

Effective 7/1/2022

Title 26B. Utah Health and Human Services Code

**Chapter 1
Department of Health and Human Services**

**Part 1
General Provisions**

26B-1-102 Definitions.

As used in this title:

- (1) "Department" means the Department of Health and Human Services created in Section 26B-1-201.
- (2) "Executive director" means the executive director of the department appointed under Section 26B-1-203.
- (3) "Local health department" means the same as that term is defined in Section 26A-1-102.
- (4) "Public health authority" means an agency or authority of the United States, a state, a territory, a political subdivision of a state or territory, an Indian tribe, or a person acting under a grant of authority from or a contract with such an agency, that is responsible for public health matters as part of the agency or authority's official mandate.

Amended by Chapter 305, 2023 General Session

26B-1-103 Purpose of title -- Consolidation of functions into single state agency.

The purpose of this title is to consolidate into a single agency of state government all of the functions previously exercised by the Department of Health and the Department of Human Services to more efficiently and effectively carry out the responsibilities delegated to the department by state law.

Amended by Chapter 255, 2022 General Session

26B-1-104 Severability of code provisions.

If a provision of this title or Title 26, Utah Health Code, or the application of any such provision to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this title or Title 26, Utah Health Code, which can be given effect without the invalid provision or application, and to this end the provisions of this title or Title 26, Utah Health Code, are declared to be severable.

Renumbered and Amended by Chapter 255, 2022 General Session

26B-1-105 Individual rights protected.

Nothing in this title prohibits an individual from choosing the diet, therapy, or mode of treatment to be administered to an individual or an individual's family.

Renumbered and Amended by Chapter 255, 2022 General Session

Part 2

Department of Health and Human Services

26B-1-201 Department of Health and Human Services -- Creation -- Duties.

- (1) There is created within state government the Department of Health and Human Services, which has all of the policymaking functions, regulatory and enforcement powers, rights, duties, and responsibilities outlined in this title and previously vested in the Department of Health and the Department of Human Services.
- (2) Subject to the limitation and grants of authority in state law, the department shall serve as the health, health planning, medical assistance, and social services authority of the state, and for administration of federally assisted state programs or plans is designated as the sole state agency for:
 - (a) social service block grants;
 - (b) alcohol, drug, and mental health programs, including block grants;
 - (c) child welfare;
 - (d) state programs supported under the Older Americans Act, 42 U.S.C. Sec. 3001, et seq.;
 - (e) public health;
 - (f) health planning;
 - (g) maternal and child health;
 - (h) services for individuals with a disability; and
 - (i) medical assistance.
- (3) A state plan or program administered by the department:
 - (a) shall be developed in the appropriate divisions or offices of the department in accordance with applicable requirements of state and federal law; and
 - (b) may be amended by the executive director to achieve coordination, efficiency, or economy.
- (4) In addition to Subsection (1), from July 1, 2022, through June 30, 2023, the Department of Health and Human Services shall exercise the policymaking functions, regulatory and enforcement powers, rights, duties, and responsibilities of the Department of Health and the Department of Human Services under:
 - (a) Title 26, Utah Health Code; and
 - (b) Title 62A, Utah Human Services Code.

Amended by Chapter 255, 2022 General Session

26B-1-202 Department authority and duties.

The department may, subject to applicable restrictions in state law and in addition to all other authority and responsibility granted to the department by law:

- (1) adopt rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, and not inconsistent with law, as the department may consider necessary or desirable for providing health and social services to the people of this state;
- (2) establish and manage client trust accounts in the department's institutions and community programs, at the request of the client or the client's legal guardian or representative, or in accordance with federal law;
- (3) purchase, as authorized or required by law, services that the department is responsible to provide for legally eligible persons;
- (4) conduct adjudicative proceedings for clients and providers in accordance with the procedures of Title 63G, Chapter 4, Administrative Procedures Act;

- (5) establish eligibility standards for the department's programs, not inconsistent with state or federal law or regulations;
- (6) take necessary steps, including legal action, to recover money or the monetary value of services provided to a recipient who was not eligible;
- (7) set and collect fees for the department's services;
- (8) license agencies, facilities, and programs, except as otherwise allowed, prohibited, or limited by law;
- (9) acquire, manage, and dispose of any real or personal property needed or owned by the department, not inconsistent with state law;
- (10) receive gifts, grants, devises, and donations; gifts, grants, devises, donations, or the proceeds thereof, may be credited to the program designated by the donor, and may be used for the purposes requested by the donor, as long as the request conforms to state and federal policy; all donated funds shall be considered private, nonlapsing funds and may be invested under guidelines established by the state treasurer;
- (11) accept and employ volunteer labor or services; the department is authorized to reimburse volunteers for necessary expenses, when the department considers that reimbursement to be appropriate;
- (12) carry out the responsibility assigned in the workforce services plan by the State Workforce Development Board;
- (13) carry out the responsibility assigned by Section 62A-5a-105 with respect to coordination of services for students with a disability;
- (14) provide training and educational opportunities for the department's staff;
- (15) collect child support payments and any other money due to the department;
- (16) apply the provisions of Title 78B, Chapter 12, Utah Child Support Act, to parents whose child lives out of the home in a department licensed or certified setting;
- (17) establish policy and procedures, within appropriations authorized by the Legislature, in cases where the Division of Child and Family Services or the Division of Juvenile Justice Services is given custody of a minor by the juvenile court under Title 80, Utah Juvenile Code, or the department is ordered to prepare an attainment plan for a minor found not competent to proceed under Section 80-6-403, including:
 - (a) designation of interagency teams for each juvenile court district in the state;
 - (b) delineation of assessment criteria and procedures;
 - (c) minimum requirements, and timeframes, for the development and implementation of a collaborative service plan for each minor placed in department custody; and
 - (d) provisions for submittal of the plan and periodic progress reports to the court;
- (18) carry out the responsibilities assigned to the department by statute;
- (19) examine and audit the expenditures of any public funds provided to a local substance abuse authority, a local mental health authority, a local area agency on aging, and any person, agency, or organization that contracts with or receives funds from those authorities or agencies. Those local authorities, area agencies, and any person or entity that contracts with or receives funds from those authorities or area agencies, shall provide the department with any information the department considers necessary. The department is further authorized to issue directives resulting from any examination or audit to a local authority, an area agency, and persons or entities that contract with or receive funds from those authorities with regard to any public funds. If the department determines that it is necessary to withhold funds from a local mental health authority or local substance abuse authority based on failure to comply with state or federal law, policy, or contract provisions, the department may take steps necessary

- to ensure continuity of services. For purposes of this Subsection (19) "public funds" means the same as that term is defined in Section 62A-15-102;
- (20) in accordance with Subsection 26B-2-104(1)(d), accredit one or more agencies and persons to provide intercountry adoption services;
 - (21) within legislative appropriations, promote and develop a system of care and stabilization services:
 - (a) in compliance with Title 63G, Chapter 6a, Utah Procurement Code; and
 - (b) that encompasses the department, department contractors, and the divisions, offices, or institutions within the department, to:
 - (i) navigate services, funding resources, and relationships to the benefit of the children and families whom the department serves;
 - (ii) centralize department operations, including procurement and contracting;
 - (iii) develop policies that govern business operations and that facilitate a system of care approach to service delivery;
 - (iv) allocate resources that may be used for the children and families served by the department or the divisions, offices, or institutions within the department, subject to the restrictions in Section 63J-1-206;
 - (v) create performance-based measures for the provision of services; and
 - (vi) centralize other business operations, including data matching and sharing among the department's divisions, offices, and institutions;
 - (22) ensure that any training or certification required of a public official or public employee, as those terms are defined in Section 63G-22-102, complies with Title 63G, Chapter 22, State Training and Certification Requirements, if the training or certification is required:
 - (a) under this title;
 - (b) by the department; or
 - (c) by an agency or division within the department;
 - (23) enter into cooperative agreements with the Department of Environmental Quality to delineate specific responsibilities to assure that assessment and management of risk to human health from the environment are properly administered;
 - (24) consult with the Department of Environmental Quality and enter into cooperative agreements, as needed, to ensure efficient use of resources and effective response to potential health and safety threats from the environment, and to prevent gaps in protection from potential risks from the environment to specific individuals or population groups;
 - (25) to the extent authorized under state law or required by federal law, promote and protect the health and wellness of the people within the state;
 - (26) establish, maintain, and enforce rules authorized under state law or required by federal law to promote and protect the public health or to prevent disease and illness;
 - (27) investigate the causes of epidemic, infectious, communicable, and other diseases affecting the public health;
 - (28) provide for the detection and reporting of communicable, infectious, acute, chronic, or any other disease or health hazard which the department considers to be dangerous, important, or likely to affect the public health;
 - (29) collect and report information on causes of injury, sickness, death, and disability and the risk factors that contribute to the causes of injury, sickness, death, and disability within the state;
 - (30) collect, prepare, publish, and disseminate information to inform the public concerning the health and wellness of the population, specific hazards, and risks that may affect the health and wellness of the population and specific activities which may promote and protect the health and wellness of the population;

- (31) abate nuisances when necessary to eliminate sources of filth and infectious and communicable diseases affecting the public health;
- (32) make necessary sanitary and health investigations and inspections in cooperation with local health departments as to any matters affecting the public health;
- (33) establish laboratory services necessary to support public health programs and medical services in the state;
- (34) establish and enforce standards for laboratory services which are provided by any laboratory in the state when the purpose of the services is to protect the public health;
- (35) cooperate with the Labor Commission to conduct studies of occupational health hazards and occupational diseases arising in and out of employment in industry, and make recommendations for elimination or reduction of the hazards;
- (36) cooperate with the local health departments, the Department of Corrections, the Administrative Office of the Courts, the Division of Juvenile Justice Services, and the Crime Victim Reparations and Assistance Board to conduct testing for HIV infection of alleged sexual offenders, convicted sexual offenders, and any victims of a sexual offense;
- (37) investigate the causes of maternal and infant mortality;
- (38) establish, maintain, and enforce a procedure requiring the blood of adult pedestrians and drivers of motor vehicles killed in highway accidents be examined for the presence and concentration of alcohol, and provide the Commissioner of Public Safety with monthly statistics reflecting the results of these examinations, with necessary safeguards so that information derived from the examinations is not used for a purpose other than the compilation of these statistics;
- (39) establish qualifications for individuals permitted to draw blood under Subsection 41-6a-523(1)(a)(vi), 53-10-405(2)(a)(vi), 72-10-502(5)(a)(vi), or 77-23-213(3)(a)(vi), and to issue permits to individuals the department finds qualified, which permits may be terminated or revoked by the department;
- (40) establish a uniform public health program throughout the state which includes continuous service, employment of qualified employees, and a basic program of disease control, vital and health statistics, sanitation, public health nursing, and other preventive health programs necessary or desirable for the protection of public health;
- (41) conduct health planning for the state;
- (42) monitor the costs of health care in the state and foster price competition in the health care delivery system;
- (43) establish methods or measures for health care providers, public health entities, and health care insurers to coordinate among themselves to verify the identity of the individuals the providers serve;
- (44) designate Alzheimer's disease and related dementia as a public health issue and, within budgetary limitations, implement a state plan for Alzheimer's disease and related dementia by incorporating the plan into the department's strategic planning and budgetary process;
- (45) coordinate with other state agencies and other organizations to implement the state plan for Alzheimer's disease and related dementia;
- (46) ensure that any training or certification required of a public official or public employee, as those terms are defined in Section 63G-22-102, complies with Title 63G, Chapter 22, State Training and Certification Requirements, if the training or certification is required by the agency or under this title, Title 26, Utah Health Code, or Title 62A, Utah Human Services Code;
- (47) oversee public education vision screening as described in Section 53G-9-404; and
- (48) issue code blue alerts in accordance with Title 35A, Chapter 16, Part 7, Code Blue Alert.

Amended by Chapter 302, 2023 General Session

26B-1-203 Executive director -- Appointment -- Compensation -- Qualifications -- Deputy directors required -- Responsibilities.

- (1)
 - (a) The chief administrative officer of the department is the executive director, who shall be appointed by the governor with the advice and consent of the Senate.
 - (b) The executive director may be removed at the will of the governor.
 - (c) The executive director shall receive a salary established by the governor within the salary range fixed by the Legislature in Title 67, Chapter 22, State Officer Compensation.
- (2) The executive director shall be experienced in administration, management, and coordination of complex organizations.
- (3) If the executive director is not a physician, the executive director or a deputy director shall:
 - (a) be informed and experienced in public health;
 - (b) have successfully completed at least a master's degree of public health or public administration from an accredited school of public health or from an accredited program of public health or public administration; and
 - (c)
 - (i) have at least five years of professional full-time experience, of which at least two years have been in public health in a senior level administrative capacity; or
 - (ii) have at least five years of professional full-time experience in public health programs, of which at least three years have been in a senior level administrative capacity.
- (4) The executive director shall appoint a deputy director of the department who:
 - (a) shall have successfully completed at least one year's graduate work in an accredited school of public health or an accredited program of public health;
 - (b) shall have at least five years of professional full-time experience in public health programs; and
 - (c) is a physician licensed to practice medicine in the state with experience in public health.
- (5) The executive director is responsible for:
 - (a) administration and supervision of the department;
 - (b) coordination of policies and program activities conducted through the boards, divisions, and offices of the department;
 - (c) approval of the proposed budget of each board, division, and office within the department; and
 - (d) other duties as the Legislature or governor shall assign to the executive director.
- (6) The executive director may appoint deputy or assistant directors to assist the executive director in carrying out the department's responsibilities.

Renumbered and Amended by Chapter 255, 2022 General Session

Superseded 7/1/2024

26B-1-204 Creation of boards, divisions, and offices -- Power to organize department.

- (1) The executive director shall make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, and not inconsistent with law for:
 - (a) the administration and government of the department;
 - (b) the conduct of the department's employees; and
 - (c) the custody, use, and preservation of the records, papers, books, documents, and property of the department.

- (2) The following policymaking boards, councils, and committees are created within the Department of Health and Human Services:
 - (a) Board of Aging and Adult Services;
 - (b) Utah State Developmental Center Board;
 - (c) Health Facility Committee;
 - (d) State Emergency Medical Services Committee;
 - (e) Air Ambulance Committee;
 - (f) Health Data Committee;
 - (g) Utah Health Care Workforce Financial Assistance Program Advisory Committee;
 - (h) Child Care Provider Licensing Committee;
 - (i) Primary Care Grant Committee;
 - (j) Adult Autism Treatment Program Advisory Committee;
 - (k) Youth Electronic Cigarette, Marijuana, and Other Drug Prevention Committee; and
 - (l) any boards, councils, or committees that are created by statute in this title.
- (3) The following divisions are created within the Department of Health and Human Services:
 - (a) relating to operations:
 - (i) the Division of Finance and Administration;
 - (ii) the Division of Licensing and Background Checks;
 - (iii) the Division of Customer Experience;
 - (iv) the Division of Data, Systems, and Evaluation; and
 - (v) the Division of Continuous Quality Improvement;
 - (b) relating to healthcare administration:
 - (i) the Division of Integrated Healthcare, which shall include responsibility for:
 - (A) the state's medical assistance programs; and
 - (B) behavioral health programs described in Chapter 5, Health Care - Substance Use and Mental Health;
 - (ii) the Division of Aging and Adult Services; and
 - (iii) the Division of Services for People with Disabilities; and
 - (c) relating to community health and well-being:
 - (i) the Division of Child and Family Services;
 - (ii) the Division of Family Health;
 - (iii) the Division of Population Health;
 - (iv) the Division of Juvenile Justice and Youth Services; and
 - (v) the Office of Recovery Services.
- (4) The executive director may establish offices and bureaus to facilitate management of the department as required by, and in accordance with this title.
- (5) From July 1, 2022, through June 30, 2023, the executive director may adjust the organizational structure relating to the department, including the organization of the department's divisions and offices, notwithstanding the organizational structure described in this title.

Amended by Chapter 249, 2023 General Session

Amended by Chapter 305, 2023 General Session

Effective 7/1/2024

26B-1-204 Creation of boards, divisions, and offices -- Power to organize department.

- (1) The executive director shall make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, and not inconsistent with law for:
 - (a) the administration and government of the department;

- (b) the conduct of the department's employees; and
 - (c) the custody, use, and preservation of the records, papers, books, documents, and property of the department.
- (2) The following policymaking boards, councils, and committees are created within the Department of Health and Human Services:
- (a) Board of Aging and Adult Services;
 - (b) Utah State Developmental Center Board;
 - (c) Health Facility Committee;
 - (d) Health Data Committee;
 - (e) Utah Health Care Workforce Financial Assistance Program Advisory Committee;
 - (f) Child Care Provider Licensing Committee;
 - (g) Primary Care Grant Committee;
 - (h) Adult Autism Treatment Program Advisory Committee;
 - (i) Youth Electronic Cigarette, Marijuana, and Other Drug Prevention Committee; and
 - (j) any boards, councils, or committees that are created by statute in this title.
- (3) The following divisions are created within the Department of Health and Human Services:
- (a) relating to operations:
 - (i) the Division of Finance and Administration;
 - (ii) the Division of Licensing and Background Checks;
 - (iii) the Division of Customer Experience;
 - (iv) the Division of Data, Systems, and Evaluation; and
 - (v) the Division of Continuous Quality Improvement;
 - (b) relating to healthcare administration:
 - (i) the Division of Integrated Healthcare, which shall include responsibility for:
 - (A) the state's medical assistance programs; and
 - (B) behavioral health programs described in Chapter 5, Health Care - Substance Use and Mental Health;
 - (ii) the Division of Aging and Adult Services; and
 - (iii) the Division of Services for People with Disabilities; and
 - (c) relating to community health and well-being:
 - (i) the Division of Child and Family Services;
 - (ii) the Division of Family Health;
 - (iii) the Division of Population Health;
 - (iv) the Division of Juvenile Justice and Youth Services; and
 - (v) the Office of Recovery Services.
- (4) The executive director may establish offices and bureaus to facilitate management of the department as required by, and in accordance with this title.
- (5) From July 1, 2022, through June 30, 2023, the executive director may adjust the organizational structure relating to the department, including the organization of the department's divisions and offices, notwithstanding the organizational structure described in this title.

Amended by Chapter 249, 2023 General Session
Amended by Chapter 305, 2023 General Session
Amended by Chapter 310, 2023 General Session

26B-1-205 Division directors -- Appointment -- Compensation -- Qualifications.

(1)

- (a) The executive director of the department has administrative jurisdiction over each division and office director.
 - (b) The executive director may make changes in personnel and service functions in the divisions and offices under the executive director's administrative jurisdiction, and authorize designees to perform appropriate responsibilities, to effectuate greater efficiency and economy in the operations of the department.
 - (c) The executive director may establish offices and bureaus to perform functions such as budgeting, planning, data processing, and personnel administration, to facilitate management of the department.
- (2) The chief officer of each division and office enumerated in Section 26B-1-204 shall be a director who shall serve as the executive and administrative head of the division or office.
 - (3) The executive director shall appoint each division director with the concurrence of the division's board, if the division has a board.
 - (4) The director of any division may be removed from that position at the will of the executive director after consultation with that division's board, if the division has a board.
 - (5) Directors of divisions and offices shall receive compensation as provided by Title 63A, Chapter 17, Utah State Personnel Management Act.
 - (6) The director of each division and office shall be experienced in administration and possess such additional qualifications as determined by the executive director, and as provided by law.

Renumbered and Amended by Chapter 255, 2022 General Session

26B-1-206 Limitation on establishment of advisory bodies.

- (1) A department division or board:
 - (a) may not establish permanent, ongoing advisory groups unless otherwise specifically created in federal or state statute; and
 - (b) shall comply with the provisions of this section.
- (2)
 - (a) A division or board may establish subject-limited and time-limited ad hoc advisory groups to provide input necessary to carry out the division's or board's assigned responsibilities.
 - (b) When establishing such an advisory group, the board shall establish in writing a specific charge and time limit.
- (3) The department shall consolidate an advisory group or committee with another committee or advisory group as appropriate to create greater efficiencies and budgetary savings for the department.
- (4) A member of any ad hoc advisory group shall receive no compensation or benefits for their service.
- (5) The provision of staffing and support to any ad hoc advisory group is contingent on availability of human and financial resources.

Renumbered and Amended by Chapter 255, 2022 General Session

26B-1-207 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 policies and to review federal grants.

- (1) In establishing public health policy, the department shall consult with the local health departments established under Title 26A, Chapter 1, Local Health Departments.

- (2)
- (a) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the department may prescribe by administrative rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, reasonable requirements not inconsistent with law for a local health department as defined in Section 26A-1-102.
 - (b) Except where specifically allowed by federal law or state statute, a local health department, as defined in Section 26A-1-102, may not establish standards or regulations that are more stringent than those established by federal law, state statute, or administrative rule adopted in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
 - (c) Nothing in this Subsection (2), limits the ability of a local health department to make standards and regulations in accordance with Subsection 26A-1-121(1)(a) for:
 - (i) emergency rules made in accordance with Section 63G-3-304; or
 - (ii) items not regulated under federal law, state statute, or state administrative rule.
- (3)
- (a) As used in this Subsection (3):
 - (i) "Committee" means the committee established under Subsection (3)(b).
 - (ii) "Exempt application" means an application for a federal grant that meets the criteria established under Subsection (3)(c)(iii).
 - (iii) "Expedited application" means an application for a federal grant that meets the criteria established under Subsection (3)(c)(iv).
 - (iv) "Federal grant" means a grant from the federal government that could provide funds for local health departments to help them fulfill their duties and responsibilities.
 - (v) "Reviewable application" means an application for a federal grant that is not an exempt application.
 - (b) The department shall establish a committee consisting of:
 - (i) the executive director, or the executive director's designee;
 - (ii) two representatives of the department, appointed by the executive director; and
 - (iii) three representatives of local health departments, appointed by all local health departments.
 - (c) The committee shall:
 - (i) evaluate the allocation of public health resources between the department and local health departments, including whether funds allocated by contract were allocated in accordance with the formula described in Section 26A-1-116;
 - (ii) evaluate policies and rules that affect local health departments in accordance with Subsection (3)(g);
 - (iii) consider department policy and rule changes proposed by the department or local health departments;
 - (iv) establish criteria by which an application for a federal grant may be judged to determine whether it should be exempt from the requirements under Subsection (3)(d); and
 - (v) establish criteria by which an application for a federal grant may be judged to determine whether committee review under Subsection (3)(d)(i) should be delayed until after the application is submitted because the application is required to be submitted under a timetable that makes committee review before it is submitted impracticable if the submission deadline is to be met.
 - (d)
 - (i) The committee shall review the goals and budget for each reviewable application:
 - (A) before the application is submitted, except for an expedited application; and
 - (B) for an expedited application, after the application is submitted but before funds from the federal grant for which the application was submitted are disbursed or encumbered.

- (ii) Funds from a federal grant under a reviewable application may not be disbursed or encumbered before the goals and budget for the federal grant are established by:
 - (A) a two-thirds vote of the committee, following the committee review under Subsection (3)(d)(i); or
 - (B) if two-thirds of the committee cannot agree on the goals and budget, the chair of the health advisory council, after consultation with the committee in a manner that the committee determines.
- (e) An exempt application is exempt from the requirements of Subsection (3)(d).
- (f) The department may use money from a federal grant to pay administrative costs incurred in implementing this Subsection (3).
- (g) When evaluating a policy or rule that affects a local health department, the committee shall determine:
 - (i) whether the department has the authority to promulgate the policy or rule;
 - (ii) an estimate of the cost a local health department will bear to comply with the policy or rule;
 - (iii) whether there is any funding provided to a local health department to implement the policy or rule; and
 - (iv) whether the policy or rule is still needed.
- (h) Before November 1 of each year, the department shall provide a report to the Administrative Rules Review and General Oversight Committee regarding the determinations made under Subsection (3)(g).

Amended by Chapter 272, 2023 General Session

26B-1-208 Participation in federal programs -- Federal grants -- Authority of executive director.

- (1) The executive director may, by following the procedures and requirements of Title 63J, Chapter 5, Federal Funds Procedures Act, seek federal grants, loans, or participation in federal programs.
- (2) Wherever state law authorizes a board, director, division, or office of the department to accept any grant, fund, or service which is to be advanced or contributed in whole or in part by the federal government, that acceptance shall be subject to the approval or disapproval of the executive director.
- (3) All applications for federal grants or other federal financial assistance for the support of any department program is subject to the approval of the executive director.
- (4) If any executive or legislative provision of the federal government so requires, as a condition to participation by this state in any fund, property, or service, the executive director, with the governor's approval, shall expend whatever funds are necessary out of the money provided by the Legislature for use and disbursement by that department.

Renumbered and Amended by Chapter 255, 2022 General Session

26B-1-209 Fee schedule adopted by department.

- (1) The department may adopt a schedule of fees that may be assessed for services rendered by the department, provided that the fees are:
 - (a) reasonable and fair; and
 - (b) submitted to the Legislature as part of the department's annual appropriations request.
- (2) When the department submits a fee schedule to the Legislature, the Legislature, in accordance with Section 63J-1-504, may:

- (a) approve the fee;
 - (b) increase or decrease and approve the fee; or
 - (c) reject any fee submitted to it.
- (3) Fees approved by the Legislature under this section shall be paid into the state treasury.

Renumbered and Amended by Chapter 255, 2022 General Session

26B-1-210 Department budget -- Reports from divisions.

- (1) The department shall prepare and submit to the governor, for inclusion in the governor's budget to be submitted to the Legislature, a budget of the department's financial requirements needed to carry out the department's responsibilities, as provided by law during the fiscal year following the Legislature's next Annual General Session.
- (2) The executive director shall require a report from each of the divisions and offices of the department, to aid in preparation of the departmental budget.

Renumbered and Amended by Chapter 255, 2022 General Session

26B-1-211 Background checks for employees -- Access to abuse and neglect information to screen employees and volunteers.

- (1) As used in this section, "bureau" means the Bureau of Criminal Identification created in Section 53-10-201.
- (2) Beginning July 1, 2018, the department may require a fingerprint-based local, regional, and national criminal history background check and ongoing monitoring of:
 - (a) all staff, contracted employees, and volunteers who:
 - (i) have access to protected health information or personal identifying information;
 - (ii) have direct access to patients, children, or vulnerable adults as defined in Section 26B-2-101;
 - (iii) work in areas of privacy and data security;
 - (iv) handle financial information, including receipt of funds, reviewing invoices, making payments, and other types of financial information; and
 - (v) perform audit functions, whether internal or external, on behalf of the department; and
 - (b) job applicants who have been offered a position with the department and the job requirements include those described in Subsection (2)(a).
- (3) Beginning July 1, 2022, for the purposes described in Subsection (2), the department may also access:
 - (a) the department's Management Information System created in Section 80-2-1001;
 - (b) the department's Licensing Information System created in Section 80-2-1002;
 - (c) the statewide database of the Division of Aging and Adult Services created by Section 26B-6-210; and
 - (d) juvenile court records under Subsection 80-3-404(4).
- (4) Each individual in a position listed in Subsection (2) shall provide a completed fingerprint card to the department upon request.
- (5) The department shall require that an individual required to submit to a background check under Subsection (4) provide a signed waiver on a form provided by the department that meets the requirements of Subsection 53-10-108(4).
- (6) For a noncriminal justice background search and registration in accordance with Subsection 53-10-108(13), the department shall submit to the bureau:

- (a) the applicant's personal identifying information and fingerprints for a criminal history search of applicable local, regional, and national databases; and
 - (b) a request for all information received as a result of the local, regional, and nationwide background check.
- (7) The department is responsible for the payment of all fees required by Subsection 53-10-108(15) and any fees required to be submitted to the Federal Bureau of Investigation by the bureau.
- (8) The department may make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, that:
- (a) determine how the department will assess the employment status of an individual upon receipt of background information;
 - (b) determine when an individual would be disqualified from holding a position based on:
 - (i) the type of crimes and the severity of those crimes; or
 - (ii) one or more substantiated or supported findings of abuse, neglect, or exploitation; and
 - (c) identify the appropriate privacy risk mitigation strategy to be used in accordance with Subsection 53-10-108(13)(b).

Renumbered and Amended by Chapter 255, 2022 General Session

26B-1-212 Confidential records.

- (1) A record classified as confidential under this title shall remain confidential, and be released according to the provisions of this title, notwithstanding Section 63G-2-310.
- (2) In addition to a person granted access to a private record described in Subsection 63G-2-302(1)(b), a school, school district, local health department, and the department may share an immunization record as defined in Section 53G-9-301 or any other record relating to a vaccination or immunization as necessary to ensure compliance with Title 53G, Chapter 8, Part 3, Physical Restraint of Students, and to prevent, investigate, and control the causes of epidemic, infectious, communicable, and other diseases affecting the public health.

Renumbered and Amended by Chapter 255, 2022 General Session

26B-1-213 Department and committee rules and proceedings.

- (1)
 - (a) Except in areas subject to concurrence between the department and a committee created under this title, Title 26, Utah Health Code, or Title 62A, Utah Human Services Code, the department shall have the power to adopt, amend, or rescind rules necessary to carry out the provisions of this title.
 - (b) If the adoption of rules under a provision of this title is subject to concurrence between the department and a committee created under this title and no concurrence can be reached, the department has final authority to adopt, amend, or rescind rules necessary to carry out the provisions of this title.
 - (c) When the provisions of this title require concurrence between the department and a committee created under this title:
 - (i) the department shall report to and update the committee on a regular basis related to matters requiring concurrence; and
 - (ii) the committee shall review the report submitted by the department under this Subsection (1) (c) and shall:
 - (A) concur with the report; or

- (B) provide a reason for not concurring with the report and provide an alternative recommendation to the department.
- (2) Rules shall have the force and effect of law and may deal with matters which materially affect the security of health or the preservation and improvement of public health in the state, and any matters as to which jurisdiction is conferred upon the department by this title.
 - (3) Every rule adopted by the department, or by the concurrence of the department and a committee established under Section 26B-1-204, is subject to Title 63G, Chapter 3, Utah Administrative Rulemaking Act, and is effective at the time and in the manner provided in that act.
 - (4) If, at the next general session of the Legislature following the filing of a rule with the legislative research director, the Legislature passes a bill disapproving such rule, the rule shall be null and void.
 - (5) The department, or the department in concurrence with a committee created under Section 26B-1-204, may not adopt a rule identical to a rule disapproved under Subsection (4) of this section before the beginning of the next general session of the Legislature following the general session at which the rule was disapproved.
 - (6) The department and all committees, boards, divisions, and offices created under this title, Title 26, Utah Health Code, or Title 62A, Utah Human Services Code, shall comply with the procedures and requirements of Title 63G, Chapter 4, Administrative Procedures Act, in any adjudicative proceedings.
 - (7)
 - (a) The department may hold hearings, administer oaths, subpoena witnesses, and take testimony in matters relating to the exercise and performance of the powers and duties vested in or imposed upon the department.
 - (b) The department may, at the department's sole discretion, contract with any other agency or department of the state to conduct hearings in the name of the department.

Renumbered and Amended by Chapter 255, 2022 General Session

26B-1-214 Executive director -- Enforcement powers.

Subject to the restrictions in this title and to the extent permitted by state law, the executive director is empowered to issue orders to enforce state laws and rules established by the department except where the enforcement power is given to a committee created under Section 26B-1-204.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-1-215 Actions on behalf of department -- Party in interest.

- (1) The executive director, each of the department's boards, divisions, offices, and the director of each division or office, shall, in the exercise of any power, duty, or function under any statute of this state, is considered to be acting on behalf of the department.
- (2) The department, through the executive director or through any of the department's boards, divisions, offices, or directors, shall be considered the party in interest in all actions at law or in equity, where the department or any constituent, board, division, office, or official thereof is authorized by any statute of the state to be a party to any legal action.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-1-216 Powers and duties of the department -- Quality and design.

The department shall:

- (1) monitor and evaluate the quality of services provided by the department including:
 - (a) in accordance with Part 5, Fatality Review, monitoring, reviewing, and making recommendations relating to a fatality review;
 - (b) overseeing the duties of the child protection ombudsman appointed under Section 80-2-1104; and
 - (c) conducting internal evaluations of the quality of services provided by the department and service providers contracted with the department;
- (2) conduct investigations described in Section 80-2-703; and
- (3) develop an integrated human services system and implement a system of care by:
 - (a) designing and implementing a comprehensive continuum of services for individuals who receive services from the department or a service provider contracted with the department;
 - (b) establishing and maintaining department contracts with public and private service providers;
 - (c) establishing standards for the use of service providers who contract with the department;
 - (d) coordinating a service provider network to be used within the department to ensure individuals receive the appropriate type of services;
 - (e) centralizing the department's administrative operations; and
 - (f) integrating, analyzing, and applying department-wide data and research to monitor the quality, effectiveness, and outcomes of services provided by the department.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-1-217 Content and form of certificates and reports.

- (1) Certificates, certifications, forms, reports, other documents and records, and the form of communication between persons required by this title shall be prepared in the form prescribed by department rule.
- (2) Certificates, certifications, forms, reports, or other documents and records, and communications between persons required by this title may be signed, filed, verified, registered, and stored by photographic, electronic, or other means as prescribed by department rule.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-1-218 Intergenerational poverty mitigation reporting.

- (1) As used in this section:
 - (a) "Cycle of poverty" means the same as that term is defined in Section 35A-9-102.
 - (b) "Intergenerational poverty" means the same as that term is defined in Section 35A-9-102.
- (2) On or before October 1 of each year, the department shall provide an annual report to the Department of Workforce Services for inclusion in the intergenerational poverty report described in Section 35A-9-202.
- (3) The report shall:
 - (a) describe policies, procedures, and programs that the department has implemented or modified to help break the cycle of poverty and end welfare dependency for children in the state affected by intergenerational poverty; and
 - (b) contain recommendations to the Legislature on how to address issues relating to breaking the cycle of poverty and ending welfare dependency for children in the state affected by intergenerational poverty.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-1-219 Requirements for issuing, recommending, or facilitating rationing criteria.

- (1) As used in this section:
 - (a) "Health care resource" means:
 - (i) health care as defined in Section 78B-3-403;
 - (ii) a prescription drug as defined in Section 58-17b-102;
 - (iii) a prescription device as defined in Section 58-17b-102;
 - (iv) a nonprescription drug as defined in Section 58-17b-102; or
 - (v) any supply or treatment that is intended for use in the course of providing health care as defined in Section 78B-3-403.
 - (b)
 - (i) "Rationing criteria" means any requirement, guideline, process, or recommendation regarding:
 - (A) the distribution of a scarce health care resource; or
 - (B) qualifications or criteria for a person to receive a scarce health care resource.
 - (ii) "Rationing criteria" includes crisis standards of care with respect to any health care resource.
 - (c) "Scarce health care resource" means a health care resource:
 - (i) for which the need for the health care resource in the state or region significantly exceeds the available supply of that health care resource in that state or region;
 - (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
 - (iii) that the federal government has allocated to the state to distribute.
- (2)
 - (a) On or before July 1, 2022, the department shall make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to establish a procedure that the 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).
- (3) The procedures developed by the department under Subsection (2) shall include, at a minimum:
 - (a) a requirement that the department notify the following individuals in writing before rationing criteria are issued, are recommended, or take effect:
 - (i) the Administrative Rules Review and General Oversight Committee created in Section 63G-3-501;
 - (ii) the governor or the governor's designee;
 - (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
 - (vi) if rationing criteria affect hospitals in the state, a representative of an association 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 and General Oversight Committee all rationing criteria that:
 - (i) were adopted, modified, required, facilitated, or recommended by the department prior to March 22, 2022; and
 - (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 and General Oversight Committee shall, under Subsection 63G-3-501(3)(d)(i), review each of the rationing criteria submitted by the department under Subsection (4)(a).
- (5) The requirements described in this section and rules made under this section shall apply regardless of whether rationing criteria:
 - (a) have the force and effect of law, or is solely advisory, informative, or descriptive;
 - (b) are carried out or implemented directly or indirectly by the department or by other individuals or entities; or
 - (c) are developed solely by the department or in collaboration with other individuals or entities.
- (6) This section:
 - (a) may not be suspended under Section 53-2a-209 or any other provision of state law relating to a state of emergency;
 - (b) does not limit a private entity from developing or implementing rationing criteria; and
 - (c) does not require the department to adopt, modify, require, facilitate, or recommend rationing criteria that the department does not determine to be necessary or appropriate.
- (7) Subsection (2) does not apply to rationing criteria that are adopted, modified, required, facilitated, or recommended by the department:
 - (a) through the regular, non-emergency rulemaking procedure described in Section 63G-3-301;
 - (b) if the modification is solely to correct a technical error in rationing criteria such as correcting obvious errors and inconsistencies including those involving punctuation, capitalization, cross references, numbering, and wording;
 - (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;
 - (e) if state law explicitly authorizes the department to engage in rulemaking to establish rationing criteria; or
 - (f) if rationing criteria are authorized directly through a general appropriation bill that is validly enacted.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-1-220 Legal advice and representation for department.

- (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 26B-1-224.

- (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 26B-1-224.
- (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.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-1-221 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.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-1-222 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;
- (2) to fail to remove or abate from private property under the person's control at 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;
- (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 Sections 26B-1-220 and 26B-1-228; or
- (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.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-1-223 Unlawful acts by department officers and employees.

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

- (1) to accept any gift, remuneration, or other consideration, directly or indirectly, for an incorrect or improper performance of the duties imposed upon the officer or employee by or in behalf of the department or by the provisions of Sections 26B-1-220 and 26B-1-228; or
- (2) to perform any work, labor, or services other than the duties assigned to 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 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.

Renumbered and Amended by Chapter 305, 2023 General Session

Superseded 7/1/2024**26B-1-224 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 Section 26B-1-222 or 26B-1-223, 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 26B-8-134 or Section 26B-4-128.
 - (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 \$5,000 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 \$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:
 - (i) may be assessed, in a judicial civil proceeding, a penalty not to exceed the sum of \$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.

Renumbered and Amended by Chapter 305, 2023 General Session

Effective 7/1/2024

26B-1-224 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 Section 26B-1-222 or 26B-1-223, 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 26B-8-134.
 - (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 \$5,000 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 \$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:
 - (i) may be assessed, in a judicial civil proceeding, a penalty not to exceed the sum of \$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.

Renumbered and Amended by Chapter 305, 2023 General Session
Amended by Chapter 310, 2023 General Session

26B-1-225 Application of enforcement procedures and penalties.

Enforcement procedures and penalties provided in Sections 26B-1-222 through 26B-1-224 do not apply to other chapters in this title which provide for specific enforcement procedures and penalties.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-1-226 Representatives of department authorized to enter regulated premises.

- (1) Authorized representatives of the department upon presentation of appropriate identification shall be authorized to enter upon the premises of properties regulated under this title to perform routine inspections to ensure compliance with rules adopted by the department.
- (2) This section does not authorize the department to inspect private dwellings.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-1-227 Authority of department as to functions transferred from other agencies.

- (1)
 - (a) If functions transferred from other agencies are vested by this code in the department, the department shall be the successor in every way, with respect to such functions, except as otherwise provided by this code.
 - (b) Every act done in the exercise of such functions by the department shall have the same force and effect as if done by the agency in which the functions were previously vested.
- (2) Whenever any such agency is referred to or designated by law, contract, or other document, the reference or designation shall apply to the department.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-1-228 Religious exemptions from code -- Regulation of state-licensed healing system practice unaffected by code.

- (1)
 - (a) Except as provided in Subsection (1)(b), nothing in this code shall be construed to compel any person to submit to any medical or dental examination or treatment under the authority of this code when such person, or the parent or guardian of any such person objects to such examination or treatment on religious grounds, or to permit any discrimination against such person on account of such objection.

- (b) An exemption from medical or dental examination, described in Subsection (1)(a), may not be granted if the executive director has reasonable cause to suspect a substantial menace to the health of other persons exposed to contact with the unexamined person.
- (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 for those who rely upon treatment by prayer or spiritual means in accordance with the creed or tenets of any well recognized church or religious denomination, provided the statutes and regulations on sanitation are complied with.
- (3) Nothing in this code shall be construed or used to amend any statute now in force pertaining to the scope of practice of any state-licensed healing system.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-1-229 Authority to provide data on treatment and condition of persons to designated agencies -- Immunity from liability -- Information considered privileged communication -- Information held in confidence -- Penalties for violation.

- (1) As used in this section:
 - (a) "Health care facility" means the same as that term is defined in Section 26B-2-201.
 - (b) "Health care provider" means the same as that term is defined in Section 78B-3-403.
- (2) Any person, health facility, or other organization may, without incurring liability, provide the following information to the persons and entities described in Subsection (3):
 - (a) information as determined by the state registrar of vital records appointed under Chapter 8, Part 1, Vital Statistics;
 - (b) interviews;
 - (c) reports;
 - (d) statements;
 - (e) memoranda;
 - (f) familial information; and
 - (g) other data relating to the condition and treatment of any person.
- (3) The information described in Subsection (2) may be provided to:
 - (a) the department and local health departments;
 - (b) the Division of Integrated Healthcare within the department;
 - (c) scientific and health care research organizations affiliated with institutions of higher education;
 - (d) the Utah Medical Association or any of its allied medical societies;
 - (e) peer review committees;
 - (f) professional review organizations;
 - (g) professional societies and associations; and
 - (h) any health facility's in-house staff committee for the uses described in Subsection (4).
- (4) The information described in Subsection (2) may be provided for the following purposes:
 - (a) study and advancing medical research, with the purpose of reducing the incidence of disease, morbidity, or mortality; or
 - (b) the evaluation and improvement of hospital and health care rendered by hospitals, health facilities, or health care providers.
- (5) Any person may, without incurring liability, provide information, interviews, reports, statements, memoranda, or other information relating to the ethical conduct of any health care provider to peer review committees, professional societies and associations, or any in-hospital staff committee to be used for purposes of intraprofessional society or association discipline.
- (6) No liability may arise against any person or organization as a result of:

- (a) providing information or material authorized in this section;
 - (b) releasing or publishing findings and conclusions of groups referred to in this section to advance health research and health education; or
 - (c) releasing or publishing a summary of these studies in accordance with this section.
- (7)
- (a) The information described in Subsection (2) that is provided to the entities described in Subsection (3):
 - (i) shall be used and disclosed by the entities described in Subsection (3) in accordance with this section; and
 - (ii) is not subject to Title 63G, Chapter 2, Government Records Access and Management Act.
 - (b) The Office of Substance Use and Mental Health, scientific and health care research organizations affiliated with institutions of higher education, the Utah Medical Association or any of the Utah Medical Association's allied medical societies, peer review committees, professional review organizations, professional societies and associations, or any health facility's in-house staff committee may only use or publish the information or material received or gathered under this section for the purpose of study and advancing medical research or medical education in the interest of reducing the incidence of disease, morbidity, or mortality, except that a summary of studies conducted in accordance with this section may be released by those groups for general publication.
- (8) All information, interviews, reports, statements, memoranda, or other data furnished by reason of this section, and any findings or conclusions resulting from those studies are privileged communications and are not subject to discovery, use, or receipt in evidence in any legal proceeding of any kind or character.
- (9)
- (a) All information described in Subsection (2) that is provided to a person or organization described in Subsection (3) shall be held in strict confidence by that person or organization, and any use, release, or publication resulting therefrom shall be made only for the purposes described in Subsections (4) and (7) and shall preclude identification of any individual or individuals studied.
 - (b) Notwithstanding Subsection (9)(a), the department's use and disclosure of information is not governed by this section.
- (10)
- (a) Any use, release, or publication, negligent or otherwise, contrary to the provisions of this section is a class B misdemeanor.
 - (b) Subsection (10)(a) does not relieve the person or organization responsible for such use, release, or publication from civil liability.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-1-231 Office of American Indian-Alaska Native Health and Family Services -- Creation -- Director -- Purpose -- Duties.

- (1)
- (a) "Director" means the director of the office appointed under Subsection (3).
 - (b) "Office" means the Office of American Indian-Alaska Native Health and Family Services created in Subsection (2).
- (2) There is created within the department the Office of American Indian-Alaska Native Health and Family Services.
- (3) The executive director shall appoint a director of the office who:

- (a) has a bachelor's degree from an accredited university or college;
 - (b) is experienced in administration; and
 - (c) is knowledgeable about the areas of American Indian-Alaska Native practices.
- (4)
- (a) The director is the administrative head of the office and shall serve under the supervision of the executive director.
 - (b) The executive director may hire staff as necessary to carry out the duties of the office described in Subsection (5)(b).
- (5)
- (a) The purpose of the office is to oversee and coordinate department services for Utah's American Indian-Alaska Native populations.
 - (b) The office shall:
 - (i) oversee and coordinate department services for Utah's American Indian-Alaska Native populations;
 - (ii) conduct regular and meaningful consultation with Indian tribes when there is a proposed department action that has an impact on an Indian tribe as a sovereign entity;
 - (iii) monitor agreements between the department and Utah's American Indian-Alaska Native populations; and
 - (iv) oversee the health liaison appointed under Section 26B-1-232 and ICWA liaison appointed under Section 26B-1-233.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-1-232 American Indian-Alaska Native Health Liaison -- Appointment -- Duties.

- (1)
- (a) "Director" means the director of the Office of American Indian-Alaska Native Health and Family Services appointed under Section 26B-1-231.
 - (b) "Health care" means care, treatment, service, or a procedure to improve, maintain, diagnose, or otherwise affect an individual's physical or mental condition.
 - (c) "Health liaison" means the American Indian-Alaska Native Health Liaison appointed under Subsection (2).
- (2)
- (a) The executive director shall appoint an individual as the American Indian-Alaska Native Health Liaison.
 - (b) The health liaison shall serve under the supervision of the director.
- (3) The health liaison shall:
- (a) promote and coordinate collaborative efforts between the department and Utah's American Indian-Alaska Native population to improve the availability and accessibility of quality health care impacting Utah's American Indian-Alaska Native populations on and off reservations;
 - (b) interact with the following to improve health disparities for Utah's American Indian-Alaska Native populations:
 - (i) tribal health programs;
 - (ii) local health departments;
 - (iii) state agencies and officials; and
 - (iv) providers of health care in the private sector;
 - (c) facilitate education, training, and technical assistance regarding public health and medical assistance programs to Utah's American Indian-Alaska Native populations; and

- (d) staff an advisory board by which Utah's tribes may consult with state and local agencies for the development and improvement of public health programs designed to address improved health care for Utah's American Indian-Alaska Native populations on and off the reservation.
- (4) The health liaison shall annually report the liaison's activities and accomplishments to the Native American Legislative Liaison Committee created in Section 36-22-1.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-1-233 Indian Child Welfare Act Liaison -- Appointment -- Qualifications -- Duties.

- (1) As used in this section:
 - (a) "Director" means the director of the Office of American Indian-Alaska Native Health and Family Services appointed under Section 26B-1-231.
 - (b) "ICWA liaison" means the Indian Child Welfare Act Liaison appointed under Subsection (2).
- (2)
 - (a) The executive director shall appoint an individual as the Indian Child Welfare Act Liaison who:
 - (i) has a bachelor's degree from an accredited university or college; and
 - (ii) is knowledgeable about the areas of child and family services and Indian tribal child rearing practices.
 - (b) The ICWA liaison shall serve under the supervision of the director.
- (3) The ICWA liaison shall:
 - (a) act as a liaison between the department and Utah's American Indian populations regarding child and family services;
 - (b) provide training to department employees regarding the requirements and implementation of the Indian Child Welfare Act, 25 U.S.C. Secs. 1901-1963;
 - (c) develop and facilitate education and technical assistance programs for Utah's American Indian populations regarding available child and family services;
 - (d) promote and coordinate collaborative efforts between the department and Utah's American Indian population to improve the availability and accessibility of quality child and family services for Utah's American Indian populations; and
 - (e) interact with the following to improve delivery and accessibility of child and family services for Utah's American Indian populations:
 - (i) state agencies and officials; and
 - (ii) providers of child and family services in the public and private sector.
- (4) The ICWA liaison shall annually report the liaison's activities and accomplishments to the Native American Legislative Liaison Committee created in Section 36-22-1.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-1-234 Handling of child sexual abuse material.

- (1) As used in this section:
 - (a) "Child sexual abuse material" means the same as that term is defined in Section 76-5b-103.
 - (b) "Secure" means to prevent and prohibit access, electronic upload, transmission, or transfer of an image.
- (2) The department or a division within the department may not retain child 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 sexual abuse material as a result of an employee unlawfully viewing child 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 sexual abuse material.

- (4) When the department or a division within the department obtains child sexual abuse material as a result of a report or an investigation, the department or division shall immediately secure the child sexual abuse material, or the electronic device if the child sexual abuse material is digital, and contact the law enforcement office that has jurisdiction over the area where the division's case is located.

Amended by Chapter 231, 2023 General Session

Renumbered and Amended by Chapter 305, 2023 General Session

26B-1-235 Request for proposal required for non-state supplied services.

- (1) As used in this section:
 - (a) "AED" means the same as that term is defined in Section 26B-4-325.
 - (b) "Office" means the Office of Emergency Medical Services and Preparedness within the department.
 - (c) "Sudden cardiac arrest" means the same as that term is defined in Section 26B-4-325.
- (2) 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.
- (3) 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).

Renumbered and Amended by Chapter 305, 2023 General Session

26B-1-236 Experimental animals -- Authorization -- Minimum period of impoundment -- Requirements -- Fees -- Records -- Revocation -- Rulemaking and investigation.

- (1) As used in this section, "institution" means any school or college of agriculture, veterinary medicine, medicine, pharmacy, or dentistry or other educational, hospital, or scientific establishment properly concerned with the investigation of or instruction concerning the structure or functions of living organisms, the cause, prevention, control, or cure of diseases or abnormal condition of human beings or animals.
- (2)
 - (a) Institutions may apply to the department for authorization to obtain animals from establishments maintained for the impounding, care, and disposal of animals seized by lawful authority.
 - (b) If, after an investigation under Subsection (2)(a), the department finds that the institution meets the requirements of this section and the department's rules and that the public interest will be served thereby, the department may authorize the institution to obtain animals under this section.
- (3) Subject to Subsection (4), the governing body of the county or municipality in which an establishment is located may make available to an authorized institution as many impounded animals in that establishment as the institution may request.
- (4) A governing body described in Subsection (3) may not make an impounded animal available to an institution, unless:
 - (a) the animal has been legally impounded for the longer of:
 - (i) at least five days; or

- (ii) the minimum period provided for by local ordinance;
- (b) the animal has not been claimed or redeemed by:
 - (i) the animal's owner; or
 - (ii) any other person entitled to claim or redeem the animal; and
- (c) the establishment has made a reasonable effort to:
 - (i) find the rightful owner of the animal, including checking if the animal has a tag or microchip; and
 - (ii) if the owner is not found, make the animal available to others during the impound period.
- (5) Owners of animals who voluntarily provide their animals to an establishment may, by signature, determine whether or not the animal may be provided to an institution or used for research or educational purposes.
- (6) The authorized institution shall provide, at the authorized institution's own expense, for the transportation of such animals from the establishment to the institution and shall use them only in the conduct of scientific and educational activities and for no other purpose.
- (7)
 - (a) The institution shall reimburse the establishment for animals received.
 - (b) The fee described in Subsection (7)(a) shall be, at a minimum, \$15 for cats and \$20 for dogs.
 - (c) The fee described in Subsection (7)(a) shall be increased as determined by the department, based on fluctuations or changes in the Consumer Price Index.
- (8) Each institution shall keep a public record of all animals received and disposed of.
- (9) The department, upon 15 days written notice and an opportunity to be heard, may revoke an institution's authorization if the institution has violated any provision of this section, or has failed to comply with the conditions required by the department with respect to the issuance of authorization.
- (10) In carrying out the provisions of this section, the department may adopt rules for:
 - (a) controlling the humane use of animals;
 - (b) diagnosis and treatment of human and animal diseases;
 - (c) advancement of veterinary, dental, medical, and biological sciences; and
 - (d) testing, improvement, and standardization of laboratory specimens, biologic projects, pharmaceuticals, and drugs.
- (11) The department may inspect or investigate any institution that applies for or is authorized to obtain animals.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-1-237 Utah Office of Internal Audit.

The Utah Office of Internal Audit:

- (1) may not be placed within the division;
- (2) shall be placed directly under, and report directly to, the executive director of the Department of Health; and
- (3) shall have full access to all records of the division.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-1-239 Systematic medical evidence review of hormonal transgender treatments.

- (1) As used in this section, "hormonal transgender treatment" means the same as that term is defined in Section 58-1-603.

- (2) The department, in consultation with the Division of Professional Licensing created in Section 58-1-103, the Physicians Licensing Board created in Section 58-67-201, the Osteopathic Physician and Surgeon's Licensing Board created in Section 58-68-201, the University of Utah, and a non-profit hospital system with multiple hospitals in Utah and experience in specialty pediatric care, shall conduct a systematic medical evidence review regarding the provision of hormonal transgender treatments to minors.
- (3) The purpose of the systematic medical evidence review is to provide the Legislature with recommendations to consider when deciding whether to lift the moratorium described in Section 58-1-603.1.
- (4) The systematic medical evidence review shall:
 - (a) analyze hormonal transgender treatments that are prescribed to a minor with gender dysphoria, including:
 - (i) analyzing any effects and side effects of the treatment; and
 - (ii) whether each treatment has been approved by the federal Food and Drug Administration to treat gender dysphoria;
 - (b) review the scientific literature regarding hormonal transgender treatments in minors, including short-term and long-term impacts, literature from other countries, and rates of desistance and time to desistance where applicable;
 - (c) review the quality of evidence cited in any scientific literature including to analyze and report on the quality of the data based on techniques such as peer review, selection bias, self-selection bias, randomization, sample size, and other applicable best research practices;
 - (d) include high quality clinical research assessing the short-term and long-term benefits and harms of hormonal transgender treatments prescribed to minors with gender dysphoria and the short-term and long-term benefits and harms of interrupting the natural puberty and development processes of the child;
 - (e) specify the conditions under which the department recommends that a treatment not be permitted;
 - (f) recommend what information a minor and the minor's parent should understand before consenting to a hormonal transgender treatment;
 - (g) recommend the best practices a health care provider should follow to provide the information described in Subsection (4)(f);
 - (h) describe the assumptions and value determinations used to reach a recommendation; and
 - (i) include any other information the department, in consultation with the entities described in Subsection (2), determines would assist the Legislature in enacting legislation related to the provision of hormonal transgender treatment to minors.
- (5) Upon the completion of the systematic medical evidence review, the department shall provide the systematic medical evidence review to the Health and Human Services Interim Committee.

Enacted by Chapter 2, 2023 General Session

26B-1-240 License by endorsement.

- (1) As used in this section, "license" means an authorization that permits the holder to engage in the practice of a profession regulated under this title.
- (2) Subject to Subsections (4) through (7), the department shall issue a license to an applicant who has been licensed in another state, district, or territory of the United States if:
 - (a) the department determines that the license issued by the other state, district, or territory encompasses a similar scope of practice as the license sought in this state;

- (b) the applicant has at least one year of experience practicing under the license issued in the other state, district, or territory; and
 - (c) the applicant's license is in good standing in the other state, district, or territory.
- (3) Subject to Subsections (4) through (7), the department may issue a license to an applicant who:
- (a) has been licensed in another state, district, or territory of the United States, or in a jurisdiction outside of the United States, if:
 - (i)
 - (A) the department determines that the applicant's education, experience, and skills demonstrate competency in the profession for which licensure is sought in this state; and
 - (B) the applicant has at least one year of experience practicing under the license issued in the other state, district, territory, or jurisdiction; or
 - (ii) the department determines that the licensure requirements of the other state, district, territory, or jurisdiction at the time the license was issued were substantially similar to the requirements for the license sought in this state; or
 - (b) has never been licensed in a state, district, or territory of the United States, or in a jurisdiction outside of the United States, if:
 - (i) the applicant was educated in or obtained relevant experience in a state, district, or territory of the United States, or a jurisdiction outside of the United States; and
 - (ii) the department determines that the education or experience was substantially similar to the education or experience requirements for the license sought in this state.
- (4) The department may refuse to issue a license to an applicant under this section if:
- (a) the department determines that there is reasonable cause to believe that the applicant is not qualified to receive the license in this state; or
 - (b) the applicant has a previous or pending disciplinary action related to the applicant's other license.
- (5) Before the department issues a license to an applicant under this section, the applicant shall:
- (a) pay a fee determined by the department under Section 63J-1-504; and
 - (b) produce satisfactory evidence of the applicant's identity, qualifications, and good standing in the profession for which licensure is sought in this state.
- (6) The department may make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, prescribing the administration and requirements of this section.
- (7) This section is subject to and may be supplemented or altered by licensure endorsement provisions or multistate licensure compacts in specific chapters of this title.

Enacted by Chapter 222, 2023 General Session

26B-1-241 Tardive dyskinesia.

With respect to tardive dyskinesia, the department shall report on the following to the Health and Human Services Interim Committee before November 1, 2023:

- (1) resources available to help health care providers, including mental health providers, accurately diagnose and appropriately treat tardive dyskinesia;
- (2) resources available to help an individual with tardive dyskinesia, and the individual's caregivers, respond to the functional and social challenges posed by the condition;
- (3) options for improving screening, diagnosis, and treatment of tardive dyskinesia, including actions the department may take on behalf of:
 - (a) residents of the state generally;
 - (b) Medicaid program enrollees; and

- (c) individuals receiving services under a local mental health authority, as defined in Section 26B-5-101; and
- (4) the potential costs and benefits of implementing the options reported under Subsection (3).

Enacted by Chapter 295, 2023 General Session

26B-1-242 Prohibition on requiring immunity passports or vaccination -- Exceptions.

- (1) As used in this section:
 - (a) "Governmental entity" means the same as that term is defined in Section 63D-2-102.
 - (b) "Immunity passport" means a document, digital record, or software application indicating that an individual is immune to a disease, whether through vaccination or infection and recovery.
 - (c) "Regulated entity" means an employer, as defined in Section 34A-6-103, that is subject to a regulation by the Centers for Medicare and Medicaid Services regarding a vaccine, unless the employer is:
 - (i) the state or a political subdivision of the state; and
 - (ii) not a health care facility as defined in Section 26B-2-201.
 - (d) "Vaccination status" means an indication of whether an individual has received one or more doses of a vaccine.
- (2) A governmental entity may not:
 - (a) refuse, withhold from, or deny to an individual any local or state service, good, facility, advantage, privilege, license, educational opportunity, health care access, or employment opportunity based on the individual's vaccination status, including whether the individual has an immunity passport; or
 - (b) require any individual, directly or indirectly, to receive a vaccine.
- (3) Subsection (2) does not apply to:
 - (a) a vaccination requirement by an institution of higher education, if the vaccination requirement is implemented in accordance with Section 53B-2-113;
 - (b) a vaccination requirement by a school if the vaccination requirement is implemented in accordance with Title 53G, Chapter 9, Part 3, Immunization Requirements;
 - (c) a child care program as defined in Section 26B-2-401 if the vaccination requirement is implemented in accordance with applicable provisions of state and federal law;
 - (d) a regulated entity if compliance with Subsection (2) would result in a violation of binding, mandatory regulations or requirements that affect the regulated entity's funding issued by the Centers for Medicare and Medicaid Services or the United States Centers for Disease Control and Prevention;
 - (e) a contract for goods or services entered into before May 3, 2023, if:
 - (i) application of this section would result in a substantial impairment of the contract; and
 - (ii) the contract is not between an employer and the employer's employee;
 - (f) a federal contractor;
 - (g) a governmental entity vaccination requirement of an employee who, as determined by the governmental entity:
 - (i) has, as part of the employee's duties, direct exposure to human blood, human fecal matter, or other potentially infectious materials that may expose the employee to hepatitis or tuberculosis; or
 - (ii) is acting in a public health or medical setting that requires the employee to receive vaccinations to perform the employee's assigned duties and responsibilities; or
 - (h) a governmental entity that:

- (i) establishes a nexus between a vaccination requirement and the employee's assigned duties and responsibilities; or
 - (ii) identifies an external requirement for vaccination that is not imposed by the governmental entity and is related to the employee's duties and responsibilities.
- (4) Nothing in this section prohibits a governmental entity from recommending that an employee receive a vaccine.

Enacted by Chapter 275, 2023 General Session

Part 3 Funds and Accounts

26B-1-301 Executive director -- Power to accept funds and gifts.

The executive director may accept and receive such other funds and gifts as may be made available from private and public groups for the purposes of promoting and protecting the public health or for the provision of health services to the people of the state and shall expend the same as appropriated by the Legislature.

Renumbered and Amended by Chapter 255, 2022 General Session

26B-1-302 National Professional Men's Basketball Team Support of Women and Children Issues Restricted Account.

- (1) There is created in the General Fund a restricted account known as the "National Professional Men's Basketball Team Support of Women and Children Issues Restricted Account."
- (2) The account shall be funded by:
 - (a) contributions deposited into the account in accordance with Section 41-1a-422;
 - (b) private contributions; and
 - (c) donations or grants from public or private entities.
- (3) Upon appropriation by the Legislature, the department shall distribute funds in the account to one or more charitable organizations that:
 - (a) qualify as being tax exempt under Section 501(c)(3) of the Internal Revenue Code;
 - (b) are selected by the owners that, either on an individual or joint basis, own a controlling interest in a legal entity that is a franchised member of the internationally recognized national governing body for professional men's basketball in the United States;
 - (c) are headquartered within the state;
 - (d) create or support programs that focus on issues affecting women and children within the state, with an emphasis on health and education; and
 - (e) have a board of directors that disperses all funds of the organization.
- (4)
 - (a) An organization described in Subsection (3) may apply to the department to receive a distribution in accordance with Subsection (3).
 - (b) An organization that receives a distribution from the department in accordance with Subsection (3) shall expend the distribution only to:
 - (i) create or support programs that focus on issues affecting women and children, with an emphasis on health and education;
 - (ii) create or sponsor programs that will benefit residents within the state; and

- (iii) pay the costs of issuing or reordering National Professional Men's Basketball Team Support of Women and Children Issues support special group license plate decals.
- (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 this Subsection (4).
- (5) In accordance with Section 63J-1-602.1, appropriations from the account are nonlapsing.

Renumbered and Amended by Chapter 255, 2022 General Session

26B-1-304 Restricted account created to fund drug testing for law enforcement agencies.

- (1) There is created within the General Fund a restricted account known as the State Laboratory Drug Testing Account.
- (2) The account consists of a specified portion of fees generated under Subsection 53-3-106(5) from the reinstatement of certain licenses, which shall be deposited in this account.
- (3) The department shall use funds in this account solely for the costs of performing drug and alcohol analysis tests for state and local law enforcement agencies, and may not assess any charge or fee to the law enforcement agencies for whom the analysis tests are performed.

Renumbered and Amended by Chapter 255, 2022 General Session

Superseded 7/1/2024

26B-1-305 Department of Health and Human Services Transition Restricted Account.

- (1) There is created a restricted account within the General Fund known as the "Department of Health and Human Services Transition Restricted Account."
- (2) The restricted account shall consist of appropriations made by the Legislature.
- (3) Subject to appropriation, the transition agencies and the department may spend money from the restricted account to pay for expenses related to moving the transition agencies into the department, including staff and legal services.

Enacted by Chapter 255, 2022 General Session

Superseded 7/1/2024

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
 - (c) contributions deposited into the account in accordance with Section 41-1a-230.7.
- (3) The department shall use:
 - (a) an amount equal to 25% of the money in the account for administrative costs related to Chapter 4, Part 1, Utah Emergency Medical Services System;
 - (b) an amount equal to 75% of the money in the account for grants awarded in accordance with Section 26B-4-107; and
 - (c) all money received from the revenue source in Subsection (2)(c) for grants awarded in accordance with Section 26B-4-107.

Renumbered and Amended by Chapter 305, 2023 General Session

Superseded 7/1/2024

26B-1-308 Rural Health Care Facilities Account -- Source of revenues -- Interest -- Distribution of revenues -- Expenditure of revenues -- Unexpended revenues lapse into the General Fund.

(1) As used in this section:

- (a) "Emergency medical services" is as defined in Section 26B-4-101.
- (b) "Federally qualified health center" is as defined in 42 U.S.C. Sec. 1395x.
- (c) "Fiscal year" means a one-year period beginning on July 1 of each year.
- (d) "Freestanding urgent care center" is as defined in Section 59-12-801.
- (e) "Nursing care facility" is as defined in Section 26B-2-201.
- (f) "Rural city hospital" is as defined in Section 59-12-801.
- (g) "Rural county health care facility" is as defined in Section 59-12-801.
- (h) "Rural county hospital" is as defined in Section 59-12-801.
- (i) "Rural county nursing care facility" is as defined in Section 59-12-801.
- (j) "Rural emergency medical services" is as defined in Section 59-12-801.
- (k) "Rural health clinic" is as defined in 42 U.S.C. Sec. 1395x.

(2) There is created a restricted account within the General Fund known as the "Rural Health Care Facilities Account."

(3)

- (a) The restricted account shall be funded by amounts appropriated by the Legislature.
- (b) Any interest earned on the restricted account shall be deposited into the General Fund.

(4) Subject to Subsections (5) and (6), the State Tax Commission shall for a fiscal year distribute money deposited into the restricted account to each:

- (a) county legislative body of a county that, on January 1, 2007, imposes a tax in accordance with Section 59-12-802 and has not repealed the tax; or
- (b) city legislative body of a city that, on January 1, 2007, imposes a tax in accordance with Section 59-12-804 and has not repealed the tax.

(5)

(a) Subject to Subsection (6), for purposes of the distribution required by Subsection (4), the State Tax Commission shall:

(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:

- (A) the amendments made by Laws of Utah 2007, Chapter 288, Sections 25 and 26, to Sections 59-12-802 and 59-12-804 been in effect for fiscal year 2005-06; and
- (B) each county and city described in Subsection (4) imposed the tax under Sections 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;

(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

- (B) the amount appropriated by the Legislature to the restricted account for the fiscal year.
- (b) The State Tax Commission shall make the estimations, calculations, and distributions required by Subsection (5)(a) on the basis of data collected by the State Tax 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:
 - (a) the commission shall determine in accordance with Subsection (5) the distribution that, but for this Subsection (6), the county legislative body or city legislative body would receive; and
 - (b) after making the determination required by Subsection (6)(a), the commission shall:
 - (i) if the effective date of the repeal of a tax imposed under Section 59-12-802 or 59-12-804 is October 1:
 - (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) 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;
 - (ii) if the effective date of the repeal of a tax imposed under Section 59-12-802 or 59-12-804 is January 1:
 - (A)
 - (I) distribute to the county legislative body or city legislative body 50% of the distribution determined in accordance with Subsection (6)(a); and
 - (II) deposit 50% 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;
 - (iii) if the effective date of the repeal of a tax imposed under Section 59-12-802 or 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.
- (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 (5) or (6):
 - (i) for a county of the third or fourth class, to fund rural county health care facilities in that county; and
 - (ii) for a county of the fifth or sixth class, to fund:

- (A) rural emergency medical services in that county;
 - (B) federally qualified health centers in that county;
 - (C) freestanding urgent care centers in that county;
 - (D) rural county health care facilities in that county;
 - (E) rural health clinics in that county; or
 - (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.

Renumbered and Amended by Chapter 305, 2023 General Session

Effective 7/1/2024

26B-1-308 Rural Health Care Facilities Account -- Source of revenues -- Interest -- Distribution of revenues -- Expenditure of revenues -- Unexpended revenues lapse into the General Fund.

- (1) As used in this section:
- (a) "Emergency medical services" is as defined in Section 53-2d-101.
 - (b) "Federally qualified health center" is as defined in 42 U.S.C. Sec. 1395x.
 - (c) "Fiscal year" means a one-year period beginning on July 1 of each year.
 - (d) "Freestanding urgent care center" is as defined in Section 59-12-801.
 - (e) "Nursing care facility" is as defined in Section 26B-2-201.
 - (f) "Rural city hospital" is as defined in Section 59-12-801.
 - (g) "Rural county health care facility" is as defined in Section 59-12-801.
 - (h) "Rural county hospital" is as defined in Section 59-12-801.
 - (i) "Rural county nursing care facility" is as defined in Section 59-12-801.
 - (j) "Rural emergency medical services" is as defined in Section 59-12-801.
 - (k) "Rural health clinic" is as defined in 42 U.S.C. Sec. 1395x.

- (2) There is created a restricted account within the General Fund known as the "Rural Health Care Facilities Account."
- (3)
 - (a) The restricted account shall be funded by amounts appropriated by the Legislature.
 - (b) Any interest earned on the restricted account shall be deposited into the General Fund.
- (4) Subject to Subsections (5) and (6), the State Tax Commission shall for a fiscal year distribute money deposited into the restricted account to each:
 - (a) county legislative body of a county that, on January 1, 2007, imposes a tax in accordance with Section 59-12-802 and has not repealed the tax; or
 - (b) city legislative body of a city that, on January 1, 2007, imposes a tax in accordance with Section 59-12-804 and has not repealed the tax.
- (5)
 - (a) Subject to Subsection (6), for purposes of the distribution required by Subsection (4), the State Tax Commission shall:
 - (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:
 - (A) the amendments made by Laws of Utah 2007, Chapter 288, Sections 25 and 26, to Sections 59-12-802 and 59-12-804 been in effect for fiscal year 2005-06; and
 - (B) each county and city described in Subsection (4) imposed the tax under Sections 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;
 - (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
 - (B) the amount appropriated by the Legislature to the restricted account for the fiscal year.
 - (b) The State Tax Commission shall make the estimations, calculations, and distributions required by Subsection (5)(a) on the basis of data collected by the State Tax 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:
 - (a) the commission shall determine in accordance with Subsection (5) the distribution that, but for this Subsection (6), the county legislative body or city legislative body would receive; and
 - (b) after making the determination required by Subsection (6)(a), the commission shall:
 - (i) if the effective date of the repeal of a tax imposed under Section 59-12-802 or 59-12-804 is October 1:
 - (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) 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;
 - (ii) if the effective date of the repeal of a tax imposed under Section 59-12-802 or 59-12-804 is January 1:
 - (A)
 - (I) distribute to the county legislative body or city legislative body 50% of the distribution determined in accordance with Subsection (6)(a); and
 - (II) deposit 50% 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;
 - (iii) if the effective date of the repeal of a tax imposed under Section 59-12-802 or 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.
- (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 (5) or (6):
 - (i) for a county of the third or fourth class, to fund rural county health care facilities in that county; and
 - (ii) for a county of the fifth or sixth class, to fund:
 - (A) rural emergency medical services in that county;
 - (B) federally qualified health centers in that county;
 - (C) freestanding urgent care centers in that county;
 - (D) rural county health care facilities in that county;
 - (E) rural health clinics in that county; or
 - (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.

Renumbered and Amended by Chapter 305, 2023 General Session
Amended by Chapter 310, 2023 General Session

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 Medicaid Restricted Account:
 - (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 department in the fiscal year for which the general funds were appropriated and which are 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 26B-3-101, from the Department of Workforce Services; and
 - (iii) any penalties imposed and collected under:
 - (A) Section 17B-2a-818.5;
 - (B) Section 19-1-206;
 - (C) Section 63A-5b-607;
 - (D) Section 63C-9-403;
 - (E) Section 72-6-107.5; or
 - (F) Section 79-2-404.
 - (b) The account shall earn interest and all interest earned shall be deposited into the 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 Section 26B-3-902.
- (3)
- (a) For fiscal years 2008-09, 2009-10, 2010-11, 2011-12, and 2012-13 the following funds are nonlapsing:

- (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 department in the fiscal year in which the general funds were appropriated; and
 - (ii) funds described in Subsection (2)(a)(ii).
- (b) For fiscal years 2019-20, 2020-21, 2021-22, and 2022-23, the funds described in Subsections (2)(a)(ii) and (3)(a)(i) are nonlapsing.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-1-310 Qualified Patient Enterprise Fund -- Creation -- Revenue neutrality -- Uniform fee.

- (1) There is created an enterprise fund known as the "Qualified Patient Enterprise Fund."
- (2) The fund created in this section is funded from:
- (a) money the department deposits into the fund under Chapter 4, Part 2, Cannabinoid Research and Medical Cannabis;
 - (b) appropriations the Legislature makes to the fund; and
 - (c) the interest described in Subsection (3).
- (3) Interest earned on the fund shall be deposited into the fund.
- (4) Money deposited into the fund may only be used by:
- (a) the department to accomplish the department's responsibilities described in Chapter 4, Part 2, Cannabinoid Research and Medical Cannabis; and
 - (b) the Center for Medical Cannabis Research created in Section 53B-17-1402 to accomplish the Center for Medical Cannabis Research's responsibilities.
- (5) The department shall set fees authorized under Chapter 4, Part 2, Cannabinoid Research and Medical Cannabis in amounts that the department anticipates are necessary, in total, to cover the department's cost to implement Chapter 4, Part 2, Cannabinoid Research and Medical Cannabis.
- (6) The department may impose a uniform fee on each medical cannabis transaction in a medical cannabis pharmacy in an amount that, subject to Subsection (5), the department sets in accordance with Section 63J-1-504.

Amended by Chapter 273, 2023 General Session

Amended by Chapter 281, 2023 General Session

Amended by Chapter 305, 2023 General Session, (Coordination Clause)

Renumbered and Amended by Chapter 305, 2023 General Session

26B-1-311 Creation of Kurt Oscarson Children's Organ Transplant Account.

- (1)
- (a) There is created a restricted account within the General Fund known as the "Kurt Oscarson Children's Organ Transplant Account."
 - (b) Private contributions received under this section and Section 59-10-1308 shall be deposited into the restricted account to be used only for the programs and purposes described in Section 26B-1-411.
- (2) Money shall be appropriated from the restricted account to the Kurt Oscarson Children's Organ Transplant Coordinating Committee created in Section 26B-1-411, in accordance with Title 63J, Chapter 1, Budgetary Procedures Act.
- (3) In addition to funds received under Section 59-10-1308, the Kurt Oscarson Children's Organ Transplant Coordinating Committee created in Section 26B-1-411 may accept transfers, grants,

gifts, bequests, or any money made available from any source to implement the programs and purposes described in Section 26B-1-411.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-1-312 Allyson Gamble Organ Donation Contribution Fund created.

- (1)
 - (a) There is created an expendable special revenue fund known as the Allyson Gamble Organ Donation Contribution Fund.
 - (b) The Allyson Gamble Organ Donation Contribution Fund shall consist of:
 - (i) private contributions;
 - (ii) donations or grants from public or private entities;
 - (iii) voluntary donations collected under Sections 41-1a-230.5 and 53-3-214.7; and
 - (iv) interest and earnings on fund money.
 - (c) The cost of administering the Allyson Gamble Organ Donation Contribution Fund shall be paid from money in the fund.
- (2) The department shall:
 - (a) administer the funds deposited in the Allyson Gamble Organ Donation Contribution Fund; and
 - (b) select qualified organizations and distribute the funds in the Allyson Gamble Organ Donation Contribution Fund in accordance with Subsection (3).
- (3)
 - (a) The funds in the Allyson Gamble Organ Donation Contribution Fund may be distributed to a selected organization that:
 - (i) promotes and supports organ donation;
 - (ii) assists in maintaining and operating a statewide organ donation registry; and
 - (iii) provides donor awareness education.
 - (b) An organization that meets the criteria of Subsections (3)(a)(i) through (iii) may apply to the department, in a manner prescribed by the department, to receive a portion of the money contained in the Allyson Gamble Organ Donation Contribution Fund.
- (4) The department may expend funds in the account to pay the costs of administering the fund and issuing or reordering the Donate Life support special group license plate and decals.

Amended by Chapter 33, 2023 General Session

Renumbered and Amended by Chapter 305, 2023 General Session

26B-1-313 Cancer Research Restricted Account.

- (1) As used in this section, "account" means the Cancer Research Restricted Account created by this section.
- (2) There is created in the General Fund a restricted account known as the "Cancer Research Restricted Account."
- (3) The account shall be funded by:
 - (a) contributions deposited into the account in accordance with Section 41-1a-422;
 - (b) private contributions;
 - (c) donations or grants from public or private entities; and
 - (d) interest and earnings on fund money.
- (4) The department shall distribute funds in the account to one or more charitable organizations that:
 - (a) qualify as being tax exempt under Section 501(c)(3) of the Internal Revenue Code;

- (b) have been designated as an official cancer center of the state;
- (c) is a National Cancer Institute designated cancer center; and
- (d) have as part of its primary mission:
 - (i) cancer research programs in basic science, translational science, population science, and clinical research to understand cancer from its beginnings; and
 - (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, 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).

Renumbered and Amended by Chapter 305, 2023 General Session

26B-1-315 Medicaid Expansion Fund.

- (1) There is created an expendable special revenue fund known as the "Medicaid Expansion Fund."
- (2) The fund consists of:
 - (a) assessments collected under Chapter 3, Part 5, Inpatient Hospital Assessment;
 - (b) intergovernmental transfers under Section 26B-3-508;
 - (c) savings attributable to the health coverage improvement program, as defined in Section 26B-3-501, as determined by the department;
 - (d) savings attributable to the enhancement waiver program, as defined in Section 26B-3-501, as determined by the department;
 - (e) savings attributable to the Medicaid waiver expansion, as defined in Section 26B-3-501, as determined by the department;
 - (f) savings attributable to the inclusion of psychotropic drugs on the preferred drug list under Subsection 26B-3-105(3) as determined by the department;
 - (g) revenues collected from the sales tax described in Subsection 59-12-103(11);
 - (h) gifts, grants, donations, or any other conveyance of money that may be made to the fund from private sources;
 - (i) interest earned on money in the fund; and
 - (j) additional amounts as appropriated by the Legislature.
- (3)
 - (a) The fund shall earn interest.
 - (b) All interest earned on fund money shall be deposited into the fund.
- (4)
 - (a) A state agency administering the provisions of Chapter 3, Part 5, Inpatient Hospital Assessment, may use money from the fund to pay the costs, not otherwise paid for with federal funds or other revenue sources, of:
 - (i) the health coverage improvement program as defined in Section 26B-3-501;

- (ii) the enhancement waiver program as defined in Section 26B-3-501;
 - (iii) a Medicaid waiver expansion as defined in Section 26B-3-501; and
 - (iv) the outpatient upper payment limit supplemental payments under Section 26B-3-511.
- (b) A state agency administering the provisions of Chapter 3, Part 5, Inpatient Hospital Assessment, may not use:
- (i) funds described in Subsection (2)(b) to pay the cost of private outpatient upper payment limit supplemental payments; or
 - (ii) money in the fund for any purpose not described in Subsection (4)(a).

Renumbered and Amended by Chapter 305, 2023 General Session
Amended by Chapter 471, 2023 General Session

26B-1-316 Hospital Provider Assessment Expendable Revenue Fund.

- (1) There is created an expendable special revenue fund known as the "Hospital Provider Assessment Expendable Revenue Fund."
- (2) The fund shall consist of:
 - (a) the assessments collected by the department under Chapter 3, Part 7, Hospital Provider Assessment;
 - (b) any interest and penalties levied with the administration of Chapter 3, Part 7, Hospital Provider Assessment; and
 - (c) any other funds received as donations for the fund and appropriations from other sources.
- (3) Money in the fund shall be used:
 - (a) to support capitated rates consistent with Subsection 26B-3-705(1)(d) for accountable care organizations as defined in Section 26B-3-701;
 - (b) to implement the quality strategies described in Subsection 26B-3-707(2), except that the amount under this Subsection (3)(b) may not exceed \$211,300 in each fiscal year; and
 - (c) to reimburse money collected by the division from a hospital, as defined in Section 26B-3-701, through a mistake made under Chapter 3, Part 7, Hospital Provider Assessment.
- (4)
 - (a) Subject to Subsection (4)(b), for the fiscal year beginning July 1, 2019, and ending July 1, 2020, any fund balance in excess of the amount necessary to pay for the 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 from the General Fund to the fund and the interest and penalties deposited into the fund under Subsection (2)(b).

Renumbered and Amended by Chapter 305, 2023 General Session
Amended by Chapter 495, 2023 General Session

26B-1-317 Ambulance Service Provider Assessment Expendable Revenue Fund.

- (1) There is created an expendable special revenue fund known as the "Ambulance Service Provider Assessment Expendable Revenue Fund."
- (2) The fund shall consist of:
 - (a) the assessments collected by the division under Chapter 3, Part 8, Ambulance Service Provider Assessment;
 - (b) the penalties collected by the division under Chapter 3, Part 8, Ambulance Service Provider Assessment;
 - (c) donations to the fund; and

- (d) appropriations by the Legislature.
- (3) Money in the fund shall be used:
 - (a) to support fee-for-service rates; and
 - (b) to reimburse money to an ambulance service provider, as defined in Section 26B-3-801, that is collected by the division from the ambulance service provider through a mistake made under Chapter 3, Part 8, Ambulance Service Provider Assessment.
- (4)
 - (a) Subject to Subsection (4)(b), for the fiscal year beginning July 1, 2019, and ending July 1, 2020, any fund balance in excess of the amount necessary to pay for the 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 from the General Fund to the fund and the penalties deposited into the fund under Subsection (2)(b).

Renumbered and Amended by Chapter 305, 2023 General Session

26B-1-318 Brain Injury Fund.

- (1) There is created an expendable special revenue fund known as the " Brain Injury Fund."
- (2) The fund shall consist of:
 - (a) gifts, grants, donations, or any other conveyance of money that may be made to the fund from private sources; and
 - (b) additional amounts as appropriated by the Legislature.
- (3) The fund shall be administered by the executive director.
- (4) Fund money may be used to:
 - (a) educate the general public and professionals regarding understanding, treatment, and prevention of brain injury;
 - (b) provide access to evaluations and coordinate short-term care to assist an individual in identifying services or support needs, resources, and benefits for which the individual may be eligible;
 - (c) develop and support an information and referral system for persons with a brain injury and their families; and
 - (d) provide grants to persons or organizations to provide the services described in Subsections (4)(a), (b), and (c).
- (5) Not less than 50% of the fund shall be used each fiscal year to directly assist individuals who meet the qualifications described in Subsection (6).
- (6) An individual who receives services either paid for from the fund, or through an organization under contract with the fund, shall:
 - (a) be a resident of Utah;
 - (b) have been diagnosed by a qualified professional as having a brain injury which results in impairment of cognitive or physical function; and
 - (c) have a need that can be met within the requirements of this section.
- (7) The fund may not duplicate any services or support mechanisms being provided to an individual by any other government or private agency.
- (8) All actual and necessary operating expenses for the Brain Injury Advisory Committee created in Section 26B-1-417 and staff shall be paid by the fund.
- (9) The fund may not be used for medical treatment, long-term care, or acute care.

Renumbered and Amended by Chapter 305, 2023 General Session
Amended by Chapter 335, 2023 General Session

26B-1-319 Neuro-Rehabilitation Fund -- Creation -- Administration -- Uses.

- (1) As used in this section, a "qualified IRC 501(c)(3) charitable clinic" means a professional medical clinic that:
 - (a) provides rehabilitation services to individuals in the state:
 - (i) who have a spinal cord or brain injury that tends to be non-progressive or non-deteriorating; and
 - (ii) who require post-acute care;
 - (b) employs licensed therapy clinicians;
 - (c) has at least five years' experience operating a post-acute care rehabilitation clinic in the state; and
 - (d) has obtained tax-exempt status under Internal Revenue Code, 26 U.S.C. Sec. 501(c)(3).
- (2) There is created an expendable special revenue fund known as the "Neuro-Rehabilitation Fund."
- (3) The fund shall consist of:
 - (a) gifts, grants, donations, or any other conveyance of money that may be made to the fund from private sources;
 - (b) a portion of the impound fee as designated in Section 41-6a-1406;
 - (c) the fees collected by the Motor Vehicle Division under Subsections 41-1a-1201(8) and 41-22-8(3); and
 - (d) amounts appropriated by the Legislature.
- (4) The fund shall be administered by the executive director, in consultation with the advisory committee created in Section 26B-1-418.
- (5) Fund money shall be used to:
 - (a) assist one or more qualified IRC 501(c)(3) charitable clinics to provide rehabilitation services to individuals who have a spinal cord or brain injury that tends to be non-progressive or non-deteriorating, including:
 - (i)
 - (A) physical, occupational, and speech therapy; and
 - (B) other services as determined by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, by the advisory committee created in Section 26B-1-418; and
 - (ii) equipment for use in the qualified charitable clinic; and
 - (b) pay for operating expenses of the Neuro-Rehabilitation Fund and Pediatric Neuro-Rehabilitation Fund Advisory Committee created in Section 26B-1-418, including the advisory committee's staff.

Amended by Chapter 33, 2023 General Session

Amended by Chapter 212, 2023 General Session

Renumbered and Amended by Chapter 305, 2023 General Session

Amended by Chapter 335, 2023 General Session

26B-1-320 Pediatric Neuro-Rehabilitation Fund -- Creation -- Administration -- Uses.

- (1) As used in this section, a "qualified IRC 501(c)(3) charitable clinic" means a professional medical clinic that:
 - (a) provides services for children in the state:
 - (i) with neurological conditions, including:
 - (A) cerebral palsy; and

- (B) spina bifida; and
 - (ii) who require post-acute care;
 - (b) employs licensed therapy clinicians;
 - (c) has at least five years experience operating a post-acute care rehabilitation clinic in the state; and
 - (d) has obtained tax-exempt status under Internal Revenue Code, 26 U.S.C. Sec. 501(c)(3).
- (2) There is created an expendable special revenue fund known as the "Pediatric Neuro-Rehabilitation Fund."
- (3) The fund shall consist of:
- (a) gifts, grants, donations, or any other conveyance of money that may be made to the fund from private sources; and
 - (b) amounts appropriated to the fund by the Legislature.
- (4) The fund shall be administered by the executive director of the department, in consultation with the advisory committee created in Section 26B-1-418.
- (5) Fund money shall be used to:
- (a) assist one or more qualified IRC 501(c)(3) charitable clinics to provide physical or occupational therapy to children with neurological conditions; and
 - (b) pay for operating expenses of the Neuro-Rehabilitation Fund and Pediatric Neuro-Rehabilitation Fund Advisory Committee created by Section 26B-1-418, including the advisory committee's staff.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-1-322 Adult Autism Treatment Account.

- (1) There is created within the General Fund a restricted account known as the "Adult Autism Treatment Account."
- (2) The account consists of:
- (a) gifts, grants, donations, or any other conveyance of money that may be made to the account from private sources;
 - (b) interest earned on money in the account; and
 - (c) money appropriated to the account by the Legislature.
- (3) Money from the account shall be used only to:
- (a) fund grants awarded by the department under Section 26B-4-602; and
 - (b) pay the operating expenses of the Adult Autism Treatment Program Advisory Committee created in Section 26B-1-204, including the cost of advisory committee staff if approved by the executive director.
- (4) The state treasurer shall invest the money in the account in accordance with Title 51, Chapter 7, State Money Management Act.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-1-323 Out and About Homebound Transportation Assistance Fund -- Creation -- Administration -- Uses.

- (1)
- (a) There is created an expendable special revenue fund known as the "Out and About Homebound Transportation Assistance Fund."
 - (b) The Out and About Homebound Transportation Assistance Fund shall consist of:
 - (i) private contributions;

- (ii) donations or grants from public or private entities;
 - (iii) voluntary donations collected under Section 53-3-214.8; and
 - (iv) interest and earnings on account money.
- (c) The cost of administering the Out and About Homebound Transportation Assistance Fund shall be paid from money in the fund.
- (2) The Division of Aging and Adult Services in the department shall:
- (a) administer the funds contained in the Out and About Homebound Transportation Assistance Fund; and
 - (b) select qualified organizations and distribute the funds in the Out and About Homebound Transportation Assistance Fund in accordance with Subsection (3).
- (3)
- (a) The division may distribute the funds in the Out and About Homebound Transportation Assistance Fund to a selected organization that provides public transportation to aging persons, high risk adults, or people with disabilities.
 - (b) An organization that provides public transportation to aging persons, high risk adults, or people with disabilities may apply to the Division of Aging and Adult Services, in a manner prescribed by the division, to receive all or part of the money contained in the Out and About Homebound Transportation Assistance Fund.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-1-324 Statewide Behavioral Health Crisis Response Account -- Creation -- Administration -- Permitted uses -- Reporting.

- (1) There is created a restricted account within the General Fund known as the "Statewide Behavioral Health Crisis Response Account," consisting of:
- (a) money appropriated or otherwise made available by the Legislature; and
 - (b) contributions of money, property, or equipment from federal agencies, political subdivisions of the state, or other persons.
- (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) After consultation with the Behavioral Health Crisis Response Commission created in Section 63C-18-202, and local substance use authorities and local mental health authorities described in Sections 17-43-201 and 17-43-301, the division shall expend funds from the account on any of the following programs:
 - (i) the Statewide Mental Health Crisis Line, as defined in Section 26B-5-610, 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) mobile crisis outreach teams as defined in Section 26B-5-609, distributed in accordance with rules made by the division in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;
 - (iii) behavioral health receiving centers as defined in Section 26B-5-114;

- (iv) stabilization services as described in Section 26B-1-102;
 - (v) mental health crisis services, as defined in Section 26B-5-101, 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 as defined in Section 26B-5-101;
 - (vi) crisis intervention training for first responders, as that term is defined in Section 78B-4-501;
 - (vii) crisis worker certification training for first responders, as that term is defined in Section 78B-4-501;
 - (viii) frontline support for the SafeUT Crisis Line; or
 - (ix) suicide prevention gatekeeper training for first responders, as that term is defined in Section 78B-4-501.
- (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;
 - (b) the recipient of each disbursement, the goods and services received, and a description of the project funded by the disbursement;
 - (c) any conditions placed by the division on the disbursements from the account;
 - (d) the anticipated expenditures from the account for the next fiscal year;
 - (e) the amount of any unexpended funds carried forward;
 - (f) the number of Statewide Mental Health Crisis Line calls received;
 - (g) the progress towards accomplishing the goals of providing statewide mental health crisis service; and
 - (h) other relevant justification for ongoing support from the account.
- (5) Notwithstanding Subsection (2)(c), allocations made to local substance use authorities and local mental health authorities for behavioral health receiving centers or mobile crisis outreach teams before the end of fiscal year 2023 shall be maintained through fiscal year 2027, subject to appropriation.
- (6)
- (a) As used in this Subsection (6):
 - (i) "Health benefit plan" means the same as that term is defined in Section 31A-1-301.
 - (ii) "Mental health service provider" means a behavioral health receiving center or mobile crisis outreach team.
 - (b) The department shall coordinate with each mental health service provider that receives state funds to determine which health benefit plans, if any, have not contracted or have refused to contract with the mental health service provider at usual and customary rates for the services provided by the mental health service provider.
 - (c) In each year that the department identifies a health benefit plan that meets the description in Subsection (6)(b), the department shall provide a report on the information gathered under Subsection (6)(b) to the Health and Human Services Interim Committee at or before the committee's October meeting.

Amended by Chapter 270, 2023 General Session
Renumbered and Amended by Chapter 305, 2023 General Session

26B-1-325 Governor's Suicide Prevention Fund.

- (1) There is created an expendable special revenue fund known as the Governor's Suicide Prevention Fund.
- (2) The fund shall consist of donations, gifts, grants, and bequests of real property or personal property made to the fund.
- (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).
- (4)
 - (a) Subject to Subsection (3), money in the fund shall be used for the following activities:
 - (i) efforts to directly improve mental health crisis response;
 - (ii) efforts that directly reduce risk factors associated with suicide; and
 - (iii) efforts that directly enhance known protective factors associated with suicide reduction.
 - (b) Efforts described in Subsections (4)(a)(ii) and (iii) include the components of the state suicide prevention program described in Subsection 26B-5-611(3).
- (5) The Office of Substance Use and Mental Health shall establish a grant application and review process for the expenditure of money from the fund.
- (6) The grant application and review process shall describe:
 - (a) requirements to complete a grant application;
 - (b) requirements to receive funding;
 - (c) criteria for the approval of a grant application;
 - (d) standards for evaluating the effectiveness of a project proposed in a grant application; and
 - (e) support offered by the office to complete a grant application.
- (7) The Office of Substance Use and Mental Health shall:
 - (a) review a grant application for completeness;
 - (b) make a recommendation to the governor or the governor's designee regarding a grant application;
 - (c) send a grant application to the governor or the governor's designee for evaluation and approval or rejection;
 - (d) inform a grant applicant of the governor or the governor's designee's determination regarding the grant application; and
 - (e) direct the fund administrator to release funding for grant applications approved by the governor or the governor's designee.
- (8) The state treasurer shall invest the money in the fund under Title 51, Chapter 7, State Money Management Act, except that all interest or other earnings derived from money in the fund shall be deposited into the fund.
- (9) Money in the fund may not be used for the Office of the Governor's administrative expenses that are normally provided for by legislative appropriation.
- (10) The governor or the governor's designee may authorize the expenditure of fund money in accordance with this section.
- (11) The governor shall make an annual report to the Legislature regarding the status of the fund, including a report on the contributions received, expenditures made, and programs and services funded.

Amended by Chapter 33, 2023 General Session

Renumbered and Amended by Chapter 305, 2023 General Session

26B-1-326 Suicide Prevention and Education Fund.

- (1) There is created an expendable special revenue fund known as the Suicide Prevention and Education Fund.
- (2) The fund shall consist of funds transferred from the Concealed Weapons Account in accordance with Subsection 53-5-707(5)(d).
- (3) Money in the fund shall be used for suicide prevention efforts that include a focus on firearm safety as related to suicide prevention.
- (4) The Office of Substance Use and Mental Health 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.
- (5) The Office of Substance Use and Mental Health shall make an annual report to the Legislature regarding the status of the fund, including a report detailing amounts received, expenditures made, and programs and services funded.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-1-327 Survivors of Suicide Loss Account.

- (1) As used in this section:
 - (a)
 - (i) "Cohabitant" means an individual who lives with another individual.
 - (ii) "Cohabitant" does not include a relative.
 - (b) "Relative" means father, mother, husband, wife, son, daughter, sister, brother, grandfather, grandmother, uncle, aunt, nephew, niece, grandson, granddaughter, first cousin, mother-in-law, father-in-law, brother-in-law, sister-in-law, son-in-law, or daughter-in-law.
- (2) Upon appropriation, the Office of Substance Use and Mental Health shall award grants from the appropriation to a person who provides, for no or minimal cost:
 - (a) clean-up of property affected or damaged by an individual's suicide, as reimbursement for the costs incurred for the clean-up; and
 - (b) bereavement services to a relative, legal guardian, or cohabitant of an individual who dies by suicide.
- (3) Before November 30 of each year, the Office of Substance Use and Mental Health shall report to the Health and Human Services Interim Committee regarding expenditures made in accordance with this section.

Renumbered and Amended by Chapter 305, 2023 General Session

Amended by Chapter 534, 2023 General Session

26B-1-328 Psychiatric and Psychotherapeutic Consultation Program Account -- Creation -- Administration -- Uses.

- (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) "Child mental health care facility" means a facility that provides licensed mental health care programs and services to children and families and employs a child mental health therapist.

- (d) "Child mental health therapist" means a mental health therapist who:
 - (i) is knowledgeable and trained in early childhood mental health; and
 - (ii) provides mental health services to children during early childhood.
 - (e) "Division" means the Division of Integrated Healthcare within the department.
 - (f) "Early childhood" means the time during which a child is zero to six years old.
 - (g) "Early childhood psychotherapeutic telehealth consultation" means a consultation regarding a child's mental health care during the child's early childhood between a child care provider or a mental health therapist and a child mental health therapist that is focused on psychotherapeutic and psychosocial interventions and is completed through the use of electronic or telephonic communication.
 - (h) "Health care facility" means a facility that provides licensed health care programs and services and employs at least two psychiatrists, at least one of whom is a child psychiatrist.
 - (i) "Primary care provider" means:
 - (i) an individual who is licensed to practice as an advanced practice registered nurse under Title 58, Chapter 31b, Nurse Practice Act;
 - (ii) a physician as defined in Section 58-67-102; or
 - (iii) a physician assistant as defined in Section 58-70a-102.
 - (j) "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.
 - (k) "Telehealth psychiatric consultation" means a consultation regarding a patient's mental health care, including diagnostic clarification, medication adjustment, or treatment planning, between a primary care provider and a psychiatrist that is completed through the use of electronic or telephonic communication.
- (2) Upon appropriation, the Office of Substance Use and Mental Health shall award grants from the appropriation to:
- (a) at least one health care facility to implement a program that provides a primary 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 as defined in Section 58-60-102 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.
- (3) The Office of Substance Use and Mental Health may award and distribute grant money to a health care facility or child mental health care facility only if the health care facility or child mental health care facility:
- (a) is located in the state; and
 - (b) submits an application in accordance with Subsection (4).
- (4) 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 (2);
 - (c) the estimated cost to implement the telehealth psychiatric consultation program or the early childhood psychotherapeutic telehealth consultation program described in Subsection (2);

- (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 (2);
 - (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 (2); 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 (2).
- (5) 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 program or the early childhood psychotherapeutic telehealth consultation program;
 - (b) the utilization of the telehealth psychiatric program or the early childhood psychotherapeutic telehealth consultation program based on metrics or categories determined by the division;
 - (c) the total amount expended from the grant money; and
 - (d) the intended use for grant money that has not been expended.
- (6) Before November 30 of each year, the department shall report to the Health and Human Services Interim Committee regarding:
- (a) expenditures made in accordance with this section; and
 - (b) a summary of any report provided to the division under Subsection (5).

Renumbered and Amended by Chapter 305, 2023 General Session

Amended by Chapter 534, 2023 General Session

26B-1-329 Mental Health Services Donation Fund.

- (1) As used in this section:
- (a) "Mental health therapist" means the same as that term is defined in Section 58-60-102.
 - (b) "Mental health therapy" means treatment or prevention of a mental illness, including:
 - (i) conducting a professional evaluation of an individual's condition of mental health, mental illness, or emotional disorder consistent with standards generally recognized by mental health therapists;
 - (ii) establishing a diagnosis in accordance with established written standards generally recognized by mental health therapists;
 - (iii) prescribing a plan or medication for the prevention or treatment of a condition of a mental illness or an emotional disorder; and
 - (iv) engaging in the conduct of professional intervention, including psychotherapy by the application of established methods and procedures generally recognized by mental health therapists.
 - (c) "Qualified individual" means an individual who:
 - (i) is experiencing a mental health crisis; and
 - (ii) calls a local mental health crisis line as defined in Section 26B-5-610 or the statewide mental health crisis line as defined in Section 26B-5-610.
- (2) There is created an expendable special revenue fund known as the "Mental Health Services Donation Fund."
- (3)
- (a) The fund shall consist of:

- (i) gifts, grants, donations, or any other conveyance of money that may be made to the fund from public or private individuals or entities; and
- (ii) interest earned on money in the fund.
- (b) The Office of Substance Use and Mental Health shall administer the fund in accordance with this section.
- (4) The Office of Substance Use and Mental Health shall award fund money to an entity in the state that provides mental health and substance use treatment for the purpose of:
 - (a) providing through telehealth or in-person services, mental health therapy to qualified individuals;
 - (b) providing access to evaluations and coordination of short-term care to assist a qualified individual in identifying services or support needs, resources, or benefits for which the qualified individual may be eligible; and
 - (c) developing a system for a qualified individual and a qualified individual's family to access information and referrals for mental health therapy.
- (5) Fund money may only be used for the purposes described in Subsection (4).
- (6) The Office of Substance Use and Mental Health shall provide an annual report to the Behavioral Health Crisis Response Commission, created in Section 63C-18-202, regarding:
 - (a) the entity that is awarded a grant under Subsection (4);
 - (b) the number of qualified individuals served by the entity with fund money; and
 - (c) any costs or benefits as a result of the award of the grant.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-1-330 Utah State Developmental Center Miscellaneous Donation Fund -- Use.

- (1) There is created an expendable special revenue fund known as the "Utah State Developmental Center Miscellaneous Donation Fund."
- (2) The Utah State Developmental Center Board created in Section 26B-1-429 shall deposit donations made to the Utah State Developmental Center under Section 26B-1-202 into the expendable special revenue fund described in Subsection (1).
- (3) The state treasurer shall invest the money in the fund described in Subsection (1) according to the procedures and requirements of Title 51, Chapter 7, State Money Management Act, and the revenue received from the investment shall remain with the fund described in Subsection (1).
- (4)
 - (a) Except as provided in Subsection (5), the money or revenue in the fund described in Subsection (1) may not be diverted, appropriated, expended, or committed to be expended for a purpose that is not listed in this section.
 - (b) Notwithstanding Section 26B-1-202, the Legislature may not appropriate money or revenue from the fund described in Subsection (1) to eliminate or otherwise reduce an operating deficit if the money or revenue appropriated from the fund is expended or committed to be expended for a purpose other than one listed in this section.
 - (c) The Legislature may not amend the purposes for which money or revenue in the fund described in Subsection (1) may be expended or committed to be expended except by the affirmative vote of two-thirds of all the members elected to each house.
- (5)
 - (a) The Utah State Developmental Center Board shall approve expenditures of money and revenue in the fund described in Subsection (1).
 - (b) The Utah State Developmental Center Board may expend money and revenue in the fund described in Subsection (1) only:

- (i) as designated by the donor; or
- (ii) for the benefit of:
 - (A) residents of the Utah State Developmental Center, established in accordance with Chapter 6, Part 5, Utah State Developmental Center; or
 - (B) individuals with disabilities who receive services and support from the Utah State Developmental Center, as described in Subsection 26B-6-502(2)(b).
- (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 specific legislative authorization.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-1-331 Utah State Developmental Center Long-Term Sustainability Fund -- Fund management.

- (1) As used in this section:
 - (a) "Board" means the Utah State Developmental Center Board created in Section 26B-1-429.
 - (b) "Division" means the Division of Integrated Healthcare within the department.
 - (c) "Sustainability fund" means the Utah State Developmental Center Long-Term Sustainability Fund created in Subsection (2).
 - (d) "Utah State Developmental Center" means the Utah State Developmental Center established in accordance with Chapter 6, Part 5, Utah State Developmental Center.
- (2) There is created a special revenue fund entitled the "Utah State Developmental Center Long-Term Sustainability Fund."
- (3)
 - (a) The sustainability fund consists of:
 - (i) revenue generated from the lease, except any lease existing on May 1, 1995, of land associated with the Utah State Developmental Center;
 - (ii) all proceeds from the sale or other disposition of real property, water rights, or water shares associated with the Utah State Developmental Center; and
 - (iii) all existing money in the Utah State Developmental Center Land Fund.
 - (b) The state treasurer shall invest sustainability fund money by following the procedures and requirements in Subsection (8).
- (4)
 - (a) The board shall ensure that money or revenue deposited into the sustainability fund is irrevocable and is expended only as provided in Subsection (5).
 - (b) The Legislature may not amend the purposes in Subsection (5) for which money or revenue in the fund may be expended or committed to be expended, except by the affirmative vote of two-thirds of all the members elected to each house.
- (5)
 - (a) Money may be expended from the sustainability fund to:
 - (i) fulfill the functions of the Utah State Developmental Center described in Sections 26B-6-502 and 26B-6-504; and
 - (ii) assist the division in the division's administration of services and supports described in Sections 26B-6-402 and 26B-6-403.
 - (b) Money from the sustainability fund may not be expended:
 - (i) for a purpose other than the purposes described in Subsection (5)(a); or
 - (ii) to reduce the amount of money that the Legislature appropriates from the General Fund for the purposes described in Subsection (5)(a).

- (6) Money may be expended from the sustainability fund only under the following conditions:
 - (a) if the balance of the sustainability fund is at least \$5,000,000 at the end of the fiscal year, the board may expend the earnings generated by the sustainability fund during 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 fiscal year, the Legislature may appropriate to the division up to 5% of the balance of the sustainability fund for a purpose described in Subsection (5)(a); and
 - (c) the board or the division may not expend any money from the sustainability fund, except as provided in Subsection (6)(a), without legislative appropriation.
- (7) The sustainability fund is revocable only by the affirmative vote of two-thirds of all the members elected to each house of the Legislature.
- (8)
 - (a) The state treasurer shall invest the assets of the sustainability fund with the primary goal of providing for the stability, income, and growth of the principal.
 - (b) Nothing in this Subsection (8) requires a specific outcome in investing.
 - (c) The state treasurer may deduct any administrative costs incurred in managing sustainability fund assets from earnings before depositing earnings into the sustainability fund.
 - (d)
 - (i) The state treasurer may employ professional asset managers to assist in the investment of assets of the sustainability fund.
 - (ii) The state treasurer may only provide compensation to asset managers from earnings generated by the sustainability fund's investments.
 - (e) The state treasurer shall invest and manage the sustainability fund assets as a prudent investor would under Section 67-19d-302.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-1-332 Nursing Care Facilities Provider Assessment Fund -- Creation -- Administration -- Uses.

- (1) There is created an expendable special revenue fund known as the "Nursing Care Facilities Provider Assessment Fund" consisting of:
 - (a) the assessments collected by the department under Chapter 3, Part 4, Nursing Care Facility Assessment;
 - (b) fines paid by nursing care facilities for excessive Medicare inpatient revenue under Section 26B-2-222;
 - (c) money appropriated or otherwise made available by the Legislature;
 - (d) any interest earned on the fund; and
 - (e) penalties levied with the administration of Chapter 3, Part 4, Nursing Care Facility Assessment.
- (2) Money in the fund shall only be used by the Medicaid program:
 - (a) to the extent authorized by federal law, to obtain federal financial participation in the Medicaid program;
 - (b) to provide the increased level of hospice reimbursement resulting from the nursing care facilities assessment imposed under Section 26B-3-403;
 - (c) for the Medicaid program to make quality incentive payments to nursing care facilities , subject to approval of a Medicaid state plan amendment to do so by the Centers for Medicare and Medicaid Services within the United States Department of Health and Human Services ;

- (d) to increase the rates paid before July 1, 2004, to nursing care facilities for providing services pursuant to the Medicaid program; and
 - (e) for administrative expenses, if the administrative expenses for the fiscal year do not exceed 3% of the money deposited into the fund during the fiscal year.
- (3) The department may not spend the money in the fund to replace existing state expenditures paid to nursing care facilities for providing services under the Medicaid program, except for increased costs due to hospice reimbursement under Subsection (2)(b).

Renumbered and Amended by Chapter 305, 2023 General Session

26B-1-334 Licensed Provider Assessment Fund -- Creation -- Deposits -- Uses.

- (1) There is created an expendable special revenue fund known as the "Licensed Provider Assessment Fund" consisting of:
- (a) the assessments collected under, and any interest and penalties levied with the administration of:
 - (i) Title 26B, Chapter 2, Part 2, Health Care Facility Licensing and Inspection Act;
 - (ii) Title 26B, Chapter 1, Part 4, Child Care Licensing; and
 - (iii) Title 26B, Chapter 2, Part 1, Human Services Programs and Facilities;
 - (b) money appropriated or otherwise made available by the Legislature; and
 - (c) any interest earned on the fund.
- (2) Money in the fund may only be used by the department:
- (a) for upgrades to and maintenance of licensing databases and applications;
 - (b) for training for providers and staff;
 - (c) to assist individuals during a facility shutdown; or
 - (d) for administrative expenses, if the administrative expenses for the fiscal year do not exceed 3% of the money deposited into the fund during the fiscal year.

Enacted by Chapter 325, 2023 General Session

26B-1-335 Division of Services for People with Disabilities Restricted Account.

- (1) As used in this section, "account" means the Division of Services for People with Disabilities Restricted Account created in Subsection (2).
- (2) There is created in the General Fund an account known as the "Division of Services for People with Disabilities Restricted Account."
- (3) The account consists of:
- (a) carry forward funds from the division's budget; and
 - (b) unexpended balances lapsed to the account from the division's budget.
- (4) Subject to appropriation, the Department of Health and Human Services may expend funds from the account to serve individuals eligible for division services statewide.

Enacted by Chapter 325, 2023 General Session

Part 4
Boards, Commissions, Councils, and Advisory Committees

26B-1-401 Executive director -- Power to amend, modify, or rescind committee rules.

The executive director pursuant to the requirements of the Administrative Rulemaking 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 health except that the executive director may not act until after discussion with the appropriate committee.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-1-402 Rare Disease Advisory Council Grant Program -- Creation -- Reporting.

(1) As used in this section:

- (a) "Council" means the Rare Disease Advisory Council described in Subsection (3).
- (b) "Grantee" means the recipient of a grant under this section to operate the program.
- (c) "Rare disease" means a disease that affects fewer than 200,000 individuals in the United States.

(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
 - (iii) in coordination with the department, report to the Legislature in accordance with Subsection (4).

(3) The Rare Disease Advisory Council convened by the grantee shall:

- (a) advise the Legislature and state agencies on providing services and care to individuals with a rare disease;
- (b) make recommendations to the Legislature and state agencies on improving access to treatment and services provided to individuals with a rare disease;
- (c) identify best practices to improve the care and treatment of individuals in the state with a rare disease;
- (d) meet at least two times in each calendar year; and
- (e) be composed of members identified by the department, including at least the following individuals:
 - (i) a representative from the department;
 - (ii) researchers and physicians who specialize in rare diseases, including at least one representative from the University of Utah;
 - (iii) two individuals who have a rare disease or are the parent or caregiver of an individual with a rare disease; and
 - (iv) two representatives from one or more rare disease patient organizations that operate in the state.

(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 Committee on:

- (a) the activities of the grantee and the council; and
- (b) recommendations and best practices regarding the ongoing needs of individuals in the state with a rare disease.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-1-403 Opioid and Overdose Fatality Review Committee.

(1) As used in this section:

- (a) "Committee" means the Opioid and Overdose Fatality Review Committee created in this section.
- (b) "Opioid overdose death" means a death primarily caused by opioids or another substance that closely resembles an opioid.
- (2) The department shall establish the Opioid and Overdose Fatality Review Committee.
- (3)
 - (a) The committee shall consist of:
 - (i) the attorney general, or the attorney general's designee;
 - (ii) a state, county, or municipal law enforcement officer;
 - (iii) the manager of the department's Violence Injury Prevention Program, or the manager's designee;
 - (iv) an emergency medical services provider;
 - (v) a representative from the Office of the Medical Examiner;
 - (vi) a representative from the Office of Substance Use and Mental Health;
 - (vii) a representative from the Office of Vital Records;
 - (viii) a representative from the Office of Health Care Statistics;
 - (ix) a representative from the Division of Professional Licensing;
 - (x) a healthcare professional who specializes in the prevention, diagnosis, and treatment of substance use disorders;
 - (xi) a representative from a state or local jail or detention center;
 - (xii) a representative from the Department of Corrections;
 - (xiii) a representative from the Division of Juvenile Justice and Youth Services;
 - (xiv) a representative from the Department of Public Safety;
 - (xv) a representative from the Commission on Criminal and Juvenile Justice;
 - (xvi) a physician from a Utah-based medical center; and
 - (xvii) a physician from a nonprofit vertically integrated health care organization.
 - (b) The president of the Senate may appoint one member of the Senate, and the speaker of the House of Representatives may appoint one member of the House of Representatives, to serve on the committee.
- (4) The executive director shall appoint a committee coordinator.
- (5)
 - (a) The department shall give the committee access to all reports, records, and other documents that are relevant to the committee's responsibilities under Subsection (6) including reports, records, or documents that are private, controlled, or protected under Title 63G, Chapter 2, Government Records Access and Management Act.
 - (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 Subsection (5)
 - (a) as the department.
- (6) The committee shall:
 - (a) conduct a multidisciplinary review of available information regarding a decedent of an opioid overdose death, which shall include:
 - (i) consideration of the decedent's points of contact with health care systems, social services systems, criminal justice systems, and other systems; and
 - (ii) identification of specific factors that put the decedent at risk for opioid overdose;
 - (b) promote cooperation and coordination among government entities involved in opioid misuse, abuse, or overdose prevention;
 - (c) develop an understanding of the causes and incidence of opioid overdose deaths in the state;

- (d) make recommendations for changes to law or policy that may prevent opioid overdose deaths;
 - (e) inform public health and public safety entities of emerging trends in opioid overdose deaths;
 - (f) monitor overdose trends on non-opioid overdose deaths; and
 - (g) review non-opioid overdose deaths in the manner described in Subsection (6)(a), when the committee determines that there are a substantial number of overdose deaths in the state caused by the use of a non-opioid.
- (7) A committee may interview or request information from a staff member, a provider, or any other person who may have knowledge or expertise that is relevant to the review of an opioid overdose death.
- (8) A majority vote of committee members present constitutes the action of the committee.
- (9) The committee may meet up to eight times each year.
- (10) When an individual case is discussed in a committee meeting under Subsection (6)(a), (6)(g), or (7), the committee shall close the meeting in accordance with Sections 52-4-204 through 52-4-206.

Renumbered and Amended by Chapter 305, 2023 General Session

Superseded 7/1/2024

26B-1-404 State Emergency Medical Services Committee -- Membership -- Expenses.

- (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;
 - (iii) two physicians who practice in the emergency department of a general acute 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 as defined in Section 26B-4-101;
 - (c) one representative from an ambulance provider as defined in Section 26B-4-101 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, provided that no class of medical services providers may have more than one representative under this Subsection (1)(d):
 - (i) a municipality;
 - (ii) a county; and
 - (iii) a fire district;
 - (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;
 - (l) one licensed behavioral emergency services technician; and

- (m) one consumer.
- (2)
 - (a) Except as provided in Subsection (2)(b), members shall be appointed to a four-year term beginning July 1.
 - (b) Notwithstanding Subsection (2)(a), the governor:
 - (i) shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of committee members are staggered so that approximately half of the committee is appointed every two years;
 - (ii) may not reappoint a member for more than two consecutive terms; and
 - (iii) shall:
 - (A) initially appoint the second member under Subsection (1)(b) from a different private provider than the private provider currently serving under Subsection (1)(b); and
 - (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 private provider.
 - (c) When a vacancy occurs in the membership for any reason, the replacement shall be appointed by the governor for the unexpired term.
- (3)
 - (a)
 - (i) Each January, the committee shall organize and select one of the committee's members as chair and one member as vice chair.
 - (ii) The committee may organize standing or ad hoc subcommittees, which shall operate in accordance with guidelines established by the committee.
 - (b)
 - (i) The chair shall convene a minimum of four meetings per year.
 - (ii) The chair may call special meetings.
 - (iii) The chair shall call a meeting upon request of five or more members of the committee.
 - (c)
 - (i) Nine members of the committee constitute a quorum for the transaction of business.
 - (ii) The action of a majority of the members present is the action of the committee.
- (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:
 - (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.
- (5) Administrative services for the committee shall be provided by the department.
- (6) The committee shall adopt rules, with the concurrence of the department, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, that:
 - (a) establish licensure, certification, and reciprocity requirements under Section 26B-4-116;
 - (b) establish designation requirements under Section 26B-4-117;
 - (c) promote the development of a statewide emergency medical services system under Section 26B-4-106;
 - (d) establish insurance requirements for ambulance providers;
 - (e) provide guidelines for requiring patient data under Section 26B-4-106;
 - (f) establish criteria for awarding grants under Section 26B-4-107;
 - (g) establish requirements for the coordination of emergency medical services and the medical supervision of emergency medical service providers under Section 26B-4-120;

- (h) select appropriate vendors to establish certification requirements for emergency medical dispatchers;
- (i) establish the minimum level of service for 911 ambulance services provided under Section 11-48-103; and
- (j) are necessary to carry out the responsibilities of the committee as specified in other sections of this part.

Renumbered and Amended by Chapter 305, 2023 General Session

Superseded 7/1/2024

26B-1-405 Air Ambulance Committee -- Membership -- Duties.

- (1) The Air Ambulance Committee created by Section 26B-1-204 shall be composed of the following members:
 - (a) the state emergency medical services medical director;
 - (b) one physician who:
 - (i) is licensed under:
 - (A) Title 58, Chapter 67, Utah Medical Practice Act;
 - (B) Title 58, Chapter 67b, Interstate Medical Licensure Compact; or
 - (C) Title 58, Chapter 68, Utah Osteopathic Medical Practice Act;
 - (ii) actively provides trauma or emergency care at a Utah hospital; and
 - (iii) has experience and is actively involved in state and national air medical transport issues;
 - (c) one member from each level 1 and level 2 trauma center in the state of Utah, selected by the trauma center the member represents;
 - (d) one registered nurse who:
 - (i) is licensed under Title 58, Chapter 31b, Nurse Practice Act; and
 - (ii) currently works as a flight nurse for an air medical transport provider in the state;
 - (e) one paramedic who:
 - (i) is licensed under Chapter 4, Part 1, Utah Emergency Medical Services System; and
 - (ii) currently works for an air medical transport provider in the state; and
 - (f) two members, each from a different for-profit air medical transport company operating in the state.
- (2) The state emergency medical services medical director shall appoint the physician member under Subsection (1)(b), and the physician shall serve as the chair of the Air Ambulance Committee.
- (3) The chair of the Air Ambulance Committee shall:
 - (a) appoint the Air Ambulance Committee members under Subsections (1)(c) through (f);
 - (b) designate the member of the Air Ambulance Committee to serve as the vice chair of the committee; and
 - (c) set the agenda for Air Ambulance Committee meetings.
- (4)
 - (a) Except as provided in Subsection (4)(b), members shall be appointed to a two-year term.
 - (b) Notwithstanding Subsection (4)(a), the Air Ambulance Committee chair shall, at the time of appointment or reappointment, adjust the length of the terms of committee members to ensure that the terms of the committee members are staggered so that approximately half of the committee is reappointed every two years.
- (5)
 - (a) A majority of the members of the Air Ambulance Committee constitutes a quorum.
 - (b) The action of a majority of a quorum constitutes the action of the Air Ambulance 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
 - (ii) any other differences between air medical transport service providers that may substantially affect the cost of the air medical transport service, as determined by the committee.
 - (c) The department shall:
 - (i) post the committee's findings under Subsection (7)(a) on the department's website; and
 - (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) A member of the Air Ambulance Committee 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.
- (10) The Air Ambulance Committee shall report to the Health and Human Services Interim Committee before November 30, 2023, regarding the sunset of this section in accordance with Section 63I-2-226.

Renumbered and Amended by Chapter 305, 2023 General Session

Superseded 7/1/2024

26B-1-406 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:

- (a) advise the department regarding trauma system needs throughout the state;
 - (b) assist the department in evaluating the quality and outcomes of the overall trauma system;
 - (c) review and comment on proposals and rules governing the statewide trauma system; and
 - (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;
 - (b) establish committee procedures and administration policies consistent with this chapter and department rule; and
 - (c) provide administrative support to the committee.

Renumbered and Amended by Chapter 305, 2023 General Session

Superseded 7/1/2024

26B-1-407 Stroke registry advisory committee.

- (1) There is created within the department a stroke registry advisory committee.
- (2) The stroke registry advisory committee created in Subsection (1) shall:
 - (a) be composed of individuals knowledgeable in adult and pediatric stroke care, including physicians, physician assistants, nurses, hospital administrators, emergency medical services personnel, government officials, consumers, and persons affiliated with professional health care associations;
 - (b) advise the department regarding the development and implementation of the stroke registry created in Section 26B-7-225;
 - (c) assist the department in evaluating the quality and outcomes of the stroke registry created in Section 26B-7-225; and
 - (d) review and comment on proposals and rules governing the statewide stroke registry created in Section 26B-7-225.

Renumbered and Amended by Chapter 305, 2023 General Session

Superseded 7/1/2024

26B-1-408 Cardiac registry advisory committee.

- (1) There is created within the department a cardiac registry advisory committee.
- (2) The cardiac registry advisory committee created in Subsection (1) shall:
 - (a) be composed of individuals knowledgeable in adult and pediatric cardiac care, including physicians, physician assistants, nurses, hospital administrators, emergency medical services personnel, government officials, consumers, and persons affiliated with professional health care associations;
 - (b) advise the department regarding the development and implementation of the cardiac registry created in Section 26B-7-226;
 - (c) assist the department in evaluating the quality and outcomes of the cardiac registry created in Section 26B-7-226; and
 - (d) review and comment on proposals and rules governing the statewide cardiac registry created in Section 26B-7-226.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-1-409 Utah Digital Health Service Commission -- Creation -- Membership -- Duties.

- (1) As used in this section:
 - (a) "Commission" means the Utah Digital Health Service Commission created in this section.
 - (b) "Digital health service" means the electronic transfer, exchange, or management of related data for diagnosis, treatment, consultation, educational, public health, or other related purposes.
- (2) There is created within the department the Utah Digital Health Service Commission.
- (3) The governor shall appoint 13 members to the commission with the advice and consent of the Senate, as follows:
 - (a) a physician who is involved in digital health service;
 - (b) a representative of a health care system or a licensed health care facility as defined in Section 26B-2-201;
 - (c) a representative of rural Utah, which may be a person nominated by an advisory committee on rural health issues;
 - (d) a member of the public who is not involved with digital health service;
 - (e) a nurse who is involved in digital health service; and
 - (f) eight members who fall into one or more of the following categories:
 - (i) individuals who use digital health service in a public or private institution;
 - (ii) individuals who use digital health service in serving medically underserved populations;
 - (iii) nonphysician health care providers involved in digital health service;
 - (iv) information technology professionals involved in digital health service;
 - (v) representatives of the health insurance industry;
 - (vi) telehealth digital health service consumer advocates; and
 - (vii) individuals who use digital health service in serving mental or behavioral health populations.
- (4)
 - (a) The commission shall annually elect a chairperson from its membership. The chairperson shall report to the executive director of the department.
 - (b) The commission shall hold meetings at least once every three months. Meetings may be held from time to time on the call of the chair or a majority of the board members.
 - (c) Seven commission members are necessary to constitute a quorum at any meeting and, if a quorum exists, the action of a majority of members present shall be the action of the commission.
- (5)
 - (a) Except as provided in Subsection (5)(b), a commission member shall be appointed for a three-year term and eligible for two reappointments.
 - (b) Notwithstanding Subsection (5)(a), the governor shall, at the time of appointment 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.
 - (c) A commission member shall continue in office until the expiration of the member's term and until a successor is appointed, which may not exceed 90 days after the formal expiration of the term.
 - (d) Notwithstanding Subsection (5)(c), a commission member who fails to attend 75% of the scheduled meetings in a calendar year shall be disqualified from serving.
 - (e) When a vacancy occurs in membership for any reason, the replacement shall be appointed for the unexpired term.
- (6) 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.
- (7) The department shall provide informatics staff support to the commission.
- (8) The funding of the commission shall be a separate line item to the department in the annual appropriations act.
- (9) The commission shall:
 - (a) advise and make recommendations on digital health service issues to the department and other state entities;
 - (b) advise and make recommendations on digital health service related patient privacy and information security to the department;
 - (c) promote collaborative efforts to establish technical compatibility, uniform policies, privacy features, and information security to meet legal, financial, commercial, and other societal requirements;
 - (d) identify, address, and seek to resolve the legal, ethical, regulatory, financial, medical, and technological issues that may serve as barriers to digital health service;
 - (e) explore and encourage the development of digital health service systems as a means of reducing health care costs and increasing health care quality and access, with emphasis on assisting rural health care providers and special populations with access to or development of electronic medical records;
 - (f) seek public input on digital health service issues; and
 - (g) in consultation with the department, advise the governor and Legislature on:
 - (i) the role of digital health service in the state;
 - (ii) the policy issues related to digital health service;
 - (iii) the changing digital health service needs and resources in the state; and
 - (iv) state budgetary matters related to digital health service.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-1-410 Primary Care Grant Committee.

- (1) As used in this section:
 - (a) "Committee" means the Primary Care Grant Committee created in Subsection (2).
 - (b) "Program" means the Primary Care Grant Program described in Sections 26B-4-310 and 26B-4-313.
- (2) There is created the Primary Care Grant Committee.
- (3) The committee shall:
 - (a) review grant applications forwarded to the committee by the department under Subsection 26B-4-312(1);
 - (b) recommend, to the executive director, grant applications to award under Subsection 26B-4-310(1);
 - (c) evaluate:
 - (i) the need for primary health care as defined in Section 26B-4-325 in different areas of the state;
 - (ii) how the program is addressing those needs; and
 - (iii) the overall effectiveness and efficiency of the program;
 - (d) review annual reports from primary care grant recipients;
 - (e) meet as necessary to carry out its duties, or upon a call by the committee chair or by a majority of committee members; and

- (f) make rules, with the concurrence of the department, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, that govern the committee, including the committee's grant selection criteria.
- (4) The committee shall consist of:
 - (a) as chair, the executive director or an individual designated by the executive director; and
 - (b) six members appointed by the governor to serve up to two consecutive, two-year terms of office, including:
 - (i) four licensed health care professionals; and
 - (ii) two community advocates who are familiar with a medically underserved population as defined in Section 26B-4-325 and with health care systems, where at least one is familiar with a rural medically underserved population.
- (5) The executive director may remove a committee member:
 - (a) if the member is unable or unwilling to carry out the member's assigned responsibilities; or
 - (b) for a rational reason.
- (6) A committee member may not receive compensation or benefits for the member's service, except a committee member who is not an employee of the department 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 in accordance with Sections 63A-3-106 and 63A-3-107.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-1-411 Creation and membership of Kurt Oscarson Children's Organ Transplant Coordinating Committee -- Expenses -- Purposes.

- (1) There is created the Kurt Oscarson Children's Organ Transplant Coordinating Committee.
- (2) The committee shall have five members representing the following:
 - (a) the executive director or the executive director's designee;
 - (b) two representatives from public or private agencies and organizations concerned with providing support and financial assistance to the children and families of children who 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.
- (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.
- (5) The department shall provide support staff for the committee.
- (6) The committee shall work to:
 - (a) provide financial assistance for initial medical expenses of children who need organ transplants;
 - (b) obtain the assistance of volunteer and public service organizations; and
 - (c) fund activities as the committee designates for the purpose of educating the public about the need for organ donors.
- (7)
 - (a) The committee is responsible for awarding financial assistance funded by the Kurt Oscarson Children's Organ Transplant Account created in Section 26B-1-311.
 - (b) The financial assistance awarded by the committee under Subsection (6)(a) shall be in the form of interest free loans. The committee may establish terms for repayment of the loans, including a waiver of the requirement to repay any awards if, in the committee's judgment, repayment of the loan would impose an undue financial burden on the recipient.
 - (c) In making financial awards under Subsection (6)(a), the committee shall consider:
 - (i) need;
 - (ii) coordination with or enhancement of existing services or financial assistance, including availability of insurance or other state aid;
 - (iii) the success rate of the particular organ transplant procedure needed by the child; and
 - (iv) the extent of the threat to the child's life without the organ transplant.
 - (d) The committee may only provide the assistance described in this section to children who have resided in Utah, or whose legal guardians have resided in Utah for at least six months prior to the date of assistance under this section.
- (8)
 - (a) The committee may expend up to 5% of the committee's annual appropriation for administrative costs associated with the allocation of funds from the Kurt Oscarson Children's Organ Transplant Account created in Section 26B-1-311.
 - (b) The administrative costs shall be used for the costs associated with staffing the committee and for State Tax Commission costs in implementing Section 59-10-1308.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-1-412 Health Facility Committee -- Members -- Terms -- Organization -- Meetings.

- (1) The definitions in Section 26B-2-201 apply to this section.
- (2)
 - (a) The Health Facility Committee shall consist of 12 members appointed by the governor in consultation with the executive director.
 - (b) The appointed members shall be knowledgeable about health care facilities and issues.
- (3) The membership of the committee is:
 - (a) one physician, licensed to practice medicine and surgery under Title 58, Chapter 67, Utah Medical Practice Act, or Title 58, Chapter 68, Utah Osteopathic Medical Practice Act, who is a graduate of a regularly chartered medical school;
 - (b) one hospital administrator;
 - (c) one hospital trustee;
 - (d) one representative of a freestanding ambulatory surgical facility;
 - (e) one representative of an ambulatory surgical facility that is affiliated with a hospital;
 - (f) one representative of the nursing care facility industry;

- (g) one registered nurse, licensed to practice under Title 58, Chapter 31b, Nurse Practice Act;
 - (h) one licensed architect or engineer with expertise in health care facilities;
 - (i) one representative of assisted living facilities licensed under Chapter 2, Part 2, Health Care Facility Licensing and Inspection;
 - (j) two consumers, one of whom has an interest in or expertise in geriatric care; and
 - (k) one representative from either a home health care provider or a hospice provider.
- (4)
- (a) Except as required by Subsection (4)(b), members shall be appointed for a term of four years.
 - (b) Notwithstanding the requirements of Subsection (4)(a), the governor shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of committee members are staggered so that approximately half of the committee is appointed every two years.
 - (c) When a vacancy occurs in the membership for any reason, the replacement shall be appointed for the unexpired term by the governor, giving consideration to recommendations made by the committee, with the consent of the Senate.
 - (d)
 - (i) A member may not serve more than two consecutive full terms or 10 consecutive years, whichever is less.
 - (ii) Notwithstanding Subsection (4)(d)(i), a member may continue to serve as a member until the member is replaced.
 - (e) The committee shall annually elect from 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.
 - (h) A vote of the majority of the members present constitutes action of the committee.
- (5) The committee shall:
- (a) with the concurrence of the department, make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act:
 - (i) for the licensing of health-care facilities; and
 - (ii) requiring the submission of architectural plans and specifications for any proposed new health-care facility or renovation to the department for review;
 - (b) approve the information for applications for licensure pursuant to Section 26B-2-207;
 - (c) advise the department as requested concerning the interpretation and enforcement of the rules established under Chapter 2, Part 2, Health Care Facility Licensing and Inspection; and
 - (d) advise, consult, cooperate with, and provide technical assistance to other agencies of the state and federal government, and other states and affected groups or persons in carrying out the purposes of Chapter 2, Part 2, Health Care Facility Licensing and Inspection.
- (6) A member may not receive compensation or benefits for the member's service, but 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.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-1-413 Health Data Committee -- Purpose, powers, and duties of the committee -- Membership -- Terms -- Chair -- Compensation.

- (1) The definitions in Section 26B-8-501 apply to this section.

- (2)
- (a) There is created within the department the Health Data Committee.
 - (b) 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.
- (3) The committee shall:
- (a) with the concurrence of the department and in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, develop and adopt by rule, following public hearing 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 (3)(a)(i);
 - (iii) describe and prioritize the actions suitable for the committee to take in response to the needs identified in Subsection (3)(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 (3)(a)(ii);
 - (iv) detail the types of data needed for the committee's work, the intended data suppliers, and the form in which such data are to be supplied, noting the consideration given 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 manner; the plan shall reasonably demonstrate that the committee has attempted to maximize cost-effectiveness in the data acquisition approaches selected;
 - (v) describe the types and methods of validation to be performed to assure data validity and reliability;
 - (vi) explain the intended uses of and expected benefits to be derived from the data specified in Subsection (3)(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;
 - (B) managing health care costs; or
 - (C) improving access to health care services;
 - (vii) describe the expected processes for interpretation and analysis of the data flowing to the committee; noting specifically the types of expertise and participation to be 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 (4), 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 section and Chapter 8, Part 5, Utah Health Data Authority; 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.

- (4) 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 section and Chapter 8, Part 5, Utah Health Data Authority.
- (5)
 - (a) Except for data collection, analysis, and validation functions described in this section, nothing in this section or in Chapter 8, Part 5, Utah Health Data Authority, 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.
- (6)
 - (a) Nothing in this section or in Chapter 8, Part 5, Utah Health Data Authority, 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.
- (7) 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.
- (8)
 - (a) 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.
 - (b) 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.
- (9) After a plan is adopted as provided in Section 26B-8-504, 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.
- (10)
 - (a) The committee may not publish any health data collected under Subsection (9) 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.
 - (b) Nothing in Subsection (9) 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.
- (11) The committee shall be composed of 15 members.
- (12)
 - (a) One member shall be:
 - (i) the commissioner of the Utah Insurance Department; or
 - (ii) the commissioner's designee who shall have knowledge regarding the health care system and characteristics and use of health data.
 - (b)
 - (i) Fourteen members shall be appointed by the governor with the advice and consent of the Senate in accordance with Subsection (13) and in accordance with Title 63G, Chapter 24, Part 2, Vacancies.

- (ii) No more than seven members of the committee appointed by the governor may be members of the same political party.
- (13) The members of the committee appointed under Subsection (12)(b) shall:
- (a) be knowledgeable regarding the health care system and the characteristics and use of health data;
 - (b) be selected so that the committee at all times includes individuals who provide care;
 - (c) include one person employed by or otherwise associated with a general acute hospital as defined in Section 26B-2-201, who is knowledgeable about the collection, analysis, and use of health care data;
 - (d) include two physicians, as defined in Section 58-67-102:
 - (i) who are licensed to practice in this state;
 - (ii) who actively practice medicine in this state;
 - (iii) who are trained in or have experience with the collection, analysis, and use of health care data; and
 - (iv) one of whom is selected by the Utah Medical Association;
 - (e) include three persons:
 - (i) who are:
 - (A) employed by or otherwise associated with a business that supplies health care insurance to the business's employees; and
 - (B) knowledgeable about the collection and use of health care data; and
 - (ii) at least one of whom represents an employer employing 50 or fewer employees;
 - (f) include three persons representing health insurers:
 - (i) at least one of whom is employed by or associated with a third-party payor that is not licensed under Title 31A, Chapter 8, Health Maintenance Organizations and Limited Health Plans;
 - (ii) at least one of whom is employed by or associated with a third party that is licensed under Title 31A, Chapter 8, Health Maintenance Organizations and Limited Health Plans; and
 - (iii) who are trained in, or experienced with the collection, analysis, and use of health care data;
 - (g) include two consumer representatives:
 - (i) from organized consumer or employee associations; and
 - (ii) knowledgeable about the collection and use of health care data;
 - (h) include one person:
 - (i) representative of a neutral, non-biased entity that can demonstrate that the entity has the broad support of health care payers and health care providers; and
 - (ii) who is knowledgeable about the collection, analysis, and use of health care data; and
 - (i) include two persons representing public health who are trained in or experienced with the collection, use, and analysis of health care data.
- (14)
- (a) Except as required by Subsection (14)(b), as terms of current committee members expire, the governor shall appoint each new member or reappointed member to a four-year term.
 - (b) Notwithstanding the requirements of Subsection (14)(a), the governor shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of committee members are staggered so that approximately half of the committee is appointed every two years.
 - (c) Members may serve after the members' terms expire until replaced.
- (15) When a vacancy occurs in the membership for any reason, the replacement shall be appointed for the unexpired term.

- (16) Committee members shall annually elect a chair of the committee from among the committee's membership. The chair shall report to the executive director.
- (17)
 - (a) The committee shall meet at least once during each calendar quarter. Meeting dates shall be set by the chair upon 10 working days' notice to the other members, or upon written request by at least four committee members with at least 10 working days' notice to other committee members.
 - (b) Eight committee members constitute a quorum for the transaction of business. Action may not be taken except upon the affirmative vote of a majority of a quorum of the committee.
 - (c) All meetings of the committee shall be open to the public, except that the committee may hold a closed meeting if the requirements of Sections 52-4-204, 52-4-205, and 52-4-206 are met.
- (18) A member:
 - (a) may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:
 - (i) Section 63A-3-106;
 - (ii) Section 63A-3-107; and
 - (iii) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107; and
 - (b) shall comply with the conflict of interest provisions described in Title 63G, Chapter 24, Part 3, Conflicts of Interest.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-1-414 Child Care Provider Licensing Committee -- Duties.

- (1)
 - (a) The Child Care Center Licensing Committee shall be comprised of 12 members appointed by the governor with the advice and consent of the Senate in accordance with this Subsection (1).
 - (b) The governor shall appoint three members who:
 - (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 as defined in Section 26B-2-401; and
 - (ii) hold an active license as a child care center from the department to provide center based child care as defined in Section 26B-2-401.
 - (c) The governor shall appoint two members who hold an active license as a residential child care provider and one member who is a certified residential child care provider.
 - (d)
 - (i) The governor shall appoint one member to represent each of the following:
 - (A) a parent with a child in a licensed center based child care facility;
 - (B) a parent with a child in a residential based child care facility;
 - (C) a child development expert from the state system of higher education;
 - (D) except as provided in Subsection (1)(f), a pediatrician licensed in the state;
 - (E) a health care provider; and
 - (F) an architect licensed in the state.
 - (ii) Except as provided in Subsection (1)(d)(i)(C), a member appointed under Subsection (1)(d)
 - (i) may not be an employee of the state or a political subdivision of the state.
 - (e) At least one member described in Subsection (1)(b) shall at the time of appointment reside in a county that is not a county of the first class.
 - (f) For the appointment described in Subsection (1)(d)(i)(D), the governor may appoint a health care professional who specializes in pediatric health if:

- (i) the health care professional is licensed under:
 - (A) Title 58, Chapter 31b, Nurse Practice Act, as an advanced practice nurse practitioner; or
 - (B) Title 58, Chapter 70a, Utah Physician Assistant Act; and
- (ii) before appointing a health care professional under this Subsection (1)(f), the governor:
 - (A) sends a notice to a professional physician organization in the state regarding the opening for the appointment described in Subsection (1)(d)(i)(D); and
 - (B) receives no applications from a pediatrician who is licensed in the state for the appointment described in Subsection (1)(d)(i)(D) within 90 days after the day on which the governor sends the notice described in Subsection (1)(f)(ii)(A).
- (2)
 - (a) Except as required by Subsection (2)(b), as terms of current members expire, the governor shall appoint each new member or reappointed member to a four-year term 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.
 - (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.
 - (e) Members of the licensing committee shall annually select one member to serve as chair who shall establish the agenda for licensing committee meetings.
- (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:
 - (i) at the director's discretion;
 - (ii) upon the request of the chair; or
 - (iii) upon the written request of three or more members.
- (5) Seven members of the licensing committee constitute a quorum for the transaction of business.
- (6) A member appointed under Subsection (1)(b) may not vote on any action proposed by the licensing committee regarding residential child care.
- (7) A member appointed under Subsection (1)(c) may not vote on any action proposed by the licensing committee regarding center based child care.
- (8) A member of the licensing committee may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses as allowed in:
 - (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 63A-3-107.
- (9) The licensing committee shall:
 - (a) in concurrence with the department and in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, make rules that govern center based child care and residential child care, as those terms are defined in Section 26B-2-401, as necessary to protect qualifying children's common needs for a safe and healthy environment, to provide for:
 - (i) adequate facilities and equipment; and
 - (ii) competent caregivers considering the age of the children and the type of program offered by the licensee

- (b) in concurrence with the department and in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, make rules necessary to carry out the purposes of Chapter 2, Part 4, Child Care Licensing, that govern center based child care and residential child care, as those terms are defined in Section 26B-2-401, in the following areas:
 - (i) requirements for applications, the application process, and compliance with other applicable statutes and rules;
 - (ii) documentation, policies, and procedures that providers shall have in place in order to be licensed, in accordance with this Subsection (9);
 - (iii) categories, classifications, and duration of initial and ongoing licenses;
 - (iv) changes of ownership or name, changes in licensure status, and changes in 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 ensure compliance with statute and rule; and
 - (vii) guidelines necessary to ensure consistency and appropriateness in the regulation and discipline of licensees;
 - (c) advise the department on the administration of a matter affecting center based child care or residential child care, as those terms are defined in Section 26B-2-401;
 - (d) advise and assist the department in conducting center based child care provider seminars and residential child care seminars; and
 - (e) perform other duties as provided in Section 26B-2-402.
- (10)
- (a) The licensing committee may not enforce the rules adopted under this section.
 - (b) the department shall enforce the rules adopted under this section in accordance with Section 26B-2-402.

Amended by Chapter 249, 2023 General Session

Renumbered and Amended by Chapter 305, 2023 General Session

26B-1-416 Utah Children's Health Insurance Program Advisory Council.

- (1)
 - (a) There is created a Utah Children's Health Insurance Program Advisory Council consisting of at least five and no more than eight members appointed by the executive director of the department.
 - (b) The term of each appointment shall be three years.
 - (c) The appointments shall be staggered at one-year intervals to ensure continuity of the advisory council.
- (2) The advisory council shall meet at least quarterly.
- (3) The membership of the advisory council shall include at least one representative from each of the following groups:
 - (a) child health care providers;
 - (b) ethnic populations other than American Indians;
 - (c) American Indians;
 - (d) health and accident and health insurance providers; and
 - (e) the general public.
- (4) The advisory council shall advise the department on:
 - (a) benefits design;
 - (b) eligibility criteria;

- (c) outreach;
 - (d) evaluation; and
 - (e) special strategies for under-served populations.
- (5) A member of the advisory council may not receive compensation or benefits for the member's service, but 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.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-1-417 Brain Injury Advisory Committee -- Membership -- Time limit.

- (1) On or after July 1 of each year, the executive director may create a Brain Injury Advisory Committee of not more than nine members.
- (2) The committee shall be composed of members of the community who are familiar with brain injury, its causes, diagnosis, treatment, rehabilitation, and support services, including:
- (a) persons with a brain injury;
 - (b) family members of a person with a brain injury;
 - (c) representatives of an association which advocates for persons with brain injuries;
 - (d) specialists in a profession that works with brain injury patients; and
 - (e) department representatives.
- (3) The department shall provide staff support to the committee.
- (4)
- (a) If a vacancy occurs in the committee membership for any reason, a replacement may be appointed for the unexpired term.
 - (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 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.
 - (e) A committee member may be removed by the executive director:
 - (i) if the member is unable or unwilling to carry out the member's assigned responsibilities; or
 - (ii) for good cause.
- (5) The committee shall comply with the procedures and requirements of:
- (a) Title 52, Chapter 4, Open and Public Meetings Act; and
 - (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, 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.
- (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.
- (8) The committee shall cease to exist on December 31 of each year, unless the executive director determines it necessary to continue.

Renumbered and Amended by Chapter 305, 2023 General Session
Amended by Chapter 335, 2023 General Session

26B-1-418 Neuro-Rehabilitation Fund and Pediatric Neuro-Rehabilitation Fund Advisory Committee -- Creation -- Membership -- Terms -- Duties.

- (1) There is created a Neuro-Rehabilitation Fund and Pediatric Neuro-Rehabilitation Fund Advisory Committee.
- (2) The advisory committee shall be composed of 11 members as follows:
 - (a) the executive director, or the executive director's designee;
 - (b) two survivors, or family members of a survivor, of a brain injury appointed by the governor;
 - (c) two survivors, or family members of a survivor, of a spinal cord injury appointed by the governor;
 - (d) one brain injury or spinal cord injury professional appointed by the governor who, at the time of appointment and throughout the professional's term on the committee, does not receive a financial benefit from the fund;
 - (e) two parents of a child with a non-progressive neurological condition appointed by the governor;
 - (f)
 - (i) a physical therapist licensed under Title 58, Chapter 24b, Physical Therapy Practice Act, with experience treating brain and spinal cord injuries, appointed by the governor; or
 - (ii) an occupational therapist licensed under Title 58, Chapter 42a, Occupational Therapy Practice Act, with experience treating brain and spinal cord injuries, appointed by 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.
- (3)
 - (a) The term of advisory committee members shall be four years. If a vacancy occurs in the committee membership for any reason, a replacement shall be appointed for the unexpired term in the same manner as the original appointment.
 - (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 is present at an open meeting, the action of the majority of members shall be the action of 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. Thereafter, members appointed to the advisory committee shall serve four-year terms.
- (4) The advisory committee shall comply with the procedures and requirements of:
 - (a) Title 52, Chapter 4, Open and Public Meetings Act;
 - (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 the member's service, but, at the executive director's discretion, may receive per diem and travel expenses as allowed in:
 - (i) Section 63A-3-106;
 - (ii) Section 63A-3-107; and
 - (iii) rules adopted by the Division of Finance according to Sections 63A-3-106 and 63A-3-107.
 - (b) Compensation and expenses of a member who is a legislator are governed by Section 36-2-2 and Legislative Joint Rules, Title 5, Legislative Compensation and Expenses.

- (6) The advisory committee shall:
 - (a) adopt rules and procedures in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, that establish priorities and criteria for the advisory committee to follow in recommending distribution of money from the Neuro-Rehabilitation Fund created in Section 26B-1-319 and the Pediatric Neuro-Rehabilitation Fund created in Section 26B-1-320 to assist qualified IRC 501(c)(3) charitable clinics, as defined in Sections 26B-1-319 and 26B-1-320;
 - (b) identify, evaluate, and review the quality of care available to:
 - (i) individuals with spinal cord and brain injuries through qualified IRC 501(c)(3) charitable clinics, as defined in Section 26B-1-319; or
 - (ii) children with non-progressive neurological conditions through qualified IRC 501(c)(3) charitable clinics, as defined in Section 26B-1-320; and
 - (c) explore, evaluate, and review other possible funding sources and make a recommendation to the Legislature regarding sources that would provide adequate funding for the advisory committee to accomplish its responsibilities under this section.
- (7) Operating expenses for the advisory committee, including the committee's staff, shall be paid for only with money from:
 - (a) the Neuro-Rehabilitation Fund created in Section 26B-1-319;
 - (b) the Pediatric Neuro-Rehabilitation Fund created in Section 26B-1-320; or
 - (c) both funds.

Renumbered and Amended by Chapter 305, 2023 General Session

Amended by Chapter 335, 2023 General Session

26B-1-419 Utah Health Care Workforce Financial Assistance Program Advisory Committee -- Membership -- Compensation -- Duties.

- (1) There is created the Utah Health Care Workforce Financial Assistance Program Advisory Committee consisting of the following 13 members appointed by the executive director, eight of whom shall be residents of rural communities:
 - (a) one rural representative of Utah Hospitals and Health Systems, nominated by the association;
 - (b) two rural representatives of the Utah Medical Association, nominated by the association;
 - (c) one representative of the Utah Academy of Physician Assistants, nominated by the association;
 - (d) one representative of the Association for Utah Community Health, nominated by the association;
 - (e) one representative of the Utah Dental Association, nominated by the association;
 - (f) one representative of mental health therapists, selected from nominees submitted by mental health therapist professional associations;
 - (g) one representative of the Association of Local Health Officers, nominated by the association;
 - (h) one representative of a low-income advocacy group, nominated by a Utah health and human services coalition that represents underserved populations as defined in Section 26B-4-702;
 - (i) one nursing program faculty member, nominated by the Statewide Deans and Directors Committee;
 - (j) one administrator of a long-term care facility, nominated by the Utah Health Care Association;
 - (k) one nursing administrator, nominated by the Utah Nurses Association; and
 - (l) one geriatric professional as defined in Section 26B-4-702 who is:

- (i) determined by the department to have adequate advanced training in geriatrics to prepare the person to provide specialized geriatric care within the scope of the person's profession; and
 - (ii) nominated by a professional association for the profession of which the person is a member.
- (2)
- (a) An appointment to the committee shall be for a four-year term unless the member is appointed to complete an unexpired term.
 - (b) The executive director may also 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.
 - (c) 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.
- (4)
- (a) A majority of the members of the committee constitutes a quorum.
 - (b) The action of a majority of a quorum constitutes the action of the committee.
- (5) A member may not receive compensation or benefits for the member's service, but 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.
- (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 as defined in Section 26B-4-702.
- (7) As funding permits, the department shall provide staff and other administrative support to the committee.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-1-420 Cannabis Research Review Board.

- (1) As used in this section:
- (a) "Cannabinoid product" means the same as that term is defined in Section 58-37-3.6.
 - (b) "Cannabis" means the same as that term is defined in Section 58-37-3.6.
- (2)
- (a) There is created the Cannabis Research Review Board within the department.
 - (b) The department shall appoint, in consultation with a professional association based in the state that represents physicians, seven members to the Cannabis Research Review Board as follows:
 - (i) three individuals who are medical research professionals; and
 - (ii) four physicians:
 - (A) who are qualified medical providers as defined in Section 26B-4-201; and
 - (B) at least two who have at least 100 patients with a medical cannabis patient card at the time of appointment.
- (3) The department shall ensure that at least one of the board members appointed under Subsection (2)(b) is a member of the Controlled Substances Advisory Committee created in Section 58-38a-201.

- (4)
 - (a) Four of the board members appointed under Subsection (2)(b) shall serve an initial term of two years and three of the board members appointed under Subsection (2)(b) 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.
- (5) The department may remove a board member without cause.
- (6) The board shall:
 - (a) nominate a board member to serve as chairperson of the board by a majority vote of the board members; and
 - (b) meet as often as necessary to accomplish the duties assigned to the board under this chapter.
- (7) Each board member, including the chair, has one vote.
- (8)
 - (a) A majority of board members constitutes a quorum.
 - (b) A vote of a majority of the quorum at any board meeting is necessary to take action on behalf of the board.
- (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, Chapter 3, Utah Administrative Rulemaking Act, receive:
 - (a) per diem at the rate established under Section 63A-3-106; and
 - (b) travel expenses at the rate established under Section 63A-3-107.
- (10) If a board member appointed under Subsection (2)(b) does not meet the qualifications of Subsection (2)(b) before July 1, 2022:
 - (a) the board member's seat is vacant; and
 - (b) the department shall fill the vacancy in accordance with this section.
- (11) The board shall review any available scientific research related to the human use of cannabis, a cannabinoid product, or an expanded cannabinoid product that:
 - (a) was conducted under a study approved by an institutional review board that is registered for human subject research by the United States Department of Health and Human Services;
 - (b) was conducted or approved by the federal government; or
 - (c)
 - (i) was conducted in another country; and
 - (ii) demonstrates, as determined by the board, a sufficient level of scientific reliability and significance to merit the board's review.
- (12) Based on the research described in Subsection (11), the board shall evaluate the safety and efficacy of cannabis, cannabinoid products, and expanded cannabinoid products, including:
 - (a) medical conditions that respond to cannabis, cannabinoid products, and expanded cannabinoid products;
 - (b) cannabis and cannabinoid dosage amounts and medical dosage forms;
 - (c) interaction of cannabis, cannabinoid products, and expanded cannabinoid products, as defined in Section 58-37-3.6, with other treatments; and
 - (d) contraindications, adverse reactions, and potential side effects from use of cannabis, cannabinoid products, and expanded cannabinoid products.
- (13) Based on the board's evaluation under Subsection (12), the board shall develop guidelines for treatment with cannabis, a cannabinoid product, and an expanded cannabinoid product that include:

- (a) a list of medical conditions, if any, that the board determines are appropriate for treatment with cannabis, a cannabis product, a cannabinoid product, or an expanded cannabinoid product;
 - (b) a list of contraindications, side effects, and adverse reactions that are associated with use of cannabis, cannabinoid products, or expanded cannabinoid products;
 - (c) a list of potential drug-drug interactions between medications that the United States Food and Drug Administration has approved and cannabis, cannabinoid products, and expanded cannabinoid products; and
 - (d) any other guideline the board determines appropriate.
- (14) The board shall submit the guidelines described in Subsection (13) to the director of the Division of Professional Licensing.
- (15) Guidelines that the board develops under this section may not limit the availability of cannabis, cannabinoid products, or expanded cannabinoid products permitted under Title 4, Chapter 41a, Cannabis Production Establishments and Pharmacies, or Title 26B, Chapter 4, Part 2, Cannabinoid Research and Medical Cannabis.
- (16) The board shall provide a report to the Health and Human Services Interim Committee regarding the board's work before October 1 of each year.
- (17) Based on the board's evaluation under Subsection (12), the board may provide recommendations to the Medical Cannabis Policy Advisory Board created in Section 26B-1-435 regarding restrictions for a substance found in a medical cannabis product that:
- (a) is likely harmful to human health; or
 - (b) is associated with a substance that is likely harmful to human health.

Amended by Chapter 281, 2023 General Session

Amended by Chapter 305, 2023 General Session, (Coordination Clause)

Renumbered and Amended by Chapter 305, 2023 General Session

26B-1-421 Compassionate Use Board.

- (1) The definitions in Section 26B-4-201 apply to this section.
- (2)
- (a) The department shall establish a Compassionate Use Board consisting of:
 - (i) seven qualified medical providers that the executive director appoints and the Senate confirms:
 - (A) who are knowledgeable about the medicinal use of cannabis;
 - (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
 - (C) who are board certified by the American Board of Medical Specialties or an American Osteopathic Association Specialty Certifying Board in the specialty of neurology, pain medicine and pain management, medical oncology, psychiatry, infectious disease, internal medicine, pediatrics, family medicine, or gastroenterology; and
 - (ii) as a nonvoting member and the chair of the Compassionate Use Board, the executive director or the director's designee.
 - (b) In appointing the seven qualified medical providers described in Subsection (2)(a), the executive director shall ensure that at least two have a board certification in pediatrics.
- (3)
- (a) Of the members of the Compassionate Use Board that the executive director first appoints:
 - (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 (3)(a) expires:
 - (i) each term is four years; and
 - (ii) each board member is eligible for reappointment.
- (c) A member of the Compassionate Use Board may serve until a successor is appointed.
- (d) Four members constitute a quorum of the Compassionate Use Board.
- (4) A member of the Compassionate Use Board may receive:
 - (a) notwithstanding Section 63A-3-106, compensation or benefits for the member's 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:
 - (a) review and recommend for department approval a petition to the board regarding an individual described in Subsection 26B-4-213(2)(a), a minor described in Subsection 26B-4-213(2)(c), or an individual who is not otherwise qualified to receive a medical cannabis card to obtain a medical cannabis card for compassionate use, for the standard or a reduced period of validity, if:
 - (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 condition that:
 - (A) substantially impairs the individual's quality of life; and
 - (B) has not, in the qualified medical provider's professional opinion, adequately responded to conventional treatments;
 - (ii) the qualified medical provider:
 - (A) recommends that the individual or minor be allowed to use medical cannabis; and
 - (B) provides a letter, relevant treatment history, and notes or copies of progress notes describing relevant treatment history including rationale for considering the use of medical cannabis; and
 - (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) when a qualified medical provider recommends that an individual described in Subsection 26B-4-213(2)(a)(i)(B) or a minor described in Subsection 26B-4-213(2)(c) be allowed to use a medical cannabis device or medical cannabis product to vaporize a medical cannabis treatment, review and approve or deny the use of the medical cannabis device or medical cannabis product;
 - (c) unless no petitions are pending:
 - (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 physical condition; and
 - (c) sufficient factors are present regarding the petitioner's safety.
- (7)
 - (a)
 - (i) The department shall review:
 - (A) any compassionate use for which the Compassionate Use Board recommends approval under Subsection (5)(d) to determine whether the board properly exercised the board's discretion under this section; and
 - (B) any expedited petitions the department receives under the process described in Subsection (6).
 - (ii) If the department determines that the Compassionate Use Board properly exercised the board's discretion in recommending approval under Subsection (5)(d) or that the expedited petition merits approval based on the criteria established in accordance with Subsection (6), the department shall:
 - (A) issue the relevant medical cannabis card; and
 - (B) provide for the renewal of the medical cannabis card in accordance with the recommendation of the qualified medical provider described in Subsection (5)(a).
 - (b)
 - (i) If the Compassionate Use Board recommends denial under Subsection (5)(d), the individual seeking to obtain a medical cannabis card may petition the department to review the board's decision.
 - (ii) If the department determines that the Compassionate Use Board's recommendation for denial under Subsection (5)(d) was arbitrary or capricious:
 - (A) the department shall notify the Compassionate Use Board of the department's determination; and
 - (B) the board shall reconsider the Compassionate Use Board's refusal to recommend approval under this section.
 - (c) In reviewing the Compassionate Use Board's recommendation for approval or denial under Subsection (5)(d) in accordance with this Subsection (7), the department shall presume the board properly exercised the board's discretion unless the department determines that the board's recommendation was arbitrary or capricious.
- (8) Any individually identifiable health information contained in a petition that the Compassionate Use Board or department receives under this section is a protected record in accordance with Title 63G, Chapter 2, Government Records Access and Management Act.
- (9) The Compassionate Use Board shall annually report the board's activity to the Cannabis Research Review Board and the advisory board.

Amended by Chapter 273, 2023 General Session
Renumbered and Amended by Chapter 305, 2023 General Session
Amended by Chapter 317, 2023 General Session

26B-1-422 Early Childhood Utah Advisory Council -- Creation -- Compensation -- Duties.

- (1) As used in this section:
 - (a) "Early childhood" refers to a child in the state who is eight years old or younger; and
 - (b) "State superintendent" means the state superintendent of public instruction appointed under Section 53E-3-301.
- (2) There is created the Early Childhood Utah Advisory Council.
- (3)
 - (a) The department shall:
 - (i) make rules establishing the membership, duties, and procedures of the council in accordance with the requirements of:
 - (A) this section;
 - (B) the Improving Head Start for School Readiness Act of 2007, 42 U.S.C. Sec. 9837b; and
 - (C) Title 63G, Chapter 3, Utah Administrative Rulemaking Act; and
 - (ii) provide necessary administrative and staff support to the council.
 - (b) A member of the council may not receive compensation or benefits for the member's service.
- (4) The duties of the council include:
 - (a) 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;
 - (b) supporting Utah parents and families by providing comprehensive and accurate information regarding the availability of voluntary services for children in early childhood from state agencies and other private and public entities;
 - (c) facilitating improved coordination between state agencies and community partners that provide services to children in early childhood;
 - (d) sharing and analyzing information regarding early childhood issues in the state;
 - (e) providing recommendations to the department, the Department of Workforce Services, and the State Board of Education regarding a comprehensive delivery system of services for children in early childhood that addresses the following four areas:
 - (i) family support and safety;
 - (ii) health and development;
 - (iii) early learning; and
 - (iv) economic development; and
 - (f) identifying opportunities for and barriers to the alignment of standards, rules, policies, and procedures across programs and agencies that support children in early childhood.
- (5) To fulfill the duties described in Subsection (4), the council shall:
 - (a) directly engage with parents, families, community members, and public and private service providers to identify and address:
 - (i) the quality, effectiveness, and availability of existing services for children in early childhood and the coordination of those services;
 - (ii) gaps and barriers to entry in the provision of services for children in early childhood; and
 - (iii) community-based solutions in improving the quality, effectiveness, and availability of services for children in early childhood;
 - (b) seek regular and ongoing feedback from a wide range of entities and individuals that use or provide services for children in early childhood, including entities and individuals that use, represent, or provide services for any of the following:
 - (i) children in early childhood who live in urban, suburban, or rural areas of the state;
 - (ii) children in early childhood with varying socioeconomic backgrounds;
 - (iii) children in early childhood with varying ethnic or racial heritages;
 - (iv) children in early childhood from various geographic areas of the state; and

- (v) children in early childhood with special needs;
 - (c) study, evaluate, and report on the status and effectiveness of policies, procedures, and programs that provide services to children in early childhood;
 - (d) study and evaluate the effectiveness of policies, procedures, and programs implemented by other states and nongovernmental entities that address the needs of children in early childhood;
 - (e) identify policies, procedures, and programs that are impeding efforts to help children in early childhood in the state and recommend changes to those policies, procedures, and programs;
 - (f) identify policies, procedures, and programs related to children in early childhood in the state that are inefficient or duplicative and recommend changes to those policies, procedures, and programs;
 - (g) recommend policy, procedure, and program changes to address the needs of children in early childhood;
 - (h) develop methods for using interagency information to inform comprehensive policy and budget decisions relating to early childhood services; and
 - (i) develop strategies and monitor efforts concerning:
 - (i) increasing school readiness;
 - (ii) improving access to early child care and early education programs; and
 - (iii) improving family and community engagement in early childhood education and development.
- (6) In fulfilling the council's duties, the council may request and receive, from any state or local governmental agency or institution, information relating to early childhood, including reports, audits, projections, and statistics.
- (7)
- (a) On or before August 1 of each year, the council shall provide an annual report to the executive director, the executive director of the Department of Workforce Services, and the state superintendent.
 - (b) The annual report shall include:
 - (i) a statewide assessment concerning the availability of high-quality pre-kindergarten services for children from low-income households;
 - (ii) 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:
 - (A) 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;
 - (B) 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;
 - (C) 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
 - (D) recommending improvements to the state's early learning standards and high-quality comprehensive early learning standards; and
 - (iii) the recommendations described in Subsection (4)(e).
- (8) In addition to the annual report described in Subsection (7)(a), on or before August 1, 2024, and at least every five years thereafter, the council shall provide to the executive director,

the executive director of the Department of Workforce Services, and the state superintendent a statewide needs assessment concerning the quality and availability of early childhood education, health, and development programs and services for children in early childhood.

Amended by Chapter 269, 2023 General Session

Renumbered and Amended by Chapter 305, 2023 General Session

Amended by Chapter 305, 2023 General Session, (Coordination Clause)

26B-1-422.1 Reports.

- (1)
 - (a) On or before August 1 of each year, the council shall provide an annual report to the executive director, the executive director of the Department of Workforce Services, and the state superintendent.
 - (b) The annual report shall include:
 - (i) a statewide assessment concerning the availability of high-quality pre-kindergarten services for children from low-income households;
 - (ii) 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:
 - (A) 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;
 - (B) 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;
 - (C) 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
 - (D) recommending improvements to the state's early learning standards and high-quality comprehensive early learning standards; and
 - (iii) the recommendations described in Subsection 26B-1-422(4)(e).
 - (2) In addition to the annual report described in Subsection (1)(a), on or before August 1, 2024, and at least every five years thereafter, the council shall provide to the executive director, the executive director of the Department of Workforce Services, and the state superintendent, a statewide needs assessment concerning the quality and availability of early childhood education, health, and development programs and services for children in early childhood.

Enacted by Chapter 269, 2023 General Session

Amended by Chapter 305, 2023 General Session, (Coordination Clause)

26B-1-423 Rural Physician Loan Repayment Program Advisory Committee -- Membership -- Compensation -- Duties.

- (1) There is created the Rural Physician Loan Repayment Program Advisory Committee consisting of the following eight members appointed by the executive director:
 - (a) two legislators whose districts include a rural county as defined in Section 26B-4-701;

- (b) five administrators of a hospital located in a rural county as defined in Section 26B-4-701, 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 as defined in Section 26B-4-701.
- (2)
- (a) An appointment to the committee shall be for a four-year term unless the member is appointed to complete an unexpired term.
 - (b) 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.
 - (c) 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:
 - (i) the chair;
 - (ii) at least three members of the committee; or
 - (iii) the executive director.
 - (b) The committee shall meet at least once each calendar year.
- (4)
- (a) A majority of the members of the committee constitutes a quorum.
 - (b) The action of a majority of a quorum constitutes the action of the committee.
- (5) A member may not receive compensation or benefits for the member's service, but 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.
- (6) The committee shall make recommendations to the department for the development and modification of rules to administer the Rural Physician Loan Repayment Program created in Section 26B-4-703.
- (7) As funding permits, the department shall provide staff and other administrative support to the committee.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-1-424 Adult Autism Treatment Program Advisory Committee -- Membership -- Procedures -- Compensation -- Duties -- Expenses.

- (1) As used in this section, "autism spectrum disorder" means the same as that term is defined in Section 31A-22-642.
- (2) The Adult Autism Treatment Advisory Committee created in Section 26B-1-204 shall consist of six members appointed by the governor to two-year terms as follows:
 - (a) one individual who:
 - (i) has a doctorate degree in psychology;
 - (ii) is a licensed behavior analyst practicing in the state; and
 - (iii) has treated adults with an autism spectrum disorder for at least three years;
 - (b) one individual who is:
 - (i) employed by the department; and
 - (ii) has professional experience with the treatment of autism spectrum disorder;
 - (c) three individuals who have firsthand experience with autism spectrum disorders and the effects, diagnosis, treatment, and rehabilitation of autism spectrum disorders, including:

- (i) family members of an adult with an autism spectrum disorder;
 - (ii) representatives of an association that advocates for adults with an autism spectrum disorder; and
 - (iii) specialists or professionals who work with adults with an autism spectrum disorder; and
- (d) one individual who is:
- (i) a health insurance professional;
 - (ii) holds a Doctor of Medicine or Doctor of Philosophy degree, with professional experience relating to the treatment of autism spectrum disorder; and
 - (iii) has a knowledge of autism benefits and therapy that are typically covered by the health insurance industry.
- (3)
- (a) Notwithstanding Subsection (2), the governor shall, at the time of appointment or reappointment, adjust the length of terms to ensure the terms of members are staggered so that approximately half of the advisory committee is appointed every year.
 - (b) If a vacancy occurs in the membership of the advisory committee, the governor may appoint a replacement for the unexpired term.
 - (c) The advisory committee shall annually elect a chair from its membership.
 - (d) A majority of the advisory committee constitutes a quorum at any meeting and, if a quorum exists, the action of the majority of members present is the action of the advisory committee.
- (4) The advisory committee shall meet as necessary to:
- (a) advise the department regarding implementation of the Adult Autism Treatment Program created in Section 26B-4-602;
 - (b) make recommendations to the department and the Legislature for improving the Adult Autism Treatment Program; and
 - (c) before October 1 each year, provide a written report of the advisory committee's activities and recommendations to:
 - (i) the executive director;
 - (ii) the Health and Human Services Interim Committee; and
 - (iii) the Social Services Appropriations Subcommittee.
- (5) The advisory committee shall comply with the procedures and requirements of:
- (a) Title 52, Chapter 4, Open and Public Meetings Act; and
 - (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, but 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.
- (7)
- (a) The department shall staff the advisory committee.
 - (b) Expenses of the advisory committee, including the cost of advisory committee staff if approved by the executive director, may be paid only with funds from the Adult Autism Treatment Account created in Section 26B-1-322.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-1-425 Utah Health Workforce Advisory Council -- Creation and membership.

- (1) There is created within the department the Utah Health Workforce Advisory Council.
- (2) The council shall be comprised of at least 14 but not more than 19 members.

- (3) The following are members of the council:
 - (a) the executive director or that individual's designee;
 - (b) the executive director of the Department of Workforce Services or that individual's designee;
 - (c) the commissioner of higher education of the Utah System of Higher Education or that individual's designee;
 - (d) the state superintendent of the State Board of Education or that individual's 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 Health 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 26B-4-706.
- (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 as defined in Section 26B-4-701.
- (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.
- (7)
 - (a) As used in this Subsection (7), "health workforce" means the same as that term is defined in Section 26B-4-706.
 - (b) The council shall:
 - (i) meet at least once each quarter;
 - (ii) study and provide recommendations to an entity described in Subsection (8) regarding:
 - (A) health workforce supply;
 - (B) health workforce employment trends and demand;
 - (C) options for training and educating the health workforce;
 - (D) the implementation or improvement of strategies that entities in the state are using or may use to address health workforce needs including shortages, recruitment, retention, and other Utah health workforce priorities as determined by the council;
 - (iii) provide guidance to an entity described in Subsection (8) regarding health workforce related matters;
 - (iv) review and comment on legislation relevant to Utah's health workforce; and
 - (v) advise the Utah Board of Higher Education and the Legislature on the status and needs of the health workforce who are in training.
- (8) The council shall provide information described in Subsections (7)(b)(ii) and (iii) to:
 - (a) the Legislature;
 - (b) the department;
 - (c) the Department of Workforce Services;
 - (d) the Department of Commerce;
 - (e) the Utah Medical Education Council; and
 - (f) any other entity the council deems appropriate upon the entity's request.
- (9)

- (a) The Utah Medical Education Council created in Section 26B-4-706 is a subcommittee of the council.
 - (b) The council may establish subcommittees to support the work of the council.
 - (c) A member of the council shall chair a subcommittee created by the council.
 - (d) Except for the Utah Medical Education Council, the chair of the subcommittee may appoint any individual to the subcommittee.
- (10) For any report created by the council that pertains to any duty described in Subsection (7), the council shall:
- (a) provide the report to:
 - (i) the department; and
 - (ii) any appropriate legislative committee; and
 - (b) post the report on the council's website.
- (11) The executive director shall:
- (a) ensure the council has adequate staff to support the council and any subcommittee created by the council; and
 - (b) provide any available information upon the council's request if:
 - (i) that information is necessary for the council to fulfill a duty described in Subsection (7); and
 - (ii) the department has access to the information.
- (12) A member of the council or a subcommittee created by the council may not receive compensation or benefits for the member's service but may receive per diem and travel expenses as allowed in:
- (a) Section 63A-3-106;
 - (b) Section 63A-3-107; and
 - (c) rules made by the Division of Finance according to Sections 63A-3-106 and 63A-3-107.

Amended by Chapter 139, 2023 General Session

Renumbered and Amended by Chapter 305, 2023 General Session

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.
 - (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 board members are staggered so that approximately half of the board is appointed every two years.
 - (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.
 - (d) When a vacancy occurs in the membership for any reason, the replacement shall be appointed for the unexpired term.
- (3)
- (a) No more than four members of the board may be from the same political party.

- (b) The board shall have diversity of gender, ethnicity, and culture; and members shall be chosen on the basis of their active interest, experience, and demonstrated ability to deal with issues related to the Board of Aging and Adult Services .
- (4)
 - (a) The board shall annually elect a chairperson from the board's membership.
 - (b) The board shall hold meetings at least once every three months.
 - (c) Within budgetary constraints, meetings may be held from time to time on the call of the chairperson or of the majority of the members of the board.
 - (d) Four members of the board 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.
- (5) 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.
- (6)
 - (a) The board shall adopt bylaws governing its activities.
 - (b) The bylaws described in Subsection (6)(a) shall include procedures for removal of a board member who is unable or unwilling to fulfill the requirements of the board member's appointment.
- (7) The board has program policymaking authority for the division over which the board presides.
- (8) A member of the board shall comply with the conflict of interest provisions described in Title 63G, Chapter 24, Part 3, Conflicts of Interest.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-1-427 Alcohol Abuse Tracking Committee --Tracking effects of abuse of alcoholic products.

- (1) There is created a committee within the department known as the Alcohol Abuse Tracking Committee that consists of:
 - (a) the executive director or the executive director's designee;
 - (b) the commissioner of the Department of Public Safety or the commissioner's designee;
 - (c) the director of the Department of Alcoholic Beverage Services or that director's designee;
 - (d) the executive director of the Department of Workforce Services or that executive director's designee;
 - (e) the chair of the Utah Substance Use and Mental Health Advisory Council or the chair's designee;
 - (f) the state court administrator or the state court administrator's designee; and
 - (g) the director of the Division of Technology Services or that director's designee.
- (2) The executive director or the executive director's designee shall chair the committee.
- (3)
 - (a) Four members of the committee constitute a quorum.
 - (b) A vote of the majority of the committee members present when a quorum is present is an action of the committee.
- (4) The committee shall meet at the call of the chair, except that the chair shall call a meeting at least twice a year:
 - (a) with one meeting held each year to develop the report required under Subsection (7); and
 - (b) with one meeting held to review and finalize the report before the report is issued.

- (5) The committee may adopt additional procedures or requirements for:
 - (a) voting, when there is a tie of the committee members;
 - (b) how meetings are to be called; and
 - (c) the frequency of meetings.
- (6) The committee shall establish a process to collect for each calendar year the following information:
 - (a) the number of individuals statewide who are convicted of, plead guilty to, plead no contest to, plead guilty in a similar manner to, or resolve by diversion or its equivalent to a violation related to underage drinking of alcohol;
 - (b) the number of individuals statewide who are convicted of, plead guilty to, plead no contest to, plead guilty in a similar manner to, or resolve by diversion or its equivalent to a violation related to driving under the influence of alcohol;
 - (c) the number of violations statewide of Title 32B, Alcoholic Beverage Control Act, related to over-serving or over-consumption of an alcoholic product;
 - (d) the cost of social services provided by the state related to abuse of alcohol, including services provided by the Division of Child and Family Services;
 - (e) the location where the alcoholic products that result in the violations or costs described in Subsections (6)(a) through (d) are obtained; and
 - (f) any information the committee determines can be collected and relates to the abuse of alcoholic products.
- (7) The committee shall report the information collected under Subsection (6) annually to the governor and the Legislature by no later than the July 1 immediately following the calendar year for which the information is collected.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-1-428 Youth Electronic Cigarette, Marijuana, and Other Drug Prevention Committee and Program -- Creation -- Membership -- Duties.

- (1) As used in this section:
 - (a) "Committee" means the Youth Electronic Cigarette, Marijuana, and Other Drug Prevention Committee created in Section 26B-1-204.
 - (b) "Program" means the Youth Electronic Cigarette, Marijuana, and Other Drug Prevention Program created in this section.
- (2)
 - (a) There is created within the department the Youth Electronic Cigarette, Marijuana, and Other Drug Prevention Program.
 - (b) In consultation with the committee, the department shall:
 - (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 and appropriate for the population targeted by the program; and
 - (iii) subject to appropriations from the Legislature, fund statewide initiatives to prevent use of electronic cigarettes, nicotine products, marijuana, and other drugs by youth.
- (3)
 - (a) The committee shall advise the department on:
 - (i) preventing use of electronic cigarettes, marijuana, and other drugs by youth in the state;
 - (ii) developing the guidelines described in Subsection (2)(b)(i); and
 - (iii) implementing the provisions of the program.
 - (b) The executive director shall:

- (i) appoint members of the committee; and
 - (ii) consult with the Utah Substance Use and Mental Health Advisory Council created in Section 63M-7-301 when making the appointments under Subsection (3)(b)(i).
- (c) The committee shall include, at a minimum:
- (i) the executive director of a local health department as defined in Section 26A-1-102, or the local health department executive director's designee;
 - (ii) one designee from the department;
 - (iii) one representative from the Department of Public Safety;
 - (iv) one representative from the behavioral health community; and
 - (v) one representative from the education community.
- (d) A member of the committee may not receive compensation or benefits for the member's service on the committee, but may receive per diem and travel expenses in accordance with:
- (i) Section 63A-3-106;
 - (ii) Section 63A-3-107; and
 - (iii) rules made by the Division of Finance under Sections 63A-3-106 and 63A-3-107.
- (e) The department shall provide staff support to the committee.
- (4) On or before October 31 of each year, the department shall report to:
- (a) the Health and Human Services Interim Committee regarding:
 - (i) the use of funds appropriated to the program;
 - (ii) the impact and results of the program, including the effectiveness of each program funded under Subsection (2)(b)(iii), during the previous fiscal year;
 - (iii) a summary of the impacts and results on reducing youth use of electronic cigarettes and nicotine products by entities represented by members of the committee, including those entities who receive funding through the Electronic Cigarette Substance and Nicotine Product Proceeds Restricted Account created in Section 59-14-807; and
 - (iv) any recommendations for legislation; and
 - (b) the Utah Substance Use and Mental Health Advisory Council created in Section 63M-7-301, regarding:
 - (i) the effectiveness of each program funded under Subsection (2)(b)(iii) in preventing youth use of electronic cigarettes, nicotine products, marijuana, and other drugs; and
 - (ii) any collaborative efforts and partnerships established by the program with public and private entities to prevent youth use of electronic cigarettes, marijuana, and other drugs.

Amended by Chapter 300, 2023 General Session

Renumbered and Amended by Chapter 305, 2023 General Session

26B-1-429 Utah State Developmental Center Board -- Creation -- Membership -- Duties -- Powers.

- (1) There is created the Utah State Developmental Center Board within the department.
- (2) The board is composed of nine members as follows:
 - (a) the director of the Division of Services for People with Disabilities or the director's designee;
 - (b) the superintendent of the developmental center or the superintendent's designee;
 - (c) the executive director or the executive director's designee;
 - (d) a resident of the Utah State Developmental Center selected by the superintendent; and
 - (e) five members appointed by the governor with the advice and consent of the Senate as follows:
 - (i) three members of the general public; and

- (ii) two members who are parents or guardians of individuals who receive services at the Utah State Developmental Center.
- (3) In making appointments to the board, the governor shall ensure that:
 - (a) no more than three members have immediate family residing at the Utah State Developmental Center; and
 - (b) members represent a variety of geographic areas and economic interests of the state.
- (4)
 - (a) The governor shall appoint each member described in Subsection (2)(e) for a term of four years.
 - (b) An appointed member may not serve more than two full consecutive terms unless the governor determines that an additional term is in the best interest of the state.
 - (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.
 - (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.
 - (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
 - (c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.
- (7)
 - (a) The board shall adopt bylaws governing the board's activities.
 - (b) Bylaws shall include procedures for removal of a member who is unable or unwilling to fulfill the requirements of the member's appointment.
- (8) The board shall:
 - (a) act for the benefit of the Utah State Developmental Center and the Division of Services for People with Disabilities;
 - (b) advise and assist the Division of Services for People with Disabilities with the division's functions, operations, and duties related to the Utah State Developmental Center, described in Sections 26B-6-402, 26B-6-403, 26B-6-502, 26B-6-504, and 26B-6-506;
 - (c) administer the Utah State Developmental Center Miscellaneous Donation Fund, as described in Section 26B-1-330;
 - (d) administer the Utah State Developmental Center Long-Term Sustainability Fund, as described in Section 26B-1-331;

- (e) approve the sale, lease, or other disposition of real property or water rights associated with the Utah State Developmental Center, as described in Subsection 26B-6-507(2); and
- (f) within 21 days after the day on which the board receives the notice required under Subsection 10-2-419(3) (b), provide a written opinion regarding the proposed boundary adjustment to:
 - (i) the director of the Division of Facilities and Construction Management; and
 - (ii) the Legislative Management Committee.

Renumbered and Amended by Chapter 305, 2023 General Session
Amended by Chapter 435, 2023 General Session

26B-1-430 Coordinating Council for Persons with Disabilities -- Policy regarding services to individuals with disabilities -- Creation -- Membership -- Expenses.

- (1) As used in this section, "state agencies" means:
 - (a) the Division of Services for People with Disabilities;
 - (b) the Office of Substance Use and Mental Health;
 - (c) the Division of Integrated Healthcare;
 - (d) family health services programs established under Chapter 4, Health Care - Delivery and Access, operated by the department;
 - (e) the Utah State Office of Rehabilitation created in Section 35A-1-202; and
 - (f) special education programs operated by the State Board of Education or an LEA under Title 53E, Chapter 7, Part 2, Special Education Program.
- (2) It is the policy of this state that all agencies that provide services to persons with disabilities:
 - (a) coordinate and ensure that services and supports are provided in a cost-effective manner. It is the intent of the Legislature that services and supports provided under this chapter be coordinated to meet the individual needs of persons with disabilities; and
 - (b) whenever possible, regard an individual's personal choices concerning services and supports that are best suited to the individual's needs and that promote the individual's independence, productivity, and integration in community life.
- (3) There is created the Coordinating Council for Persons with Disabilities.
- (4) The council shall consist of:
 - (a) the director of the Division of Services for People with Disabilities within the department, or the director's designee;
 - (b) the director of family health services programs, appointed under Section 26B-7-120, or the director's designee;
 - (c) the director of the Utah State Office of Rehabilitation created in Section 35A-1-202, or the director's designee;
 - (d) the state director of special education, or the director's designee;
 - (e) the director of the Division of Integrated Healthcare within the department, or the director's designee;
 - (f) the director of the Office of Substance Use and Mental Health within the department, or the director's designee;
 - (g) the superintendent of Schools for the Deaf and the Blind, or the superintendent's designee; and
 - (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 (4)(a) through (g).
- (5)
 - (a) The council shall annually elect a chair from its membership.
 - (b) Five members of the council are a quorum.

- (6) A member may not receive compensation or benefits for the member's service, but 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.
- (7) The council has authority, after local or individual efforts have failed, to:
 - (a) coordinate the appropriate transition of persons with disabilities who receive services and support from one state agency to receive services and support from another state agency;
 - (b) coordinate policies governing the provision of services and support for persons with disabilities by state agencies; and
 - (c) consider issues regarding eligibility for services and support and, where possible, develop uniform eligibility standards for state agencies.
- (8) The council may receive appropriations from the Legislature to purchase services and supports for persons with disabilities as the council deems appropriate.
- (9)
 - (a) Within appropriations authorized by the Legislature, the following individuals or the individuals' representatives shall cooperatively develop a single coordinated education program, treatment services, and individual and family supports for students entitled to a free appropriate education under Title 53E, Chapter 7, Part 2, Special Education Program, who also require services from the department or the Utah State Office of Rehabilitation:
 - (i) the state director of special education;
 - (ii) the director of the Utah State Office of Rehabilitation created in Section 35A-1-202;
 - (iii) the executive director of the department;
 - (iv) the director of family health services within the department; and
 - (v) the affected LEA, as defined in Section 53E-1-102.
 - (b) Distribution of costs for services and supports described in Subsection (9)(a) shall be determined through a process established by the department and the State Board of Education.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-1-432 Newborn Hearing Screening Committee.

- (1) There is established the Newborn Hearing Screening Committee.
- (2) The committee shall advise the department on:
 - (a) the validity and cost of newborn infant hearing loss testing procedures; and
 - (b) rules promulgated by the department to implement this Section 26B-4-319.
- (3) The committee shall be composed of at least 11 members appointed by the executive director, including:
 - (a) one representative of the health insurance industry;
 - (b) one pediatrician;
 - (c) one family practitioner;
 - (d) one ear, nose, and throat specialist nominated by the Utah Medical Association;
 - (e) two audiologists nominated by the Utah Speech-Language Hearing Association;
 - (f) one representative of hospital neonatal nurseries;
 - (g) one representative of the Early Intervention Baby Watch Program administered by the department;
 - (h) one public health nurse;
 - (i) one consumer; and

- (j) the executive director or the executive director's designee.
- (4)
 - (a) Of the initial members of the committee, the executive director shall appoint as nearly as possible half to two-year terms and half to four-year terms.
 - (b) After the initial appointments described in Subsection (4)(a), appointments shall be for four-year terms except:
 - (i) for those members who have been appointed to complete an unexpired term; and
 - (ii) as necessary to ensure that as nearly as possible the terms of half the appointments expire every two years.
- (5) A majority of the members constitutes a quorum, and a vote of the majority of the members present constitutes an action of the committee.
- (6) The committee shall appoint a chair from the committee's membership.
- (7) The committee shall meet at least quarterly.
- (8) A member may not receive compensation or benefits for the member's service, but 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.
- (9) The department shall provide staff for the committee.

Enacted by Chapter 305, 2023 General Session

26B-1-434 Correctional Postnatal and Early Childhood Advisory Board -- Duties -- Rulemaking.

- (1) As used in this part:
 - (a) "Advisory board" means the Correctional Postnatal and Early Childhood Advisory Board.
 - (b) "Incarcerated mother" means the same as that term is defined in Section 64-13-46.5.
- (2) The advisory board shall consist of the following members:
 - (a) two individuals from the Department of Corrections, appointed by the executive director of the Department of Corrections;
 - (b) one individual appointed by the Board of Pardons and Parole; and
 - (c) six individuals appointed by the executive director of the department, including:
 - (i) two individuals from the department with experience in child care licensing;
 - (ii) two pediatric healthcare providers;
 - (iii) one individual with expertise in early childhood development; and
 - (iv) one individual with experience advocating for incarcerated women.
- (3)
 - (a) Except as provided in Subsection (3)(b), a member of the advisory board shall be appointed for a four-year term.
 - (b) A member that is appointed to complete an unexpired term may complete the unexpired term and serve a subsequent four-year term.
 - (c) Appointments and reappointments may be staggered so that one-fourth of the advisory board changes each year.
 - (d) The advisory board shall annually elect a chair and co-chair of the board from among the members of the board to serve a two-year term.
- (4) The advisory board shall meet at least bi-annually, or more frequently as determined by the executive director, the chair, or three or more members of the advisory board.

- (5) A majority of the board constitutes a quorum and a vote of the majority of the members present constitutes an action of the advisory board.
- (6) A member of the advisory board may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses as allowed in:
 - (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 63A-3-107.
- (7) The advisory board shall:
 - (a) review research regarding childhood development and best practices for infants placed in a nursery located within a secure correctional environment;
 - (b) as part of the advisory board's review of research under Subsection (7)(a), study the benefits of having a nursery for infants and incarcerated mothers located within a secure correctional environment and the benefits of placing an infant or incarcerated mother in a diversion program removed from a secure correctional environment;
 - (c) study the costs of implementing a diversion program for infants and incarcerated mothers removed from a secure correctional environment;
 - (d) create a provisional plan for implementing a diversion program for infants and incarcerated mothers removed from a secure correctional environment; and
 - (e) advise and make recommendations to the department regarding rules and policies for any nursery established by the Department of Corrections to provide space for incarcerated mothers and infants.
- (8) The advisory board, upon request from the Department of Corrections, may:
 - (a) after considering the specific circumstances of an infant and the infant's incarcerated mother, extend the age that qualifies the infant for a nursery under Subsection 64-13-46.5(2) up to 24 months old if:
 - (i) the extension is in the best interest of the infant; and
 - (ii) without the extension the infant would be separated from the incarcerated mother while the incarcerated mother remains in the correctional facility; or
 - (b) allow an incarcerated mother who has committed a violent felony to be provided space in a nursery if it is in the best interest of the incarcerated mother's infant.
- (9) On or before November 30, 2024, the advisory board shall provide a report of the advisory board's research and study under Subsections (7)(a) through (d), including any proposed legislation, to:
 - (a) the Law Enforcement and Criminal Justice Interim Committee; and
 - (b) the Executive Offices and Criminal Justice Appropriations Subcommittee.
- (10) The department shall:
 - (a) after receiving recommendations from the advisory board under Subsection (7)(e), adopt rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, for certification of a nursery established in a secure correctional environment that address:
 - (i) the safety of the nursery for infants and incarcerated mothers;
 - (ii) the childhood development needs of the infants in the nursery;
 - (iii) the specific medical needs of the infants and incarcerated mothers in the nursery;
 - (iv) the appropriate needs of the incarcerated mothers in the nursery; and
 - (v) any other requirements recommended by the advisory board that the department deems necessary for the nursery; and
 - (b) certify that any nursery established by the Department of Corrections is in compliance with the rules established under this section before the nursery begins operations.

- (11) The department may make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, regarding corrective action, including closure of a nursery established by the Department of Corrections, if the Department of Corrections fails to comply with the rules established under this section.

Enacted by Chapter 420, 2023 General Session

26B-1-435 Medical Cannabis Policy Advisory Board creation - Membership.

- (1) There is created within the department the Medical Cannabis Policy Advisory Board.
- (2)
- (a) The advisory board shall consist of the following members:
 - (i) appointed by the executive director:
 - (A) a qualified medical provider who has at least 100 patients who have a medical cannabis patient card at the time of appointment;
 - (B) a medical research professional;
 - (C) a mental health specialist;
 - (D) an individual who represents an organization that advocates for medical cannabis patients;
 - (E) an individual who holds a medical cannabis patient card; and
 - (F) a member of the general public who does not hold a medical cannabis card; and
 - (ii) appointed by the commissioner of the Department of Agriculture and Food:
 - (A) an individual who owns or operates a licensed cannabis cultivation facility;
 - (B) an individual who owns or operates a licensed medical cannabis pharmacy; and
 - (C) a law enforcement officer.
 - (b) The commissioner of the Department of Agriculture and Food shall ensure that at least one individual appointed under Subsection (2)(a)(ii)(A) or (B) also owns or operates a licensed cannabis processing facility.
- (3)
- (a) Subject to Subsection (3)(b), a member of the advisory board shall serve for a four year term.
 - (b) When appointing the initial membership of the advisory board, the executive director and the commissioner of the Department of Agriculture and Food shall coordinate to appoint four advisory board members to serve a term of two years to ensure that approximately half of the board is appointed every two years.
- (4)
- (a) If an advisory board member is no longer able to serve as a member, a new member shall be appointed in the same manner as the original appointment.
 - (b) A member appointed in accordance with Subsection (4)(a) shall serve for the remainder of the unexpired term of the original appointment.
- (5)
- (a) A majority of the advisory board members constitutes a quorum.
 - (b) The action of a majority of a quorum constitutes an action of the advisory board.
 - (c) The advisory board shall annually designate one of the advisory board's members to serve as chair for a one-year period.
- (6) An advisory board member may not receive compensation or benefits for the member's service on the advisory board but may receive per diem and reimbursement for travel expenses incurred as an advisory board member in accordance with:
- (a) Sections 63A-3-106 and 63A-3-107; and
 - (b) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.

- (7) The department shall:
 - (a) provide staff support for the advisory board; and
 - (b) assist the advisory board in conducting meetings.

Enacted by Chapter 273, 2023 General Session

26B-1-435.1 Medical Cannabis Policy Advisory Board duties.

- (1) The advisory board may recommend:
 - (a) to the department or the Department of Agriculture and Food changes to current or proposed medical cannabis rules or statutes;
 - (b) to the appropriate legislative committee whether the advisory board supports a change to medical cannabis statutes.
- (2) The advisory board shall:
 - (a) review any draft rule that is authorized under this chapter or Title 4, Chapter 41a, Cannabis Production Establishments and Pharmacies;
 - (b) consult with the Department of Agriculture and Food regarding the issuance of an additional:
 - (i) cultivation facility license under Section 4-41a-205; or
 - (ii) pharmacy license under Section 4-41a-1005;
 - (c) consult with the department regarding cannabis patient education;
 - (d) consult regarding the reasonableness of any fees set by the department or the Utah Department of Agriculture and Food that pertain to the medical cannabis program; and
 - (e) consult regarding any issue pertaining to medical cannabis when asked by the department or the Utah Department of Agriculture and Food.

Enacted by Chapter 273, 2023 General Session

**Part 5
Fatality Review**

26B-1-501 Definitions.

As used in this part:

- (1) "Abuse" means the same as that term is defined in Section 80-1-102.
- (2) "Child" means the same as that term is defined in Section 80-1-102.
- (3) "Committee" means a fatality review committee that is formed under Section 26B-1-503 or 26B-1-504.
- (4) "Dependency" means the same as that term is defined in Section 80-1-102.
- (5) "Formal review" means a review of a death or a near fatality that is ordered under Subsection 26B-1-502(6).
- (6) "Near fatality" means alleged abuse or neglect that, as certified by a physician, places a child in serious or critical condition.
- (7) "Qualified individual" means an individual who:
 - (a) at the time that the individual dies, is a resident of a facility or program that is owned or operated by the department or a division of the department;
 - (b)
 - (i) is in the custody of the department or a division of the department; and
 - (ii) is placed in a residential placement by the department or a division of the department;

- (c) at the time that the individual dies, has an open case for the receipt of child welfare services, including:
 - (i) an investigation for abuse, neglect, or dependency;
 - (ii) foster care;
 - (iii) in-home services; or
 - (iv) substitute care;
- (d) had an open case for the receipt of child welfare services within one year before the day on which the individual dies;
- (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:
 - (i) the department or a division of the department is aware of the death; and
 - (ii) the death is reported as a homicide, suicide, or an undetermined cause;
- (f) received services from, or under the direction of, the Division of Services for People with Disabilities within one year before the day on which the individual dies, unless the individual:
 - (i) lived in the individual's home at the time of death; and
 - (ii) the director of the Division of Continuous Quality and Improvement determines that the death was not in any way related to services that were provided by, or under the direction of, the department or a division of the department;
- (g) dies within 60 days after the day on which the individual is discharged from the Utah State Hospital, if the department is aware of the death;
- (h) is a child who:
 - (i) suffers a near fatality; and
 - (ii) is the subject of an open case for the receipt of child welfare services within one year before the day on which the child suffered the near fatality, including:
 - (A) an investigation for abuse, neglect, or dependency;
 - (B) foster care;
 - (C) in-home services; or
 - (D) substitute care; or
 - (i) is designated as a qualified individual by the executive director.
- (8) "Neglect" means the same as that term is defined in Section 80-1-102.
- (9) "Substitute care" means the same as that term is defined in Section 80-1-102.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-1-502 Initial review.

- (1) Within seven days after the day on which the department knows that a qualified individual has died or is an individual described in Subsection 26B-1-501(7)(h), a person designated by the department shall:
 - (a)
 - (i) for a death, complete a deceased client report form, created by the department; or
 - (ii) for an individual described in Subsection 26B-1-501(7)(h), complete a near fatality client report form, created by the department; and
 - (b) forward the completed client report form to the director of the office or division that has jurisdiction over the region or facility.
- (2) The director of the office or division described in Subsection (1) shall, upon receipt of a near fatality client report form or a deceased client report form, immediately provide a copy of the form to:
 - (a) the executive director; and

- (b) the fatality review coordinator or the fatality review coordinator's designee.
- (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 Division of Continuous Quality and Improvement 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 Division of Continuous Quality and Improvement 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 Division of Continuous Quality and Improvement 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 26B-1-501(6)(a) or (b), unless:
 - (I) the near fatality or the death is due to a natural cause; or
 - (II) the director of the Division of Continuous Quality and Improvement or the director's designee determines that the near fatality or the death was not in any way related to services that were provided by, or under the direction of, the department or a division of the department; or
 - (B) a child in foster care or substitute care, unless the near fatality or the death is due to:
 - (I) a natural cause; or
 - (II) an accident;
 - (ii) it appears, based on the information provided to the director of the Division of Continuous Quality and Improvement or the director's designee, that:
 - (A) a provision of law, rule, policy, or procedure relating to the qualified individual or the individual's family may not have been complied with;
 - (B) the near fatality or the fatality was not responded to properly;
 - (C) a law, rule, policy, or procedure may need to be changed; or
 - (D) additional training is needed;
 - (iii)
 - (A) the death is caused by suicide; or
 - (B) the near fatality is caused by attempted suicide; or
 - (iv) the director of the Division of Continuous Quality and Improvement or the director's designee determines that another reason exists to order that a review of the near fatality or the death be conducted.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-1-503 Fatality review committee for a qualified individual who was not a resident of the Utah State Hospital or the Utah State Developmental Center.

- (1) Except for a fatality review committee described in Section 26B-1-504, the fatality review coordinator shall organize a fatality review committee for each formal review.
- (2) Except as provided in Subsection (5), a committee described in Subsection (1):
 - (a) shall include the following members:
 - (i) the department's fatality review coordinator, who shall designate a member of the committee to serve as chair of the committee;
 - (ii) a member of the board, if there is a board, of the relevant division or office;
 - (iii) the attorney general or the attorney general's designee;
 - (iv)
 - (A) a member of the management staff of the relevant division or office; or
 - (B) a person who is a supervisor, or a higher level position, from a region that did not have jurisdiction over the qualified individual; and
 - (v) a member of the department's risk management services; and
 - (b) may include the following members:
 - (i) a health care professional;
 - (ii) a law enforcement officer; or
 - (iii) a representative of the Office of Public Guardian.
- (3) If a death that is subject to formal review involves a qualified individual described in Subsection 26B-1-501(7)(c), (d), or (h), the committee may also include:
 - (a) a health care professional;
 - (b) a law enforcement officer;
 - (c) the director of the Office of Guardian ad Litem;
 - (d) an employee of the division who may be able to provide information or expertise that would be helpful to the formal review; or
 - (e) a professional whose knowledge or expertise may significantly contribute to the formal review.
- (4) A committee described in Subsection (1) may also include a person whose knowledge or expertise may significantly contribute to the formal review.
- (5) A committee described in this section may not include an individual who was involved in, or who supervises a person who was involved in, the near fatality or the death.
- (6) Each member of a committee described in this section who is not an employee of the department shall sign a form, created by the department, indicating that the member agrees to:
 - (a) keep all information relating to the formal review confidential; and
 - (b) not release any information relating to a formal review, unless required or permitted by law to release the information.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-1-504 Fatality review committees for a resident of the Utah State Hospital or the Utah State Developmental Center.

- (1) If a qualified individual who is the subject of a formal review was a resident of the Utah State Hospital or the Utah State Developmental Center, the fatality review coordinator of that facility shall organize a fatality review committee to review the near fatality or the death.

- (2) Except as provided in Subsection (4), a committee described in Subsection (1) shall include the following members:
 - (a) the fatality review coordinator for the facility, who shall serve as chair of the committee;
 - (b) a member of the management staff of the facility;
 - (c) a supervisor of a unit other than the one in which the qualified individual resided;
 - (d) a physician;
 - (e) a representative from the administration of the division that oversees the facility;
 - (f) the department's fatality review coordinator;
 - (g) a member of the department's risk management services; and
 - (h) a citizen who is not an employee of the department.
- (3) A committee described in Subsection (1) may also include a person whose knowledge or expertise may significantly contribute to the formal review.
- (4) A committee described in this section may not include an individual who:
 - (a) was involved in, or who supervises a person who was involved in, the near fatality or the death; or
 - (b) has a conflict with the fatality review.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-1-505 Fatality review committee proceedings.

- (1) A majority vote of committee members present constitutes the action of the committee.
- (2) The department shall give the committee access to all reports, records, and other documents that are relevant to the near fatality or the death under investigation, including:
 - (a) narrative reports;
 - (b) case files;
 - (c) autopsy reports; and
 - (d) police reports, unless the report is protected from disclosure under Subsection 63G-2-305(10) or (11).
- (3) The Utah State Hospital and the Utah State Developmental Center shall provide protected health information to the committee if requested by a fatality review coordinator.
- (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 Division of Continuous Quality and Improvement.
- (5) A committee may interview a staff member, a provider, or any other person who may have knowledge or expertise that is relevant to the formal review.
- (6) A committee shall render an advisory opinion regarding:
 - (a) whether the provisions of law, rule, policy, and procedure relating to the qualified individual and the individual's family were complied with;
 - (b) whether the near fatality or the death was responded to properly;
 - (c) whether to recommend that a law, rule, policy, or procedure be changed; and
 - (d) whether additional training is needed.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-1-506 Fatality review committee report -- Response to report.

- (1) Within 20 days after the day on which the committee proceedings described in Section 26B-1-505 end, the committee shall submit:
 - (a) a written report to the executive director that includes:

- (i) the advisory opinions made under Subsection 26B-1-505(6); and
 - (ii) any recommendations regarding action that should be taken in relation to an employee of the department or a person who contracts with the department;
 - (b) a copy of the report described in Subsection (1)(a) to:
 - (i) the director, or the director's designee, of the office or division to which the near fatality or the death relates; and
 - (ii) the regional director, or the regional director's designee, of the region to which the near fatality or the death relates; and
 - (c) a copy of the report described in Subsection (1)(a), with only identifying information redacted, to the Office of Legislative Research and General Counsel.
- (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 Division of Continuous Quality and Improvement 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;
 - (b) indicates that the near fatality or the death was not responded to properly;
 - (c) recommends that a law, rule, policy, or procedure be changed; or
 - (d) indicates that additional training is needed.
- (3) The response described in Subsection (2) shall include a plan of action to implement any recommended improvements within the office or division.
- (4) Within 30 days after the day on which the executive director receives the response described in Subsection (2), the executive director, or the executive director's designee shall:
- (a) review the plan of action described in Subsection (3);
 - (b) make any written response that the executive director or the executive director's designee determines is necessary;
 - (c) provide a copy of the written response described in Subsection (4)(b), with only identifying information redacted, to the Office of Legislative Research and General Counsel; and
 - (d) provide an unredacted copy of the response described in Subsection (4)(b) to the director of the Division of Continuous Quality and Improvement.
- (5) A report described in Subsection (1) and each response described in this section is a protected record.
- (6)
- (a) As used in this Subsection (6), "fatality review document" means any document created in connection with, or as a result of, a formal review of a near fatality or a death, or a decision whether to conduct a formal review of a near fatality or a death, including:
 - (i) a report described in Subsection (1);
 - (ii) a response described in this section;
 - (iii) a recommendation regarding whether a formal review should be conducted;
 - (iv) a decision to conduct a formal review;
 - (v) notes of a person who participates in a formal review;
 - (vi) notes of a person who reviews a formal review report;
 - (vii) minutes of a formal review;
 - (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 relation to, the portion of a meeting of the Health and Human Services Interim Committee or the Child Welfare Legislative Oversight Panel that a formal review report or a document described in this Subsection (6)(a) is reviewed or discussed.

- (b) A fatality review document is not subject to discovery, subpoena, or similar compulsory process in any civil, judicial, or administrative proceeding, nor shall any individual or organization with lawful access to the data be compelled to testify with regard to a report described in Subsection (1) or a response described in this section.
- (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 26B-1-507(4).

Renumbered and Amended by Chapter 305, 2023 General Session

26B-1-507 Reporting to, and review by, legislative committees.

- (1) The Office of Legislative Research and General Counsel shall provide a copy of the report described in Subsection 26B-1-506(1)(c), and the responses described in Subsections 26B-1-506(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 26B-1-501(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 26B-1-506(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 the executive summary described in Subsection (4)(a) to:
 - (i) the Health and Human Services Interim Committee; and
 - (ii) the Child Welfare Legislative Oversight Panel.
- (5) The executive summary described in Subsection (4):
 - (a) may not include any names or identifying information;
 - (b) shall include:
 - (i) all recommendations regarding changes to the law that were made during the preceding fiscal year under Subsection 26B-1-505(6);
 - (ii) all changes made, or in the process of being made, to a law, rule, policy, or procedure in response to a formal review that occurred during the preceding fiscal year;
 - (iii) a description of the training that has been completed in response to a formal review that occurred during the preceding fiscal year;
 - (iv) statistics for the preceding fiscal year regarding:

- (A) the number of qualified individuals and the type of deaths and near fatalities that are known to the department;
 - (B) the number of formal reviews conducted;
 - (C) the categories described in Subsection 26B-1-501(7) of qualified individuals;
 - (D) the gender, age, race, and other significant categories of qualified individuals; and
 - (E) the number of fatalities of qualified individuals known to the department that are identified as suicides; and
 - (v) action taken by the Division of Licensing and Background Checks and the Bureau of Internal Review and Audits in response to the near fatality or the death of a qualified individual; and
 - (c) is a public document.
- (6) The Division of Child and Family Services shall, to the extent required by the federal Child Abuse Prevention and Treatment Act of 1988, Pub. L. No. 93-247, as amended, allow public disclosure of the findings or information relating to a case of child abuse or neglect that results in a child fatality or a near fatality.

Renumbered and Amended by Chapter 305, 2023 General Session

Chapter 2 Licensing and Certifications

Part 1 Human Services Programs and Facilities

26B-2-101 Definitions.

As used in this part:

- (1) "Adoption services" means the same as that term is defined in Section 80-2-801.
- (2) "Adult day care" means nonresidential care and supervision:
 - (a) for three or more adults for at least four but less than 24 hours a day; and
 - (b) that meets the needs of functionally impaired adults through a comprehensive program that provides a variety of health, social, recreational, and related support services in a protective setting.
- (3) "Applicant" means a person that applies for an initial license or a license renewal under this part.
- (4)
 - (a) "Associated with the licensee" means that an individual is:
 - (i) affiliated with a licensee as an owner, director, member of the governing body, employee, agent, provider of care, department contractor, or volunteer; or
 - (ii) applying to become affiliated with a licensee in a capacity described in Subsection (4)(a)(i).
 - (b) "Associated with the licensee" does not include:
 - (i) service on the following bodies, unless that service includes direct access to a child or a vulnerable adult:
 - (A) a local mental health authority described in Section 17-43-301;
 - (B) a local substance abuse authority described in Section 17-43-201; or

- (C) a board of an organization operating under a contract to provide mental health or substance use programs, or services for the local mental health authority or substance abuse authority; or
 - (ii) a guest or visitor whose access to a child or a vulnerable adult is directly supervised at all times.
- (5)
- (a) "Boarding school" means a private school that:
 - (i) uses a regionally accredited education program;
 - (ii) provides a residence to the school's students:
 - (A) for the purpose of enabling the school's students to attend classes at the school; and
 - (B) as an ancillary service to educating the students at the school;
 - (iii) has the primary purpose of providing the school's students with an education, as defined in Subsection (5)(b)(i); and
 - (iv)
 - (A) does not provide the treatment or services described in Subsection (38)(a); or
 - (B) provides the treatment or services described in Subsection (38)(a) on a limited basis, as described in Subsection (5)(b)(ii).
 - (b)
 - (i) For purposes of Subsection (5)(a)(iii), "education" means a course of study for one or more grades from kindergarten through grade 12.
 - (ii) For purposes of Subsection (5)(a)(iv)(B), a private school provides the treatment or services described in Subsection (38)(a) on a limited basis if:
 - (A) the treatment or services described in Subsection (38)(a) are provided only as an incidental service to a student; and
 - (B) the school does not:
 - (I) specifically solicit a student for the purpose of providing the treatment or services described in Subsection (38)(a); or
 - (II) have a primary purpose of providing the treatment or services described in Subsection (38)(a).
 - (c) "Boarding school" does not include a therapeutic school.
 - (6) "Child" means an individual under 18 years old.
 - (7) "Child placing" means receiving, accepting, or providing custody or care for any child, temporarily or permanently, for the purpose of:
 - (a) finding a person to adopt the child;
 - (b) placing the child in a home for adoption; or
 - (c) foster home placement.
 - (8) "Child-placing agency" means a person that engages in child placing.
 - (9) "Client" means an individual who receives or has received services from a licensee.
 - (10)
 - (a) "Congregate care program" means any of the following that provide services to a child:
 - (i) an outdoor youth program;
 - (ii) a residential support program;
 - (iii) a residential treatment program; or
 - (iv) a therapeutic school.
 - (b) "Congregate care program" does not include a human services program that:
 - (i) is licensed to serve adults; and
 - (ii) is approved by the office to service a child for a limited time.
 - (11) "Day treatment" means specialized treatment that is provided to:

- (a) a client less than 24 hours a day; and
- (b) four or more persons who:
 - (i) are unrelated to the owner or provider; and
 - (ii) have emotional, psychological, developmental, physical, or behavioral dysfunctions, impairments, or chemical dependencies.
- (12) "Department contractor" means an individual who:
 - (a) provides services under a contract with the department; and
 - (b) due to the contract with the department, has or will likely have direct access to a child or vulnerable adult.
- (13) "Direct access" means that an individual has, or likely will have:
 - (a) contact with or access to a child or vulnerable adult that provides the individual with an opportunity for personal communication or touch; or
 - (b) an opportunity to view medical, financial, or other confidential personal identifying information of the child, the child's parents or legal guardians, or the vulnerable adult.
- (14) "Directly supervised" means that an individual is being supervised under the uninterrupted visual and auditory surveillance of another individual who has a current background screening approval issued by the office.
- (15) "Director" means the director of the office.
- (16) "Domestic violence" means the same as that term is defined in Section 77-36-1.
- (17) "Domestic violence treatment program" means a nonresidential program designed to provide psychological treatment and educational services to perpetrators and victims of domestic violence.
- (18) "Elder adult" means a person 65 years old or older.
- (19) "Foster home" means a residence that is licensed or certified by the office for the full-time substitute care of a child.
- (20) "Health benefit plan" means the same as that term is defined in Section 31A-22-634.
- (21) "Health care provider" means the same as that term is defined in Section 78B-3-403.
- (22) "Health insurer" means the same as that term is defined in Section 31A-22-615.5.
- (23)
 - (a) "Human services program" means:
 - (i) a foster home;
 - (ii) a therapeutic school;
 - (iii) a youth program;
 - (iv) an outdoor youth program;
 - (v) a residential treatment program;
 - (vi) a residential support program;
 - (vii) a resource family home;
 - (viii) a recovery residence; or
 - (ix) a facility or program that provides:
 - (A) adult day care;
 - (B) day treatment;
 - (C) outpatient treatment;
 - (D) domestic violence treatment;
 - (E) child-placing services;
 - (F) social detoxification; or
 - (G) any other human services that are required by contract with the department to be licensed with the department.
 - (b) "Human services program" does not include:

- (i) a boarding school; or
 - (ii) a residential, vocational and life skills program, as defined in Section 13-53-102.
- (24) "Indian child" means the same as that term is defined in 25 U.S.C. Sec. 1903.
- (25) "Indian country" means the same as that term is defined in 18 U.S.C. Sec. 1151.
- (26) "Indian tribe" means the same as that term is defined in 25 U.S.C. Sec. 1903.
- (27) "Intermediate secure treatment" means 24-hour specialized residential treatment or care for an individual who:
- (a) cannot live independently or in a less restrictive environment; and
 - (b) requires, without the individual's consent or control, the use of locked doors to care for the individual.
- (28) "Licensee" means an individual or a human services program licensed by the office.
- (29) "Local government" means a city, town, metro township, or county.
- (30) "Minor" means child.
- (31) "Office" means the Office of Licensing within the department.
- (32) "Outdoor youth program" means a program that provides:
- (a) services to a child that has:
 - (i) a chemical dependency; or
 - (ii) a dysfunction or impairment that is emotional, psychological, developmental, physical, or behavioral;
 - (b) a 24-hour outdoor group living environment; and
 - (c)
 - (i) regular therapy, including group, individual, or supportive family therapy; or
 - (ii) informal therapy or similar services, including wilderness therapy, adventure therapy, or outdoor behavioral healthcare.
- (33) "Outpatient treatment" means individual, family, or group therapy or counseling designed to improve and enhance social or psychological functioning for those whose physical and emotional status allows them to continue functioning in their usual living environment.
- (34) "Practice group" or "group practice" means two or more health care providers legally organized as a partnership, professional corporation, or similar association, for which:
- (a) substantially all of the services of the health care providers who are members of the group are provided through the group and are billed in the name of the group and amounts received are treated as receipts of the group; and
 - (b) the overhead expenses of and the income from the practice are distributed in accordance with methods previously determined by members of the group.
- (35) "Private-placement child" means a child whose parent or guardian enters into a contract with a congregate care program for the child to receive services.
- (36)
- (a) "Recovery residence" means a home, residence, or facility that meets at least two of the following requirements:
 - (i) provides a supervised living environment for individuals recovering from a substance use disorder;
 - (ii) provides a living environment in which more than half of the individuals in the residence are recovering from a substance use disorder;
 - (iii) provides or arranges for residents to receive services related to the resident's recovery from a substance use disorder, either on or off site;
 - (iv) is held out as a living environment in which individuals recovering from substance abuse disorders live together to encourage continued sobriety; or
 - (v)

- (A) receives public funding; or
 - (B) is run as a business venture, either for-profit or not-for-profit.
- (b) "Recovery residence" does not mean:
- (i) a residential treatment program;
 - (ii) residential support program; or
 - (iii) a home, residence, or facility, in which:
 - (A) residents, by a majority vote of the residents, establish, implement, and enforce policies governing the living environment, including the manner in which applications for residence are approved and the manner in which residents are expelled;
 - (B) residents equitably share rent and housing-related expenses; and
 - (C) a landlord, owner, or operator does not receive compensation, other than fair market rental income, for establishing, implementing, or enforcing policies governing the living environment.
- (37) "Regular business hours" means:
- (a) the hours during which services of any kind are provided to a client; or
 - (b) the hours during which a client is present at the facility of a licensee.
- (38)
- (a) "Residential support program" means a program that arranges for or provides the necessities of life as a protective service to individuals or families who have a disability or who are experiencing a dislocation or emergency that prevents them from providing these services for themselves or their families.
 - (b) "Residential support program" includes a program that provides a supervised living environment for individuals with dysfunctions or impairments that are:
 - (i) emotional;
 - (ii) psychological;
 - (iii) developmental; or
 - (iv) behavioral.
 - (c) Treatment is not a necessary component of a residential support program.
 - (d) "Residential support program" does not include:
 - (i) a recovery residence; or
 - (ii) a program that provides residential services that are performed:
 - (A) exclusively under contract with the department and provided to individuals through the Division of Services for People with Disabilities; or
 - (B) in a facility that serves fewer than four individuals.
- (39)
- (a) "Residential treatment" means a 24-hour group living environment for four or more individuals unrelated to the owner or provider that offers room or board and specialized treatment, behavior modification, rehabilitation, discipline, emotional growth, or habilitation services for persons with emotional, psychological, developmental, or behavioral dysfunctions, impairments, or chemical dependencies.
 - (b) "Residential treatment" does not include a:
 - (i) boarding school;
 - (ii) foster home; or
 - (iii) recovery residence.
- (40) "Residential treatment program" means a program or facility that provides:
- (a) residential treatment; or
 - (b) intermediate secure treatment.
- (41) "Seclusion" means the involuntary confinement of an individual in a room or an area:

- (a) away from the individual's peers; and
 - (b) in a manner that physically prevents the individual from leaving the room or area.
- (42) "Social detoxification" means short-term residential services for persons who are experiencing or have recently experienced drug or alcohol intoxication, that are provided outside of a health care facility licensed under Part 2, Health Care Facility Licensing and Inspection, and that include:
- (a) room and board for persons who are unrelated to the owner or manager of the facility;
 - (b) specialized rehabilitation to acquire sobriety; and
 - (c) aftercare services.
- (43) "Substance abuse disorder" or "substance use disorder" mean the same as "substance use disorder" is defined in Section 26B-5-501.
- (44) "Substance abuse treatment program" or "substance use disorder treatment program" means a program:
- (a) designed to provide:
 - (i) specialized drug or alcohol treatment;
 - (ii) rehabilitation; or
 - (iii) habilitation services; and
 - (b) that provides the treatment or services described in Subsection (44)(a) to persons with:
 - (i) a diagnosed substance use disorder; or
 - (ii) chemical dependency disorder.
- (45) "Therapeutic school" means a residential group living facility:
- (a) for four or more individuals that are not related to:
 - (i) the owner of the facility; or
 - (ii) the primary service provider of the facility;
 - (b) that serves students who have a history of failing to function:
 - (i) at home;
 - (ii) in a public school; or
 - (iii) in a nonresidential private school; and
 - (c) that offers:
 - (i) room and board; and
 - (ii) an academic education integrated with:
 - (A) specialized structure and supervision; or
 - (B) services or treatment related to:
 - (I) a disability;
 - (II) emotional development;
 - (III) behavioral development;
 - (IV) familial development; or
 - (V) social development.
- (46) "Unrelated persons" means persons other than parents, legal guardians, grandparents, brothers, sisters, uncles, or aunts.
- (47) "Vulnerable adult" means an elder adult or an adult who has a temporary or permanent mental or physical impairment that substantially affects the person's ability to:
- (a) provide personal protection;
 - (b) provide necessities such as food, shelter, clothing, or mental or other health care;
 - (c) obtain services necessary for health, safety, or welfare;
 - (d) carry out the activities of daily living;
 - (e) manage the adult's own resources; or

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

(48)

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

- (i) serves adjudicated or nonadjudicated youth;
- (ii) charges a fee for the program's services;
- (iii) may provide host homes or other arrangements for overnight accommodation of the youth;
- (iv) may provide all or part of the program's services in the outdoors;
- (v) may limit or censor access to parents or guardians; and
- (vi) prohibits or restricts a minor's ability to leave the program at any time of the minor's own free will.

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

(49)

(a) "Youth transportation company" means any person that transports a child for payment to or from a congregate care program in Utah.

(b) "Youth transportation company" does not include:

- (i) a relative of the child;
- (ii) a state agency; or
- (iii) a congregate care program's employee who transports the child from the congregate care program that employs the employee and returns the child to the same congregate care program.

Amended by Chapter 305, 2023 General Session

26B-2-102 Purpose of licensure.

The purpose of licensing under this part is to permit or authorize a public or private agency to provide defined human services programs within statutory and regulatory guidelines.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-2-103 Office of Licensing -- Appointment -- Qualifications of director.

- (1) There is created the Office of Licensing within the department.
- (2) The office shall be the licensing authority for the department, and is vested with all the powers, duties, and responsibilities described in:
 - (a) this part;
 - (b) Part 2, Health Care Facility Licensing and Inspection; and
 - (c) Part 6, Mammography Quality Assurance.
- (3) The executive director shall appoint the director of the office.
- (4) The director shall have a bachelor's degree from an accredited university or college, be experienced in administration, and be knowledgeable of health and human services licensing.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-2-104 Office responsibilities.

- (1) Subject to the requirements of federal and state law, the office shall:

- (a) make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to establish:
 - (i) except as provided in Subsection (1)(a)(ii), basic health and safety standards for licensees, that shall be limited to:
 - (A) fire safety;
 - (B) food safety;
 - (C) sanitation;
 - (D) infectious disease control;
 - (E) safety of the:
 - (I) physical facility and grounds; and
 - (II) area and community surrounding the physical facility;
 - (F) transportation safety;
 - (G) emergency preparedness and response;
 - (H) the administration of medical standards and procedures, consistent with the related provisions of this title;
 - (I) staff and client safety and protection;
 - (J) the administration and maintenance of client and service records;
 - (K) staff qualifications and training, including standards for permitting experience to be substituted for education, unless prohibited by law;
 - (L) staff to client ratios;
 - (M) access to firearms; and
 - (N) the prevention of abuse, neglect, exploitation, harm, mistreatment, or fraud;
 - (ii) basic health and safety standards for therapeutic schools, that shall be limited to:
 - (A) fire safety, except that the standards are limited to those required by law or rule under Title 53, Chapter 7, Part 2, Fire Prevention and Fireworks Act;
 - (B) food safety;
 - (C) sanitation;
 - (D) infectious disease control, except that the standards are limited to:
 - (I) those required by law or rule under this title, or Title 26A, Local Health Authorities; and
 - (II) requiring a separate room for clients who are sick;
 - (E) safety of the physical facility and grounds, except that the standards are limited to those required by law or rule under Title 53, Chapter 7, Part 2, Fire Prevention and Fireworks Act;
 - (F) transportation safety;
 - (G) emergency preparedness and response;
 - (H) access to appropriate medical care, including:
 - (I) subject to the requirements of law, designation of a person who is authorized to dispense medication; and
 - (II) storing, tracking, and securing medication;
 - (I) staff and client safety and protection that permits the school to provide for the direct supervision of clients at all times;
 - (J) the administration and maintenance of client and service records;
 - (K) staff qualifications and training, including standards for permitting experience to be substituted for education, unless prohibited by law;
 - (L) staff to client ratios;
 - (M) access to firearms; and
 - (N) the prevention of abuse, neglect, exploitation, harm, mistreatment, or fraud;
 - (iii) procedures and standards for permitting a licensee to:

- (A) provide in the same facility and under the same conditions as children, residential treatment services to a person 18 years old or older who:
 - (I) begins to reside at the licensee's residential treatment facility before the person's 18th birthday;
 - (II) has resided at the licensee's residential treatment facility continuously since the time described in Subsection (1)(a)(iii)(A)(I);
 - (III) has not completed the course of treatment for which the person began residing at the licensee's residential treatment facility; and
 - (IV) voluntarily consents to complete the course of treatment described in Subsection (1)(a)(iii)(A)(III); or
- (B)
 - (I) provide residential treatment services to a child who is:
 - (Aa) at least 12 years old or, as approved by the office, younger than 12 years old; and
 - (Bb) under the custody of the department, or one of its divisions; and
 - (II) provide, in the same facility as a child described in Subsection (1)(a)(iii)(B)(I), residential treatment services to a person who is:
 - (Aa) at least 18 years old, but younger than 21 years old; and
 - (Bb) under the custody of the department, or one of its divisions;
- (iv) minimum administration and financial requirements for licensees;
- (v) guidelines for variances from rules established under this Subsection (1);
- (vi) ethical standards, as described in Subsection 78B-6-106(3), and minimum responsibilities of a child-placing agency that provides adoption services and that is licensed under this part;
- (vii) what constitutes an "outpatient treatment program" for purposes of this part;
- (viii) a procedure requiring a licensee to provide an insurer the licensee's records related to any services or supplies billed to the insurer, and a procedure allowing the licensee and the insurer to contact the Insurance Department to resolve any disputes;
- (ix) a protocol for the office to investigate and process complaints about licensees;
- (x) a procedure for a licensee to:
 - (A) report the use of a restraint or seclusion within one business day after the day on which the use of the restraint or seclusion occurs; and
 - (B) report a critical incident within one business day after the day on which the incident occurs;
- (xi) guidelines for the policies and procedures described in Sections 26B-2-109 and 26B-2-123;
- (xii) a procedure for the office to review and approve the policies and procedures described in Sections 26B-2-109 and 26B-2-123; and
- (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 office;
- (b) enforce rules relating to the office;
- (c) issue licenses in accordance with this part;
- (d) if the United States Department of State executes an agreement with the office that designates the office to act as an accrediting entity in accordance with the Intercountry Adoption Act of 2000, Pub. L. No. 106-279, accredit one or more agencies and persons to provide intercountry adoption services pursuant to:
 - (i) the Intercountry Adoption Act of 2000, Pub. L. No. 106-279; and
 - (ii) the implementing regulations for the Intercountry Adoption Act of 2000, Pub. L. No. 106-279;
- (e) make rules to implement the provisions of Subsection (1)(d);

- (f) conduct surveys and inspections of licensees and facilities in accordance with Section 26B-2-107;
 - (g) collect licensure fees;
 - (h) notify licensees of the name of a person within the department to contact when filing a complaint;
 - (i) investigate complaints regarding any licensee or human services program;
 - (j) have access to all records, correspondence, and financial data required to be maintained by a licensee;
 - (k) have authority to interview any client, family member of a client, employee, or officer of a licensee;
 - (l) have authority to deny, condition, revoke, suspend, or extend any license issued by the department under this part by following the procedures and requirements of Title 63G, Chapter 4, Administrative Procedures Act;
 - (m) electronically post notices of agency action issued to a human services program, with the exception of a foster home, on the office's website, in accordance with Title 63G, Chapter 2, Government Records Access and Management Act; and
 - (n) upon receiving a local government's request under Section 26B-2-118, 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
 - (iii) by or against a staff member while the staff member is on duty;
 - (b) immediately report to emergency medical services any medical emergency, as defined by rule:
 - (i) on the premises where the licensee operates its human services program;
 - (ii) involving its clients; or
 - (iii) involving a staff member while the staff member is on duty; and
 - (c) immediately report other emergencies that occur on the premises where the licensee operates its human services program to the appropriate emergency services agency.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-2-105 Licensure requirements -- Expiration -- Renewal.

- (1) Except as provided in Section 26B-2-115, 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 part and the rules under the authority of this 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;
 - (ii) as a partner;
 - (iii) as a shareholder; or

- (iv) as a person or entity involved in the ownership or management of a human services program owned or managed by the other person or entity.
- (b) A license issued under this part may not be assigned or transferred.
- (c) An application for a license under this part shall be treated as an application for reinstatement of a revoked license if:
 - (i)
 - (A) the person or entity applying for the license had a license revoked under this part; and
 - (B) the revoked license described in Subsection (2)(c)(i)(A) is not reinstated before the application described in this Subsection (2)(c) is made; or
 - (ii) a member of an entity applying for the license:
 - (A)
 - (I) had a license revoked under this part; and
 - (II) the revoked license described in Subsection (2)(c)(ii)(A)(I) is not reinstated before the application described in this Subsection (2)(c) is made; or
 - (B)
 - (I) was a member of an entity that had a license revoked under this part at any time before the license was revoked; and
 - (II) the revoked license described in Subsection (2)(c)(ii)(B)(I) is not reinstated before the application described in this Subsection (2)(c) is made.
- (3) A current license shall at all times be posted in the facility where each human services program is operated, in a place that is visible and readily accessible to the public.
- (4)
 - (a) Except as provided in Subsection (4)(c), each license issued under this part expires at midnight on the last day of the same month the license was issued, one year following the date of issuance unless the license has been:
 - (i) previously revoked by the office;
 - (ii) voluntarily returned to the office by the licensee; or
 - (iii) extended by the office.
 - (b) A license shall be renewed upon application and payment of the applicable fee, unless the office finds that the licensee:
 - (i) is not in compliance with the:
 - (A) provisions of this part; or
 - (B) rules made under this part;
 - (ii) has engaged in a pattern of noncompliance with the:
 - (A) provisions of this part; or
 - (B) rules made under this part;
 - (iii) has engaged in conduct that is grounds for denying a license under Section 26B-2-112; or
 - (iv) has engaged in conduct that poses a substantial risk of harm to any person.
 - (c) The office may issue a renewal license that expires at midnight 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 part or a rule made under this part.
- (5) Any licensee that is in operation at the time rules are made in accordance with this 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.

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

Renumbered and Amended by Chapter 305, 2023 General Session

26B-2-106 License application -- Classification of information.

- (1) An application for a license under this part 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.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-2-107 Administrative inspections.

- (1)
 - (a) Subject to Subsection (1)(b), the office may, for the purpose of ascertaining compliance with this part, enter and inspect on a routine basis the facility of a licensee.
 - (b)
 - (i) The office shall enter and inspect a congregate care program at least once each calendar quarter.
 - (ii) At least two of the inspections described in Subsection (1)(b)(i) shall be unannounced.
 - (c) If another government entity conducts an inspection that is substantially similar to an inspection conducted by the office, the office may conclude the inspection satisfies an inspection described in Subsection (1)(b).
- (2) Before conducting an inspection under Subsection (1), the office shall, after identifying the person in charge:
 - (a) give proper identification;
 - (b) request to see the applicable license;
 - (c) describe the nature and purpose of the inspection; and
 - (d) if necessary, explain the authority of the office to conduct the inspection and the penalty for refusing to permit the inspection as provided in Section 26B-2-113.
- (3) In conducting an inspection under Subsection (1), the office may, after meeting the requirements of Subsection (2):
 - (a) inspect the physical facilities;
 - (b) inspect and copy records and documents;
 - (c) interview officers, employees, clients, family members of clients, and others; and
 - (d) observe the licensee in operation.
- (4) An inspection conducted under Subsection (1) shall be during regular business hours and may be announced or unannounced.
- (5) The licensee shall make copies of inspection reports available to the public upon request.
- (6) The provisions of this section apply to on-site inspections and do not restrict the office from contacting family members, neighbors, or other individuals, or from seeking information from other sources to determine compliance with this part.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-2-108 Adoption of inspections, examinations, and studies.

The office may adopt an inspection, examination, or study conducted by a public or private entity, as identified by rule, to determine whether a licensee has complied with a licensing requirement imposed by virtue of this part.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-2-109 Human services program non-discrimination.

A human services program:

- (1) shall perform an individualized assessment when classifying and placing an individual in programs and living environments; and
- (2) subject to the office's review and approval, shall create policies and procedures that include:
 - (a) a description of what constitutes sex and gender based abuse, discrimination, and harassment;
 - (b) procedures for preventing and reporting abuse, discrimination, and harassment; and
 - (c) procedures for teaching effective and professional communication with individuals of all sexual orientations and genders.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-2-110 License revocation -- Suspension.

- (1) If a license is revoked, the office may not grant a new license unless:
 - (a) the human services program provides satisfactory evidence to the office that the conditions upon which revocation was based have been corrected;
 - (b) the human services program is inspected by the office and found to be in compliance with all provisions of this part and applicable rules;
 - (c) at least five years have passed since the day on which the licensee is served with final notice that the license is revoked; and
 - (d) the office determines that the interests of the public will not be jeopardized by granting the license.
- (2) The office may suspend a license for no longer than three years.
- (3) When a license has been suspended, the office may restore, or restore subject to conditions, the suspended license upon a determination that the:
 - (a) conditions upon which the suspension was based have been completely or partially corrected; and
 - (b) interests of the public will not be jeopardized by restoration of the license.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-2-111 Adjudicative proceedings.

- (1) Whenever the office has reason to believe that a licensee is in violation of this part or rules made under this 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 part.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-2-112 Violations -- Penalties.

- (1) As used in this section, "health care provider" means a person licensed to provide health care services under this part.
- (2) The office may deny, place conditions on, suspend, or revoke a human services license, if the office finds, related to the human services program:
 - (a) that there has been a failure to comply with the rules established under this 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:
 - (a) that there has been a failure to comply with rules established under this 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.
- (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 26B-2-124, 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 26B-2-124(3).
- (6) The office shall make rules for calculating the cost of care described in Subsection (5) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-2-113 Violation -- Criminal penalties.

- (1)
 - (a) A person who owns, establishes, conducts, maintains, manages, or operates a human services program in violation of this 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
 - (iii) seeking injunctive or equitable relief.
- (2) Any person that violates a provision of this part, lawful orders of the office, or rules adopted under this part may be assessed a penalty not to exceed the sum of \$10,000 per violation, in:
 - (a) a judicial civil proceeding; or
 - (b) an administrative action in accordance with Title 63G, Chapter 4, Administrative Procedures Act.
- (3) Assessment of a judicial penalty or an administrative penalty does not preclude the office from:
 - (a) seeking criminal penalties;
 - (b) denying, placing conditions on, suspending, or revoking a license; or
 - (c) seeking injunctive or equitable relief.
- (4) The office may assess the human services program the cost incurred by the office in placing a monitor.
- (5) Notwithstanding Subsection (1)(a) and subject to Subsections (1)(b) and (2), an individual is guilty of a class A misdemeanor if the individual knowingly and willfully offers, pays, promises to pay, solicits, or receives any remuneration, including any commission, bonus, kickback, bribe, or rebate, directly or indirectly, overtly or covertly, in cash or in kind, or engages in any split-fee arrangement in return for:
 - (a) referring an individual to a person for the furnishing or arranging for the furnishing 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:
 - (a) any discount, payment, waiver of payment, or payment practice not prohibited by 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;
 - (B) are consistent with the fair market value for those information services; and
 - (C) are not based on the potential value of the goods or services that a health care provider, practice group, or substance use disorder treatment program may provide to a 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;
 - (ii) is not related to an owner of a facility or a person who refers a clinical sample to 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
 - (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
 - (B) is a person under contract with the laboratory to market or sell the laboratory's services to a person who provides substance use disorder treatment, if the total compensation paid by the laboratory does not exceed the total compensation that the 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:
 - (i) offer, pay, promise to pay, solicit, or receive any remuneration directly or indirectly, overtly or covertly, in cash or in kind, including:
 - (A) a commission;
 - (B) a bonus;
 - (C) a kickback;
 - (D) a bribe; or
 - (E) a rebate; or
 - (ii) engage in any split-fee arrangement.
 - (b) A person who violates Subsection (7)(a) is guilty of a class A misdemeanor and shall be assessed a penalty in accordance with Subsection (2).

Renumbered and Amended by Chapter 305, 2023 General Session

26B-2-114 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 part or rules established under this part.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-2-115 Exclusions from chapter.

The provisions of this part do not apply to:

- (1) a facility or program owned or operated by an agency of the United States government;
- (2) a facility or program operated by or under an exclusive contract with the Department of Corrections;
- (3) unless required otherwise by a contract with the department, individual or group counseling by a mental health professional licensed under Title 58, Chapter 60, Mental Health Professional Practice Act;
- (4) a general acute hospital, small health care facility, specialty hospital, nursing care facility, or other health care facility licensed by the department under Part 2, Health Care Facility Licensing and Inspection; or
- (5) a boarding school.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-2-116 Coordination of human services and educational services -- Licensing of programs -- Procedures.

(1) As used in this section:

- (a) "Accredited private school" means a private school that is accredited by an accrediting entity recognized by the Utah State Board of Education.
- (b) "Education entitled children" means children:
 - (i) subject to compulsory education under Section 53G-6-202;
 - (ii) subject to the school attendance requirements of Section 53G-6-203; or
 - (iii) who are eligible for special education services as described in Title 53E, Chapter 7, Part 2, Special Education Program.

(2) Subject to Subsection (9) or (10), a human services program may not be licensed to serve education entitled children unless the human services program presents an educational service plan that includes evidence:

- (a) satisfactory to:
 - (i) the office; and
 - (ii)
 - (A) the local school board of the school district in which the human services program will be operated; or
 - (B) the school district superintendent of the school district in which the human services program will be operated; and

(b) that children served by the human services program shall receive appropriate educational services satisfying the requirements of applicable law.

(3) An educational services plan may be accepted if the educational services plan includes:

- (a) the following information provided by the human services program:
 - (i) the number of children served by the human services program estimated to be enrolled in the local school district;

- (ii) the ages and grade levels of children served by the human services program estimated to be enrolled in the local school district;
- (iii) the subjects or hours of the school day for which children served by the human services program are estimated to enroll in the local school district;
- (iv) the direct contact information for the purposes of taking custody of a child served by the human services program during the school day in case of illness, disciplinary removal by a school, or emergency evacuation of a school; and
- (v) the method or arrangements for the transportation of children served by the human services program to and from the school; and
- (b) the following information provided by the school district:
 - (i) enrollment procedures and forms;
 - (ii) documentation required prior to enrollment from each of the child's previous schools of enrollment;
 - (iii) if applicable, a schedule of the costs for tuition and school fees; and
 - (iv) schools and services for which a child served by the human services program may be eligible.
- (4) Subject to Subsection (9) or (10), if a human services program serves any education entitled children whose custodial parents or legal guardians reside outside the state, then the program shall also provide an educational funding plan that includes evidence:
 - (a) satisfactory to:
 - (i) the office; and
 - (ii)
 - (A) the local school board of the school district in which the human services program will be operated; or
 - (B) the school district superintendent of the school district in which the human services program will be operated; and
 - (b) that all costs for educational services to be provided to the education entitled children, including tuition, and school fees approved by the local school board, shall be borne by the human services program.
- (5) Subject to Subsection (9) or (10), and in accordance with Subsection (2), the human services program shall obtain and provide the office with a letter:
 - (a) from the entity referred to in Subsection (2)(a)(ii):
 - (i) approving the educational service plan referred to in Subsection (3); or
 - (ii)
 - (A) disapproving the educational service plan referred to in Subsection (3); and
 - (B) listing the specific requirements the human services program must meet before approval is granted; and
 - (b) from the entity referred to in Subsection (4)(a)(ii):
 - (i) approving the educational funding plan, referred to in Subsection (4); or
 - (ii)
 - (A) disapproving the educational funding plan, referred to in Subsection (4); and
 - (B) listing the specific requirements the human services program must meet before approval is granted.
- (6) Subject to Subsection (9), failure of a local school board or school district superintendent to respond to a proposed plan within 45 days of receipt of the plan is equivalent to approval of the plan by the local school board or school district superintendent if the human services program provides to the office:
 - (a) proof that:

- (i) the human services program submitted the proposed plan to the local school board or school district superintendent; and
 - (ii) more than 45 days have passed from the day on which the plan was submitted; and
- (b) an affidavit, on a form produced by the office, stating:
 - (i) the date that the human services program submitted the proposed plan to the local school board or school district superintendent;
 - (ii) that more than 45 days have passed from the day on which the plan was submitted; and
 - (iii) that the local school board or school district superintendent described in Subsection (6)(b)
 - (i) failed to respond to the proposed plan within 45 days from the day on which the plan was submitted.
- (7) If a licensee that is licensed to serve an education entitled child fails to comply with the licensee's approved educational service plan or educational funding plan, then:
 - (a) the office may give the licensee notice of intent to revoke the licensee's license; 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 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:
 - (a) for purposes of Subsection (3):
 - (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).
- (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.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-2-117 Licensing residential treatment programs and recovery residences -- Notification of local government.

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

- (2) Subject to the requirements of federal and state law, and pursuant to the authority granted by Section 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 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 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;
 - (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.
- (6) When submitting an application for a license to operate a residential treatment program, the applicant shall include with the application:
 - (a) a copy of the notice described in Subsection (4); and
 - (b) proof that the applicant served the notice described in Subsection (4) on the governing body described in Subsection (4).

Renumbered and Amended by Chapter 305, 2023 General Session

26B-2-118 Request by local government.

- (1) A local government may request that the office notify the local government of new human services program license applications for human services programs located within the local government's jurisdiction.
- (2) Subsection (1) does not apply to foster homes.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-2-119 Residential support program -- Temporary homeless youth shelter.

In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the office shall make rules that establish age-appropriate and gender-appropriate sleeping quarters in temporary homeless youth shelters, as defined in Section 80-5-102, that provide overnight shelter to minors.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-2-120 Background check -- Direct access to children or vulnerable adults.

(1) As used in this section:

(a)

(i) "Applicant" means, notwithstanding Section 26B-2-101:

- (A) an individual who applies for an initial license or certification or a license or certification renewal under this part;
- (B) an individual who is associated with a licensee and has or will likely have direct access to a child or a vulnerable adult;
- (C) an individual who provides respite care to a foster parent or an adoptive parent on more than one occasion;
- (D) a department contractor;
- (E) an individual who transports a child for a youth transportation company;
- (F) 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 resides in a home, that is licensed or certified by the office; 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).

(ii) "Applicant" does not include:

- (A) an individual who is in the custody of the Division of Child and Family Services or the Division of Juvenile Justice Services; or
- (B) an individual who applies for employment with, or is employed by, the Department of Health and Human Services.

(b) "Application" means a background screening application to the office.

(c) "Bureau" means the Bureau of Criminal Identification within the Department of Public Safety, created in Section 53-10-201.

(d) "Certified peer support specialist" means the same as that term is defined in Section 26B-5-610.

(e) "Criminal finding" means a record of:

- (i) an arrest or a warrant for an arrest;
- (ii) charges for a criminal offense; or
- (iii) a criminal conviction.

(f) "Incidental care" means occasional care, not in excess of five hours per week and never overnight, for a foster child.

(g) "Mental health professional" means an individual who:

- (i) is licensed under Title 58, Chapter 60, Mental Health Professional Practice Act; and
- (ii) engaged in the practice of mental health therapy.

(h) "Non-criminal finding" means a record maintained in:

- (i) the Division of Child and Family Services' Management Information System described in Section 80-2-1001;
- (ii) the Division of Child and Family Services' Licensing Information System described in Section 80-2-1002;

- (iii) the Division of Aging and Adult Services' vulnerable adult abuse, neglect, or exploitation database described in Section 26B-6-210;
 - (iv) the Sex and Kidnap Offender Registry described in Title 77, Chapter 41, Sex and Kidnap Offender Registry, or a national sex offender registry; or
 - (v) a state child abuse or neglect registry.
- (i)
- (i) "Peer support specialist" means an individual who:
 - (A) has a disability or a family member with a disability, or is in recovery from a mental illness or a substance use disorder; and
 - (B) uses personal experience to provide support, guidance, or services to promote resiliency and recovery.
 - (ii) "Peer support specialist" includes a certified peer support specialist.
 - (iii) "Peer support specialist" does not include a mental health professional.
- (j) "Personal identifying information" means:
- (i) current name, former names, nicknames, and aliases;
 - (ii) date of birth;
 - (iii) physical address and email address;
 - (iv) telephone number;
 - (v) driver license or other government-issued identification;
 - (vi) social security number;
 - (vii) only for applicants who are 18 years old or older, fingerprints, in a form specified by the office; and
 - (viii) other information specified by the office by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
- (k) "Practice of mental health therapy" means the same as that term is defined in Section 58-60-102.
- (2) Except as provided in Subsection (12), an applicant or a representative shall submit the following to the office:
- (a) personal identifying information;
 - (b) a fee established by the office under Section 63J-1-504; and
 - (c) a disclosure form, specified by the office, for consent for:
 - (i) an initial background check upon submission of the information described in this Subsection (2);
 - (ii) ongoing monitoring of fingerprints and registries until no longer associated with a licensee for 90 days;
 - (iii) a background check when the office determines that reasonable cause exists; and
 - (iv) retention of personal identifying information, including fingerprints, for monitoring and notification as described in Subsections (3)(d) and (4); and
 - (d) if an applicant resided outside of the United States and its territories during the five years immediately preceding the day on which the information described in Subsections (2)(a) through (c) is submitted to the office, documentation establishing whether the applicant was convicted of a crime during the time that the applicant resided outside of the United States or its territories.
- (3) The office:
- (a) shall perform the following duties as part of a background check of an applicant:
 - (i) check state and regional criminal background databases for the applicant's criminal history by:
 - (A) submitting personal identifying information to the bureau for a search; or

- (B) using the applicant's personal identifying information to search state and regional criminal background databases as authorized under Section 53-10-108;
- (ii) submit the applicant's personal identifying information and fingerprints to the bureau for a criminal history search of applicable national criminal background databases;
- (iii) search the Division of Child and Family Services' Licensing Information System described in Section 80-2-1002;
- (iv) if the applicant is applying to become a prospective foster or adoptive parent, search the Division of Child and Family Services' Management Information System described in Section 80-2-1001 for:
 - (A) the applicant; and
 - (B) any adult living in the applicant's home;
- (v) for an applicant described in Subsection (1)(a)(i)(F), search the Division of Child and Family Services' Management Information System described in Section 80-2-1001;
- (vi) search the Division of Aging and Adult Services' vulnerable adult abuse, neglect, or exploitation database described in Section 26B-6-210;
- (vii) search the juvenile court records for substantiated findings of severe child abuse or neglect described in Section 80-3-404; and
- (viii) search the juvenile court arrest, adjudication, and disposition records, as provided under Section 78A-6-209;
- (b) shall conduct a background check of an applicant for an initial background check upon submission of the information described in Subsection (2);
- (c) may conduct all or portions of a background check of an applicant, as provided by rule, made by the office in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act:
 - (i) for an annual renewal; or
 - (ii) when the office determines that reasonable cause exists;
- (d) may submit an applicant's personal identifying information, including fingerprints, to the bureau for checking, retaining, and monitoring of state and national criminal background databases and for notifying the office of new criminal activity associated with the applicant;
- (e) shall track the status of an applicant under this section to ensure that the applicant is not required to duplicate the submission of the applicant's fingerprints if the applicant applies for:
 - (i) more than one license;
 - (ii) direct access to a child or a vulnerable adult in more than one human services program; or
 - (iii) direct access to a child or a vulnerable adult under a contract with the department;
- (f) shall track the status of each individual with direct access to a child or a vulnerable adult and notify the bureau within 90 days after the day on which the license expires or the individual's direct access to a child or a vulnerable adult ceases;
- (g) shall adopt measures to strictly limit access to personal identifying information solely to the individuals responsible for processing and entering the applications for background checks and to protect the security of the personal identifying information the office reviews under this Subsection (3);
- (h) as necessary to comply with the federal requirement to check a state's child abuse and neglect registry regarding any individual working in a congregate care program, shall:
 - (i) search the Division of Child and Family Services' Licensing Information System described in Section 80-2-1002; and
 - (ii) require the child abuse and neglect registry be checked in each state where an applicant resided at any time during the five years immediately preceding the day on which the applicant submits the information described in Subsection (2) to the office; and

- (i) shall make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to implement the provisions of this Subsection (3) relating to background checks.
- (4)
- (a) With the personal identifying information the office submits to the bureau under Subsection (3), the bureau shall check against state and regional criminal background databases for the applicant's criminal history.
 - (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 that 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) Except as provided in Subsection (5)(b), 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:
 - (i) a felony or misdemeanor involving conduct that constitutes any of the following:
 - (A) an offense identified as domestic violence, lewdness, voyeurism, battery, cruelty to animals, or bestiality;
 - (B) a violation of any pornography law, including sexual exploitation of a minor or aggravated sexual exploitation of a minor;
 - (C) sexual solicitation;
 - (D) an offense included in Title 76, Chapter 5, Offenses Against the Individual, Title 76, Chapter 5b, Sexual Exploitation Act, Title 76, Chapter 4, Part 4, Enticement of a Minor, or Title 76, Chapter 7, Offenses Against the Family;
 - (E) aggravated arson, as described in Section 76-6-103;
 - (F) aggravated burglary, as described in Section 76-6-203;

- (G) aggravated robbery, as described in Section 76-6-302;
 - (H) identity fraud crime, as described in Section 76-6-1102;
 - (I) sexual battery, as described in Section 76-9-702.1; or
 - (J) a violent offense committed in the presence of a child, as described in Section 76-3-203.10; or
- (ii) 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 Subsection (5)(a)(i).
- (b)
 - (i) Subsection (5)(a) does not apply to an applicant who is seeking a position as a peer support provider, a mental health professional, or in a program that serves only adults with a primary mental health diagnosis, with or without a co-occurring substance use disorder.
 - (ii) The office shall conduct a comprehensive review of an applicant described in Subsection (5)(b)(i) in accordance with Subsection (6).
- (6) The office shall conduct a comprehensive review of an applicant's background check if the applicant:
 - (a) has a felony or class A misdemeanor conviction for an offense described in Subsection (5) with a date of conviction that is more than three years before the date on which the applicant submits the information described in Subsection (2);
 - (b) has a felony charge or conviction for an offense not described in Subsection (5) with a date of charge or conviction that is no more than 10 years before the date on which the applicant submits the application under Subsection (2) and no criminal findings or non-criminal findings after the date of conviction;
 - (c) has a class B misdemeanor or class C misdemeanor conviction for an offense described in Subsection (5) with a date of conviction that is more than three years after, and no more than 10 years before, the date on which the applicant submits the information described in Subsection (2) and no criminal findings or non-criminal findings after the date of conviction;
 - (d) has a misdemeanor conviction for an offense not described in Subsection (5) with a date of conviction that is no more than three years before the date on which the applicant submits information described in Subsection (2) and no criminal findings or non-criminal findings after the date of conviction;
 - (e) is currently subject to a plea in abeyance or diversion agreement for an offense described in Subsection (5);
 - (f) appears on the Sex and Kidnap Offender Registry described in Title 77, Chapter 41, Sex and Kidnap Offender Registry, or a national sex offender registry;
 - (g) 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:
 - (i) under 28 years old; or
 - (ii) 28 years old or older and has been convicted of, has pleaded no contest to, or is currently subject to a plea in abeyance or diversion agreement for a felony or a misdemeanor offense described in Subsection (5);
 - (h) has a pending charge for an offense described in Subsection (5);
 - (i) has a listing in the Division of Child and Family Services' Licensing Information System described in Section 80-2-1002 that occurred no more than 15 years before the date on which the applicant submits the information described in Subsection (2) and no criminal findings or non-criminal findings dated after the date of the listing;
 - (j) has a listing in the Division of Aging and Adult Services' vulnerable adult abuse, neglect, or exploitation database described in Section 26B-6-210 that occurred no more than 15 years

- before the date on which the applicant submits the information described in Subsection (2) and no criminal findings or non-criminal findings dated after the date of the listing;
- (k) has a substantiated finding of severe child abuse or neglect under Section 80-3-404 or 80-3-504 that occurred no more than 15 years before the date on which the applicant submits the information described in Subsection (2) and no criminal findings or non-criminal findings dated after the date of the finding;
- (l)
- (i) is seeking a position:
- (A) as a peer support provider;
- (B) as a mental health professional; or
- (C) in a program that serves only adults with a primary mental health diagnosis, with or without a co-occurring substance use disorder; and
- (ii) within three years before the day on which the applicant submits the information described in Subsection (2):
- (A) has a felony or misdemeanor charge or conviction;
- (B) has a listing in the Division of Child and Family Services' Licensing Information System described in Section 80-2-1002;
- (C) has a listing in the Division of Aging and Adult Services' vulnerable adult abuse, neglect, or exploitation database described in Section 26B-6-210; or
- (D) has a substantiated finding of severe child abuse or neglect under Section 80-3-404 or 80-3-504;
- (m)
- (i)
- (A) is seeking a position in a congregate care program;
- (B) is seeking to become a prospective foster or adoptive parent; or
- (C) is an applicant described in Subsection (1)(a)(i)(F); and
- (ii)
- (A) has an infraction conviction for conduct that constitutes an offense or violation described in Subsection (5)(a)(i)(A) or (B);
- (B) has a listing in the Division of Child and Family Services' Licensing Information System described in Section 80-2-1002;
- (C) has a listing in the Division of Aging and Adult Services' vulnerable adult abuse, neglect, or exploitation database described in Section 26B-6-210;
- (D) has a substantiated finding of severe child abuse or neglect under Section 80-3-404 or 80-3-504; or
- (E) has a listing on the registry check described in Subsection (13)(a) as having a substantiated or supported finding of a severe type of child abuse or neglect as defined in Section 80-1-102; or
- (n) is seeking to become a prospective foster or adoptive parent and has, or has an adult living with the applicant who has, a conviction, finding, or listing described in Subsection (6)(m)(ii).
- (7)
- (a) The comprehensive review shall include an examination of:
- (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;
- (iv) the age of the perpetrator when the offense or incident occurred;
- (v) whether the offense or incident was an isolated or repeated incident;

- (vi) whether the offense or incident directly relates to abuse of a child or vulnerable adult, including:
 - (A) actual or threatened, nonaccidental physical, mental, or financial harm;
 - (B) sexual abuse;
 - (C) sexual exploitation; or
 - (D) negligent treatment;
 - (vii) any evidence provided by the applicant of rehabilitation, counseling, psychiatric treatment received, or additional academic or vocational schooling completed; and
 - (viii) the applicant's risk of harm to clientele in the program or in the capacity for which the applicant is applying.
- (b) At the conclusion of the comprehensive review, the office shall deny an application to an applicant if the office finds:
- (i) that approval would likely create a risk of harm to a child or a vulnerable adult; or
 - (ii) an individual is prohibited from having direct access to a child or vulnerable adult by court order.
- (8) The office shall approve an application to an applicant who is not denied under this section.
- (9)
- (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 under Subsection (11), without requiring that the applicant be directly supervised, if the office:
 - (i) is awaiting the results of the criminal history search of national criminal background databases; and
 - (ii) would otherwise approve an application of the applicant under this section.
 - (b) The office may conditionally approve an application of an applicant, for a maximum of one year after the day on which the office sends written notice to the applicant under Subsection (11), without requiring that the applicant be directly supervised if the office:
 - (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 this section.
 - (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 this section.
- (10)
- (a) A licensee or department contractor may not permit an individual to have direct access to a child or a vulnerable adult without being directly supervised unless:
 - (i) the individual is associated with the licensee or department contractor and the department conducts a background screening in accordance with this section;
 - (ii) the individual is the parent or guardian of the child, or the guardian of the vulnerable adult;
 - (iii) 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;
 - (iv) the individual is only permitted to have direct access to a vulnerable adult who voluntarily invites the individual to visit; or
 - (v) 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.
 - (b) 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.

(11)

- (a) Within 30 days after the day on which the applicant submits the information described in Subsection (2), the office shall notify the applicant of any potentially disqualifying criminal findings or non-criminal findings.
- (b) If the notice under Subsection (11)(a) states that the applicant's application is denied, the notice shall further advise the applicant that the applicant may, under Subsection 26B-2-111(2), request a hearing in the department's Office of Administrative Hearings, to challenge the office's decision.
- (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the office shall make rules, consistent with this part:
 - (i) defining procedures for the challenge of the office's background check decision described in Subsection (11)(b); and
 - (ii) expediting the process for renewal of a license under the requirements of this section and other applicable sections.

(12)

- (a) An individual or a department contractor who provides services in an adults only substance use disorder program, as defined by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, is exempt from this section.
- (b) The exemption described in Subsection (12)(a) does not extend to a program director or a member, as defined by Section 26B-2-105, of the program.

(13)

- (a) Except as provided in Subsection (13)(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 or an applicant seeking to become a prospective foster or adoptive parent, 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 or adoptive parent, to determine whether the prospective foster or 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 (13)(a)(i) resided in the five years immediately preceding the day on which the applicant applied to be a foster 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.
- (b) The requirements described in Subsection (13)(a) do not apply to the extent that:
 - (i) federal law or rule permits otherwise; or
 - (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
 - (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).
- (c) Notwithstanding Subsections (5) through (10), the office shall deny a clearance to an applicant seeking a position in a congregate care program or an applicant to become a prospective foster or 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;
 - (B) commission of domestic violence in the presence of a child, as described in 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;
- (E) aggravated murder, as described in Section 76-5-202;
- (F) murder, as described in Section 76-5-203;
- (G) manslaughter, as described in Section 76-5-205;
- (H) child abuse homicide, as described in Section 76-5-208;
- (I) homicide by assault, as described in Section 76-5-209;
- (J) kidnapping, as described in Section 76-5-301;
- (K) child kidnapping, as described in Section 76-5-301.1;
- (L) aggravated kidnapping, as described in Section 76-5-302;
- (M) human trafficking of a child, as described in Section 76-5-308.5;
- (N) an offense described in Title 76, Chapter 5, Part 4, Sexual Offenses;
- (O) sexual exploitation of a minor, as described in Title 76, Chapter 5b, Sexual Exploitation Act;
- (P) aggravated exploitation of a minor, as described in Section 76-5b-201.1;
- (Q) aggravated arson, as described in Section 76-6-103;
- (R) aggravated burglary, as described in Section 76-6-203;
- (S) aggravated robbery, as described in Section 76-6-302;
- (T) lewdness involving a child, as described in Section 76-9-702.5;
- (U) incest, as described in Section 76-7-102; or
- (V) domestic violence, as described in Section 77-36-1; or
- (ii) an offense committed outside the state that, if committed in the state, would constitute a violation of an offense described in Subsection (13)(c)(i).
- (d) Notwithstanding Subsections (5) through (10), the office shall deny a license or license renewal to an individual seeking a position in a congregate care program or a prospective foster or adoptive parent if, within the five years immediately preceding the day on which the individual's application or license would otherwise be approved, the individual was convicted of a felony involving conduct that constitutes a violation of any of the following:
 - (i) aggravated assault, as described in Section 76-5-103;
 - (ii) aggravated assault by a prisoner, as described in Section 76-5-103.5;
 - (iii) mayhem, as described in Section 76-5-105;
 - (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;
 - (vi) an offense described in Title 58, Chapter 37b, Imitation Controlled Substances 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), the office shall conduct the comprehensive review of an applicant's background check under this section if the registry check described in Subsection (13)(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.
- (14) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the office may make rules, consistent with this part, to:
 - (a) establish procedures for, and information to be examined in, the comprehensive review described in Subsections (6) and (7); and
 - (b) determine whether to consider an offense or incident that occurred while an individual was in the custody of the Division of Child and Family Services or the Division of Juvenile Justice

Services for purposes of approval or denial of an application for a prospective foster or adoptive parent.

Renumbered and Amended by Chapter 305, 2023 General Session
Amended by Chapter 344, 2023 General Session

26B-2-121 Access to abuse and neglect information.

- (1) As used in this section:
 - (a) "Direct service worker" means the same as that term is defined in Section 26B-6-401.
 - (b) "Personal care attendant" means the same as that term is defined in Section 26B-6-401.
- (2) With respect to a licensee, a direct service worker, or a personal care attendant, the department may access only the Licensing Information System of the Division of Child and Family Services created by Section 80-2-1002 and juvenile court records under Subsection 80-3-404(4), for the purpose of:
 - (a)
 - (i) determining whether a person associated with a licensee, with direct access to children:
 - (A) is listed in the Licensing Information System; or
 - (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); and
 - (ii) informing a licensee that a person associated with the licensee:
 - (A) is listed in the Licensing Information System; or
 - (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
 - (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); 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
 - (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); or
 - (c)
 - (i) determining whether a personal care attendant:
 - (A) is listed in the Licensing Information System; or
 - (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); and
 - (ii) informing a person described in Subsections 26B-6-101(9)(a)(i) through (iv) that a personal care attendant:
 - (A) is listed in the Licensing Information System; or
 - (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).
- (3) Notwithstanding Subsection (2), the department may access the Division of Child and Family Services' Management Information System under Section 80-2-1001:
 - (a) for the purpose of licensing and monitoring foster parents;
 - (b) for the purposes described in Subsection 80-2-1001(5)(b)(iii); and
 - (c) for the purpose described in Section 26B-1-211.

- (4) The department shall receive and process personal identifying information under Subsection 26B-2-120(1) for the purposes described in Subsection (2).
- (5) The department shall adopt rules under Title 63G, Chapter 3, Utah Administrative Rulemaking Act, consistent with this part, defining the circumstances under which a person may have direct access or provide services to children when:
 - (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
 - (b) juvenile court records show that a court made a substantiated finding under Section 80-3-404, that the person committed a severe type of child abuse or neglect.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-2-122 Access to vulnerable adult abuse and neglect information.

- (1) For purposes of this section:
 - (a) "Direct service worker" means the same as that term is defined in Section 26B-6-401.
 - (b) "Personal care attendant" means the same as that term is defined in Section 26B-6-401.
- (2) With respect to a licensee, a direct service worker, or a personal care attendant, the department may access the database created by Section 26B-6-210 for the purpose of:
 - (a)
 - (i) determining whether a person associated with a licensee, with direct access to vulnerable adults, has a supported or substantiated finding of:
 - (A) abuse;
 - (B) neglect; or
 - (C) exploitation; and
 - (ii) informing a licensee that a person associated with the licensee has a supported or substantiated finding of:
 - (A) abuse;
 - (B) neglect; or
 - (C) exploitation;
 - (b)
 - (i) determining whether a direct service worker has a supported or substantiated finding of:
 - (A) abuse;
 - (B) neglect; or
 - (C) exploitation; and
 - (ii) informing a direct service worker or the direct service worker's employer that the direct service worker has a supported or substantiated finding of:
 - (A) abuse;
 - (B) neglect; or
 - (C) exploitation; or
 - (c)
 - (i) determining whether a personal care attendant has a supported or substantiated finding of:
 - (A) abuse;
 - (B) neglect; or
 - (C) exploitation; and
 - (ii) informing a person described in Subsections 26B-6-401(9)(a)(i) through (iv) that a personal care attendant has a supported or substantiated finding of:
 - (A) abuse;
 - (B) neglect; or

(C) exploitation.

- (3) The department shall receive and process personal identifying information under Subsection 26B-2-120(1) for the purposes described in Subsection (2).
- (4) The department shall adopt rules under Title 63G, Chapter 3, Utah Administrative Rulemaking Act, consistent with this part and Chapter 6, Part 2, Abuse, Neglect, or Exploitation of a Vulnerable Adult, defining the circumstances under which a person may have direct access or provide services to vulnerable adults when the person is listed in the statewide database of the Division of Aging and Adult Services created by Section 26B-6-210 as having a supported or substantiated finding of abuse, neglect, or exploitation.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-2-123 Congregate care program regulation.

- (1) A congregate care program may not use a cruel, severe, unusual, or unnecessary practice on a child, including:
 - (a) a strip search unless the congregate care program determines and documents that a strip search is necessary to protect an individual's health or safety;
 - (b) a body cavity search unless the congregate care program determines and documents that a body cavity search is necessary to protect an individual's health or safety;
 - (c) inducing pain to obtain compliance;
 - (d) hyperextending joints;
 - (e) peer restraints;
 - (f) discipline or punishment that is intended to frighten or humiliate;
 - (g) requiring or forcing the child to take an uncomfortable position, including squatting or bending;
 - (h) for the purpose of punishing or humiliating, requiring or forcing the child to repeat physical movements or physical exercises such as running laps or performing push-ups;
 - (i) spanking, hitting, shaking, or otherwise engaging in aggressive physical contact;
 - (j) denying an essential program service;
 - (k) depriving the child of a meal, water, rest, or opportunity for toileting;
 - (l) denying shelter, clothing, or bedding;
 - (m) withholding personal interaction, emotional response, or stimulation;
 - (n) prohibiting the child from entering the residence;
 - (o) abuse as defined in Section 80-1-102; and
 - (p) neglect as defined in Section 80-1-102.
- (2) Before a congregate care program may use a restraint or seclusion, the congregate care program shall:
 - (a) develop and implement written policies and procedures that:
 - (i) describe the circumstances under which a staff member may use a restraint or seclusion;
 - (ii) describe which staff members are authorized to use a restraint or seclusion;
 - (iii) describe procedures for monitoring a child that is restrained or in seclusion;
 - (iv) describe time limitations on the use of a restraint or seclusion;
 - (v) require immediate and continuous review of the decision to use a restraint or seclusion;
 - (vi) require documenting the use of a restraint or seclusion;
 - (vii) describe record keeping requirements for records related to the use of a restraint or seclusion;
 - (viii) to the extent practicable, require debriefing the following individuals if debriefing would not interfere with an ongoing investigation, violate any law or regulation, or conflict with a child's treatment plan:

- (A) each witness to the event;
 - (B) each staff member involved; and
 - (C) the child who was restrained or in seclusion;
 - (ix) include a procedure for complying with Subsection (5); and
 - (x) provide an administrative review process and required follow up actions after a child is restrained or put in seclusion; and
 - (b) consult with the office to ensure that the congregate care program's written policies and procedures align with applicable law.
- (3) A congregate care program:
- (a) may use a passive physical restraint only if the passive physical restraint is supported by a nationally or regionally recognized curriculum focused on non-violent interventions and de-escalation techniques;
 - (b) may not use a chemical or mechanical restraint unless the office has authorized the congregate care program to use a chemical or mechanical restraint;
 - (c) shall ensure that a staff member that uses a restraint on a child is:
 - (i) properly trained to use the restraint; and
 - (ii) familiar with the child and if the child has a treatment plan, the child's treatment plan; and
 - (d) shall train each staff member on how to intervene if another staff member fails to follow correct procedures when using a restraint.
- (4)
- (a) A congregate care program:
 - (i) may use seclusion if:
 - (A) the purpose for the seclusion is to ensure the immediate safety of the child or others; and
 - (B) no less restrictive intervention is likely to ensure the safety of the child or others; and
 - (ii) may not use seclusion:
 - (A) for coercion, retaliation, or humiliation; or
 - (B) due to inadequate staffing or for the staff's convenience.
 - (b) While a child is in seclusion, a staff member who is familiar to the child shall actively supervise the child for the duration of the seclusion.
- (5) Subject to the office's review and approval, a congregate care program shall develop:
- (a) suicide prevention policies and procedures that describe:
 - (i) how the congregate care program will respond in the event a child exhibits self-injurious, self-harm, or suicidal behavior;
 - (ii) warning signs of suicide;
 - (iii) emergency protocol and contacts;
 - (iv) training requirements for staff, including suicide prevention training;
 - (v) procedures for implementing additional supervision precautions and for removing any additional supervision precautions;
 - (vi) suicide risk assessment procedures;
 - (vii) documentation requirements for a child's suicide ideation and self-harm;
 - (viii) special observation precautions for a child exhibiting warning signs of suicide;
 - (ix) communication procedures to ensure all staff are aware of a child who exhibits warning signs of suicide;
 - (x) a process for tracking suicide behavioral patterns; and
 - (xi) a post-intervention plan with identified resources; and
 - (b) based on state law and industry best practices, policies and procedures for managing a child's behavior during the child's participation in the congregate care program.
- (6)

- (a) A congregate care program:
 - (i) subject to Subsection (6)(b), shall facilitate weekly confidential voice-to-voice communication between a child and the child's parents, guardian, foster parents, and siblings, as applicable;
 - (ii) shall ensure that the communication described in Subsection (6)(a)(i) complies with the child's treatment plan, if any; and
 - (iii) may not use family contact as an incentive for proper behavior or withhold family contact as a punishment.
- (b) For the communication described in Subsection (6)(a)(i), a congregate care program may not:
 - (i) deny the communication unless state law or a court order prohibits the communication; or
 - (ii) modify the frequency or form of the communication unless:
 - (A) the office approves the modification; or
 - (B) state law or a court order prohibits the frequency or the form of the communication.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-2-124 Congregate care program requirements.

- (1) As used in this section, "disruption plan" means a child specific plan used:
 - (a) when the private-placement child stops receiving services from a congregate care program; and
 - (b) for transporting a private-placement child to a parent or guardian or to another congregate care program.
- (2) A congregate care program shall keep the following for a private-placement child whose parent or guardian lives outside the state:
 - (a) regularly updated contact information for the parent or guardian that lives outside the state; and
 - (b) a disruption plan.
- (3) If a private-placement child whose parent or guardian resides outside the state leaves a congregate care program without following the child's disruption plan, the congregate care program shall:
 - (a) notify the parent or guardian, office, and local law enforcement authorities;
 - (b) assist the state in locating the private-placement child; and
 - (c) after the child is located, transport the private-placement child:
 - (i) to a parent or guardian;
 - (ii) back to the congregate care program; or
 - (iii) to another congregate care program.
- (4) This section does not apply to a guardian that is a state or agency.
- (5) The office shall make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, describing:
 - (a) additional mandatory provisions for a disruption plan; and
 - (b) how a congregate care program shall notify the office when a private-placement child begins receiving services.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-2-125 Youth transportation company registration.

- (1) The office shall establish a registration system for youth transportation companies.
- (2) The office shall establish a fee:

- (a) under Section 63J-1-504 that does not exceed \$500; and
 - (b) that when paid by all registrants generates sufficient revenue to cover or substantially cover the costs for the creation and maintenance of the registration system.
- (3) A youth transportation company shall:
- (a) register with the office; and
 - (b) provide the office:
 - (i) proof of a business insurance policy that provides at least \$1,000,000 in coverage; and
 - (ii) a valid business license from the state where the youth transportation company is headquartered.
- (4) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the office shall make rules to implement this section.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-2-126 Notification requirement for child-placing agencies that provide foster home services -- Rulemaking authority.

- (1) The office shall require a child-placing agency that provides foster home services to notify a foster parent that if the foster parent signs as the responsible adult for a foster child to receive a driver license under Section 53-3-211:
- (a) the foster parent is jointly and severally liable with the minor for civil compensatory damages caused by the minor when operating a motor vehicle upon a highway as provided under Subsections 53-3-211(2) and (4); and
 - (b) the foster parent may file with the Driver License Division a verified written request that the learner permit or driver license be canceled in accordance with Section 53-3-211 if the foster child no longer resides with the foster parent.
- (2) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the office may make rules establishing the procedures for a child-placing agency to provide the notification required under this section.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-2-127 Child placing licensure requirements -- Prohibited acts -- Consortium.

- (1) As used in this section:
- (a)
 - (i) "Advertisement" means any written, oral, or graphic statement or representation made in connection with a solicitation of business.
 - (ii) "Advertisement" includes a statement or representation described in Subsection (1)(a)(i) by a noncable television system, radio, printed brochure, newspaper, leaflet, flyer, 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 part.
 - (b) If a child-placing agency's license is suspended or revoked in accordance with this part, the care, control, or custody of any child who is in the care, control, or custody of the child-placing agency shall be transferred to the Division of Child and Family Services.
- (3)
- (a)
 - (i) An attorney, physician, or other person may assist:
 - (A) a birth parent to identify or locate a prospective adoptive parent who is interested 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:
 - (A) "comprehensive";
 - (B) "complete";
 - (C) "one-stop";
 - (D) "all-inclusive"; or
 - (E) any other term similar to the terms described in Subsections (3)(b)(v)(A) through (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.
- (4) A person who intentionally or knowingly violates Subsection (2) or (3) is guilty of a third degree felony.

- (5) This section does not preclude payment of fees for medical, legal, or other lawful services rendered in connection with the care of a mother, delivery and care of a child, or lawful adoption proceedings, except that a child-placing agency may not:
 - (a) charge or accept payment for services that were not actually rendered; or
 - (b) charge or accept payment from a prospective adoptive parent for medical or hospital expenses that were paid for by public funds.
- (6) In accordance with federal law, only an agent or employee of the Division of Child and Family Services or of a licensed child-placing agency may certify to United States Citizenship and Immigration Services that a family meets the preadoption requirements of the Division of Child and Family Services.
- (7) A licensed child-placing agency or an attorney practicing in this state may not place a child for adoption, either temporarily or permanently, with an individual who would not be qualified for adoptive placement under Sections 78B-6-102, 78B-6-117, and 78B-6-137.
- (8)
 - (a) A child-placing agency, as that term is defined in Section 63G-20-102, that serves a resident of the state who is a birth mother or a prospective adoptive parent must be a member of a statewide consortium of licensed child-placing agencies that, together, serve all birth mothers lawfully seeking to place a child for adoption and all qualified prospective adoptive parents.
 - (b) The department shall receive and investigate any complaint against a consortium of licensed child-placing agencies.

Renumbered and Amended by Chapter 305, 2023 General Session

Amended by Chapter 466, 2023 General Session

26B-2-128 Numerical limit of foster children in a foster home.

- (1) Except as provided in Subsection (2) or (3), no more than:
 - (a) four foster children may reside in the foster home of a licensed foster parent; or
 - (b) three foster children may reside in the foster home of a certified foster parent.
- (2) When placing a sibling group into a foster home, the limits in Subsection (1) may be exceeded if:
 - (a) no other foster children reside in the foster home;
 - (b) only one other foster child resides in the foster home at the time of a sibling group's placement into the foster home; or
 - (c) a sibling group re-enters foster care and is placed into the foster home where the sibling group previously resided.
- (3) When placing a child into a foster home, the limits in Subsection (1) may be exceeded:
 - (a) to place a child into a foster home where a sibling of the child currently resides; or
 - (b) to place a child in a foster home where the child previously resided.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-2-129 Licensure of tribal foster homes.

- (1) The Indian Child Welfare Act, 25 U.S.C. Secs. 1901-1963, provides that Indian tribes may develop and implement tribal foster home standards.
- (2) The office shall give full faith and credit to an Indian tribe's certification or licensure of a tribal foster home for an Indian child and siblings of that Indian child, both on and off 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.

- (3) If the Indian tribe has not developed standards, the office shall license tribal foster homes pursuant to this part.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-2-130 Foster care by a child's relative.

- (1) As used in this section:
 - (a) "Custody" means the same as that term is defined in Section 80-2-102.
 - (b) "Relative" means the same as that term is defined in Section 80-3-102.
 - (c) "Temporary custody" means the same as that term is defined in Section 80-2-102.
- (2)
 - (a) 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.
 - (b) 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.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-2-131 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.
 - (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 child-placing agency shall pay all educational costs required under Section 53G-7-503.
- (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).

Renumbered and Amended by Chapter 305, 2023 General Session

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 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.

Renumbered and Amended by Chapter 305, 2023 General Session

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 court to enjoin any person, agency, firm, corporation, or association from violating Section 26B-2-127.
- (2) The office shall:
 - (a) solicit information from the public relating to violations of Section 26B-2-127; and
 - (b) upon identifying a violation of Section 26B-2-127:
 - (i) send a written notice to the person who violated Section 26B-2-127 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.
- (3)
 - (a) A county attorney or the attorney general shall institute legal action as necessary to enforce the provisions of Section 26B-2-127 after being informed of an alleged violation.
 - (b) If a county attorney does not take action within 30 days after the day on which the county attorney is informed of an alleged violation of Section 26B-2-127, the attorney general may be requested to take action, and shall then institute legal proceedings in place 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 26B-2-127 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.
 - (b) Each act in violation of Section 26B-2-127, including each placement or attempted placement of a child, is a separate violation.
- (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.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-2-134 Obligations of persons providing assessment and treatment services.

- (1) As used in this section:
 - (a) "Assessor" means a licensee that provides an assessment as ordered by a court in a criminal case.
 - (b) "Criminal case" means a case in which a court of justice described in Section 78A-1-101 has ordered an individual to comply with certain terms and conditions of probation related to a criminal offense.
 - (c) "Licensee" means the same as that term is defined in Section 26B-2-101.
- (2)

- (a) Except as provided in Subsection (4), an assessor that determines that the individual requires specific treatment shall:
 - (i) provide the individual a list of all available licensees that provide the treatment; and
 - (ii) permit the individual to select a licensee described in Subsection (2)(a)(i) with which to complete the treatment.
- (b) The list described in Subsection (2)(a)(i) may include the assessor, if the assessor is a licensee that provides the required treatment described in Subsection (2)(a).
- (3) Except as provided in Subsection (4), an assessor or other licensee may not solicit defendants as clients on any property that operates as a court of justice as described in Section 78A-1-101.
- (4) An assessor that performs services for a problem-solving court approved by the Judicial Council is not required to comply with this section.

Enacted by Chapter 257, 2023 General Session

Part 2

Health Care Facility Licensing and Inspection

26B-2-201 Definitions.

As used in this part:

- (1)
 - (a) "Abortion clinic" means a type I abortion clinic or a type II abortion clinic.
 - (b) "Abortion clinic" does not mean a clinic that meets the definition of hospital under Section 76-7-301 or Section 76-7a-101.
- (2) "Activities of daily living" means essential activities including:
 - (a) dressing;
 - (b) eating;
 - (c) grooming;
 - (d) bathing;
 - (e) toileting;
 - (f) ambulation;
 - (g) transferring; and
 - (h) self-administration of medication.
- (3) "Ambulatory surgical facility" means a freestanding facility, which provides surgical services to patients not requiring hospitalization.
- (4) "Assistance with activities of daily living" means providing of or arranging for the provision of assistance with activities of daily living.
- (5)
 - (a) "Assisted living facility" means:
 - (i) a type I assisted living facility, which is a residential facility that provides assistance with activities of daily living and social care to two or more residents who:
 - (A) require protected living arrangements; and
 - (B) are capable of achieving mobility sufficient to exit the facility without the assistance of another person; and
 - (ii) a type II assisted living facility, which is a residential facility with a home-like setting that provides an array of coordinated supportive personal and health care services available 24

hours per day to residents who have been assessed under department rule to need any of these services.

- (b) Each resident in a type I or type II assisted living facility shall have a service plan based on the assessment, which may include:
 - (i) specified services of intermittent nursing care;
 - (ii) administration of medication; and
 - (iii) support services promoting residents' independence and self-sufficiency.
- (6) "Birthing center" means a facility that:
 - (a) receives maternal clients and provides care during pregnancy, delivery, and immediately after delivery; and
 - (b)
 - (i) is freestanding; or
 - (ii) is not freestanding, but meets the requirements for an alongside midwifery unit described in Subsection 26B-2-228(7).
- (7) "Committee" means the Health Facility Committee created in Section 26B-1-204.
- (8) "Consumer" means any person not primarily engaged in the provision of health care to individuals or in the administration of facilities or institutions in which such care is provided and who does not hold a fiduciary position, or have a fiduciary interest in any entity 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.
- (9) "End stage renal disease facility" means a facility which furnishes staff-assisted kidney dialysis services, self-dialysis services, or home-dialysis services on an outpatient 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, a clinic that meets the definition of hospital under Section 76-7-301 or 76-71-201, 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 physicians or one or more groups of physicians organized on a group practice or individual practice basis.
- (15)
- (a) "Home health agency" means an agency, organization, or facility or a subdivision of an agency, organization, or facility which employs two or more direct care staff persons who provide licensed nursing services, therapeutic services of physical therapy, speech therapy, occupational therapy, medical social services, or home health aide services on a visiting basis.
- (b) "Home health agency" does not mean an individual who provides services under the authority of a private license.
- (16) "Hospice" means a program of care for the terminally ill and their families which occurs in a home or in a health care facility and which provides medical, palliative, 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:
- (a) as a result of physical or mental limitations or age requires or requests services provided in an assisted living facility; and
- (b) does not require intensive medical or nursing services as provided in a hospital or nursing care facility.
- (20) "Small health care facility" means a four to 16 bed facility that provides licensed health care programs and services to residents.
- (21) "Specialty hospital" means a facility which provides specialized diagnostic, therapeutic, or rehabilitative services in the recognized specialty or specialties for which the hospital is licensed.
- (22) "Substantial compliance" means in a department survey of a licensee, the department determines there is an absence of deficiencies which would harm the physical health, mental health, safety, or welfare of patients or residents of a licensee.
- (23) "Type I abortion clinic" means a facility, including a physician's office, but not including a general acute or specialty hospital, that:
- (a) performs abortions, as defined in Section 76-7-301, during the first trimester of pregnancy; and
- (b) does not perform abortions, as defined in Section 76-7-301, after the first trimester of pregnancy.

- (24) "Type II abortion clinic" means a facility, including a physician's office, but not including a general acute or specialty hospital, that:
- (a) performs abortions, as defined in Section 76-7-301, after the first trimester of pregnancy; or
 - (b) performs abortions, as defined in Section 76-7-301, during the first trimester of pregnancy and after the first trimester of pregnancy.

Amended by Chapter 301, 2023 General Session
Renumbered and Amended by Chapter 305, 2023 General Session

26B-2-202 Duties of department.

- (1) The department shall:
- (a) enforce rules established pursuant to this part;
 - (b) authorize an agent of the department to conduct inspections of health care facilities pursuant to this part;
 - (c) collect information authorized by the committee that may be necessary to ensure that adequate health care facilities are available to the public;
 - (d) collect and credit fees for licenses as free revenue;
 - (e) collect and credit fees for conducting plan reviews as dedicated credits;
 - (f)
 - (i) collect and credit fees for conducting clearance under Sections 26B-2-239 and 26B-2-240; and
 - (ii) beginning July 1, 2012:
 - (A) up to \$105,000 of the fees collected under Subsection (1)(f)(i) are dedicated credits; and
 - (B) the fees collected for background checks under Subsection 26B-2-240(6) and Subsection 26B-2-241(4) shall be transferred to the Department of Public Safety to reimburse the Department of Public Safety for its costs in conducting the federal background checks;
 - (g) designate an executive secretary from within the department to assist the committee in carrying out its powers and responsibilities;
 - (h) establish reasonable standards for criminal background checks by public and private entities;
 - (i) recognize those public and private entities that meet the standards established pursuant to Subsection (1)(h); and
 - (j) provide necessary administrative and staff support to the committee.
- (2) The department may:
- (a) exercise all incidental powers necessary to carry out the purposes of this part;
 - (b) review architectural plans and specifications of proposed health care facilities or renovations of health care facilities to ensure that the plans and specifications conform to rules established by the committee; and
 - (c) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, make rules as necessary to implement the provisions of this part.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-2-203 Services required -- General acute hospitals -- Specialty Hospitals.

- (1) General acute hospitals and specialty hospitals shall remain open and be continuously ready to receive patients 24 hours of every day in a year and have an attending medical staff consisting of one or more physicians licensed to practice medicine and surgery under Title 58, Chapter 67, Utah Medical Practice Act, or Title 58, Chapter 68, Utah Osteopathic Medical Practice Act.

- (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.
- (3)
 - (a) A home health agency shall provide at least licensed nursing services or 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.
- (4) Beginning January 1, 2023, a hospice program shall provide at least one qualified medical provider, as that term is defined in Section 26B-4-201, for the treatment of hospice patients.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-2-204 Licensing of an abortion clinic -- Rulemaking authority -- Fee -- Licensing of a clinic meeting the definition of hospital.

- (1)
 - (a) No abortion clinic may operate in the state on or after January 1, 2024, or the last valid date of an abortion clinic license issued under the requirements of this section, whichever date is later.
 - (b) Notwithstanding Subsection (1)(a), a licensed abortion clinic may not perform an abortion in violation of any provision of state law.
- (2) The state may not issue a license for an abortion clinic after May 2, 2023.
- (3) For any license for an abortion clinic that is issued under this section:
 - (a) 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.
 - (b) 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.
 - (c) The department shall make rules establishing minimum health, safety, sanitary, and recordkeeping requirements for:
 - (i) a type I abortion clinic; and
 - (ii) a type II abortion clinic.
 - (d) To receive and maintain a license described in this section, an abortion clinic shall:
 - (i) apply for a license on a form prescribed by the department;
 - (ii) satisfy and maintain the minimum health, safety, sanitary, and recordkeeping requirements established under Subsection (3) that relate to the type of abortion clinic licensed;
 - (iii) comply with the recordkeeping and reporting requirements of Section 76-7-313;
 - (iv) comply with the requirements of Title 76, Chapter 7, Part 3, Abortion, and Title 76, Chapter 7a, Abortion Prohibition;
 - (v) pay the annual licensing fee; and
 - (vi) cooperate with inspections conducted by the department.
 - (e) The department shall, at least twice per year, inspect each abortion clinic in the state to ensure that the abortion clinic is complying with all statutory and licensing requirements relating to the abortion clinic. At least one of the inspections shall be made without providing notice to the abortion clinic.
 - (f) The department shall charge an annual license fee, set by the department in accordance with the procedures described in Section 63J-1-504, to an abortion clinic in an amount that will pay for the cost of the licensing requirements described in this section and the cost of inspecting abortion clinics.

- (g) 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.
- (4)
 - (a) Notwithstanding any other provision of this section, the department may license a clinic that meets the definition of hospital under Section 76-7-301 or Section 76-7a-101.
 - (b) A clinic described in Subsection (4)(a) is not defined as an abortion clinic.

Amended by Chapter 301, 2023 General Session
Renumbered and Amended by Chapter 305, 2023 General Session

26B-2-205 Exempt facilities.

This part does not apply to:

- (1) a dispensary or first aid facility maintained by any commercial or industrial plant, 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;
- (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.

Amended by Chapter 301, 2023 General Session
Renumbered and Amended by Chapter 305, 2023 General Session

26B-2-206 License required -- Not assignable or transferable -- Posting -- Expiration and renewal -- Time for compliance by operating facilities.

- (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 part and the rules adopted pursuant to this part .
 - (b) This Subsection (1) does not apply to facilities that are exempt under Section 26B-2-205.
- (2) A license issued under this 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 24 months from the date of issuance for health care facilities that meet the provisions of this part and department rules adopted pursuant to this 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 part or the rules adopted pursuant to this 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 part shall be given a reasonable time for compliance as determined by the committee.

Amended by Chapter 301, 2023 General Session

Renumbered and Amended by Chapter 305, 2023 General Session

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 privacy.
- (3) Information received by the department from a health care facility, pertaining to that facility's accreditation by a voluntary accrediting organization, shall be private data except for a summary prepared by the department related to licensure standards.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-2-208 Violations -- Denial or revocation of license -- Restricting or prohibiting new admissions -- Monitor.

- (1) If the department finds a violation of this part or any rules adopted pursuant to this part the department may take one or more of the following actions:
 - (a) serve a written statement of violation requiring corrective action, which shall include time frames for correction of all violations;
 - (b) subject to Subsection (2), deny or revoke a license if it finds:
 - (i) there has been a failure to comply with the rules established pursuant to this part;
 - (ii) evidence of aiding, abetting, or permitting the commission of any illegal act; or
 - (iii) conduct adverse to the public health, morals, welfare, and safety of the people of the state;
 - (c) restrict or prohibit new admissions to a health care facility or revoke the license of a health care facility for:
 - (i) violation of any rule adopted under this part; or
 - (ii) permitting, aiding, or abetting the commission of any illegal act in the health care facility;
 - (d) place a department representative as a monitor in the facility until corrective action is completed;
 - (e) assess to the facility the cost incurred by the department in placing a monitor;
 - (f) assess an administrative penalty as allowed by Subsection 26B-1-224(1)(a); or
 - (g) issue a cease and desist order to the facility.

- (2) If the department finds that an abortion has been performed in violation of Section 76-7-314 or 76-7a-201, the department shall deny or revoke the license.

Amended by Chapter 301, 2023 General Session
Renumbered and Amended by Chapter 305, 2023 General Session

26B-2-209 Failure to follow certain health care claims practices -- Penalties.

- (1) The department may assess a fine of up to \$500 per violation against a health care facility that violates Section 31A-26-313.
- (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 mitigated and reversed any damage to the insured caused by the health care facility or third 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.

Renumbered and Amended by Chapter 305, 2023 General Session

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 part and applicable rules.
- (2) If the department does not renew a license because of noncompliance with the provisions of this part or the rules adopted under this 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 jeopardized.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-2-211 License issued to facility in compliance or substantial compliance with 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 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.

Renumbered and Amended by Chapter 305, 2023 General Session

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.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-2-213 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.

Renumbered and Amended by Chapter 305, 2023 General Session

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 and may prevent the entrance of any resident or patient onto the premises of that facility until the condition is eliminated.
- (2) Parties aggrieved by the actions of the department under this section may obtain an adjudicative proceeding and judicial review.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-2-215 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 part or rules adopted by the committee.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-2-216 Operating facility in violation of part a misdemeanor.

In addition to the penalties in Section 26B-1-224, any person owning, establishing, conducting, maintaining, managing, or operating a health care facility in violation of this part is guilty of a class A misdemeanor.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-2-217 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.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-2-218 Life and Health Insurance Guaranty Association Act not amended.

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

Renumbered and Amended by Chapter 305, 2023 General Session

26B-2-219 Requirement for hospitals to provide statements of itemized charges to patients.

- (1) As used in this section, "hospital" includes:
 - (a) an ambulatory surgical facility;
 - (b) a general acute hospital; and
 - (c) a specialty hospital.
- (2) A hospital shall provide a statement of itemized charges to any patient receiving medical care or other services from that hospital.
- (3)
 - (a) The statement shall be provided to the patient or the patient's personal representative or agent at the hospital's expense, personally, by mail, or by verifiable electronic delivery after the hospital receives an explanation of benefits from a third party payer which indicates the patient's remaining responsibility for the hospital charges.
 - (b) If the statement is not provided to a third party, it shall be provided to the patient as soon as possible and practicable.
- (4) The statement required by this section:
 - (a) shall itemize each of the charges actually provided by the hospital to the patient;
 - (b)
 - (i) shall include the words in bold "THIS IS THE BALANCE DUE AFTER PAYMENT FROM YOUR HEALTH INSURER"; or
 - (ii) shall include other appropriate language if the statement is sent to the patient under Subsection (3)(b); and
 - (c) may not include charges of physicians who bill separately.
- (5) The requirements of this section do not apply to patients who receive services from a hospital under Title XIX of the Social Security Act.
- (6) Nothing in this section prohibits a hospital from sending an itemized billing statement to a patient before the hospital has received an explanation of benefits from an insurer. If a hospital

provides a statement of itemized charges to a patient prior to receiving the explanation of benefits from an insurer, the itemized statement shall be marked in bold: "DUPLICATE: DO NOT PAY" or other appropriate language.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-2-220 Authentication of medical records.

Any entry in a medical record compiled or maintained by a health care facility may be authenticated by identifying the author of the entry by:

- (1) a signature including first initial, last name, and discipline; or
- (2) the use of a computer identification process unique to the author that definitively identifies the author.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-2-221 Reporting of disciplinary information -- Immunity from liability.

A health care facility licensed under this part which reports disciplinary information on a licensed nurse to the Division of Professional Licensing within the Department of Commerce as required by Section 58-31b-702 is entitled to the immunity from liability provided by that section.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-2-222 Licensing of a new nursing care facility -- Approval for a licensed bed in an existing nursing care facility -- Fine for excess Medicare inpatient revenue.

(1) Notwithstanding Section 26B-2-201, as used in this section:

(a) "Medicaid" means the Medicaid program, as that term is defined in Section 26B-3-101.

(b) "Medicaid certification" means the same as that term is defined in Section 26B-3-301.

(c) "Nursing care facility" and "small health care facility":

(i) mean the following facilities licensed by the department under this part:

(A) a skilled nursing facility;

(B) an intermediate care facility; or

(C) a small health care facility with four to 16 beds functioning as a skilled nursing facility;

and

(ii) do not mean:

(A) an intermediate care facility for the intellectually disabled;

(B) a critical access hospital that meets the criteria of 42 U.S.C. Sec. 1395i-4(c)(2) (1998);

(C) a small health care facility that is hospital based; or

(D) a small health care facility other than a skilled nursing care facility with no more than 16 beds.

(d) "Rural county" means the same as that term is defined in Section 26B-3-301.

(2) Except as provided in Subsection (6) and Section 26B-2-227, a new nursing care facility shall be approved for a health facility license only if:

(a) under the provisions of Section 26B-3-311 the facility's nursing care facility program has received Medicaid certification or will receive Medicaid certification for each bed in the facility;

(b) the facility's nursing care facility program has received or will receive approval for Medicaid certification under Subsection 26B-3-311(5), if the facility is located in a rural county; or

(c)

(i) the applicant submits to the department the information described in Subsection (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:
 - (A) has been at least 75% during each of the past two years for all existing facilities 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:
 - (i) shows the facility's annual Medicare inpatient revenue, including Medicare Advantage revenue, will not exceed 49% of the facility's annual total revenue during each of the first three years of operation;
 - (ii) shows the facility will be financially viable if the annual occupancy rate is at least 88%;
 - (iii) shows the facility will be able to achieve financial viability;
 - (iv) shows the facility will not:
 - (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
 - (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.
- (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 26B-3-311 or 26B-3-313.
- (6) Subsection (2) does not apply to a nursing care facility that:
 - (a) has, by the effective date of this act, submitted to the department schematic drawings, and paid applicable fees, for a particular site or a site within a three-mile radius of that site;
 - (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

- (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;
 - (d) replaces a nursing care facility that:
 - (i) closed within the past three years; or
 - (ii) is located within five miles of the facility;
 - (e) is undergoing a change of ownership, even if a government entity designates the facility as a new nursing care facility; or
 - (f) is a state-owned veterans home, regardless of who operates the home.
- (7)
- (a) For each year the annual Medicare inpatient revenue, including Medicare Advantage revenue, of a nursing care facility approved for a health facility license under Subsection (2)(c) exceeds 49% of the facility's total revenue for the year, the facility shall be subject to a fine of \$50,000, payable to the department.
 - (b) A nursing care facility approved for a health facility license under Subsection (2)(c) shall submit to the department the information necessary for the department to annually determine whether the facility is subject to the fine in Subsection (7)(a).
 - (c) The department:
 - (i) shall make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, specifying the information a nursing care facility shall submit to the department under Subsection (7)(b);
 - (ii) shall annually determine whether a facility is subject to the fine in Subsection (7)(a);
 - (iii) may take one or more of the actions in Section 26B-2-202 or 26B-2-208 against a facility for nonpayment of a fine due under Subsection (7)(a); and
 - (iv) shall deposit fines paid to the department under Subsection (7)(a) into the Nursing Care Facilities Provider Assessment Fund, created in Section 26B-3-405.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-2-223 Prohibition against bed banking by nursing care facilities for Medicaid reimbursement.

- (1) As used in this section:
 - (a) " Bed banking" means the designation of a nursing care facility bed as not part of the facility's operational bed capacity.
 - (b) " Nursing care facility" means the same as that term is defined in Section 26B-2-222.
- (2) Beginning July 1, 2008, the department shall, for purposes of Medicaid reimbursement under Chapter 3, Part 1, Health Care Assistance, prohibit the banking of nursing care facility beds.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-2-224 Patient identity protection.

- (1) As used in this section:
 - (a) "EMTALA" means the federal Emergency Medical Treatment and Active Labor Act.
 - (b) "Health professional office" means:
 - (i) a physician's office; or
 - (ii) a dental office.
 - (c) "Medical facility" means:
 - (i) a general acute hospital;

- (ii) a specialty hospital;
 - (iii) a home health agency;
 - (iv) a hospice;
 - (v) a nursing care facility;
 - (vi) a residential-assisted living facility;
 - (vii) a birthing center;
 - (viii) an ambulatory surgical facility;
 - (ix) a small health care facility;
 - (x) an abortion clinic;
 - (xi) a clinic that meets the definition of hospital under Section 76-7-301 or Section 76-7a-101;
 - (xii) a facility owned or operated by a health maintenance organization;
 - (xiii) an end stage renal disease facility;
 - (xiv) a health care clinic; or
 - (xv) any other health care facility that the committee designates by rule.
- (2)
- (a) In order to discourage identity theft and health insurance fraud, and to reduce the risk of medical errors caused by incorrect medical records, a medical facility or a health professional office shall request identification from an individual prior to providing in-patient 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 health professional office shall request identification:
 - (i) for the individual who lacks the legal capacity to consent to treatment; and
 - (ii) from the individual who consents to treatment on behalf of the individual described in Subsection (2)(b)(i).
- (3) A medical facility or a health professional office:
- (a) that is subject to EMTALA:
 - (i) may not refuse services to an individual on the basis that the individual did not provide identification when requested; and
 - (ii) shall post notice in its emergency department that informs a patient of the patient's right to treatment for an emergency medical condition under EMTALA;
 - (b) may not be penalized for failing to ask for identification;
 - (c) is not subject to a private right of action for failing to ask for identification; and
 - (d) may document or confirm patient identity by:
 - (i) photograph;
 - (ii) fingerprinting;
 - (iii) palm scan; or
 - (iv) other reasonable means.
- (4) The identification described in this section:
- (a) is intended to be used for medical records purposes only; and
 - (b) shall be kept in accordance with the requirements of the Health Insurance Portability and Accountability Act of 1996.

Amended by Chapter 301, 2023 General Session
Renumbered and Amended by Chapter 305, 2023 General Session

26B-2-225 General acute hospital to report prescribed controlled substance poisoning or overdose.

- (1) If a person who is 12 years old or older is admitted to a general acute hospital for poisoning or overdose involving a prescribed controlled substance, the general acute hospital shall, within three business days after the day on which the person is admitted, send a written report to the Division of Professional Licensing, created in Section 58-1-103, that includes:
 - (a) the patient's name and date of birth;
 - (b) each drug or other substance found in the person's system that may have contributed to the poisoning or overdose, if known;
 - (c) the name of each person who the general acute hospital has reason to believe may have prescribed a controlled substance described in Subsection (1)(b) to the person, if known; and
 - (d) the name of the hospital and the date of admission.
- (2) Nothing in this section may be construed as creating a new cause of action.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-2-226 Information regarding certain health care facility charges.

A health care facility licensed under this part shall, when requested by a consumer:

- (1) make a list of prices charged by the facility available for the consumer that includes the facility's:
 - (a) in-patient procedures;
 - (b) out-patient procedures;
 - (c) the 50 most commonly prescribed drugs in the facility;
 - (d) imaging services; and
 - (e) implants; and
- (2) provide the consumer with information regarding any discounts the facility provides for:
 - (a) charges for services not covered by insurance; or
 - (b) prompt payment of billed charges.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-2-227 Pilot program for managed care model with a small health care facility operating as a skilled nursing facility.

- (1) Notwithstanding the requirement for Medicaid certification under Sections 26B-3-310 through 26B-3-313, and Section 26B-2-222, a small health care facility with four to 16 beds, functioning as a skilled nursing facility, may be approved for licensing by the department as a pilot program in accordance with this section, and without obtaining Medicaid certification for the beds in the facility.
- (2)
 - (a) The department shall establish one pilot program with a facility that meets the qualifications under Subsection (3).
 - (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.
- (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:
 - (a) be located in:
 - (i) a county of the second class that has at least 1,800 square miles within the county; and
 - (ii) a city of the fifth class; and
 - (b) limit a patient's stay in the facility to no more than 10 days.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-2-228 Birthing centers -- Regulatory restrictions.

- (1) As used in this section:
 - (a) "Alongside midwifery unit" means a birthing center that meets the requirements described in Subsection (7).
 - (b) "Certified nurse midwife" means an individual who is licensed under Title 58, Chapter 44a, Nurse Midwife Practice Act.
 - (c) "Direct-entry midwife" means an individual who is licensed under Title 58, Chapter 77, Direct-Entry Midwife Act.
 - (d) "Licensed maternity care practitioner" includes:
 - (i) a physician;
 - (ii) a certified nurse midwife;
 - (iii) a direct entry midwife;
 - (iv) a naturopathic physician; and
 - (v) other individuals who are licensed under Title 58, Occupations and Professions and whose scope of practice includes midwifery or obstetric care.
 - (e) "Naturopathic physician" means an individual who is licensed under Title 58, Chapter 71, Naturopathic Physician Practice Act.
 - (f) "Physician" means an individual who is licensed under Title 58, Chapter 67, Utah Medical Practice Act, or Title 58, Chapter 68, Utah Osteopathic Medical Practice Act.
- (2) The committee and the department may not require a birthing center or a licensed maternity care practitioner who practices at a birthing center to:
 - (a) maintain admitting privileges at a general acute hospital;
 - (b) maintain a written transfer agreement with one or more general acute hospitals;
 - (c) maintain a collaborative practice agreement with a physician; or
 - (d) have a physician or certified nurse midwife present at each birth when another licensed maternity care practitioner is present at the birth and remains until the maternal patient and newborn are stable postpartum.
- (3) The committee and the department shall:
 - (a) permit all types of licensed maternity care practitioners to practice in a birthing center; and
 - (b) except as provided in Subsection (2)(b), require a birthing center to have a written plan for the transfer of a patient to a hospital in accordance with Subsection (4).
- (4) A transfer plan under Subsection (3)(b) shall:
 - (a) be signed by the patient; and
 - (b) indicate that the plan is not an agreement with a hospital.
- (5) If a birthing center transfers a patient to a licensed maternity care practitioner or facility, the responsibility of the licensed maternity care practitioner or facility, for the patient:
 - (a) does not begin until the patient is physically within the care of the licensed maternity care practitioner or facility;
 - (b) is limited to the examination and care provided after the patient is transferred to the licensed maternity care practitioner or facility; and
 - (c) does not include responsibility or accountability for the patient's decision to pursue 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 who is not practicing at a birthing center may, upon receiving a briefing from a member of a birthing

- center's clinical staff, issue a medical order for the birthing center's patient without 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 responsibility and liability for caring for the patient is that of the birthing center and the birthing center's clinical staff.
 - (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 received under Subsection (6)(a).
- (7)
- (a) A birthing center that is not freestanding may be licensed as an alongside midwifery unit if the birthing center:
 - (i) is accredited by the Commission on Accreditation of Birth Centers;
 - (ii) is connected to a hospital facility, either through a bridge, ramp, or adjacent to the labor and delivery unit within the hospital with care provided with the midwifery model of care, where maternal patients are received and care provided during labor, delivery, and immediately after delivery; and
 - (iii) is supervised by a clinical director who is licensed as a physician as defined in Section 58-67-102 or a certified nurse midwife under Title 58, Chapter 44a, Nurse Midwife Practice Act.
 - (b) An alongside midwifery unit shall have a transfer agreement in place with the adjoining hospital:
 - (i) to transfer a patient to the adjacent hospital's labor and delivery unit if a higher level of care is needed; and
 - (ii) for services that are provided by the adjacent hospital's staff in collaboration with the alongside midwifery unit staff.
 - (c) An alongside midwifery unit may:
 - (i) contract with staff from the adjoining hospital to assist with newborn care or resuscitation of a patient in an emergency; and
 - (ii) integrate the alongside midwifery unit's medical records with the medical record system utilized by the adjoining hospital.
 - (d) Notwithstanding Title 58, Chapter 77, Direct-Entry Midwife Act, licensure as a direct-entry midwife under Section 58-77-301 is not sufficient to practice as a licensed maternity care practitioner in an alongside midwifery unit.
- (8) The department shall hold a public hearing under Subsection 63G-3-302(2)(a) for a proposed administrative rule, and amendment to a rule, or repeal of a rule, that relates to birthing centers.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-2-229 Disposal of controlled substances at nursing care facilities.

- (1) As used in this section:
- (a) "Controlled substance" means the same as that term is defined in Section 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:
 - (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.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-2-230 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).

Renumbered and Amended by Chapter 305, 2023 General Session

Superseded 7/1/2024

26B-2-231 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 26B-1-405(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:
 - (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.

Renumbered and Amended by Chapter 305, 2023 General Session

Effective 7/1/2024

26B-2-231 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 53-2d-107(8)(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:

- (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.

Renumbered and Amended by Chapter 305, 2023 General Session

Amended by Chapter 310, 2023 General Session

26B-2-232 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.

- (2)
- (a) A health care facility having possession of an aborted fetus shall provide for the final disposition of the aborted fetus through:
 - (i) cremation as that term is defined in Section 58-9-102; or
 - (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.
 - (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 an aborted fetus if:
 - (i) the pregnant woman provides written authorization for the health care facility to act as the authorizing agent; or
 - (ii)
 - (A) more than 72 hours have passed since the abortion was performed; and
 - (B) the pregnant woman did not exercise her right to control the final disposition of the aborted fetus under Subsection (4)(a).
 - (d) Within 120 business days after the day on which an abortion is performed, a 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.
 - (e) A health care facility shall conduct the final disposition under this section in accordance with applicable state and federal law.
- (3) Before performing an abortion, a health care facility shall:
- (a) provide the pregnant woman with the information described in Subsection 76-7-305.5(2)(w) through:
 - (i) a form approved by the department;
 - (ii) an in-person consultation with a physician; or
 - (iii) an in-person consultation with a mental health therapist as defined in Section 58-60-102; and
 - (b) if the pregnant woman makes a decision under Subsection (4)(b), document the pregnant woman's decision under Subsection (4)(b) in the pregnant woman's medical record.
- (4) A pregnant woman who has an abortion:
- (a) except as provided in Subsection (6), has the right to control the final disposition of the aborted fetus;

- (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 aborted fetus;
 - (c) is responsible for the costs related to the final disposition of the aborted fetus at the chosen location if the pregnant woman chooses a method or location for the final disposition of the aborted fetus that is different from the method or location that is usual and customary for the health care facility; and
 - (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 accordance with this section.
- (5) The form described in Subsection (3)(a)(i) shall include the following information:
- "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."
- (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 76-7-304.5(1)(b).
- (7)
- (a) A health care facility may not include fetal remains with other biological, 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.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-2-233 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
 - (ii) interment.
 - (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:
 - (i) the parent provides written authorization for the health care facility to act as the 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 miscarried fetus under Subsection (4)(a).
 - (d) Within 120 business days after the day on which a miscarriage occurs, a health care facility possessing miscarried remains shall:
 - (i) conduct the final disposition of the miscarried remains in accordance with this section; or
 - (ii) ensure that the miscarried remains are preserved until final disposition.
 - (e) A health care facility shall conduct the final disposition under this section in accordance with applicable state and federal law.
- (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 parent or parents of the miscarried fetus regarding:
 - (i) the parents' right to determine the final disposition of the miscarried fetus;
 - (ii) the available options for disposition of the miscarried fetus; and
 - (iii) counseling that may be available concerning the death of the miscarried fetus.
 - (b) A health care facility shall:
 - (i) provide the information described in Subsection (3)(a) through:
 - (A) a form approved by the department;
 - (B) an in-person consultation with a physician; or
 - (C) an in-person consultation with a mental health therapist as defined in Section 58-60-102; and
 - (ii) if the parent or parents make a decision under Subsection (4)(b), document the parent's decision under Subsection (4)(b) in the parent's medical record.
- (4) The parents of a miscarried fetus:
- (a) have the right to control the final disposition of the miscarried fetus;
 - (b) if the parents have a preference for disposition of the miscarried fetus, shall inform 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 at the chosen location if the parents choose a method or location for the final disposition of the miscarried fetus that is different from the method or location that is usual and customary for the health care facility.
- (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."
- (6)
- (a) A health care facility may not include a miscarried fetus with other biological, 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 (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.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-2-234 Resident consumer protection.

- (1) As used in this section:
 - (a) "Eligible requester" means:
 - (i) a resident;
 - (ii) a prospective resident;
 - (iii) a legal representative of a resident or prospective resident; or
 - (iv) the department.
 - (b) "Facility" means an assisted living facility or nursing care facility.
 - (c) "Facility's leadership" means a facility's:
 - (i) owner;
 - (ii) administrator;
 - (iii) director; or
 - (iv) employee that is in a position to determine which providers have access to the facility.
 - (d) "Personal care agency" means a person that provides assistance with activities of daily living.
 - (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 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;
 - (ii) if an eligible requester requests to know which providers have access to the facility, refer the eligible requester to a member of the facility's leadership; and
 - (iii) if a provider requests to know whether the provider has access to the facility, refer 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:
 - (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
 - (iii) whether a person in the facility's leadership has a legal or financial interest in a 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).

- (d) If a resident is being served by a provider that is later prohibited from accessing the facility, the facility shall:
 - (i) allow the provider access to the facility to finish the resident's current episode of care; or
 - (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.
- (5) The department may issue a notice of deficiency if a facility that denies a provider access under Subsection (2) does not comply with Subsection (3) at the time of the denial.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-2-235 Sepsis protocols for general acute hospitals -- Presenting protocols upon inspection.

- (1) As used in this section, "sepsis" means a life-threatening complication of an infection.
- (2) A general acute hospital may develop protocols for the treatment of sepsis and septic shock that are consistent with current evidence-based guidelines for the treatment of severe sepsis and septic shock.
- (3) When developing the protocols described in Subsection (2), a general acute hospital shall consider:
 - (a) a process for screening and recognizing patients with sepsis;
 - (b) a process to screen out individuals for whom the protocols would not be appropriate for treating sepsis;
 - (c) timeline goals for treating sepsis;
 - (d) different possible methods for treating sepsis and reasons to use each method;
 - (e) specific protocols to treat children who present with symptoms of sepsis or septic shock; and
 - (f) training requirements for staff.
- (4) A general acute hospital may update the general acute hospital's sepsis protocols as new data on the treatment of sepsis and septic shock becomes available.
- (5) The department, or an entity assigned by the department to inspect a general acute hospital, may request a copy of the sepsis protocols described in this section when inspecting a general acute hospital.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-2-236 Monitoring device -- Installation, notice, and consent -- Admission and discharge -- Liability.

- (1) As used in this section:
 - (a) "Legal representative" means an individual who is legally authorized to make health care decisions on behalf of another individual.
 - (b)
 - (i) "Monitoring device" means:
 - (A) a video surveillance camera; or
 - (B) a microphone or other device that captures audio.
 - (ii) "Monitoring device" does not include:
 - (A) a device that is specifically intended to intercept wire, electronic, or oral communication without notice to or the consent of a party to the communication; or
 - (B) a device that is connected to the Internet or that is set up to transmit data via an electronic communication.

- (c) "Resident" means an individual who receives health care from a facility.
 - (d) "Room" means a resident's private or shared primary living space.
 - (e) "Roommate" means an individual sharing a room with a resident.
- (2) A resident or the resident's legal representative may operate or install a monitoring device in the resident's room if the resident and the resident's legal representative, if any, unless the resident is incapable of informed consent:
- (a) notifies the resident's assisted living facility in writing that the resident or the resident's legal representative, if any:
 - (i) intends to operate or install a monitoring device in the resident's room; and
 - (ii) consents to a waiver agreement, if required by an assisted living facility;
 - (b) obtains written consent from each of the resident's roommates, and their legal representative, if any, that specifically states the hours when each roommate consents to the resident or the resident's legal representative operating the monitoring device; and
 - (c) assumes all responsibility for any cost related to installing or operating the monitoring device.
- (3) An assisted living facility shall not be civilly or criminally liable to:
- (a) a resident or resident's roommate for the operation of a monitoring device consistent with this part; and
 - (b) any person other than the resident or resident's roommate for any claims related to the use or operation of a monitoring device consistent with this part, unless the claim is caused by the acts or omissions of an employee or agent of the assisted living facility.
- (4)
- (a) An assisted living facility may not deny an individual admission to the facility for the sole reason that the individual or the individual's legal representative requests to install or operate a monitoring device in the individual's room.
 - (b) An assisted living facility may not discharge a resident for the sole reason that the resident or the resident's legal representative requests to install or operate a monitoring device in the individual's room.
 - (c) An assisted living facility may require the resident or the resident's legal representative to place a sign near the entrance of the resident's room that states that the room contains a monitoring device.
- (5) Notwithstanding any other provision of this part, an individual may not, under this part, operate a monitoring device in an assisted living facility without a court order:
- (a) in secret; or
 - (b) with an intent to intercept a wire, electronic, or oral communication without notice to or the consent of a party to the communication.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-2-237 Transfer or discharge from an assisted living facility.

- (1) As used in this section:
- (a) "Ombudsman" means the same as that term is defined in Section 26B-2-301.
 - (b) "Resident" means an individual who receives health care from an assisted living facility.
 - (c) "Responsible person" means an individual who:
 - (i) is designated in writing by a resident to receive communication on behalf of the resident; or
 - (ii) is legally authorized to make health care decisions on behalf of the resident.
- (2) A facility is subject to the requirements in Subsection (3) if the transfer or discharge:
- (a) is initiated by the facility for any reason;
 - (b) is objected to by the resident or the resident's responsible person;

- (c) was not initiated by a verbal or written request from the resident; or
 - (d) is inconsistent with the resident's preferences and stated goals for care.
- (3) Before a transfer or discharge described in Subsection (2) occurs, the assisted living facility from which the resident is transferred or discharged shall:
- (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 resident's responsible person, of:
 - (i) the reasons for the transfer or discharge;
 - (ii) the effective date of the transfer or discharge;
 - (iii) the location to which the resident will be transferred or discharged, if known; and
 - (iv) the name, address, email, and telephone number of the ombudsman;
 - (b) send a copy, in English, of the notice described in Subsection (3)(a) to the ombudsman on the same day on which the assisted living facility delivers the notice described in Subsection (3) (a) to the resident and the resident's responsible person;
 - (c) provide the notice described in Subsection (3)(a) at least 30 days before the day on which the resident is transferred or discharged, unless:
 - (i) notice for a shorter period of time is necessary to protect:
 - (A) the safety of individuals in the assisted living facility from endangerment due to the medical or behavioral status of the resident; or
 - (B) the health of individuals in the assisted living facility from endangerment due to the resident's continued residency;
 - (ii) an immediate transfer or discharge is required by the resident's urgent medical needs; or
 - (iii) the resident has not resided in the assisted living facility for at least 30 days;
 - (d) 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;
 - (e) orally explain to the resident:
 - (i) the services available through the ombudsman; and
 - (ii) the contact information for the ombudsman; and
 - (f) provide and document the provision of preparation and orientation for the resident, in a language and manner the resident is most likely to understand, to ensure a safe and orderly transfer or discharge from the assisted living facility.
- (4) In the event of an assisted living facility closure, the assisted living facility shall provide written notification of the closure to the ombudsman, each resident of the facility, and each resident's responsible person.

Amended by Chapter 268, 2023 General Session

Renumbered and Amended by Chapter 305, 2023 General Session

Amended by Chapter 305, 2023 General Session, (Coordination Clause)

26B-2-238 Definitions for Sections 26B-2-238 through 26B-2-241.

As used in this section and Sections 26B-2-239, 26B-2-240, and 26B-2-241:

- (1) "Clearance" means approval by the department under Section 26B-2-239 for an individual to have direct patient access.
- (2) "Covered body" means a covered provider, covered contractor, or covered employer.
- (3) "Covered contractor" means a person that supplies covered individuals, by contract, to a covered employer or covered provider.
- (4) "Covered employer" means an individual who:
 - (a) engages a covered individual to provide services in a private residence to:

- (i) an aged individual, as defined by department rule; or
 - (ii) a disabled individual, as defined by department rule;
 - (b) is not a covered provider; and
 - (c) is not a licensed health care facility within the state.
- (5) "Covered individual":
- (a) means an individual:
 - (i) whom a covered body engages; and
 - (ii) who may have direct patient access;
 - (b) includes:
 - (i) a nursing assistant, as defined by department rule;
 - (ii) a personal care aide, as defined by department rule;
 - (iii) an individual licensed to engage in the practice of nursing under Title 58, Chapter 31b, Nurse Practice Act;
 - (iv) a provider of medical, therapeutic, or social services, including a provider of laboratory and radiology services;
 - (v) an executive;
 - (vi) administrative staff, including a manager or other administrator;
 - (vii) dietary and food service staff;
 - (viii) housekeeping and maintenance staff; and
 - (ix) any other individual, as defined by department rule, who has direct patient access; and
 - (c) does not include a student, as defined by department rule, directly supervised by a member of the staff of the covered body or the student's instructor.
- (6) "Covered provider" means:
- (a) an end stage renal disease facility;
 - (b) a long-term care hospital;
 - (c) a nursing care facility;
 - (d) a small health care facility;
 - (e) an assisted living facility;
 - (f) a hospice;
 - (g) a home health agency; or
 - (h) a personal care agency.
- (7) "Direct patient access" means for an individual to be in a position where the individual could, in relation to a patient or resident of the covered body who engages the individual:
- (a) cause physical or mental harm;
 - (b) commit theft; or
 - (c) view medical or financial records.
- (8) "Engage" means to obtain one's services:
- (a) by employment;
 - (b) by contract;
 - (c) as a volunteer; or
 - (d) by other arrangement.
- (9) "Long-term care hospital":
- (a) means a hospital that is certified to provide long-term care services under the provisions of 42 U.S.C. Sec. 1395tt; and
 - (b) does not include a critical access hospital, designated under 42 U.S.C. Sec. 1395i-4(c)(2).
- (10) "Patient" means an individual who receives health care services from one of the following covered providers:
- (a) an end stage renal disease facility;

- (b) a long-term care hospital;
 - (c) a hospice;
 - (d) a home health agency; or
 - (e) a personal care agency.
- (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 the following covered providers:
- (a) a nursing care facility;
 - (b) a small health care facility;
 - (c) an assisted living facility; or
 - (d) a hospice that provides living quarters as part of its services.
- (13) "Residential setting" means a place provided by a covered provider:
- (a) for residents to live as part of the services provided by the covered provider; and
 - (b) where an individual who is not a resident also lives.
- (14) "Volunteer" means an individual, as defined by department rule, who provides services without pay or other compensation.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-2-239 Clearance required -- Application by covered providers, covered contractors, and individuals.

- (1) The definitions in Section 26B-2-238 apply to this section.
- (2)
- (a) A covered provider may engage a covered individual only if the individual has clearance.
 - (b) A covered contractor may supply a covered individual to a covered employer or covered provider only if the individual has clearance.
 - (c) A covered employer may engage a covered individual who does not have clearance.
- (3)
- (a) Notwithstanding Subsections (2)(a) and (b), if a covered individual does not have clearance, a covered provider may engage the individual or a covered contractor may supply the individual to a covered provider or covered employer:
 - (i) under circumstances specified by department rule; and
 - (ii) only while an application for clearance for the individual is pending.
 - (b) For purposes of Subsection (3)(a), an application is pending if the following have been submitted to the department for the individual:
 - (i) an application for clearance;
 - (ii) the personal identification information specified by the department under Subsection 26B-2-240(4)(b); and
 - (iii) any fees established by the department under Subsection 26B-2-240(9).
- (4)
- (a) As provided in Subsection (4)(b), each covered provider and covered contractor operating in this state shall:
 - (i) collect from each covered individual the contractor engages, and each individual the contractor intends to engage as a covered individual, the personal identification information specified by the department under Subsection 26B-2-240(4)(b); and
 - (ii) submit to the department an application for clearance for the individual, including:
 - (A) the personal identification information; and
 - (B) any fees established by the department under Subsection 26B-2-240(9).

- (b) Clearance granted for an individual pursuant to an application submitted by a covered provider or a covered contractor is valid until the later of:
 - (i) two years after the individual is no longer engaged as a covered individual; or
 - (ii) the covered provider's or covered contractor's next license renewal date.
- (5)
 - (a) A covered provider that provides services in a residential setting shall:
 - (i) collect the personal identification information specified by the department under Subsection 26B-2-240(4)(b) for each individual 12 years old or older, other than a resident, who resides in the residential setting; and
 - (ii) submit to the department an application for clearance for the individual, including:
 - (A) the personal identification information; and
 - (B) any fees established by the department under Subsection 26B-2-240(9).
 - (b) A covered provider that provides services in a residential setting may allow an individual 12 years old or older, other than a resident, to reside in the residential setting only if the individual has clearance.
- (6)
 - (a) An individual may apply for clearance by submitting to the department an application, including:
 - (i) the personal identification information specified by the department under Subsection 26B-2-240(4)(b); and
 - (ii) any fees established by the department under Subsection 26B-2-240(9).
 - (b) Clearance granted to an individual who makes application under Subsection (6)(a) is valid for two years unless the department determines otherwise based on the department's ongoing review under Subsection 26B-2-240(4)(a).

Renumbered and Amended by Chapter 305, 2023 General Session

26B-2-240 Department authorized to grant, deny, or revoke clearance -- Department may limit direct patient access -- Clearance.

- (1) The definitions in Section 26B-2-238 apply to this section.
- (2)
 - (a) As provided in this section, the department may grant, deny, or revoke clearance for an individual, including a covered individual.
 - (b) The department may limit the circumstances under which a covered individual granted clearance may have direct patient access, based on the relationship factors under Subsection (4) and other mitigating factors related to patient and resident protection.
 - (c) The department shall determine whether to grant clearance for each applicant for whom it receives:
 - (i) the personal identification information specified by the department under Subsection (4)(b); and
 - (ii) any fees established by the department under Subsection (9).
 - (d) The department shall establish a procedure for obtaining and evaluating relevant information concerning covered individuals, including fingerprinting the applicant and submitting the prints to the Criminal Investigations and Technical Services Division of the Department of Public Safety for checking against applicable state, regional, and national criminal records files.
- (3) The department may review the following sources to determine whether an individual should be granted or retain clearance, which may include:

- (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) juvenile court arrest, adjudication, and disposition records, as allowed under Section 78A-6-209;
 - (c) federal criminal background databases available to the state;
 - (d) the Division of Child and Family Services Licensing Information System described in Section 80-2-1002;
 - (e) child abuse or neglect findings described in Section 80-3-404;
 - (f) the Division of Aging and Adult Services vulnerable adult abuse, neglect, or exploitation database described in Section 26B-6-210;
 - (g) registries of nurse aids described in 42 C.F.R. Sec. 483.156;
 - (h) licensing and certification records of individuals licensed or certified by the Division of Professional Licensing under Title 58, Occupations and Professions; and
 - (i) the List of Excluded Individuals and Entities database maintained by the United States Department of Health and Human Services' Office of Inspector General.
- (4) The department shall adopt rules that:
- (a) specify the criteria the department will use to determine whether an individual is granted or retains clearance:
 - (i) based on an initial evaluation and ongoing review of information under Subsection (3); and
 - (ii) including consideration of the relationship the following may have to patient and resident protection:
 - (A) warrants for arrest;
 - (B) arrests;
 - (C) convictions, including pleas in abeyance;
 - (D) pending diversion agreements;
 - (E) adjudications by a juvenile court under Section 80-6-701 if the individual is over 28 years old and has been convicted, has pleaded no contest, or is subject to a plea in abeyance or diversion agreement for a felony or misdemeanor, or the individual is under 28 years old; and
 - (F) any other findings under Subsection (3); and
 - (b) specify the personal identification information that must be submitted by an individual or covered body with an application for clearance, including:
 - (i) the applicant's Social Security number; and
 - (ii) fingerprints.
- (5) For purposes of Subsection (4)(a), 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.
- (6) The Department of Public Safety, the Administrative Office of the Courts, the Division of Professional Licensing, and any other state agency or political subdivision of the state:
- (a) shall allow the department to review the information the department may review under Subsection (3); and
 - (b) except for the Department of Public Safety, may not charge the department for access to the information.
- (7) The department shall adopt measures to protect the security of the information it reviews under Subsection (3) and strictly limit access to the information to department employees responsible for processing an application for clearance.

- (8) The department may disclose personal identification information specified under Subsection (4)(b) to other divisions and offices 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).
- (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 26B-2-241; and
 - (c) other department costs related to the processing of the application and the ongoing review of information pursuant to Subsection (4)(a) to determine whether clearance should be retained.

Renumbered and Amended by Chapter 305, 2023 General Session

Superseded 7/1/2024

26B-2-241 Direct Access Clearance System database -- Contents and use -- Department of Public Safety retention of information and notification -- No civil liability for providing information.

- (1) The definitions in Section 26B-2-238 apply to this section.
- (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 26B-4-124; and
 - (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 26B-4-124.
- (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 (2)(a)(i) and (2)(b)(i) for:
 - (i) covered individuals engaged by the covered provider or covered contractor; and
 - (ii) individuals:
 - (A) whom the covered provider or covered contractor could engage as covered individuals; and
 - (B) who have provided the covered provider or covered contractor with sufficient personal identification information to uniquely identify the individual in the database.
 - (c)
 - (i) The department may establish fees, in accordance with Section 63J-1-504, for use of the database by a covered contractor.
 - (ii) The fees may include, in addition to any fees established by the department under Subsection 26B-2-240(9), an initial set-up fee, an ongoing access fee, and a per-use fee.
- (4) The Criminal Investigations and Technical Services Division within the Department of Public Safety shall:
 - (a) retain, separate from other division records, personal information, including any fingerprints, sent to the division by the department pursuant to Subsection 26B-2-240(3)(a); 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;
 - (ii) an arrest;
 - (iii) a conviction, including a plea in abeyance; or
 - (iv) a pending diversion agreement.
- (5) A covered body is not civilly liable for submitting to the department information required under this section, Section 26B-2-239, or Section 26B-2-240, or refusing to employ an individual who does not have clearance to have direct patient access under Section 26B-2-240.

Renumbered and Amended by Chapter 305, 2023 General Session

Effective 7/1/2024

26B-2-241 Direct Access Clearance System database -- Contents and use -- Department of Public Safety retention of information and notification -- No civil liability for providing information.

- (1) The definitions in Section 26B-2-238 apply to this section.
- (2) The department shall create and maintain a Direct Access Clearance System database, which:
 - (a) includes the names of individuals for whom:
 - (i) the department has received an application for clearance under this part; or
 - (ii) the Bureau of Emergency Medical Services has received an application for background clearance under Section 53-2d-410; and
 - (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 53-2d-410.
- (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 (2)(a)(i) and (2)(b)(i) for:
 - (i) covered individuals engaged by the covered provider or covered contractor; and
 - (ii) individuals:
 - (A) whom the covered provider or covered contractor could engage as covered individuals; and
 - (B) who have provided the covered provider or covered contractor with sufficient personal identification information to uniquely identify the individual in the database.
 - (c)
 - (i) The department may establish fees, in accordance with Section 63J-1-504, for use of the database by a covered contractor.
 - (ii) The fees may include, in addition to any fees established by the department under Subsection 26B-2-240(9), an initial set-up fee, an ongoing access fee, and a per-use fee.
- (4) The Criminal Investigations and Technical Services Division within the Department of Public Safety shall:
 - (a) retain, separate from other division records, personal information, including any fingerprints, sent to the division by the department pursuant to Subsection 26B-2-240(3)(a); 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;
 - (ii) an arrest;
 - (iii) a conviction, including a plea in abeyance; or
 - (iv) a pending diversion agreement.
- (5) A covered body is not civilly liable for submitting to the department information required under this section, Section 26B-2-239, or Section 26B-2-240, or refusing to employ an individual who does not have clearance to have direct patient access under Section 26B-2-240.

Renumbered and Amended by Chapter 305, 2023 General Session
Amended by Chapter 310, 2023 General Session

26B-2-242 Visitation policy.

- (1) As used in this section:
- (a) "Patient" means an individual who receives care or services from a health care facility.
 - (b) "Personal representative" means an individual described in 45 C.F.R. Sec. 164.502(g).
 - (c) "Primary visitor" means an individual who a patient designates under Subsection (3).
- (2) A health care facility shall establish visitation policies and procedures that shall, at a minimum, include provisions regarding:
- (a) infection control;
 - (b) infection control education for visitors;
 - (c) personal protective equipment requirements when necessary for infection control;
 - (d) for a visitor who is not a primary visitor:
 - (i) maximum duration of visits;
 - (ii) maximum number of visitors a patient may have each day;
 - (iii) maximum number of visitors a patient may have at one time; and
 - (e) the individual or position at the health care facility that is responsible for ensuring that staff adhere to the policies and procedures.
- (3)
- (a) A patient or the patient's personal representative may designate one individual as a primary visitor.
 - (b) Except as provided in Subsection (5), a health care facility may not limit the duration or frequency of a primary visitor's visits to the designating patient.
- (4) A health care facility may not:
- (a) require a visitor or primary visitor to comply with infection control measures that are more restrictive than the infection control measures the health care facility requires of the health care facility's staff;
 - (b) require a visitor or primary visitor to show proof of vaccination or immunization status;
 - (c) except as provided in Subsection (5), prohibit physical contact between the visitor and the patient the visitor is visiting; or
 - (d) deny a visitor or primary visitor access to the patient unless visitation is denied, modified, or limited as provided in Subsection (5).
- (5) A health care facility may:
- (a) exclude certain areas of the health care facility from visitor and primary visitor access;
 - (b) require a visitor or a primary visitor to agree in writing to follow the health care facility's visitation policies and procedures before allowing access to the patient;
 - (c) suspend or refuse in-person visitation for a visitor or a primary visitor if the visitor or primary visitor violates the health care facility's visitation policies and procedures;

- (d) remove a visitor or primary visitor or deny visitation, if the patient is undergoing a procedure or receiving treatment that would be impeded by visitation;
- (e) deny visitation for a visitor or primary visitor if the patient or personal representative objects to the visit; or
- (f) prohibit physical contact or visitation if:
 - (i) the visit or physical contact is prohibited by law;
 - (ii) the patient is in the custody of the state; or
 - (iii) the health care facility determines the visit or physical contact:
 - (A) creates a physical safety risk to the patient, the visitor or primary visitor, or the health care facility's staff;
 - (B) is counter therapeutic to the patient's well-being; or
 - (C) is disruptive to the patient's care or treatment.
- (6) A health care facility shall provide the department with a copy of the health care facility's visitation policies and procedures:
 - (a) upon the department's request; and
 - (b) when the health care facility:
 - (i) obtains a license to operate from the department;
 - (ii) renews the license from the department; and
 - (iii) changes ownership.
- (7) A health care facility shall make visitation policies and procedures created in accordance with this section available on the health care facility's website.
- (8) The department shall provide:
 - (a) a description of the requirements of this section on the department's website; and
 - (b) a method for the public to report a violation of this section.
- (9) This section does not apply to the Utah State Hospital.

Enacted by Chapter 276, 2023 General Session

Part 3

Long Term Care Ombudsman

26B-2-301 Definitions.

As used in this part:

- (1) "Assisted living facility" means the same as that term is defined in Section 26B-2-201.
- (2) "Auxiliary aids and services" means items, equipment, or services that assist in effective communication between an individual who has a mental, hearing, vision, or speech disability and another individual.
- (3) "Division" means the Division of Customer Experience.
- (4) "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.
- (5) "Intermediate care facility" means the same as that term is defined in Section 58-15-101.
- (6)
 - (a) "Long-term care facility" means:

- (i) a skilled nursing facility;
 - (ii) except as provided in Subsection (6)(b), an intermediate care facility;
 - (iii) a nursing home;
 - (iv) a small health care facility;
 - (v) a small health care facility type N; or
 - (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.
- (7) "Ombudsman" means the administrator of the long-term care ombudsman program, created pursuant to Section 26B-2-303.
- (8) "Ombudsman program" means the Long-Term Care Ombudsman Program.
- (9) "Resident" means an individual who resides in a long-term care facility.
- (10) "Skilled nursing facility" means the same as that term is defined in Section 58-15-101.
- (11) "Small health care facility" means the same as that term is defined in Section 26B-2-201.
- (12) "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.

Renumbered and Amended by Chapter 305, 2023 General Session

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 long-term care facilities created to serve their specialized needs and problems; and that for the health, safety, and welfare of these citizens, the state should take appropriate action 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.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-2-303 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 26B-6-110, 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.

Renumbered and Amended by Chapter 305, 2023 General Session

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.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-2-305 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.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-2-306 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:

- (a) making inquiries and obtaining information;
 - (b) holding investigatory hearings;
 - (c) entering and inspecting any premises, without notice to the facility, provided the investigator presents, upon entering the premises, identification as an individual authorized 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.
 - (e) 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.

Renumbered and Amended by Chapter 305, 2023 General Session

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 not be disclosed by the ombudsman unless:
 - (a) the complainant or resident, or the legal representative of either, consents in 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 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
 - (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.

Renumbered and Amended by Chapter 305, 2023 General Session

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 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
 - (e) offer or accept any compensation, gratuity, or promise thereof in an effort to affect the outcome of a matter being investigated or of a matter that is before the ombudsman for determination of whether an investigation should be conducted.
- (2) Violation of any provision of this part constitutes a class B misdemeanor.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-2-309 Assisted living facility transfers.

- (1) After the ombudsman receives a notice described in Subsection 26B-2-237(2)(b), the ombudsman shall:
- (a) review the notice; and
 - (b) contact the resident or the resident's responsible person to conduct a voluntary interview.
- (2) The voluntary interview described in Subsection (1)(b) shall:
- (a) provide the resident with information about the services available through the ombudsman;
 - (b) confirm the details in the notice described in Subsection 26B-2-237(2)(b), including:
 - (i) the name of the resident;
 - (ii) the reason for the transfer or discharge;
 - (iii) the date of the transfer or discharge; and
 - (iv) a description of the resident's next living arrangement; and
 - (c) provide the resident an opportunity to discuss any concerns or complaints the resident may have regarding:
 - (i) the resident's treatment at the assisted living facility; and
 - (ii) whether the assisted living facility treated the resident fairly when the assisted living facility transferred or discharged the resident.
- (3) On or before November 1 of each year, the ombudsman shall provide a report to the Health and Human Services Interim Committee regarding:

- (a) the reasons why assisted living facilities are transferring residents;
- (b) where residents are going upon transfer or discharge; and
- (c) the type and prevalence of complaints that the ombudsman receives regarding assisted living facilities, including complaints about the process or reasons for a transfer or discharge.

Renumbered and Amended by Chapter 305, 2023 General Session

Part 4 Child Care Licensing

26B-2-401 Definitions.

As used in this part:

- (1) "Capacity limit" means the maximum number of qualifying children that a regulated provider may care for at any given time, in accordance with rules made by the department.
- (2)
 - (a) "Center based child care" means child care provided in a facility or program that is not the home of the provider.
 - (b) "Center based child care" does not include:
 - (i) residential child care; or
 - (ii) care provided in a facility or program exempt under Section 26B-2-405.
- (3) "Certified provider" means a person who holds a certificate from the department under Section 26B-2-404.
- (4) "Child care" means continuous care and supervision of a qualifying child, that is:
 - (a) in lieu of care ordinarily provided by a parent in the parent's home;
 - (b) for less than 24 hours a day; and
 - (c) for direct or indirect compensation.
- (5) "Child care program" means a child care facility or program operated by a regulated provider.
- (6) "Exempt provider" means a person who provides care described in Subsection 26B-2-405(2).
- (7) "Licensed provider" means a person who holds a license from the department under Section 26B-2-403.
- (8) "Licensing committee" means the Child Care Provider Licensing Committee created in Section 26B-1-204.
- (9) "Public school" means:
 - (a) a school, including a charter school, that:
 - (i) is directly funded at public expense; and
 - (ii) provides education to qualifying children for any grade from first grade through twelfth grade;or
 - (b) a school, including a charter school, that provides:
 - (i) preschool or kindergarten to qualifying children, regardless of whether the preschool or kindergarten is funded at public expense; and
 - (ii) education to qualifying children for any grade from first grade through twelfth grade, if each grade, from first grade to twelfth grade, that is provided at the school, is directly funded at public expense.
- (10) "Qualifying child" means an individual who is:
 - (a)
 - (i) under the age of 13 years old; or

- (ii) under the age of 18 years old, if the person has a disability; and
 - (b) a child of:
 - (i) a person other than the person providing care to the child;
 - (ii) a regulated provider, if the child is under the age of four; or
 - (iii) an employee or owner of a licensed child care center, if the child is under the age of four.
- (11) "Regulated provider" means a licensed provider or certified provider.
- (12) "Residential child care" means child care provided in the home of the provider.

Amended by Chapter 249, 2023 General Session
Renumbered and Amended by Chapter 305, 2023 General Session

26B-2-402 Duties of the department -- Enforcement of part -- Licensing committee requirements.

- (1) With regard to residential child care licensed or certified under this part, the department may:
- (a) make and enforce rules to implement this part and, as necessary to protect qualifying children's common needs for a safe and healthy environment, to provide for:
 - (i) adequate facilities and equipment; and
 - (ii) competent caregivers, considering the age of the children and the type of program offered by the licensee; and
 - (b) make and enforce rules necessary to carry out the purposes of this part, in the following areas:
 - (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;
 - (iv) changes of ownership or name, changes in licensure status, and changes in 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 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 types of child care provided.
- (7) Notwithstanding the definition of "qualifying child" in Section 26B-2-401, 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.
- (8) Notwithstanding Subsection (1)(a)(i), the licensing committee and the department may not exclude floor space used for furniture, fixtures, or equipment from the minimum square footage requirement for indoor and outdoor areas if the furniture, fixture, or equipment is used:
 - (a) by qualifying children;
 - (b) for the care of qualifying children; or
 - (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.
- (11) The department shall set and collect licensing and other fees in accordance with Section 26B-1-209.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-2-403 Licensure requirements -- Expiration -- Renewal.

- (1) Except as provided in Section 26B-2-405, 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
 - (c) the person:
 - (i) provides child care;
 - (ii) is not required to obtain a license under Subsection (1)(a) or (b); and
 - (iii) requests to be licensed.
- (2) Notwithstanding Subsection (1), a certified provider may, in accordance with rules made by the department under Subsection 26B-2-402(3), exceed the certified provider's capacity limit to provide after school child care without obtaining a license from the department.
- (3) The department may issue licenses for a period not exceeding 24 months to child care providers who meet the requirements of:
 - (a) this part; and
 - (b) the department's rules governing child care programs.
- (4) A license issued under this part is not assignable or transferable.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-2-404 Residential Child Care Certificate.

- (1) Except as provided in Section 26B-2-405, a person shall obtain a Residential Child Care Certificate from the department if:
 - (a) the person provides residential child care for seven or eight qualifying children; or
 - (b) the person:
 - (i) provides residential child care for six or less qualifying children; and
 - (ii) requests to be certified.
- (2) The minimum qualifications for a Residential Child Care Certificate are:
 - (a) the submission of:
 - (i) an application in the form prescribed by the department;
 - (ii) a certification and criminal background fee established in accordance with Section 26B-1-209; and
 - (iii) in accordance with Section 26B-2-406, identifying information for each adult person and each juvenile age 12 through 17 years old who resides in the provider's home:
 - (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; and
 - (C) to discover whether the person is listed in the Licensing Information System described in Section 80-2-1002;
 - (b) an initial and annual inspection of the provider's home within 90 days of sending an intent to inspect notice to:
 - (i) check the immunization record, as defined in Section 53G-9-301, of each qualifying child who receives child care in the provider's home;
 - (ii) identify serious sanitation, fire, and health hazards to qualifying children; and
 - (iii) make appropriate recommendations; and
 - (c) annual training consisting of 10 hours of department-approved training as specified by the department by administrative rule, including a current department-approved CPR and first aid course.
- (3) If a serious sanitation, fire, or health hazard has been found during an inspection conducted pursuant to Subsection (2)(b), the department shall require corrective action for the serious hazards found and make an unannounced follow up inspection to determine compliance.
- (4) In addition to an inspection conducted pursuant to Subsection (2)(b), the department may inspect the home of a certified provider in response to a complaint of:
 - (a) child abuse or neglect;
 - (b) serious health hazards in or around the provider's home; or
 - (c) providing residential child care without the appropriate certificate or license.
- (5) With respect to residential child care, the department may only make and enforce rules necessary to implement this section.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-2-405 Exclusions from part -- Criminal background checks by an excluded person.

- (1)
 - (a) Except as provided in Subsection (1)(b), the provisions and requirements of this part do not apply to:
 - (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;
 - (iii) a health care facility licensed under Part 2, Health Care Facility Licensing and Inspection;
 - (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;
 - (vii) center based child care for four or less qualifying children, unless the provider requests to be licensed under Section 26B-2-403; or
 - (viii) residential child care for six or less qualifying children, unless the provider requests to be licensed under Section 26B-2-403 or certified under Section 26B-2-404.
- (b) Notwithstanding Subsection (1)(a), a person who does not hold a license or certificate from the department under this 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 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 organization;
 - (d) care provided to a qualifying child as part of a summer camp that operates on federal land pursuant to a federal permit;
 - (e) care provided by an organization that:
 - (i) qualifies for tax exempt status under Section 501(c)(3) of the Internal Revenue Code;
 - (ii) provides care pursuant to a written agreement with:
 - (A) a municipality, as defined in Section 10-1-104, that provides oversight for the program; or
 - (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
 - (f) care provided to a qualifying child at a facility where:
 - (i) the parent or guardian of the qualifying child is at all times physically present in the building where the care is provided and the parent or guardian is near enough to reach the child within five minutes if needed;
 - (ii) the duration of the care is less than four hours for an individual qualifying child in any one day;
 - (iii) the care is provided on a sporadic basis;
 - (iv) the care does not include diapering a qualifying child; and
 - (v) the care does not include preparing or serving meals to a qualifying child.
- (3) An exempt provider shall submit to the department:

- (a) the information required under Subsections 26B-2-406(1) and (2); and
- (b) of the children receiving care from the exempt provider:
 - (i) the number of children who are less than two years old;
 - (ii) the number of children who are at least two years old and less than five years old; and
 - (iii) the number of children who are five years old or older.
- (4) An exempt provider shall post, in a conspicuous location near the entrance of the exempt provider's facility, a notice prepared by the department that:
 - (a) states that the facility is exempt from licensure and certification; and
 - (b) provides the department's contact information for submitting a complaint.
- (5)
 - (a) Except as provided in Subsection (5)(b), the department may not release the information the department collects from exempt providers under Subsection (3).
 - (b) The department may release an aggregate count of children receiving care from exempt providers, without identifying a specific provider.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-2-406 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 part shall submit to the department the name and other identifying information, which shall include fingerprints, of existing, new, and proposed:
 - (i) owners;
 - (ii) directors;
 - (iii) members of the governing body;
 - (iv) employees;
 - (v) providers of care;
 - (vi) volunteers, except parents of children enrolled in the programs; and
 - (vii) all adults residing in a residence where child care is provided.
 - (b)
 - (i) The Utah Division of Criminal Investigation and Technical Services within the Department of Public Safety shall process the information required under Subsection (1)(a) 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.
- (2)
 - (a) Each person requesting a residential certificate or to be licensed or to renew a license under this part shall submit to the department the name and other identifying information of any person age 12 through 17 who resides in the residence where the child care is provided. The identifying information required for a person age 12 through 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
 - (ii) the person described in Subsection (1) is:
 - (A) over the age of 28; and
 - (B) has been convicted, has pleaded no contest, or is currently subject to a plea in abeyance or diversion agreement for a felony or misdemeanor.
- (3) Except as provided in Subsections (4) and (5), a licensee under this 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:
 - (a) provide child care;
 - (b) provide volunteer services for a child care program or an exempt provider;
 - (c) reside at the premises where child care is provided; or
 - (d) function as an owner, director, or member of the governing body of a child care program or an exempt provider.
- (4)
 - (a) The department may, by rule, exempt the following from the restrictions of Subsection (3):
 - (i) specific misdemeanors; and
 - (ii) specific acts adjudicated in juvenile court, which if committed by an adult would be misdemeanors.
 - (b) In accordance with criteria established by rule, the executive director may consider and exempt individual cases not otherwise exempt under Subsection (4)(a) from the restrictions of Subsection (3).
- (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.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-2-407 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.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-2-408 Investigations -- Records.

- (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.
- (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 suggests actions or conditions that could pose a serious risk to the safety or well-being of a qualifying child;
 - (ii) as necessary:
 - (A) encourage the complainant to disclose the minimum personal identifying information necessary, including the complainant's full name, for the department to attempt to subsequently communicate with the complainant;
 - (B) inform the complainant that the department may not investigate an anonymous 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
 - (D) inform the complainant that the department may be limited in its use of information provided by a confidential complainant, as provided in Subsection (3)(c)(ii)(B); 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, 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
 - (iii) may, during a regularly scheduled annual survey, inform the exempt provider, licensee, or certificate holder that is the subject of the complaint of allegations or concerns raised by:
 - (A) the anonymous complainant; or
 - (B) the complainant who reported events more than six weeks after the events occurred.
 - (c)
 - (i) If the complainant elects to be a confidential complainant, the department shall determine whether the complainant wishes to remain confidential:
 - (A) only until the investigation of the complaint has been completed; or
 - (B) indefinitely.
 - (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:
 - (l) notwithstanding Subsection 63G-2-201(5)(b), may not disclose the name of the complainant, including to the subject of the complaint; and

- (II) may not use information provided by the complainant to substantiate an alleged violation of state law or department rule unless the department independently corroborates the information.
- (4)
- (a) Prior to conducting an investigation of a child care program or an exempt provider in response to a complaint, a department investigator shall review the complaint with 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
 - (iii) prior to the investigation, the investigator informs the subject of the complaint of:
 - (A) except as provided in Subsection (3)(c), the name of the complainant; and
 - (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.
- (5) If the department is unable to substantiate a complaint, any record related to the complaint or the investigation of the complaint:
- (a) shall be classified under Title 63G, Chapter 2, Government Records Access and Management Act, as:
 - (i) a private or controlled record if appropriate under Section 63G-2-302 or 63G-2-304; or
 - (ii) a protected record under Section 63G-2-305; and
 - (b) if disclosed in accordance with Subsection 63G-2-201(5)(b), may not identify an 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.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-2-409 License violations -- Penalties.

- (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
 - (c) conduct adverse to the public health, morals, welfare, and safety of children under 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 part, or rules made pursuant to this 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.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-2-410 Offering or providing care in violation of part -- Misdemeanor.

Notwithstanding the provisions of Section 26B-1-224, a person who provides or offers child care except as provided by this part is guilty of a class A misdemeanor.

Renumbered and Amended by Chapter 305, 2023 General Session

Part 5 Certifications

26B-2-501 Definitions.

As used in this part:

- (1) "Capacity building" means strengthening an individual's or a community's ability to participate in shared decision making.
- (2) "Community health worker" means an individual who:
 - (a) works to improve a social determinant of health;
 - (b) acts as an intermediary between a community and health services or social services to:
 - (i) facilitate access to services; or
 - (ii) improve the quality and cultural competence of service delivery; and
 - (c) increases health knowledge and self-sufficiency of an individual or a community through outreach, capacity building, community education, informal counseling, social support, and other similar activities.
- (3) "Core-skill education" means education regarding each of the following:
 - (a) self-reliance;
 - (b) outreach;
 - (c) capacity building;
 - (d) individual and community assessment;
 - (e) coordination skills;
 - (f) relationship building;
 - (g) facilitation of services;
 - (h) communication;
 - (i) professional conduct; and
 - (j) health promotion.
- (4) "Core-skill training" means:
 - (a) 90 hours of competency-based education; and
 - (b) 300 hours of community involvement as determined by the department through rule.
- (5) "Social determinate of health" means any condition in which an individual or a 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.
- (6) "State certified" means that an individual has obtained the state certification described in Subsection 26B-2-504(1).

Renumbered and Amended by Chapter 305, 2023 General Session

26B-2-502 Rulemaking.

The department may make rules as authorized by this part in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-2-503 Recommendation for Community Health Worker Certification Advisory Board.

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.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-2-504 Certification -- Unlawful conduct.

- (1) The department shall issue to an individual who qualifies under Section 26B-2-505 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.
- (3) The department may fine an individual who violates Subsection (2) in an amount up to \$100.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-2-505 Qualifications for certification.

- (1) The department shall issue a certification described in Section 26B-2-504 to a community health worker if the community health worker has:
 - (a) completed core-skill training administered by:
 - (i) the department;
 - (ii) a state professional association that:
 - (A) is associated with the community health worker profession; and
 - (B) is aligned with a national community health worker professional association; or
 - (iii) an entity designated by a state professional association described in Subsection (1)(a)(ii);
 - (b) completed training regarding basic medical confidentiality requirements, including the confidentiality requirements of HIPAA as defined in Section 26B-8-514;
 - (c) completed an application as designed by the department with a signed statement agreeing to abide by national standards of practice and ethics for community health workers; and
 - (d) paid a fee established by the department under Section 63J-1-504.
- (2) A community health worker with at least 4,000 hours of experience as a community health worker is exempt from the core-skill training requirement described in Subsection (1)(a).

Renumbered and Amended by Chapter 305, 2023 General Session

26B-2-506 Certification is voluntary.

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

Renumbered and Amended by Chapter 305, 2023 General Session

26B-2-507 Term of certification - Expiration - Renewal.

- (1) Subject to Subsection (2), the department shall issue each certification under Section 26B-2-504 in accordance with a two-year renewal cycle.
- (2) The department may by rule extend or shorten a renewal cycle by as much as one 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.
 - (b) A rule created by the department under Subsection (4)(a)(i) shall include a requirement regarding:
 - (i) continuing education; and
 - (ii) maintaining professional conduct.

Renumbered and Amended by Chapter 305, 2023 General Session

**Part 6
Mammography Quality Assurance**

26B-2-601 Definitions.

As used in this part:

- (1) "Diagnostic mammography" means mammography performed on a woman having suspected breast cancer.
- (2) "Facility" means a facility that provides screening or diagnostic breast mammography services.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-2-602 Department rulemaking authority.

The department shall make rules under Title 63G, Chapter 3, Utah Administrative Rulemaking Act:

- (1) establishing quality assurance standards for all facilities performing screening or diagnostic mammography and developing mammogram x-ray films, including notification and procedures for clinical follow-up of abnormal mammograms;
- (2) providing for:
 - (a) collection and periodic reporting of mammography examinations and clinical follow-up data to the department;
 - (b) certification and revocation of certification of mammogram facilities;
 - (c) inspection of mammogram facilities, including entry of agents of the department into the facilities for inspections;
 - (d) setting fees for certification; and

- (e) an appeal process regarding department certification decisions; and
- (3) requiring a facility that is certified under Section 26B-2-603 to comply with the notification requirement described in Section 26B-2-605.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-2-603 Mammogram provider certification.

- (1) A mammogram may only be performed in a facility the department certifies as meeting:
 - (a) the qualifications and standards under Section 26B-2-602; and
 - (b) the registration, licensing, and inspection requirements for radiation sources under Section 19-3-104.
- (2) Facilities desiring to perform mammograms shall request certification as a mammogram provider by the department under procedures established by department rule.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-2-604 Department duties.

The department shall:

- (1) enforce rules established under this part;
- (2) implement and enforce the notice requirement in Section 26B-2-605;
- (3) authorize qualified department agents to conduct inspections of mammogram 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.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-2-605 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 26B-2-603 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."

Renumbered and Amended by Chapter 305, 2023 General Session

26B-2-606 Breast cancer mortality reduction program.

The department shall create a breast cancer mortality reduction program. The program shall include:

- (1) education programs for health professionals regarding skills in cancer screening, diagnosis, referral, treatment, and rehabilitation based on current scientific knowledge;
- (2) education programs to assist the public in understanding:
 - (a) the benefits of regular breast cancer screening;
 - (b) resources available in the medical care system for cancer screening, diagnosis, referral, treatment, and rehabilitation; and
 - (c) available options for treatment of breast cancer and the ramifications of each approach; and
- (3) subsidized screening mammography for low-income women as determined by the department standards.

Renumbered and Amended by Chapter 305, 2023 General Session

Chapter 3 Health Care - Administration and Assistance

Part 1 Health Care Assistance

26B-3-101 Definitions.

As used in this chapter:

- (1) "Applicant" means any person who requests assistance under the medical programs of the state.
- (2) "CMS" means the Centers for Medicare and Medicaid Services within the United States Department of Health and Human Services.
- (3) "Division" means the Division of Integrated Healthcare within the department, established under Section 26B-3-102.
- (4) "Enrollee" or "member" means an individual whom the department has determined to be eligible for assistance under the Medicaid program.
- (5) "Medicaid program" means the state program for medical assistance for persons who are eligible under the state plan adopted pursuant to Title XIX of the federal Social Security Act.
- (6) "Medical assistance" means services furnished or payments made to or on behalf of a member.
- (7)
 - (a) "Passenger vehicle" means a self-propelled, two-axle vehicle intended primarily for operation on highways and used by an applicant or recipient to meet basic transportation needs and has a fair market value below 40% of the applicable amount of the federal luxury passenger automobile tax established in 26 U.S.C. Sec. 4001 and adjusted annually for inflation.
 - (b) "Passenger vehicle" does not include:
 - (i) a commercial vehicle, as defined in Section 41-1a-102;
 - (ii) an off-highway vehicle, as defined in Section 41-1a-102; or
 - (iii) a motor home, as defined in Section 13-14-102.
- (8) "PPACA" means the same as that term is defined in Section 31A-1-301.
- (9) "Recipient" means a person who has received medical assistance under the Medicaid program.

Amended by Chapter 306, 2023 General Session

26B-3-102 Division -- Creation.

There is created, within the department, the Division of Integrated Healthcare which shall be responsible for implementing, organizing, and maintaining the Medicaid program and the Children's Health Insurance Program established in Section 26B-3-902, in accordance with the provisions of this chapter and applicable federal law.

Renumbered and Amended by Chapter 306, 2023 General Session

26B-3-103 State Medicaid director -- Appointment -- Responsibilities.

- (1) The state Medicaid director shall be appointed by the governor, after consultation with the executive director, with the advice and consent of the Senate.
- (2) The state Medicaid director may employ other employees as necessary to implement the provisions of this chapter, and shall:
 - (a) administer the responsibilities of the division as set forth in this chapter;
 - (b) administer the division's budget; and
 - (c) establish and maintain a state plan for the Medicaid program in compliance with federal law and regulations.

Renumbered and Amended by Chapter 306, 2023 General Session

26B-3-104 Division responsibilities -- Emphasis -- Periodic assessment.

- (1) In accordance with the requirements of Title XIX of the Social Security Act and applicable federal regulations, the division is responsible for the effective and impartial administration of this chapter in an efficient, economical manner. The division shall:
 - (a) establish, on a statewide basis, a program to safeguard against unnecessary or inappropriate use of Medicaid services, excessive payments, and unnecessary or inappropriate hospital admissions or lengths of stay;
 - (b) deny any provider claim for services that fail to meet criteria established by the division concerning medical necessity or appropriateness; and
 - (c) place its emphasis on high quality care to recipients in the most economical and cost-effective manner possible, with regard to both publicly and privately provided services.
- (2) The division shall implement and utilize cost-containment methods, where possible, which may include:
 - (a) prepayment and postpayment review systems to determine if utilization is reasonable and necessary;
 - (b) preadmission certification of nonemergency admissions;
 - (c) mandatory outpatient, rather than inpatient, surgery in appropriate cases;
 - (d) second surgical opinions;
 - (e) procedures for encouraging the use of outpatient services;
 - (f) consistent with Sections 26B-3-105 and 58-17b-606, a Medicaid drug program;
 - (g) coordination of benefits; and
 - (h) review and exclusion of providers who are not cost effective or who have abused the Medicaid program, in accordance with the procedures and provisions of federal law and 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.

Renumbered and Amended by Chapter 306, 2023 General Session

26B-3-105 Medicaid drug program -- Preferred drug list.

- (1) A Medicaid drug program developed by the department under Subsection 26B-3-104(2)(f):
 - (a) shall, notwithstanding Subsection 26B-3-104(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 Sections 26B-3-302 through 26B-3-309 regarding the 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
 - (e) except as prohibited by Subsections 58-17b-606(4) and (5), shall establish the prior authorization requirements established under Subsections (1)(c) and (d) which shall 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) As used in this Subsection (2):
 - (i) "Immunosuppressive drug":
 - (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.
 - (ii) 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 Sections 26B-3-302 through 26B-3-309 regarding the 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).
 - (f) The department shall grant a prior authorization for a sedative hypnotic that is not on the preferred drug list under Subsection (2)(e), if the health care provider has 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;
 - (iv) objective clinical evidence that a patient is at high risk of adverse events due to a 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) As used in this Subsection (3), "psychotropic drug" means the following classes of drugs:
 - (i) atypical anti-psychotic;
 - (ii) anti-depressant;
 - (iii) anti-convulsant/mood stabilizer;
 - (iv) anti-anxiety; and
 - (v) attention deficit hyperactivity disorder stimulant.
 - (b)
 - (i) The department shall develop a preferred drug list for psychotropic drugs.
 - (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 drug.

- (iii) A health care provider may not override Section 58-17b-606 by writing "dispense as written" on a prescription.
- (c) The department, and a Medicaid accountable care organization that is responsible for providing behavioral health, shall:
 - (i) establish a system to:
 - (A) track health care provider prescribing patterns for psychotropic drugs;
 - (B) educate health care providers who are not complying with the preferred drug list; 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.

Renumbered and Amended by Chapter 306, 2023 General Session

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.
- (2)
 - (a) The department may enter into an agreement with a financial institution doing business in the state to develop and operate a data match system to identify an applicant's or enrollee's assets that:
 - (i) uses automated data exchanges to the maximum extent feasible; and
 - (ii) requires a financial institution each month to provide the name, record address, Social Security number, other taxpayer identification number, or other identifying information for each applicant or enrollee who maintains an account at the financial institution.
 - (b) The department may pay a reasonable fee to a financial institution for compliance with this Subsection (2), as provided in Section 7-1-1006.
 - (c) 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 this Subsection (2).
 - (d) The department may disclose a financial record obtained from a financial institution under this section only for the purpose of, and to the extent necessary in, verifying eligibility as provided in this section and Section 26B-3-903.

Renumbered and Amended by Chapter 306, 2023 General Session

26B-3-107 Dental benefits.

- (1)

- (a) Except as provided in Subsection (8), the division may establish a competitive bid process to bid out Medicaid dental benefits under this chapter.
- (b) The division may bid out the Medicaid dental benefits separately from other program benefits.
- (2) The division shall use the following criteria to evaluate dental bids:
 - (a) ability to manage dental expenses;
 - (b) proven ability to handle dental insurance;
 - (c) efficiency of claim paying procedures;
 - (d) provider contracting, discounts, and adequacy of network; and
 - (e) other criteria established by the department.
- (3) The division shall request bids for the program's benefits at least once every five years.
- (4) The division's contract with dental plans for the program's benefits shall include risk sharing provisions in which the dental plan must accept 100% of the risk for any difference between the division's premium payments per client and actual dental expenditures.
- (5) The division may not award contracts to:
 - (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:
 - (i) there are no responsive bidders; or
 - (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.
- (8)
 - (a) The division may:
 - (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 the United 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.
 - (b) The department shall reimburse a dental hygienist for dental services performed in a public health setting and in accordance with Subsection (9)(c) beginning on the earlier of:
 - (i) January 1, 2023; or
 - (ii) 30 days after the date on which the replacement of the department's Medicaid Management Information System software is complete.

- (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
 - (ii) the dental hygienist provides the service within the scope of practice described in Section 58-69-801.
- (d) Before November 30 of each year in which the department reimburses dental hygienists in accordance with Subsection (9)(c), the department shall report to the Health and Human Services Interim Committee, for the previous fiscal year:
 - (i) the number and geographic distribution of dental hygienists who requested to be reimbursed directly;
 - (ii) the total number of Medicaid enrollees who were served by a dental hygienist who were reimbursed under this Subsection (9);
 - (iii) the total amount reimbursed directly to dental hygienists under this Subsection (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.

Renumbered and Amended by Chapter 306, 2023 General Session

26B-3-108 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 Act, the requirements of Title XIX, and applicable federal regulations.
 - (b) The rules adopted under Subsection (2)(a) shall include, in addition to other rules necessary to implement the program:
 - (i) the standards used by the department for determining eligibility for Medicaid services;
 - (ii) the services and benefits to be covered by the Medicaid program;
 - (iii) reimbursement methodologies for providers under the Medicaid program; and
 - (iv) a requirement that:
 - (A) a person receiving Medicaid services shall participate in the electronic exchange of clinical health records established in accordance with Section 26B-8-411 unless the individual opts out of participation;
 - (B) prior to enrollment in the electronic exchange of clinical health records the enrollee shall receive notice of enrollment in the electronic exchange of clinical health records and the right to opt out of participation at any time; and

- (C) beginning July 1, 2012, when the program sends enrollment or renewal information to the enrollee and when the enrollee logs onto the program's website, the enrollee shall receive notice of the right to opt out of the electronic exchange of clinical health records.
- (3)
- (a) The department shall, in accordance with Subsection (3)(b), report to the Social Services Appropriations Subcommittee when the department:
- (i) implements a change in the Medicaid State Plan;
 - (ii) initiates a new Medicaid waiver;
 - (iii) initiates an amendment to an existing Medicaid waiver;
 - (iv) applies for an extension of an application for a waiver or an existing Medicaid waiver;
 - (v) applies for or receives approval for a change in any capitation rate within the Medicaid program; or
 - (vi) initiates a rate change that requires public notice under state or federal law.
- (b) The report required by Subsection (3)(a) shall:
- (i) be submitted to the Social Services Appropriations Subcommittee prior to the department implementing the proposed change; and
 - (ii) include:
 - (A) a description of the department's current practice or policy that the department is proposing to change;
 - (B) an explanation of why the department is proposing the change;
 - (C) the proposed change in services or reimbursement, including a description of the effect of the change;
 - (D) the effect of an increase or decrease in services or benefits on individuals and families;
 - (E) the degree to which any proposed cut may result in cost-shifting to more expensive services in health or human service programs; and
 - (F) the fiscal impact of the proposed change, including:
 - (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 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 26B-3-1113, 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.

- (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 credits to be used by the division in accordance with the requirements of Section 1919 of Title XIX of the federal Social Security Act.
 - (b) In accordance with Section 63J-1-602.2, sanctions collected under this Subsection (7) are nonlapsing.
- (8)
 - (a) In determining whether an applicant or recipient is eligible for a service or benefit under this part or Part 9, Utah 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:
 - (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) 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.
- (11)
 - (a) The department may apply for and, if approved, implement a demonstration 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.
 - (c) Subsection (11)(a) is not intended to expand the coverage of the Medicaid program.
- (12)
 - (a)
 - (i) The department shall apply for, and if approved, implement an amendment to the state plan under this Subsection (12) for benefits for:
 - (A) medically needy pregnant women;
 - (B) medically needy children; and
 - (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
 - (ii) include the withdrawals from an account in the Utah Educational Savings Plan as resources for a benefit determination, if the withdrawal was not used for qualified higher education costs as that term is defined in Section 53B-8a-102.5.
- (13)
 - (a) The department may not deny or terminate eligibility for Medicaid solely because an individual is:
 - (i) incarcerated; and
 - (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.
- (14) The department is a party to, and may intervene at any time in, any judicial or administrative action:
 - (a) to which the Department of Workforce Services is a party; and
 - (b) that involves medical assistance under this chapter.
- (15)
 - (a) The department may not deny or terminate eligibility for Medicaid solely because a birth mother, as that term is defined in Section 78B-6-103, considers an adoptive placement for the child or proceeds with an adoptive placement of the child.
 - (b) A health care provider, as that term is defined in Section 26B-3-126, may not decline payment by Medicaid for covered health and medical services provided to a birth mother, as that term is defined in Section 78B-6-103, who is enrolled in Utah's Medicaid program and who considers an adoptive placement for the child or proceeds with an adoptive placement of the child.

Renumbered and Amended by Chapter 306, 2023 General Session

Amended by Chapter 466, 2023 General Session

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 26B-3-113(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.

Renumbered and Amended by Chapter 306, 2023 General Session

26B-3-110 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.
- (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
 - (ii) as the department determines appropriate, seeking federal approval to do one or 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.

Renumbered and Amended by Chapter 306, 2023 General Session

26B-3-111 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 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 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;
 - (b) a community spouse monthly income allowance, but only to the extent that the income of the institutionalized spouse is made available to, or for the benefit of, the 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.
- (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;
 - (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) Part 10, Medical Benefits Recovery, does not apply if a court has entered an order against an institutionalized spouse for the support of the community spouse.

Renumbered and Amended by Chapter 306, 2023 General Session

26B-3-112 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 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:
 - (a) be within existing appropriations for the Utah Premium Partnership for Health 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.

Renumbered and Amended by Chapter 306, 2023 General Session

26B-3-113 Expanding the Medicaid program.

- (1) As used in this section:
 - (a) "Federal poverty level" means the same as that term is defined in Section 26B-3-207.
 - (b) "Medicaid expansion" means an expansion of the Medicaid program in accordance with this section.
 - (c) "Medicaid Expansion Fund" means the Medicaid Expansion Fund created in Section 26B-1-315.
- (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 26B-1-112.
 - (c) The department may implement any provision described in Subsections 26B-3-112(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 Subsection (3) if the department:
 - (a) receives approval from CMS to:
 - (i) expand Medicaid coverage to eligible individuals whose income is below 95% of 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
 - (iii) any other contributions, funds, or transfers from a nonstate agency for Medicaid 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:
 - (A) expand Medicaid coverage to eligible individuals whose income is below 95% of 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);
- (ii) pays the state portion of costs for the Medicaid expansion under this Subsection (4) with funds from:
 - (A) the Medicaid Expansion Fund;
 - (B) county contributions to the nonfederal share of Medicaid expenditures; or
 - (C) any other contributions, funds, or transfers from a nonstate agency for Medicaid 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:
 - (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
 - (B) a requirement that an individual who is offered a private health benefit plan by an 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.

- (b) Notwithstanding Sections 26B-3-127 and 63J-5-204, and in accordance with this Subsection (5), eligibility for the Medicaid program shall be expanded to include all persons in the optional Medicaid expansion population under PPACA and the Health Care Education Reconciliation Act of 2010, Pub. L. No. 111-152, and related federal regulations and guidance, on the earlier of:
 - (i) the day on which CMS approves a waiver to implement the provisions described in 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 federal law to:
 - (i) implement each provision described in Subsections 26B-3-210(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.
- (d) The eligibility criteria in this Subsection (5) shall be construed to include all individuals eligible for the health coverage improvement program under Section 26B-3-207.
- (e) The department shall pay the state portion of costs for a Medicaid expansion under this Subsection (5) entirely from:
 - (i) the Medicaid Expansion Fund;
 - (ii) county contributions to the nonfederal share of Medicaid expenditures; or
 - (iii) any other contributions, funds, or transfers from a nonstate agency for Medicaid expenditures.
- (f) If the costs of the Medicaid expansion under this Subsection (5) exceed the funds available under Subsection (5)(e):
 - (i) the department may reduce or eliminate optional Medicaid services under this chapter;
 - (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 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 and Department of Workforce Services by a percentage:
 - (A) proportionate to the amount of the deficiency; and
 - (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 provide matching funds to the state for the cost of providing Medicaid services to newly enrolled individuals who qualify for Medicaid coverage under a Medicaid expansion.
- (8) The department shall report to the Social Services Appropriations Subcommittee 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;
 - (c) estimated costs to the state for the Medicaid expansion for the current and following fiscal years;
 - (d) recommendations to control costs of the Medicaid expansion; and
 - (e) as calculated in accordance with Subsections 26B-3-506(4) and 26B-3-606(2), the state's net cost of the qualified Medicaid expansion.

Renumbered and Amended by Chapter 306, 2023 General Session

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 26B-4-704(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.

Renumbered and Amended by Chapter 306, 2023 General Session

26B-3-115 Contracts for provision of medical services -- Federal provisions modifying department 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.

Renumbered and Amended by Chapter 306, 2023 General Session

26B-3-116 Liability insurance required.

The Medicaid program may not reimburse a home health agency, as defined in Section 26B-2-201, 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
- (2) an amount established by department rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

Renumbered and Amended by Chapter 306, 2023 General Session

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.
- (2) Such funds shall be used as provided in this chapter and be administered by the department for purposes related to medical assistance programs.

Renumbered and Amended by Chapter 306, 2023 General Session

26B-3-118 Medical vendor rates.

- (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 the division in cooperation with providers of services for each type of service purchased by the division.
- (2) As far as possible, the rates paid for services shall be established in advance of the fiscal year for which funds are to be requested.

Renumbered and Amended by Chapter 306, 2023 General Session

26B-3-119 Enforcement of public assistance statutes.

- (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 these sections pertain to benefits conferred or administered by the division under this 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.

Renumbered and Amended by Chapter 306, 2023 General Session

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.

Renumbered and Amended by Chapter 306, 2023 General Session

26B-3-121 Rural hospitals.

- (1) As used in this section "rural hospital" means a hospital located outside of a standard metropolitan statistical area, as designated by the United States Bureau of the Census.
- (2) For purposes of the Medicaid program, the division may not discriminate among rural hospitals on the basis of size.

Renumbered and Amended by Chapter 306, 2023 General Session

26B-3-122 Telemedicine -- Reimbursement -- Rulemaking.

- (1)
 - (a) As used in this section, communication by telemedicine is considered face-to-face contact between a health care provider and a patient under the state's medical assistance program if:
 - (i) the communication by telemedicine meets the requirements of administrative rules adopted in accordance with Subsection (3); and
 - (ii) the health care services are eligible for reimbursement under the state's medical assistance program.
 - (b) This Subsection (1) applies to any managed care organization that contracts with the state's medical assistance program.
- (2) The reimbursement rate for telemedicine services approved under this section:
 - (a) shall be subject to reimbursement policies set by the state plan; and
 - (b) may be based on:
 - (i) a monthly reimbursement rate;
 - (ii) a daily reimbursement rate; or
 - (iii) an encounter rate.
- (3) The department shall adopt administrative rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, which establish:
 - (a) the particular telemedicine services that are considered face-to-face encounters for reimbursement purposes under the state's medical assistance program; and
 - (b) the reimbursement methodology for the telemedicine services designated under Subsection (3)(a).

Renumbered and Amended by Chapter 306, 2023 General Session

26B-3-123 Reimbursement of telemedicine services and telepsychiatric consultations.

- (1) As used in this section:

- (a) "Telehealth services" means the same as that term is defined in Section 26B-4-704.
 - (b) "Telemedicine services" means the same as that term is defined in Section 26B-4-704.
 - (c) "Telepsychiatric consultation" means a consultation between a physician and a board certified psychiatrist, both of whom are licensed to engage in the practice of medicine in the state, that utilizes:
 - (i) the health records of the patient, provided from the patient or the referring physician;
 - (ii) a written, evidence-based patient questionnaire; and
 - (iii) telehealth services that meet industry security and privacy standards, including compliance with the:
 - (A) Health Insurance Portability and Accountability Act; and
 - (B) Health Information Technology for Economic and Clinical Health Act, Pub. L. No. 111-5, 123 Stat. 226, 467, as amended.
- (2) This section applies to:
 - (a) a managed care organization that contracts with the Medicaid program; and
 - (b) a provider who is reimbursed for health care services under the Medicaid program.
 - (3) The Medicaid program shall reimburse for telemedicine services at the same rate that the Medicaid program reimburses for other health care services.
 - (4) The Medicaid program shall reimburse for audio-only telehealth services as specified by division rule.
 - (5) The Medicaid program shall reimburse for telepsychiatric consultations at a rate set by the Medicaid program.

Amended by Chapter 295, 2023 General Session

Renumbered and Amended by Chapter 306, 2023 General Session

26B-3-124 Process to promote health insurance coverage for children.

- (1) The department, in collaboration with the Department of Workforce Services and the State Board of Education, shall develop a process to promote health insurance coverage for a child in school when:
 - (a) the child applies for free or reduced price school lunch;
 - (b) a child enrolls in or registers in school; and
 - (c) other appropriate school related opportunities.
- (2) The department, in collaboration with the Department of Workforce Services, shall promote and facilitate the enrollment of children identified under Subsection (1) without health insurance in the Utah Children's Health Insurance Program, the Medicaid program, or the Utah Premium Partnership for Health Insurance Program.

Renumbered and Amended by Chapter 306, 2023 General Session

26B-3-125 Medicaid -- Continuous eligibility -- Promoting payment and delivery reform.

- (1) In accordance with Subsection (2), and within appropriations from the Legislature, the department may amend the state Medicaid plan to:
 - (a) create continuous eligibility for up to 12 months for an individual who has qualified for the state Medicaid program;
 - (b) provide incentives in managed care contracts for an individual to obtain appropriate care in appropriate settings; and

- (c) require the managed care system to accept the risk of managing the Medicaid population assigned to the plan amendment in return for receiving the benefits of providing quality and cost effective care.
- (2) If the department amends the state Medicaid plan under Subsection (1)(a) or (b), the department:
 - (a) shall ensure that the plan amendment:
 - (i) is cost effective for the state Medicaid program;
 - (ii) increases the quality and continuity of care for recipients; and
 - (iii) calculates and transfers administrative savings from continuous enrollment from the Department of Workforce Services to the department; and
 - (b) may limit the plan amendment under Subsection (1)(a) or (b) to select geographic areas or specific Medicaid populations.
- (3) The department may seek approval for a state plan amendment, waiver, or a demonstration project from the Secretary of the United States Department of Health and Human Services if necessary to implement a plan amendment under Subsection (1)(a) or (b).

Renumbered and Amended by Chapter 306, 2023 General Session

26B-3-126 Patient notice of health care provider privacy practices.

- (1)
 - (a) For purposes of this section:
 - (i) "Health care provider" means a health care provider as defined in Section 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 Section 26B-3-902; 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 Section 26B-3-902, 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).

Renumbered and Amended by Chapter 306, 2023 General Session

26B-3-127 Optional Medicaid expansion.

- (1) The department and the governor may not expand the state's Medicaid program under PPACA unless:
 - (a) the department expands Medicaid in accordance with Section 26B-3-210; or

- (b)
 - (i) the governor or the governor's designee has reported the intention to expand the state Medicaid program under PPACA to the Legislature in compliance with the legislative review process in Section 26B-3-108; and
 - (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 26B-3-207.
 - (b) The health coverage improvement program under Section 26B-3-207 is not subject to the requirements in Subsection (1).

Renumbered and Amended by Chapter 306, 2023 General Session

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.

Renumbered and Amended by Chapter 306, 2023 General Session

26B-3-129 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 26B-3-108 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;
 - (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;

- (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;
 - (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).
 - (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:
 - (A) each individual claim; or
 - (B) the extrapolation sample.
 - (ii) Nothing in this section limits a provider's right to appeal the audit under Title 63G, General Government, Title 63G, Chapter 4, Administrative Procedures Act, the Medicaid program and its manual or rules, or other laws or rules that may provide remedies to providers.

Renumbered and Amended by Chapter 306, 2023 General Session

26B-3-130 Medicaid intergovernmental transfer report -- Approval requirements.

- (1) As used in this section:
 - (a)
 - (i) "Intergovernmental transfer" means the transfer of public funds from:
 - (A) a local government entity to another nonfederal governmental entity; or
 - (B) from a nonfederal, government owned health care facility regulated under Chapter 2, Part 2, Health Care Facility Licensing and Inspection, to another nonfederal governmental entity.
 - (ii) "Intergovernmental transfer" does not include:
 - (A) the transfer of public funds from one state agency to another state agency; or
 - (B) a transfer of funds from the University of Utah Hospitals and Clinics.
 - (b)
 - (i) "Intergovernmental transfer program" means a federally approved reimbursement program or category that is authorized by the Medicaid state plan or waiver authority for intergovernmental transfers.
 - (ii) "Intergovernmental transfer program" does not include the addition of a provider to an existing intergovernmental transfer program.

- (c) "Local government entity" means a county, city, town, special service district, special district, or local education agency as that term is defined in Section 63J-5-102.
 - (d) "Non-state government entity" means a hospital authority, hospital district, health care district, special service district, county, or city.
- (2)
- (a) An entity that receives federal Medicaid dollars from the department as a result of an intergovernmental transfer shall, on or before August 1, 2017, and on or before August 1 each year thereafter, provide the department with:
 - (i) information regarding the payments funded with the intergovernmental transfer as authorized by and consistent with state and federal law;
 - (ii) information regarding the entity's ability to repay federal funds, to the extent 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 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 2, Part 2, Health Care Facility Licensing and Inspection.
- (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 program contract; and
 - (b) the non-state government entity makes the certification described in Subsection (4)(d)(ii).
- (6) The department may not increase the percentage of the administrative fee paid by a non-state government entity to the department under the Nursing Care Facility Non-State Government-Owned Upper Payment Limit program.
- (7) The department may not condition participation in the Nursing Care Facility Non-State Government-Owned Upper Payment Limit program on:
 - (a) a requirement that the department be allowed to direct or determine the types of patients that a non-state government entity will treat or the course of treatment for a patient in a non-state government nursing care facility; or
 - (b) a requirement that a non-state government entity or nursing care facility post a bond, purchase insurance, or create a reserve account of any kind.
- (8) The non-state government entity shall have the primary responsibility for ensuring compliance with Subsection (4)(d)(ii).
- (9)
 - (a) The department may not enter into a new Nursing Care Facility Non-State Government-Owned Upper Payment Limit program contract before January 1, 2019.
 - (b) Subsection (9)(a) does not apply to:
 - (i) a new Nursing Care Facility Non-State Government-Owned Upper Payment Limit program contract that was included in the federal funds request summary under Section 63J-5-201 for fiscal year 2018; or

- (ii) a nursing care facility that is operated or managed by the same company as a nursing care facility that was included in the federal funds request summary under Section 63J-5-201 for fiscal year 2018.

Amended by Chapter 16, 2023 General Session
Renumbered and Amended by Chapter 306, 2023 General Session

26B-3-131 Screening, Brief Intervention, and Referral to Treatment Medicaid reimbursement.

- (1) As used in this section:
 - (a) "Controlled substance prescriber" means a controlled substance prescriber, as that term is defined in Section 58-37-6.5, who:
 - (i) has a record of having completed SBIRT training, in accordance with Subsection 58-37-6.5(2), before providing the SBIRT services; and
 - (ii) is a Medicaid enrolled health care provider.
 - (b) "SBIRT" means the same as that term is defined in Section 58-37-6.5.
- (2) The department shall reimburse a controlled substance prescriber who provides SBIRT services to a Medicaid enrollee who is 13 years old or older for the SBIRT services.

Renumbered and Amended by Chapter 306, 2023 General Session

26B-3-132 Prescribing policies for opioid prescriptions.

- (1) The department may implement a prescribing policy for certain opioid prescriptions that is substantially similar to the prescribing policies required in Section 31A-22-615.5.
- (2) The department may amend the state program and apply for waivers for the state program, if necessary, to implement Subsection (1).

Renumbered and Amended by Chapter 306, 2023 General Session

26B-3-133 Reimbursement for long-acting reversible contraception immediately following childbirth.

- (1) As used in this section, "long-acting reversible contraception" means a contraception method that requires administration less than once per month, including:
 - (a) an intrauterine device; and
 - (b) a contraceptive implant.
- (2) The division shall separately identify and reimburse, from other labor and delivery services within the Medicaid program, the provision and insertion of long-acting reversible contraception immediately after childbirth.

Renumbered and Amended by Chapter 306, 2023 General Session

26B-3-134 Coverage of exome sequence testing.

- (1) As used in this section, "exome sequence testing" means a genomic technique for sequencing the genome of an individual for diagnostic purposes.
- (2) The Medicaid program shall reimburse for exome sequence testing:
 - (a) for an enrollee who:
 - (i) is younger than 21 years old; and
 - (ii) who remains undiagnosed after exhausting all other appropriate diagnostic-related tests;

- (b) performed by a nationally recognized provider with significant experience in exome sequence testing;
- (c) that is medically necessary; and
- (d) at a rate set by the Medicaid program.

Renumbered and Amended by Chapter 306, 2023 General Session

Superseded 7/1/2024

26B-3-135 Reimbursement for nonemergency secured behavioral health transport providers.

The department may not reimburse a nonemergency secured behavioral health transport provider that is designated under Section 26B-4-117.

Renumbered and Amended by Chapter 306, 2023 General Session

Effective 7/1/2024

26B-3-135 Reimbursement for nonemergency secured behavioral health transport providers.

The department may not reimburse a nonemergency secured behavioral health transport provider that is designated under Section 53-2d-403.

Renumbered and Amended by Chapter 306, 2023 General Session

Amended by Chapter 310, 2023 General Session

26B-3-136 Children's Health Care Coverage Program.

(1) As used in this section:

- (a) "CHIP" means the Children's Health Insurance Program created in Section 26B-3-902.
- (b) "Program" means the Children's Health Care Coverage Program created in Subsection (2).

(2)

- (a) There is created the Children's Health Care Coverage Program within the department.
- (b) The purpose of the program is to:
 - (i) promote health insurance coverage for children in accordance with Section 26B-3-124;
 - (ii) conduct research regarding families who are eligible for Medicaid and CHIP to determine awareness and understanding of available coverage;
 - (iii) analyze trends in disenrollment and identify reasons that families may not be renewing enrollment, including any barriers in the process of renewing enrollment;
 - (iv) administer surveys to recently enrolled CHIP and children's Medicaid enrollees to identify:
 - (A) how the enrollees learned about coverage; and
 - (B) any barriers during the application process;
 - (v) develop promotional material regarding CHIP and children's Medicaid eligibility, including outreach through social media, video production, and other media platforms;
 - (vi) identify ways that the eligibility website for enrollment in CHIP and children's Medicaid can be redesigned to increase accessibility and enhance the user experience;
 - (vii) identify outreach opportunities, including partnerships with community organizations including:
 - (A) schools;
 - (B) small businesses;
 - (C) unemployment centers;

- (D) parent-teacher associations; and
 - (E) youth athlete clubs and associations; and
 - (viii) develop messaging to increase awareness of coverage options that are available through the department.
- (3)
- (a) The department may not delegate implementation of the program to a private entity.
 - (b) Notwithstanding Subsection (3)(a), the department may contract with a media agency to conduct the activities described in Subsection (2)(b)(iv) and (vii).

Renumbered and Amended by Chapter 306, 2023 General Session

26B-3-137 Reimbursement for diabetes prevention program.

- (1) As used in this section, "DPP" means the National Diabetes Prevention Program developed by the United States Centers for Disease Control and Prevention.
- (2) Beginning July 1, 2022, the Medicaid program shall reimburse a provider for an enrollee's participation in the DPP if the enrollee:
 - (a) meets the DPP's eligibility requirements; and
 - (b) has not previously participated in the DPP after July 1, 2022, while enrolled in the Medicaid program.
- (3) Subject to appropriation, the Medicaid program may set the rate for reimbursement.
- (4) The department may apply for a state plan amendment if necessary to implement this section.
- (5)
 - (a) On or after July 1, 2025, but before October 1, 2025, the department shall provide a written report regarding the efficacy of the DPP and reimbursement under this section to the Health and Human Services Interim Committee.
 - (b) The report described in Subsection (5)(a) shall include:
 - (i) the total number of enrollees with a prediabetic condition as of July 1, 2022;
 - (ii) the total number of enrollees as of July 1, 2022, with a diagnosis of type 2 diabetes;
 - (iii) the total number of enrollees who participated in the DPP;
 - (iv) the total cost incurred by the state to implement this section; and
 - (v) any conclusions that can be drawn regarding the impact of the DPP on the rate of type 2 diabetes for enrollees.

Renumbered and Amended by Chapter 306, 2023 General Session

26B-3-138 Behavioral health delivery working group.

- (1) As used in this section, "targeted adult Medicaid program" means the same as that term is defined in Section 26B-3-207.
- (2) On or before May 31, 2022, the department shall convene a working group to collaborate with the department on:
 - (a) establishing specific and measurable metrics regarding:
 - (i) compliance of managed care organizations in the state with federal Medicaid managed care requirements;
 - (ii) timeliness and accuracy of authorization and claims processing in accordance with Medicaid policy and contract requirements;
 - (iii) reimbursement by managed care organizations in the state to providers to maintain adequacy of access to care;

- (iv) availability of care management services to meet the needs of Medicaid-eligible individuals enrolled in the plans of managed care organizations in the state; and
 - (v) timeliness of resolution for disputes between a managed care organization and the managed care organization's providers and enrollees;
 - (b) improving the delivery of behavioral health services in the Medicaid program;
 - (c) proposals to implement the delivery system adjustments authorized under Subsection 26B-3-223(3); and
 - (d) issues that are identified by managed care organizations, behavioral health service providers, and the department.
- (3) The working group convened under Subsection (2) shall:
- (a) meet quarterly; and
 - (b) consist of at least the following individuals:
 - (i) the executive director or the executive director's designee;
 - (ii) for each Medicaid accountable care organization with which the department contracts, an individual selected by the accountable care organization;
 - (iii) five individuals selected by the department to represent various types of behavioral health services providers, including, at a minimum, individuals who represent providers who provide the following types of services:
 - (A) acute inpatient behavioral health treatment;
 - (B) residential treatment;
 - (C) intensive outpatient or partial hospitalization treatment; and
 - (D) general outpatient treatment;
 - (iv) a representative of an association that represents behavioral health treatment providers in the state, designated by the Utah Behavioral Healthcare Council convened by the Utah Association of Counties;
 - (v) a representative of an organization representing behavioral health organizations;
 - (vi) the chair of the Utah Substance Use and Mental Health Advisory Council created in Section 63M-7-301;
 - (vii) a representative of an association that represents local authorities who provide public behavioral health care, designated by the department;
 - (viii) one member of the Senate, appointed by the president of the Senate; and
 - (ix) one member of the House of Representatives, appointed by the speaker of the House of Representatives.
- (4) The working group convened under this section shall recommend to the department:
- (a) specific and measurable metrics under Subsection (2)(a);
 - (b) how physical and behavioral health services may be integrated for the targeted adult Medicaid program, including ways the department may address issues regarding:
 - (i) filing of claims;
 - (ii) authorization and reauthorization for treatment services;
 - (iii) reimbursement rates; and
 - (iv) other issues identified by the department, behavioral health services providers, or Medicaid managed care organizations;
 - (c) ways to improve delivery of behavioral health services to enrollees, including changes to statute or administrative rule; and
 - (d) wraparound service coverage for enrollees who need specific, nonclinical services to ensure a path to success.

26B-3-139 Adjudicative proceedings related to Medicaid funds.

- (1) If a proceeding of the department, under Title 63G, Chapter 4, Administrative Procedures Act, relates in any way to recovery of Medicaid funds:
 - (a) the presiding officer shall be designated by the executive director of the department and report directly to the executive director or, in the discretion of the executive director, report directly to the director of the Office of Internal Audit; and
 - (b) the decision of the presiding officer is the recommended decision to the executive director of the department or a designee of the executive director who is not in the division.
- (2) Subsection (1) does not apply to hearings conducted by the Department of Workforce Services relating to medical assistance eligibility determinations.
- (3) If a proceeding of the department, under Title 63G, Chapter 4, Administrative Procedures Act, relates in any way to Medicaid or Medicaid funds, the following may attend 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.
- (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.

Renumbered and Amended by Chapter 306, 2023 General Session

26B-3-140 Medical assistance accountability -- Division duties -- Reporting.

- (1) As used in this section:
 - (a) "Abuse" means:
 - (i) an action or practice that:
 - (A) is inconsistent with sound fiscal, business, or medical practices; and
 - (B) results, or may result, in unnecessary Medicaid related costs or other medical or hospital assistance costs; or
 - (ii) reckless or negligent upcoding.
 - (b) "Fraud" means intentional or knowing:
 - (i) deception, misrepresentation, or upcoding in relation to Medicaid funds, costs, claims, reimbursement, or practice; or
 - (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 result in a lower Medicaid payment or reimbursement.
 - (d) "Waste" means overutilization of resources or inappropriate payment.
- (2) The division shall:
 - (a) develop and implement procedures relating to Medicaid funds and medical or hospital assistance funds to ensure that providers do not receive:
 - (i) duplicate payments for the same goods or services;
 - (ii) payment for goods or services by resubmitting a claim for which:
 - (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
 - (B) the decision to disallow the payment has become final;

- (iii) payment for goods or services provided after a recipient's death, including payment for pharmaceuticals or long-term care; or
- (iv) payment for transporting an unborn infant;
- (b) consult with CMS, other states, and the Office of Inspector General of Medicaid Services to determine and implement best practices for discovering and eliminating fraud, waste, and abuse of Medicaid funds and medical or hospital assistance funds;
- (c) actively seek repayment from providers for improperly used or paid:
 - (i) Medicaid funds; and
 - (ii) medical or hospital assistance funds;
- (d) coordinate, track, and keep records of all division efforts to obtain repayment of the funds described in Subsection (2)(c), and the results of those efforts;
- (e) keep Medicaid pharmaceutical costs as low as possible by actively seeking to obtain pharmaceuticals at the lowest price possible, including, on a quarterly basis for the pharmaceuticals that represent the highest 45% of state Medicaid expenditures for pharmaceuticals and on an annual basis for the remaining pharmaceuticals:
 - (i) tracking changes in the price of pharmaceuticals;
 - (ii) checking the availability and price of generic drugs;
 - (iii) reviewing and updating the state's maximum allowable cost list; and
 - (iv) comparing pharmaceutical costs of the state Medicaid program to available pharmacy price lists; and
- (f) provide training, on an annual basis, to the employees of the division who make decisions on billing codes, or who are in the best position to observe and identify upcoding, in order to avoid and detect upcoding.

Renumbered and Amended by Chapter 306, 2023 General Session

26B-3-141 Medical assistance from division or Department of Workforce Services and compliance under adoption assistance interstate compact -- Penalty for fraudulent claim.

- (1) As used in this section:
 - (a) "Adoption assistance" means the same as that term is defined in Section 80-2-809.
 - (b) "Adoption assistance agreement" means the same as that term is defined in Section 80-2-809.
 - (c) "Adoption assistance interstate compact" means an agreement executed by the Division of Child and Family Services with any other state in accordance with Section 80-2-809.
- (2)
 - (a) A child who is a resident of this state and is the subject of an adoption assistance interstate compact is entitled to receive medical assistance from the division and the Department of Workforce Services by filing a certified copy of the child's adoption assistance agreement with the division or the Department of Workforce Services.
 - (b) The adoptive parent of the child described in Subsection (2)(a) shall annually provide the division or the Department of Workforce Services with evidence verifying that the adoption assistance agreement is still effective.
- (3) The Department of Workforce Services shall consider the recipient of medical assistance under this section as the Department of Workforce Services does any other recipient of medical assistance under an adoption assistance agreement executed by the Division of Child and Family Services.
- (4)

- (a) A person may not submit a claim for payment or reimbursement under this section that the person knows is false, misleading, or fraudulent.
 - (b) A violation of Subsection (4)(a) is a third degree felony.
- (5) The division and the Department of Workforce Services shall:
- (a) cooperate with the Division of Child and Family Services in regard to an adoption assistance interstate compact; and
 - (b) comply with an adoption assistance interstate compact.

Renumbered and Amended by Chapter 306, 2023 General Session

26B-3-142 Long-acting injectables.

- (1) With respect to payments by the Medicaid program for long-acting injectable typical and atypical antipsychotics, the department shall report on the following to the Health and Human Services Interim Committee before November 1, 2023:
- (a) options for payment, including the benefits and cost of each option; and
 - (b) whether payment should be included in a bundled payment made to a hospital.
- (2) The department shall prepare the report with input from health care providers.

Enacted by Chapter 295, 2023 General Session

Part 2
Medicaid Waivers

26B-3-201 Medicaid waiver for independent foster care adolescents.

- (1) As used in this section, an "independent foster care adolescent" includes any individual who reached 18 years old while in the custody of the department if the department 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 old.
- (3) Before July 1, 2006, the division shall submit a state Medicaid Plan amendment to CMS to provide medical coverage for independent foster care adolescents effective fiscal year 2006-07.

Renumbered and Amended by Chapter 306, 2023 General Session

26B-3-202 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
 - (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.

Renumbered and Amended by Chapter 306, 2023 General Session

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:
- (a) "ACO" means an accountable care organization that contracts with the state's Medicaid program for:
 - (i) physical health services; or
 - (ii) integrated physical and behavioral health services.
 - (b) "Base budget" means the same as that term is defined in legislative rule.
 - (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 Medicaid eligible individuals.
 - (d) "Behavioral health services" means mental health or substance use treatment or services.

- (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 factor.
 - (5) The appropriations provided to the department for behavioral health plans under this section shall be reduced by the amount contributed by counties in the current fiscal year for behavioral health plans in accordance with Subsections 17-43-201(5)(k) and 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.
 - (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 completed in coordination with the department and the Governor's Office of Planning and Budget.

Renumbered and Amended by Chapter 306, 2023 General Session

26B-3-204 Incentives to appropriately use emergency department services.

- (1)
 - (a) This section applies to the Medicaid program and to the Utah Children's Health Insurance Program created in Section 26B-3-902.
 - (b) As used in this section:
 - (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 26B-3-202 and administered by a managed care organization.
 - (iii) "Non-emergent care":

- (A) means use of the emergency department to receive health care that is non-emergent as defined by the department by administrative rule adopted in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, and the Emergency Medical Treatment and Active Labor Act; and
 - (B) does not mean the medical services provided to an individual required by the Emergency Medical Treatment and Active Labor Act, including services to conduct a medical screening examination to determine if the recipient has an emergent or non-emergent 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.
- (2)
- (a) A managed care organization may, in accordance with Subsections (2)(b) and (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 Subsection (3).
- (4) The department may:
- (a) through administrative rule adopted by the department, develop quality measurements that evaluate a managed care organization's delivery of:
 - (i) appropriate emergency department services to recipients enrolled in the managed care plan;
 - (ii) expanded primary care and urgent care for recipients enrolled in the managed care plan, with consideration of the managed care organization's:
 - (A) delivery of primary care, urgent care, and after hours care through means other than the emergency department;
 - (B) recipient access to primary care providers and community health centers including evening and weekend access; and
 - (C) other innovations for expanding access to primary care; and

- (iii) quality of care for the managed care plan members;
- (b) compare the quality measures developed under Subsection (4)(a) for each managed care organization; and
- (c) develop, by administrative rule, an algorithm to determine assignment of new, unassigned recipients to specific managed care plans based on the plan's performance in relation to the quality measures developed pursuant to Subsection (4)(a).

Renumbered and Amended by Chapter 306, 2023 General Session

26B-3-205 Long-term care insurance partnership.

- (1) As used in this section:
 - (a) "Qualified long-term care insurance contract" is as defined in 26 U.S.C. Sec. 7702B(b).
 - (b) "Qualified long-term care insurance partnership" is as defined in 42 U.S.C. Sec. 1396p(b)(1)(C)(iii).
 - (c) "State plan amendment" means an amendment to the state Medicaid plan drafted by the department in compliance with this section.
- (2) No later than July 1, 2014, the department shall seek federal approval of a state plan amendment that creates a qualified long-term care insurance partnership.
- (3) The department may make rules to comply with federal laws and regulations relating to qualified long-term care insurance partnerships and qualified long-term care insurance contracts.

Renumbered and Amended by Chapter 306, 2023 General Session

26B-3-206 Medicaid waiver for children with disabilities and complex medical needs.

- (1) As used in this section:
 - (a) "Additional eligibility criteria" means the additional eligibility criteria set by the department under Subsection (4)(e).
 - (b) "Complex medical condition" means a physical condition of an individual that:
 - (i) results in severe functional limitations for the individual; and
 - (ii) is likely to:
 - (A) last at least 12 months; or
 - (B) result in death.
 - (c) "Program" means the program for children with complex medical conditions created in Subsection (3).
 - (d) "Qualified child" means a child who:
 - (i) is less than 19 years old;
 - (ii) is diagnosed with a complex medical condition;
 - (iii) has a condition that meets the definition of disability in 42 U.S.C. Sec. 12102; and
 - (iv) meets the additional eligibility criteria.
- (2) The department shall apply for a Medicaid home and community-based waiver with CMS to implement, within the state Medicaid program, the program described in Subsection (3).
- (3) If the waiver described in Subsection (2) is approved, the department shall offer a program that:
 - (a) as funding permits, provides treatment for qualified children;
 - (b) accepts applications for the program on an ongoing basis;
 - (c) requires periodic reevaluations of an enrolled child's eligibility and other applicants or eligible children waiting for services in the program based on the additional eligibility criteria; and

- (d) at the time of reevaluation, allows the department to disenroll a child if the child is no longer a qualified child.
- (4) The department shall:
 - (a) establish by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, criteria to prioritize qualified children's participation in the program based on the following factors, in the following priority order:
 - (i) the complexity of a qualified child's medical condition; and
 - (ii) the financial needs of the qualified child and the qualified child's family;
 - (b) convene a public process to determine the benefits and services to offer a qualified child under the program;
 - (c) evaluate, on an ongoing basis, the cost and effectiveness of the program;
 - (d) if funding for the program is reduced, develop an evaluation process to reduce the number of children served based on the participation criteria established under Subsection (4)(a); and
 - (e) establish, by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, additional eligibility criteria based on the factors described in Subsections (4)(a)(i) and (ii).

Amended by Chapter 286, 2023 General Session

Renumbered and Amended by Chapter 306, 2023 General Session

26B-3-207 Health coverage improvement program -- Eligibility -- Annual report -- Expansion of eligibility for adults with dependent children.

- (1) As used in this section:
 - (a) "Adult in the expansion population" means an individual who:
 - (i) is described in 42 U.S.C. Sec. 1396a(a)(10)(A)(i)(VIII); and
 - (ii) is not otherwise eligible for Medicaid as a mandatory categorically needy individual.
 - (b) "Enhancement waiver program" means the Primary Care Network enhancement waiver program described in Section 26B-3-211.
 - (c) "Federal poverty level" means the poverty guidelines established by the Secretary of the United States Department of Health and Human Services under 42 U.S.C. Sec. 9909(2).
 - (d) "Health coverage improvement program" means the health coverage improvement program described in Subsections (3) through (9).
 - (e) "Homeless":
 - (i) means an individual who is chronically homeless, as determined by the department; and
 - (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:
 - (i) established by the state in an appropriations act adopted pursuant to Title 63J, Chapter 1, Budgetary Procedures Act; and
 - (ii) under which an individual may qualify for Medicaid coverage in accordance with 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 use, 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 26B-3-223;
 - (ii) except as provided in Subsection (5)(b)(iii), for behavioral health, through the counties in accordance with Sections 17-43-201 and 17-43-301;
 - (iii) that, subject to Section 26B-3-223, 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 use 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.
- (6)
- (a) An individual is eligible for the health coverage improvement program under Subsection (5) if:
 - (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;
 - (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 use treatment or mental health treatment, as determined by the department; or
 - (iii) if funding is available, an individual in need of substance use 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.
- (7) The state may request a modification of the income eligibility ceiling and other eligibility criteria under Subsection (6) each fiscal year based on projected enrollment, costs to the state, and the state budget.
- (8) 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.

- (9) 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).
- (10) 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 (10)(c).
- (11) If, after the enhancement waiver program takes effect, the enhancement waiver program is repealed or suspended by either the state or federal government, the department shall reinstate the health coverage improvement program and continue to accept new enrollees into the health coverage improvement program in accordance with the provisions of this section.

Renumbered and Amended by Chapter 306, 2023 General Session

26B-3-208 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).
 - (b) Before June 30, 2018, the department shall submit to CMS a request for waivers, or an amendment of existing waivers, from federal law necessary for the state to provide dental services, in accordance with Subsections (2)(b)(i) and (d) through (f), to an individual described in Subsection (2)(b)(i).
 - (c) Before June 30, 2019, the department shall submit to CMS a request for waivers, or an amendment to existing waivers, from federal law necessary for the state to:
 - (i) provide dental services, in accordance with Subsections (2)(b)(ii) and (d) through (f) to an individual described in Subsection (2)(b)(ii); and
 - (ii) provide the services described in Subsection (2)(g).
 - (d) On or before January 1, 2024, the department shall submit to CMS a request for waivers, or an amendment of existing waivers, from federal law necessary for the state to provide dental services, in accordance with Subsections (2)(b)(iii) and (d) through (f), to an individual described in Subsection (2)(b)(iii).
- (2)
- (a) To the extent funded, the department shall provide dental services to only blind or disabled individuals, as defined in 42 U.S.C. Sec. 1382c(a)(1), who are 18 years old or older 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:
 - (A) qualifies for the health coverage improvement program described in Section 26B-3-207; and
 - (B) is receiving treatment in a substance abuse treatment program, as defined in Section 26B-2-101, licensed under Chapter 2, Part 1, Human Services Programs and Facilities;
- (ii) if a waiver is approved under Subsection (1)(c)(i), the department shall provide dental services to an individual who is an aged individual as defined in 42 U.S.C. Sec. 1382c(a)(1); and
- (iii) if a waiver is approved under Subsection (1)(d), the department shall provide dental services to an individual who is:
 - (A) not described in Subsection (2)(a);
 - (B) not described in Subsection (2)(b)(i);
 - (C) not described in Subsection (2)(b)(ii);
 - (D) not pregnant;
 - (E) 21 years old or older; and
 - (F) eligible for full services through the Medicaid program.
- (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.
- (d) The department shall provide the services to individuals described in Subsection (2)(b):
 - (i) by contracting with an entity that:
 - (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)(g); and
 - (B) applying for the waiver described in Subsection (1)(c).
- (h) Where possible, the department shall ensure that dental 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 free-for-service reimbursement until July 1, 2018; and

- (ii) after July 1, 2018, through the method of reimbursement used by the division for Medicaid dental benefits.
- (i) Subject to appropriations by the Legislature, and as determined by the department, the scope, amount, duration, and frequency of services provided under this section may be limited.
- (3)
 - (a) If the waivers requested under Subsection (1)(a) are granted, the Medicaid program shall begin providing dental services in the manner described in Subsection (2) no later than July 1, 2017.
 - (b) If the waivers requested under Subsection (1)(b) are granted, the Medicaid program shall begin providing dental services to the population described in Subsection (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.
 - (d) If the waivers requested under Subsection (1)(d) are granted, the Medicaid program shall begin providing dental services to the population described in Subsection (2)(b)(iii) within 90 days after the day on which the waivers are granted.
- (4) If the federal share of the cost of providing dental services under this section will be less than 55% during any portion of the next fiscal year, the Medicaid program shall cease providing dental services under this section no later than the end of the current fiscal year.

Amended by Chapter 304, 2023 General Session

Renumbered and Amended by Chapter 306, 2023 General Session

26B-3-209 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.

Renumbered and Amended by Chapter 306, 2023 General Session

26B-3-210 Medicaid waiver expansion.

- (1) As used in this section:
 - (a) "Federal poverty level" means the same as that term is defined in Section 26B-3-207.
 - (b) "Medicaid waiver expansion" means an expansion of the Medicaid program in accordance with this section.
- (2)
 - (a) Before January 1, 2019, the department shall apply to CMS for approval of a waiver or state plan amendment to implement the Medicaid waiver expansion.

- (b) The Medicaid waiver expansion shall:
 - (i) expand Medicaid coverage to eligible individuals whose income is below 95% of the federal poverty level;
 - (ii) obtain maximum federal financial participation under 42 U.S.C. Sec. 1396d(y) for enrolling an individual in the Medicaid program;
 - (iii) provide Medicaid benefits through the state's Medicaid accountable care organizations in areas where a Medicaid accountable care organization is implemented;
 - (iv) integrate the delivery of behavioral health services and physical health services with Medicaid accountable care organizations in select geographic areas of the state that choose an integrated model;
 - (v) include a path to self-sufficiency, including work activities as defined in 42 U.S.C. Sec. 607(d), for qualified adults;
 - (vi) require an individual who is offered a private health benefit plan by an employer to enroll in the employer's health plan;
 - (vii) sunset in accordance with Subsection (5)(a); and
 - (viii) permit the state to close enrollment in the Medicaid waiver expansion if the department has insufficient funding to provide services to additional eligible individuals.
- (3) If the Medicaid waiver described in Subsection (2)(a) is approved, the department may only pay the state portion of costs for the Medicaid waiver expansion with appropriations from:
 - (a) the Medicaid Expansion Fund, created in Section 26B-1-315;
 - (b) county contributions to the non-federal share of Medicaid expenditures; and
 - (c) any other contributions, funds, or transfers from a non-state agency for Medicaid expenditures.
- (4)
 - (a) In consultation with the department, Medicaid accountable care organizations and counties that elect to integrate care under Subsection (2)(b)(iv) shall collaborate on 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:
 - (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.

Renumbered and Amended by Chapter 306, 2023 General Session

26B-3-211 Primary Care Network enhancement waiver program.

- (1) As used in this section:
- (a) "Enhancement waiver program" means the Primary Care Network enhancement waiver program described in this section.
 - (b) "Federal poverty level" means the poverty guidelines established by the secretary of the United States Department of Health and Human Services under 42 U.S.C. Sec. 9902(2).
 - (c) "Health coverage improvement program" means the same as that term is defined in Section 26B-3-207.
 - (d) "Income eligibility ceiling" means the percentage of federal poverty level:
 - (i) established by the Legislature in an appropriations act adopted pursuant to Title 63J, Chapter 1, Budgetary Procedures Act; and
 - (ii) under which an individual may qualify for coverage in the enhancement waiver program in accordance with this section.
 - (e) "Optional population" means the optional expansion population under PPACA if the expansion provides coverage for individuals at or above 95% of the federal poverty level.
 - (f) "Primary Care Network" means the state Primary Care Network program created by the Medicaid primary care network demonstration waiver obtained under Section 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 26B-3-210, Medicaid waiver expansion, will not be approved; or
 - (ii) the division withdraws the waiver for the Medicaid waiver expansion submitted under Section 26B-3-210, Medicaid waiver expansion.
 - (b) The division may not apply for a waiver under Subsection (3)(a) while a waiver request under Section 26B-3-210, Medicaid waiver expansion, is pending with CMS.
- (4) An individual who is eligible for the enhancement waiver program may receive the following benefits under the enhancement waiver program:
- (a) the benefits offered under the Primary Care Network program;
 - (b) diagnostic testing and procedures;
 - (c) medical specialty care;
 - (d) inpatient hospital services;
 - (e) outpatient hospital services;

- (f) outpatient behavioral health care, including outpatient substance use care; and
 - (g) for an individual who qualifies for the health coverage improvement program, as approved by CMS, temporary residential treatment for substance use 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.
- (5) An individual is eligible for the enhancement waiver program if, at the time of enrollment:
- (a) the individual is qualified to enroll in the Primary Care Network or the health 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 26B-3-207, who qualify for the health coverage improvement program;
 - (ii) adults with dependent children who qualify for the health coverage improvement program under Subsection 26B-3-207(3) ;
 - (iii) adults with dependent children who do not qualify for the health coverage 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 exceed 105% of the number of individuals who were enrolled in the Primary Care Network on December 31, 2017.
 - (c) The department may only use appropriations from the Medicaid Expansion Fund created in Section 26B-1-315 to fund the state portion of the enhancement 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 26B-3-207(10) and (11), 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.

Renumbered and Amended by Chapter 306, 2023 General Session

26B-3-212 Limited family planning services for low-income individuals.

(1) As used in this section:

(a)

(i) "Family planning services" means family planning services that are provided under the state Medicaid program, including:

(A) sexual health education and family planning counseling; and

(B) other medical diagnosis, treatment, or preventative care routinely provided as part of a family planning service visit.

(ii) "Family planning services" do not include an abortion, as that term is defined in Section 76-7-301.

(b) "Low-income individual" means an individual who:

(i) has an income level that is equal to or below 185% of the federal poverty level; and

(ii) does not qualify for full coverage under the Medicaid program.

(2) Before January 1, 2024, the division shall apply for a Medicaid waiver or a state plan amendment with CMS to:

(a) offer a program that provides family planning services to low-income individuals; and

(b) receive a federal match rate of 90% of state expenditures for family planning services provided under the waiver or state plan amendment.

Renumbered and Amended by Chapter 306, 2023 General Session

Amended by Chapter 316, 2023 General Session

26B-3-213 Medicaid waiver for mental health crisis lines and mobile crisis outreach teams.

(1) As used in this section:

(a) "Local mental health crisis line" means the same as that term is defined in Section 26B-5-610.

(b) "Mental health crisis" means:

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

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

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

(ii) a mental health condition that, in the opinion of a mental health therapist or the 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

- (B) the statewide mental health crisis line.
 - (d) "Mental health therapist" means the same as that term is defined in Section 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 26B-5-610.
- (2) In consultation with 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).

Renumbered and Amended by Chapter 306, 2023 General Session

26B-3-214 Medicaid waiver for coverage of mental health services in schools.

- (1) As used in this section, "local education agency" means:
- (a) a school district;
 - (b) a charter school; or
 - (c) the Utah Schools for the Deaf and the Blind.
- (2) In consultation with the State Board of Education, the department shall develop a proposal to allow the state Medicaid program to reimburse a local education agency, a local mental health authority, or a private provider for covered mental health services provided:
- (a) in accordance with Section 53E-9-203; and
 - (b)
 - (i) at a local education agency building or facility; or
 - (ii) by an employee or contractor of a local education agency.
- (3) Before January 1, 2020, the department shall apply to CMS for a state plan amendment to implement the coverage described in Subsection (2).

Renumbered and Amended by Chapter 306, 2023 General Session

26B-3-215 Coverage for in vitro fertilization and genetic testing.

- (1) As used in this section:
- (a) "Qualified condition" means:
 - (i) cystic fibrosis;
 - (ii) spinal muscular atrophy;
 - (iii) Morquio Syndrome;
 - (iv) myotonic dystrophy; or
 - (v) sickle cell anemia.
 - (b) "Qualified enrollee" means an individual who:
 - (i) is enrolled in the Medicaid program;
 - (ii) has been diagnosed by a physician as having a genetic trait associated with a qualified condition; and
 - (iii) intends to get pregnant with a partner who is diagnosed by a physician as having a genetic trait associated with the same qualified condition as the individual.

- (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 States Department of Health and Human Services to implement the coverage described in Subsection (3).
- (3) If the waiver described in Subsection (2) is approved, the Medicaid program shall provide coverage to a qualified enrollee for:
 - (a) in vitro fertilization services; and
 - (b) genetic testing of a qualified enrollee who receives in vitro fertilization services under Subsection (3)(a).
- (4) The Medicaid program may not provide the coverage described in Subsection (3) before the later of:
 - (a) the day on which the waiver described in Subsection (2) is approved; and
 - (b) January 1, 2021.
- (5) Before November 1, 2022, and before November 1 of every third year thereafter, the department shall:
 - (a) calculate the change in state spending attributable to the coverage under this section; and
 - (b) report the amount described in Subsection (5)(a) to the Health and Human Services Interim Committee and the Social Services Appropriations Subcommittee.

Renumbered and Amended by Chapter 306, 2023 General Session

26B-3-216 Medicaid waiver for fertility preservation services.

- (1) As used in this section:
 - (a) "Iatrogenic infertility" means an impairment of fertility or reproductive functioning caused by surgery, chemotherapy, radiation, or other medical treatment.
 - (b) "Physician" means an individual licensed to practice under Title 58, Chapter 67, Utah Medical Practice Act, or Title 58, Chapter 68, Utah Osteopathic Medical Practice Act.
 - (c) "Qualified enrollee" means an individual who:
 - (i) is enrolled in the Medicaid program;
 - (ii) has been diagnosed with a form of cancer by a physician; and
 - (iii) needs treatment for that cancer that may cause a substantial risk of sterility or iatrogenic infertility, including surgery, radiation, or chemotherapy.
 - (d) "Standard fertility preservation service" means a fertility preservation procedure and service that:
 - (i) is not considered experimental or investigational by the American Society for Reproductive Medicine or the American Society of Clinical Oncology; and
 - (ii) is consistent with established medical practices or professional guidelines published by the American Society for Reproductive Medicine or the American Society of Clinical Oncology, including:
 - (A) sperm banking;
 - (B) oocyte banking;
 - (C) embryo banking;
 - (D) banking of reproductive tissues; and
 - (E) storage of reproductive cells and tissues.
- (2) Before January 1, 2022, the department shall apply for a Medicaid waiver or a state plan amendment with CMS to implement the coverage described in Subsection (3).

- (3) If the waiver or state plan amendment described in Subsection (2) is approved, the Medicaid program shall provide coverage to a qualified enrollee for standard fertility preservation services.
- (4) The Medicaid program may not provide the coverage described in Subsection (3) before the later of:
 - (a) the day on which the waiver described in Subsection (2) is approved; and
 - (b) January 1, 2023.
- (5) Before November 1, 2023, and before November 1 of each third year after 2023, the department shall:
 - (a) calculate the change in state spending attributable to the coverage described in this section; and
 - (b) report the amount described in Subsection (5)(a) to the Health and Human Services Interim Committee and the Social Services Appropriations Subcommittee.

Renumbered and Amended by Chapter 306, 2023 General Session

26B-3-217 Medicaid waiver for coverage of qualified inmates leaving prison or jail.

- (1) As used in this section:
 - (a) "Correctional facility" means:
 - (i) a county jail;
 - (ii) the Department of Corrections, created in Section 64-13-2; or
 - (iii) a prison, penitentiary, or other institution operated by or under contract with the Department of Corrections for the confinement of an offender, as defined in Section 64-13-1.
 - (b) "Qualified inmate" means an individual who:
 - (i) is incarcerated in a correctional facility; and
 - (ii) has:
 - (A) a chronic physical or behavioral health condition;
 - (B) a mental illness, as defined in Section 26B-5-301; or
 - (C) an opioid use disorder.
- (2) Before July 1, 2020, the division shall apply for a Medicaid waiver or a state plan amendment with CMS to offer a program to provide Medicaid coverage to a qualified inmate for up to 30 days immediately before the day on which the qualified inmate is released from a correctional facility.
- (3) If the waiver or state plan amendment described in Subsection (2) is approved, the department shall report to the Health and Human Services Interim Committee each year 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
 - (c) the effectiveness of the program, including:
 - (i) any reduction in the number of emergency room visits or hospitalizations by 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.

- (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:
 - (a) any costs to enroll the qualified inmate for the Medicaid coverage described in Subsection (2);
 - (b) any administrative fees for the Medicaid coverage described in Subsection (2); and
 - (c) the Medicaid coverage that is provided to the qualified inmate under Subsection (2).

Renumbered and Amended by Chapter 306, 2023 General Session

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
 - (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) 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 26B-3-113 or 26B-3-207.

Renumbered and Amended by Chapter 306, 2023 General Session

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:
 - (a) "Accountable care organization" means the same as that term is defined in Section 26B-3-204.
 - (b) "Behavioral health receiving center" means the same as that term is defined in Section 26B-4-114.
 - (c) "Crisis management services" means behavioral health services provided to an individual who is experiencing a mental health crisis.
 - (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 amendment with CMS to offer a program that provides reimbursement through a bundled daily rate for crisis management services that are delivered to an individual during the individual's stay at a behavioral health receiving center.

- (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.

Renumbered and Amended by Chapter 306, 2023 General Session

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.

Renumbered and Amended by Chapter 306, 2023 General Session

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 26B-3-207.
 - (c) "Medical respite care" means short-term housing with supportive medical services.
 - (d) "Medical respite facility" means a residential facility that provides medical respite care to homeless individuals.
- (2) Before January 1, 2022, the department shall apply for a Medicaid waiver or state plan amendment with CMS to choose a single medical respite facility to reimburse for services provided to an individual who is:
 - (a) homeless; and
 - (b) an adult in the expansion population.
- (3) The department shall choose a medical respite facility best able to serve homeless individuals who are adults in the expansion population.
- (4) If the waiver or state plan amendment described in Subsection (2) is approved, while the waiver or state plan amendment is in effect, the department shall submit a report to the Health and Human Services Interim Committee each year before November 30 detailing:
 - (a) the number of homeless individuals served at the facility;
 - (b) the cost of the program; and
 - (c) the reduction of health care costs due to the program's implementation.
- (5) Through administrative rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the department shall further define and limit the services, described in this section, provided to a homeless individual.

Renumbered and Amended by Chapter 306, 2023 General Session

26B-3-222 Medicaid waiver expansion for extraordinary care reimbursement.

- (1) As used in this section:
 - (a) "Existing home and community-based services waiver" means an existing home and community-based services waiver in the state that serves an individual:
 - (i) with an acquired brain injury;
 - (ii) with an intellectual or physical disability; or
 - (iii) who is 65 years old or older.
 - (b) "Guardian" means a person appointed by a court to manage the affairs of a living individual.
 - (c) "Parent" means a biological or adoptive parent of an individual."
 - (d) "Personal care services" means a service that:
 - (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;
 - (ii) is authorized for an individual described in Subsection (1)(d)(i) in accordance with a plan of treatment;
 - (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.
 - (e) "Waiver enrollee" means an individual who is enrolled in an existing home and community-based services waiver.
- (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).
- (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).
- (5) Before July 1, 2023, 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 to whom the individual is a parent or guardian.
- (6) If CMS approves the amendment described in Subsection (5), the department shall implement the program described in Subsection (5).
- (7) The department shall by rule, made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, define "extraordinary care" for purposes of Subsection (5).

Renumbered and Amended by Chapter 306, 2023 General Session

Amended by Chapter 315, 2023 General Session

26B-3-223 Delivery system adjustments for the targeted adult Medicaid program.

- (1) As used in this section, "targeted adult Medicaid program" means the same as that term is defined in Section 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

- (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 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
 - (b) deliver behavioral health services through an accountable care organization where implemented.
- (4) Before implementing the delivery system adjustments described in Subsection (3) in a county, the department shall, at a minimum, seek input from:
 - (a) individuals who qualify for the targeted adult Medicaid program who reside in the county;
 - (b) the county's executive officer, legislative body, and other county officials who are involved in the delivery of behavioral health services;
 - (c) the local mental health authority and local substance abuse authority that serves the county;
 - (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
 - (e) timely resolve any disputes between a provider or enrollee with the managed care plan.
- (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.

Renumbered and Amended by Chapter 306, 2023 General Session

26B-3-224 Medicaid waiver for increased integrated health care reimbursement.

- (1) As used in this section:
 - (a) "Integrated health care setting" means a health care or behavioral health care setting that provides integrated physical and behavioral health care services.
 - (b) "Local mental health authority" means a local mental health authority described in 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).
- (4) If the waiver or state plan amendment described in Subsection (3) is approved, the department shall:
 - (a) implement the proposal described in Subsection (2); and

- (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:
 - (i) the number of patients served under the waiver or state plan amendment;
 - (ii) the cost of the waiver or state plan amendment; and
 - (iii) any benefits of the waiver or state plan amendment.

Renumbered and Amended by Chapter 306, 2023 General Session

26B-3-225 Coverage for autism spectrum disorder.

(1) As used in this section:

- (a)
 - (i) "Applied behavior analysis" means the design, implementation, and evaluation of environmental modifications, using behavioral stimuli and consequences, to produce socially significant improvement in human behavior.
 - (ii) "Applied behavior analysis" includes the use of direct observation, measurement, and functional analysis of the relationship between environment and behavior.
- (b) "Autism spectrum disorder" means pervasive developmental disorders as defined by the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders.
- (c) "Behavioral health treatment" means counseling and treatment programs, including applied behavior analysis, that are:
 - (i) necessary to develop, maintain, or restore, to the maximum extent practicable, the functioning of an individual; and
 - (ii) provided or supervised by:
 - (A) a board certified behavior analyst; or
 - (B) an individual licensed under Title 58, Occupations and Professions, whose scope of practice includes mental health services.
- (d) "Diagnosis of autism spectrum disorder" means medically necessary assessments, evaluations, or tests:
 - (i) performed by:
 - (A) a licensed physician who is board certified in neurology, psychiatry, or pediatrics and has experience diagnosing autism spectrum disorder; or
 - (B) a licensed psychologist with experience diagnosing autism spectrum disorder; and
 - (ii) necessary to diagnose whether an individual has an autism spectrum disorder.
- (e) "Pharmacy care" means medications prescribed by a licensed physician and any health-related services considered medically necessary to determine the need or effectiveness of the medications.
- (f) "Psychiatric care" means direct or consultative services provided by a psychiatrist licensed in the state in which the psychiatrist practices.
- (g) "Psychological care" means direct or consultative services provided by a psychologist licensed in the state in which the psychologist practices.
- (h) "Therapeutic care" means services provided by a licensed or certified speech therapist, occupational therapist, or physical therapist.
- (i)
 - (i) "Treatment for autism spectrum disorder" means evidence-based care and related equipment prescribed or ordered for an enrollee diagnosed with an autism spectrum disorder by a physician or a licensed psychologist described in Subsection (1)(d) who determines the care to be medically necessary.
 - (ii) "Treatment for autism spectrum disorder" includes:

- (A) behavioral health treatment, provided or supervised by a person described in Subsection (1)(c)(ii);
 - (B) pharmacy care;
 - (C) psychiatric care;
 - (D) psychological care; and
 - (E) therapeutic care.
- (2) The department shall request a state plan amendment with CMS to provide treatment for autism spectrum disorder for an enrollee diagnosed with autism spectrum disorder.

Enacted by Chapter 326, 2023 General Session

26B-3-226 Medicaid waiver for rural healthcare for chronic conditions.

- (1) As used in this section:
- (a) "Qualified condition" means:
 - (i) diabetes;
 - (ii) high blood pressure;
 - (iii) congestive heart failure;
 - (iv) asthma;
 - (v) obesity;
 - (vi) chronic obstructive pulmonary disease; or
 - (vii) chronic kidney disease.
 - (b) "Qualified enrollee" means an individual who:
 - (i) is enrolled in the Medicaid program;
 - (ii) has been diagnosed as having a qualified condition; and
 - (iii) is not enrolled in an accountable care organization.
- (2) Before January 1, 2024, the department shall apply for a Medicaid waiver with the Centers for Medicare and Medicaid Services to implement the coverage described in Subsection (3) for a three-year pilot program.
- (3) If the waiver described in Subsection (2) is approved, the Medicaid program shall contract with a single entity to provide coordinated care for the following services to each qualified enrollee:
- (a) a telemedicine platform for the qualified enrollee to use;
 - (b) an in-home initial visit to the qualified enrollee;
 - (c) daily remote monitoring of the qualified enrollee's qualified condition;
 - (d) all services in the qualified enrollee's language of choice;
 - (e) individual peer monitoring and coaching for the qualified enrollee;
 - (f) available access for the qualified enrollee to video-enabled consults and voice-enabled consults 24 hours a day, seven days a week;
 - (g) in-home biometric monitoring devices to monitor the qualified enrollee's qualified condition; and
 - (h) at-home medication delivery to the qualified enrollee.
- (4) The Medicaid program may not provide the coverage described in Subsection (3) until the waiver is approved.
- (5) Each year the waiver is active, the department shall submit a report to the Health and Human Services Interim Committee before November 30 detailing:
- (a) the number of patients served under the waiver;
 - (b) the cost of the waiver; and
 - (c) any benefits of the waiver, including an estimate of:
 - (i) the reductions in emergency room visits or hospitalizations;

- (ii) the reductions in 30-day hospital readmissions for the same diagnosis;
- (iii) the reductions in complications related to qualified conditions; and
- (iv) any improvements in health outcomes from baseline assessments.

Enacted by Chapter 336, 2023 General Session

26B-3-227 Recreational therapy -- Reimbursement.

- (1) As used in this section:
 - (a) "Assisted living facility" means the same as that term is defined in Section 26B-2-201.
 - (b) "Behavioral health program" means a behavioral health program described in Title 62A, Chapter 15, Substance Abuse and Mental Health Act.
 - (c) "General acute hospital" means the same as that term is defined in Section 26B-2-201.
 - (d) "Intermediate care facility" means the same as that term is defined in Section 58-15-101.
 - (e) "Mental health therapist" means the same as that term is defined in Section 58-60-102.
 - (f) "Qualified enrollee" means an individual who:
 - (i) is enrolled in the Medicaid program; and
 - (ii) has been referred for recreational therapy services by a mental health therapist.
 - (g) "Recreational therapy services" means the same as that term is defined in Section 58-40-102.
 - (h) "Skilled nursing facility" means the same as that term is defined in Section 58-15-101.
 - (i) "Youth residential treatment facility" means a facility that provides a 24-hour group living environment for four or more individuals who are under 18 years old and who are unrelated to the owner or provider of the facility.
- (2) Before January 1, 2024, the department shall apply for a Medicaid waiver or a state plan with CMS to allow for reimbursement for recreational therapy services provided:
 - (a) to a qualified enrollee;
 - (b) by an individual authorized to engage in the practice of recreational therapy under Title 58, Chapter 40, Recreational Therapy Practice Act; and
 - (c) at a:
 - (i) general acute hospital;
 - (ii) youth residential treatment facility;
 - (iii) behavioral health program;
 - (iv) intermediate care facility;
 - (v) assisted living facility;
 - (vi) skilled nursing facility;
 - (vii) psychiatric hospital; or
 - (viii) mental health agency.
- (3) If the waiver or state plan amendment described in Subsection (2) is approved, the Medicaid program shall provide coverage to a qualified enrollee for recreational therapy services.

Enacted by Chapter 288, 2023 General Session

26B-3-228 Medicaid coverage for certain postpartum women.

- (1) As used in this section:
 - (a) "Extended postpartum period" means the period after a woman's pregnancy ends:
 - (i) beginning the day after the initial postpartum period; and
 - (ii) ending on the last day of the month that is 12 months after the day on which the woman's pregnancy ends.
 - (b) "Initial postpartum period" means the period:

- (i) beginning on the day on which a woman's pregnancy ends; and
 - (ii) ending on the last day of the month that is 60 days after the day on which the woman's pregnancy ends.
 - (c) "Miscarriage" means the spontaneous or accidental loss of a fetus, regardless of gestational age or the duration of the pregnancy.
- (2) Before July 1, 2023, the division shall request a waiver or state plan amendment to, in accordance with 42 U.S.C. Sec. 1396a(e)(16), provide continuous Medicaid coverage during the woman's extended postpartum period if:
- (a) the woman is eligible for Medicaid during the woman's pregnancy; and
 - (b) the woman's pregnancy ended by way of:
 - (i) birth;
 - (ii) miscarriage;
 - (iii) stillbirth; or
 - (iv) an abortion that is permitted under Section 76-7a-201.
- (3) If the request described in Subsection (2) is denied or is not approved by January 1, 2024, the division shall request a waiver or state plan amendment to, in accordance with 42 U.S.C. Sec. 1396a(e)(16), provide continuous Medicaid coverage during the woman's extended postpartum period if the woman is eligible for Medicaid during the woman's pregnancy.

Enacted by Chapter 316, 2023 General Session

Part 3

Administration of Medicaid Programs: Drug Utilization Review and Long Term Care Facility Certification

26B-3-301 Definitions.

As used in this part:

- (1) "Appropriate and medically necessary" means, regarding drug prescribing, dispensing, and patient usage, that it is in conformity with the criteria and standards developed in accordance with this part.
- (2) "Board" means the Drug Utilization Review Board created in Section 26B-3-302.
- (3) "Certified program" means a nursing care facility program with Medicaid certification.
- (4) "Compendia" means resources widely accepted by the medical profession in the efficacious use of drugs, including "American Hospital Formulary Service Drug Information," "U.S. Pharmacopeia - Drug Information," "A.M.A. Drug Evaluations," peer-reviewed medical literature, and information provided by manufacturers of drug products.
- (5) "Counseling" means the activities conducted by a pharmacist to inform Medicaid recipients about the proper use of drugs, as required by the board under this part.
- (6) "Criteria" means those predetermined and explicitly accepted elements used to measure drug use on an ongoing basis in order to determine if the use is appropriate, medically necessary, and not likely to result in adverse medical outcomes.
- (7) "Drug-disease contraindications" means that the therapeutic effect of a drug is adversely altered by the presence of another disease condition.
- (8) "Drug-interactions" means that two or more drugs taken by a recipient lead to clinically significant toxicity that is characteristic of one or any of the drugs present, or that leads to interference with the effectiveness of one or any of the drugs.

- (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 drugs in the Medicaid program.
- (10) "Intervention" means a form of communication utilized by the board with a prescriber or pharmacist to inform about or influence prescribing or dispensing practices.
- (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 beds within the facility.
- (12)
 - (a) "Nursing care facility" means the following facilities licensed by the department under Chapter 2, Part 2, Health Care Facility Licensing and Inspection:
 - (i) skilled nursing facilities;
 - (ii) intermediate care facilities; and
 - (iii) an intermediate care facility for people with an intellectual disability.
 - (b) "Nursing care facility" does not mean a critical access hospital that meets the criteria of 42 U.S.C. Sec. 1395i-4(c)(2) (1998).
- (13) "Nursing care facility program" means the personnel, licenses, services, contracts, and all other requirements that shall be met for a nursing care facility to be eligible for Medicaid certification under this part and division rule.
- (14) "Overutilization" or "underutilization" means the use of a drug in such quantities that the desired therapeutic goal is not achieved.
- (15) "Pharmacist" means a person licensed in this state to engage in the practice of pharmacy under Title 58, Chapter 17b, Pharmacy Practice Act.
- (16) "Physical facility" means the buildings or other physical structures where a nursing care facility program is operated.
- (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.
- (18) "Prospective DUR" means that part of the drug utilization review program that occurs before a drug is dispensed, and that is designed to screen for potential drug therapy problems based on explicit and predetermined criteria and standards.
- (19) "Retrospective DUR" means that part of the drug utilization review program that assesses or measures drug use based on an historical review of drug use data against predetermined and explicit criteria and standards, on an ongoing basis with professional input.
- (20) "Rural county" means a county with a population of less than 50,000, as determined by:
 - (a) the most recent official census or census estimate of the United States Bureau of the Census;
 - or
 - (b) the most recent population estimate for the county from the Utah Population Committee, if a population figure for the county is not available under Subsection (20)(a).
- (21) "Service area" means the boundaries of the distinct geographic area served by a certified program as determined by the division in accordance with this part and division rule.
- (22) "Standards" means the acceptable range of deviation from the criteria that reflects local medical practice and that is tested on the Medicaid recipient database.
- (23) "SURS" means the Surveillance Utilization Review System of the Medicaid program.
- (24) "Therapeutic appropriateness" means drug prescribing and dispensing based on rational drug therapy that is consistent with criteria and standards.
- (25) "Therapeutic duplication" means prescribing and dispensing the same drug or two or more drugs from the same therapeutic class where periods of drug administration overlap and where that practice is not medically indicated.

(26) "Urban county" means a county that is not a rural county.

Renumbered and Amended by Chapter 306, 2023 General Session

26B-3-302 DUR Board -- Creation and membership -- Expenses.

- (1) There is created a 12-member Drug Utilization Review Board responsible for implementation of a retrospective and prospective DUR program.
- (2)
 - (a) Except as required by Subsection (2)(b), as terms of current board members expire, the executive director shall appoint each new member or reappointed member to a four-year term.
 - (b) Notwithstanding the requirements of Subsection (2)(a), the executive director shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of board members are staggered so that approximately half of the board is appointed every two years.
 - (c) Persons appointed to the board may be reappointed upon completion of their terms, but may not serve more than two consecutive terms.
 - (d) The executive director shall provide for geographic balance in representation on the board.
- (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:
 - (a) four physicians who are actively engaged in the practice of medicine or osteopathic medicine in this state, to be selected from a list of nominees provided by the 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
 - (g) one dentist licensed to practice in this state under Title 58, Chapter 69, Dentist and Dental Hygienist Practice Act, who is actively engaged in the practice of dentistry, 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.
- (6) The board shall elect a chair from among its members who shall serve a one-year term, and may serve consecutive terms.
- (7) A member may not receive compensation or benefits for the member's service, but 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.

Renumbered and Amended by Chapter 306, 2023 General Session

26B-3-303 DUR Board -- Responsibilities.

The board shall:

- (1) develop rules necessary to carry out its responsibilities as defined in this part;

- (2) oversee the implementation of a Medicaid retrospective and prospective DUR program in accordance with this part, including responsibility for approving provisions of contractual agreements between the Medicaid program and any other entity that will process and review Medicaid drug claims and profiles for the DUR program in accordance with this part;
- (3) develop and apply predetermined criteria and standards to be used in retrospective and prospective DUR, ensuring that the criteria and standards are based on the compendia, and that they are developed with professional input, in a consensus fashion, with provisions for timely revision and assessment as necessary. The DUR standards developed by the board shall reflect the local practices of physicians in order to monitor:
 - (a) therapeutic appropriateness;
 - (b) overutilization or underutilization;
 - (c) therapeutic duplication;
 - (d) drug-disease contraindications;
 - (e) drug-drug interactions;
 - (f) incorrect drug dosage or duration of drug treatment; and
 - (g) clinical abuse and misuse;
- (4) develop, select, apply, and assess interventions and remedial strategies for physicians, pharmacists, and recipients that are educational and not punitive in nature, in order to improve the quality of care;
- (5) disseminate information to physicians and pharmacists to ensure that they are aware of the board's duties and powers;
- (6) provide written, oral, or electronic reminders of patient-specific or drug-specific information, designed to ensure recipient, physician, and pharmacist confidentiality, and suggest changes in prescribing or dispensing practices designed to improve the quality of care;
- (7) utilize face-to-face discussions between experts in drug therapy and the prescriber or pharmacist who has been targeted for educational intervention;
- (8) conduct intensified reviews or monitoring of selected prescribers or pharmacists;
- (9) create an educational program using data provided through DUR to provide active and ongoing educational outreach programs to improve prescribing and dispensing practices, either directly or by contract with other governmental or private entities;
- (10) provide a timely evaluation of intervention to determine if those interventions have improved the quality of care;
- (11) publish the annual Drug Utilization Review report required under 42 C.F.R. Sec. 712;
- (12) develop a working agreement with related boards or agencies, including the State Board of Pharmacy, Physicians' Licensing Board, and SURS staff within the division, in 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:
 - (a) identification and reduction of the frequency of patterns of fraud, abuse, gross overuse, inappropriate, or medically unnecessary care among physicians, pharmacists, and recipients;
 - (b) potential or actual severe or adverse reactions to drugs;
 - (c) therapeutic appropriateness;
 - (d) overutilization or underutilization;
 - (e) appropriate use of generics;
 - (f) therapeutic duplication;
 - (g) drug-disease contraindications;

- (h) drug-drug interactions;
 - (i) incorrect drug dosage and duration of drug treatment;
 - (j) drug allergy interactions; and
 - (k) clinical abuse and misuse;
- (15) develop and publish, with the input of the State Board of Pharmacy, guidelines and standards to be used by pharmacists in counseling Medicaid recipients in accordance with this part. The guidelines shall ensure that the recipient may refuse counseling and that the refusal is to be documented by the pharmacist. Items to be discussed as part of that counseling include:
- (a) the name and description of the medication;
 - (b) administration, form, and duration of therapy;
 - (c) special directions and precautions for use;
 - (d) common severe side effects or interactions, and therapeutic interactions, and how to avoid those occurrences;
 - (e) techniques for self-monitoring drug therapy;
 - (f) proper storage;
 - (g) prescription refill information; and
 - (h) action to be taken in the event of a missed dose; and
- (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 shall include:
- (a) the name, address, age, and gender of the recipient;
 - (b) individual history of the recipient where significant, including disease state, known allergies and drug reactions, and a comprehensive list of medications and relevant devices;
 - (c) the pharmacist's comments on the individual's drug therapy;
 - (d) name of prescriber; and
 - (e) name of drug, dose, duration of therapy, and directions for use.

Renumbered and Amended by Chapter 306, 2023 General Session

26B-3-304 Confidentiality of records.

- (1) Information obtained under this part shall be treated as confidential or controlled information under Title 63G, Chapter 2, Government Records Access and Management Act.
- (2) The board shall establish procedures ensuring that the information described in Subsection 26B-3-304(16) is held confidential by the pharmacist, being provided to the physician only upon request.
- (3) The board shall adopt and implement procedures designed to ensure the confidentiality of all information collected, stored, retrieved, assessed, or analyzed by the board, staff to the board, or contractors to the DUR program, that identifies individual physicians, pharmacists, or recipients. The board may have access to identifying information for purposes of carrying out intervention activities, but that identifying information may not be released to anyone other than a member of the board. The board may release cumulative nonidentifying information for research purposes.

Renumbered and Amended by Chapter 306, 2023 General Session

26B-3-305 Drug prior approval program.

- (1) A drug prior approval program approved or implemented by the board shall meet the following conditions:

- (a) except as provided in Subsection (2), a drug may not be placed on prior approval for other than medical reasons;
 - (b) the board shall hold a public hearing at least 30 days prior to placing a drug on prior approval;
 - (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 (1)(b);
 - (d) the board shall consider written and oral comments submitted by interested parties prior to or during the hearing held in accordance with Subsection (1)(b);
 - (e) the board shall provide evidence that placing a drug class on prior approval:
 - (i) will not impede quality of recipient care; and
 - (ii) that the drug class is subject to clinical abuse or misuse;
 - (f) the board shall reconsider its decision to place a drug on prior approval:
 - (i) no later than nine months after any drug class is placed on prior approval; and
 - (ii) at a public hearing with notice as provided in Subsection (1)(b);
 - (g) the program shall provide an approval or denial of a request for prior approval:
 - (i) by either:
 - (A) fax;
 - (B) telephone; or
 - (C) electronic transmission;
 - (ii) at least Monday through Friday, except for state holidays; and
 - (iii) within 24 hours after receipt of the prior approval request;
 - (h) the program shall provide for the dispensing of at least a 72-hour supply of the drug on the prior approval program:
 - (i) in an emergency situation; or
 - (ii) on weekends or state holidays;
 - (i) the program may be applied to allow acceptable medical use of a drug on prior approval for appropriate off-label indications; and
 - (j) before placing a drug class on the prior approval program, the board shall:
 - (i) determine that the requirements of Subsections (1)(a) through (i) have been met; and
 - (ii) by majority vote, place the drug class on prior approval.
- (2) The board may, only after complying with Subsections (1)(b) through (j), consider the cost:
- (a) of a drug when placing a drug on the prior approval program; and
 - (b) associated with including, or excluding a drug from the prior approval process, including:
 - (i) potential side effects associated with a drug; or
 - (ii) potential hospitalizations or other complications that may occur as a result of a drug's inclusion on the prior approval process.

Renumbered and Amended by Chapter 306, 2023 General Session

26B-3-306 Advisory committees.

The board may establish advisory committees to assist it in carrying out its duties under Sections 26B-3-302 through 26B-3-309.

Renumbered and Amended by Chapter 306, 2023 General Session

26B-3-307 Retrospective and prospective DUR.

- (1) The board, in cooperation with the division, shall include in its state plan the creation and implementation of a retrospective and prospective DUR program for Medicaid outpatient drugs

to ensure that prescriptions are appropriate, medically necessary, and not likely to result in adverse medical outcomes.

- (2) The retrospective and prospective DUR program shall be operated under guidelines established by the board under Subsections (3) and (4).
- (3) The retrospective DUR program shall be based on guidelines established by the board, using the mechanized drug claims processing and information retrieval system to analyze claims data in order to:
 - (a) identify patterns of fraud, abuse, gross overuse, and inappropriate or medically unnecessary care; and
 - (b) assess data on drug use against explicit predetermined standards that are based on the compendia and other sources for the purpose of monitoring:
 - (i) therapeutic appropriateness;
 - (ii) overutilization or underutilization;
 - (iii) therapeutic duplication;
 - (iv) drug-disease contraindications;
 - (v) drug-drug interactions;
 - (vi) incorrect drug dosage or duration of drug treatment; and
 - (vii) clinical abuse and misuse.
- (4) The prospective DUR program shall be based on guidelines established by the board and shall provide that, before a prescription is filled or delivered, a review will be conducted by the pharmacist at the point of sale to screen for potential drug therapy problems resulting from:
 - (a) therapeutic duplication;
 - (b) drug-drug interactions;
 - (c) incorrect dosage or duration of treatment;
 - (d) drug-allergy interactions; and
 - (e) clinical abuse or misuse.
- (5) In conducting the prospective DUR, a pharmacist may not alter the prescribed outpatient drug therapy without the consent of the prescribing physician or physician assistant. This section does not effect the ability of a pharmacist to substitute a generic equivalent.

Renumbered and Amended by Chapter 306, 2023 General Session

26B-3-308 Penalties.

Any person who violates the confidentiality provisions of Sections 26B-3-302 through 26B-3-307 is guilty of a class B misdemeanor.

Renumbered and Amended by Chapter 306, 2023 General Session

26B-3-309 Immunity.

There is no liability on the part of, and no cause of action of any nature arises against any member of the board, its agents, or employees for any action or omission by them in effecting the provisions of Sections 26B-3-302 through 26B-3-307.

Renumbered and Amended by Chapter 306, 2023 General Session

26B-3-310 Purpose -- Medicaid certification of nursing care facilities.

- (1) The Legislature finds:

- (a) that an oversupply of nursing care facilities in the state adversely affects the state Medicaid program and the health of the people in the state;
 - (b) it is in the best interest of the state to prohibit nursing care facilities from receiving Medicaid certification, except as provided by Sections 26B-3-311 through 26B-3-313; and
 - (c) it is in the best interest of the state to encourage aging nursing care facilities with Medicaid certification to renovate the nursing care facilities' physical facilities so that the quality of life and clinical services for Medicaid residents are preserved.
- (2) Medicaid reimbursement of nursing care facility programs is limited to:
- (a) the number of nursing care facility programs with Medicaid certification as of May 9, 2016; and
 - (b) additional nursing care facility programs approved for Medicaid certification under the provisions of Subsections 26B-3-311(5) and (7).
- (3) The division may not:
- (a) except as authorized by Section 26B-3-311:
 - (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 26B-3-311(3).
- (4) Notwithstanding Section 26B-3-311, 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.

Renumbered and Amended by Chapter 306, 2023 General Session

26B-3-311 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 beds in accordance with Subsection (5).
 - (b) The division may renew Medicaid certification of a nursing care facility program that is not currently certified if:
 - (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
 - (B) the owner of the program has not, under this section or Section 26B-3-313, transferred to another nursing care facility program the license for any of the Medicaid beds in the program; and
 - (ii) except as provided in Subsection 26B-3-310(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 26B-3-312(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 that was previously a certified program but now resides in a new or renovated physical facility if the nursing care facility program meets all of the following:
- (a) the nursing care facility program met all applicable requirements for Medicaid 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 the physical facility the certified program shall voluntarily comply with Subsection (4)(b).
- (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 comply with division rules regarding billing for Medicaid and the provision of services to 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 counties impacted by the requested additional Medicaid certification is insufficient, based on the information submitted to the director under Subsection (5)(b);
 - (ii) whether the county or group of counties impacted by the requested additional Medicaid certification is underserved by specialized or unique services that would be 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).

- (6) The department shall adopt administrative rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to adjust the Medicaid nursing care facility 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
 - (ii)
 - (A) for a nursing care facility other than a facility described in Subsection (6)(a)(ii)(B), 85% of total bed capacity; or
 - (B) for a rural nursing care facility, 65% of total bed capacity; and
 - (b) not allow for increases in reimbursement for property values without major renovation or replacement projects as defined by the department by rule.
- (7)
- (a) Except as provided in Subsection 26B-3-310(3), if a nursing care facility does not seek Medicaid certification for a bed under Subsections (1) through (6), the department shall, notwithstanding Subsections 26B-3-312(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;
 - (ii) the nursing care facility meets the quality of care regulations issued by CMS; and
 - (iii) the total number of additional beds in the facility granted Medicaid certification 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).

Renumbered and Amended by Chapter 306, 2023 General Session

26B-3-312 Appeals of division decision -- Rulemaking authority -- 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 Sections 26B-3-310 through 26B-3-313 in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
- (3)
 - (a) In the event the department is at risk for a federal disallowance with regard to a Medicaid recipient being served in a nursing care facility program that is not Medicaid certified, the department may grant temporary Medicaid certification to that facility for up to 24 months.
 - (b)
 - (i) The department may extend a temporary Medicaid certification granted to a 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.
 - (ii) A temporary Medicaid certification granted under this Subsection (3) is revoked upon:
 - (A) the discharge of the patient from the facility; or
 - (B) the patient no longer residing at the facility for any reason.
 - (c) The department may place conditions on the temporary certification granted under Subsections (3)(a) and (b), such as:
 - (i) not allowing additional admissions of Medicaid recipients to the program; and
 - (ii) not paying for the care of the patient after October 1, 2008, with state only dollars.

Renumbered and Amended by Chapter 306, 2023 General Session

26B-3-313 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 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;
 - (ii) the nursing care facility program gives a written assurance, which is postmarked or has proof of delivery 30 days before the transfer, to the director and to the transferee in accordance with Subsection 26B-3-311(4);
 - (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;
 - (B) the date of the transfer; and
 - (C) the identity and location of the entity receiving the transferred licenses; and

- (iv) if the nursing care facility program for which the license will be transferred or purchased is located in an urban county with a nursing care facility average annual occupancy rate over the previous two years less than or equal to 75%, the nursing care facility program transferring or selling the license demonstrates to the satisfaction of the 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:
 - (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 26B-3-311(5).
- (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 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;
 - (c) may only seek Medicaid certification for the number of licensed beds in the nursing care facility program equal to the total number of licenses for Medicaid beds received by the entity;
 - (d) does not have to demonstrate need or seek approval for the Medicaid licensed bed under Subsection 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 26B-3-311(5), including personnel, services, contracts, and licensing of facilities under 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 26B-3-310, 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

- (ii) if:
 - (A) the nursing care facility seeks Medicaid certification for the transferred licenses within the time limit required by Subsection (3)(f); and
 - (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 26B-3-310 and 26B-3-311 if:
 - (i) the license for a Medicaid bed is transferred under this section but the receiving entity does not obtain Medicaid certification for the licensed bed within the time required by Subsection (3)(f); or
 - (ii) the license for a Medicaid bed is transferred under this section but the license is no longer eligible for Medicaid certification.

Renumbered and Amended by Chapter 306, 2023 General Session

Part 4

Nursing Care Facility Assessment

26B-3-401 Definitions.

As used in this part:

- (1)
 - (a) "Nursing care facility" means:
 - (i) a nursing care facility as defined in Section 26B-2-201;
 - (ii) beginning January 1, 2006, a designated swing bed in:
 - (A) a general acute hospital as defined in Section 26B-2-201; and
 - (B) a critical access hospital which meets the criteria of 42 U.S.C. Sec. 1395i-4(c)(2) (1998); and
 - (iii) an intermediate care facility for people with an intellectual disability that is licensed under Section 26B-2-212.
 - (b) "Nursing care facility" does not include:
 - (i) the Utah State Developmental Center;
 - (ii) the Utah State Hospital;
 - (iii) a general acute hospital, specialty hospital, or small health care facility as those terms are defined in Section 26B-2-201; or
 - (iv) a Utah State Veterans Home.
- (2) "Patient day" means each calendar day in which an individual patient is admitted to the nursing care facility during a calendar month, even if on a temporary leave of absence from the facility.

Renumbered and Amended by Chapter 306, 2023 General Session

26B-3-402 Legislative findings.

- (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.

Renumbered and Amended by Chapter 306, 2023 General Session

26B-3-403 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 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 part, including the right to audit records of a nursing care facility related to patient days of care for the facility.
 - (c) The department shall forward proceeds from the assessment imposed by this part to the state treasurer for deposit in the expendable special revenue fund as specified in Section 26B-1-332.
- (3) Each nursing care facility shall, on or before the end of the month next succeeding each calendar monthly period, file with the department:
 - (a) a report which includes:
 - (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
 - (b) a return for the monthly period, and shall remit with the return the assessment required by this 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 part, or that fails to file a return as required by this part, shall pay, in addition to the assessment, penalties and interest as provided in Section 26B-3-404.

Renumbered and Amended by Chapter 306, 2023 General Session

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 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:
 - (a) If any underpayment of assessment is due to negligence, the penalty is 25% of the underpayment.
 - (b) If the underpayment of the assessment is due to intentional disregard of law or rule, the penalty is 50% of the underpayment.
- (4) For intent to evade the assessment, the penalty is 100% of the underpayment.
- (5) The rate of interest applicable to an underpayment of an assessment under this part or an unpaid penalty under this part is 12% annually.
- (6) The department may waive the imposition of a penalty for good cause.

Renumbered and Amended by Chapter 306, 2023 General Session

26B-3-405 Adjustment to nursing care facility Medicaid reimbursement rates.

If federal law or regulation prohibits the money in the Nursing Care Facilities Provider Assessment Fund from being used in the manner set forth in Subsection 26B-1-332(1)(b), the rates paid to nursing care facilities for providing services pursuant to the Medicaid program shall be changed:

- (1) except as otherwise provided in Subsection (2), to the rates paid to nursing care facilities on June 30, 2004; or
- (2) if the Legislature or the department has on or after July 1, 2004, changed the rates paid to facilities through a manner other than the use of expenditures from the Nursing Care Facilities Provider Assessment Fund, to the rates provided for by the Legislature or the department.

Renumbered and Amended by Chapter 306, 2023 General Session

26B-3-406 Intermediate care facility for people with an intellectual disability -- Uniform rate.

An intermediate care facility for people with an intellectual disability is subject to all the provisions of this part, except that the department shall establish a uniform rate for an intermediate care facility for people with an intellectual disability that:

- (1) is based on the same formula specified for nursing care facilities under the provisions of Subsection 26B-3-403(1)(b); and
- (2) may be different than the uniform rate established for other nursing care facilities.

Renumbered and Amended by Chapter 306, 2023 General Session

Part 5 Inpatient Hospital Assessment

26B-3-501 Definitions.

As used in this part:

- (1) "Assessment" means the inpatient hospital assessment established by this part.
- (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:
 - (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
 - (b) a similar report adopted by the department by administrative rule, if the report under Subsection (3)(a) is no longer available.
- (4) "Division" means the Division of Integrated Healthcare within the department.
- (5) "Enhancement waiver program" means the program established by the Primary Care Network enhancement waiver program described in Section 26B-3-211.
- (6) "Health coverage improvement program" means the health coverage improvement program described in Section 26B-3-207.
- (7) "Hospital share" means the hospital share described in Section 26B-3-505.
- (8) "Medicaid accountable care organization" means a managed care organization, as defined in 42 C.F.R. Sec. 438, that contracts with the department under the provisions of Section 26B-3-202.
- (9) "Medicaid waiver expansion" means a Medicaid expansion in accordance with Section 26B-3-113 or 26B-3-210.
- (10) "Medicare cost report" means CMS-2552-10, the cost report for electronic filing of hospitals.
- (11)
 - (a) "Non-state government hospital" means a hospital owned by a non-state government entity.
 - (b) "Non-state government hospital" does not include:
 - (i) the Utah State Hospital; or
 - (ii) a hospital owned by the federal government, including the Veterans Administration Hospital.
- (12)
 - (a) "Private hospital" means:
 - (i) a general acute hospital, as defined in Section 26B-2-201, that is privately owned and operating in the state; and
 - (ii) a privately owned specialty hospital operating in the state, including a privately owned hospital whose inpatient admissions are predominantly for:
 - (A) rehabilitation;
 - (B) psychiatric care;
 - (C) chemical dependency services; or
 - (D) long-term acute care services.
 - (b) "Private hospital" does not include a facility for residential treatment as defined in Section 26B-2-101.
- (13) "State teaching hospital" means a state owned teaching hospital that is part of an institution of higher education.
- (14) "Upper payment limit gap" means the difference between the private hospital outpatient upper payment limit and the private hospital Medicaid outpatient payments, as determined in accordance with 42 C.F.R. Sec. 447.321.

Renumbered and Amended by Chapter 306, 2023 General Session

26B-3-502 Application.

- (1) Other than for the imposition of the assessment described in this part, nothing in this part shall affect the nonprofit or tax exempt status of any nonprofit charitable, religious, or educational health care provider under any:
 - (a) state law;
 - (b) ad valorem property taxes;
 - (c) sales or use taxes; or
 - (d) other taxes, fees, or assessments, whether imposed or sought to be imposed, by the state or any political subdivision of the state.
- (2) All assessments paid under this part may be included as an allowable cost of a hospital for purposes of any applicable Medicaid reimbursement formula.
- (3) This part does not authorize a political subdivision of the state to:
 - (a) license a hospital for revenue;
 - (b) impose a tax or assessment upon a hospital; or
 - (c) impose a tax or assessment measured by the income or earnings of a hospital.

Renumbered and Amended by Chapter 306, 2023 General Session

26B-3-503 Assessment.

- (1) An assessment is imposed on each private hospital:
 - (a) beginning upon the later of CMS approval of:
 - (i) the health coverage improvement program waiver under Section 26B-3-207; and
 - (ii) the assessment under this part;
 - (b) in the amount designated in Sections 26B-3-506 and 26B-3-507; and
 - (c) in accordance with Section 26B-3-504.
- (2) Subject to Section 26B-3-505, the assessment imposed by this part is due and payable on a quarterly basis, after payment of the outpatient upper payment limit supplemental payments under Section 26B-3-511 have been paid.
- (3) The first quarterly payment is not due until at least three months after the earlier of the effective dates of the coverage provided through:
 - (a) the health coverage improvement program;
 - (b) the enhancement waiver program; or
 - (c) the Medicaid waiver expansion.

Renumbered and Amended by Chapter 306, 2023 General Session

26B-3-504 Collection of assessment -- Deposit of revenue -- Rulemaking.

- (1) The collecting agent for the assessment imposed under Section 26B-3-503 is the department.
- (2) The department is vested with the administration and enforcement of this part, and may make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, necessary to:
 - (a) collect the assessment, intergovernmental transfers, and penalties imposed under this part;
 - (b) audit records of a facility that:
 - (i) is subject to the assessment imposed by this part; and
 - (ii) does not file a Medicare cost report; and

- (c) select a report similar to the Medicare cost report if Medicare no longer uses a Medicare cost report.
- (3) The department shall:
 - (a) administer the assessment in this part separately from the assessment in Part 7, Hospital Provider Assessment; and
 - (b) deposit assessments collected under this part into the Medicaid Expansion Fund created by Section 26B-1-315.

Renumbered and Amended by Chapter 306, 2023 General Session

26B-3-505 Quarterly notice.

- (1) Quarterly assessments imposed by this 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.
- (2) The department may, by rule, extend the time for paying the assessment.

Renumbered and Amended by Chapter 306, 2023 General Session

26B-3-506 Hospital financing of health coverage improvement program Medicaid waiver expansion -- Hospital share.

- (1) The hospital share is:
 - (a) 45% of the state's net cost of the health coverage improvement program, including Medicaid coverage for individuals with dependent children up to the federal poverty level designated under Section 26B-3-207;
 - (b) 45% of the state's net cost of the enhancement waiver program;
 - (c) if the waiver for the Medicaid waiver expansion is approved, \$11,900,000; and
 - (d) 45% of the state's net cost of the upper payment limit gap.
- (2)
 - (a) The hospital share is capped at no more than \$13,600,000 annually, consisting of:
 - (i) an \$11,900,000 cap for the programs specified in Subsections (1)(a) through (c); and
 - (ii) a \$1,700,000 cap for the program specified in Subsection (1)(d).
 - (b) The department shall prorate the cap described in Subsection (2)(a) in any year in which the programs specified in Subsections (1)(a) and (d) are not in effect for the full fiscal year.
- (3) Private hospitals shall be assessed under this part for:
 - (a) 69% of the portion of the hospital share for the programs specified in Subsections (1)(a) through (c); and
 - (b) 100% of the portion of the hospital share specified in Subsection (1)(d).
- (4)
 - (a) In the report described in Subsection 26B-3-113(8), the department shall calculate the state's net cost of each of the programs described in Subsections (1)(a) through (c) that are in effect for that year.
 - (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:
 - (i) hospital inpatient payments;
 - (ii) hospital inpatient discharges;
 - (iii) hospital inpatient days; and
 - (iv) hospital outpatient payments; and
- (b) if the Medicaid accountable care organization enrolls any individuals in the health coverage improvement program, the enhancement waiver program, or the Medicaid waiver expansion, for the population newly eligible for any of those programs:
 - (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.

Renumbered and Amended by Chapter 306, 2023 General Session

26B-3-507 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 26B-3-506(1) and (3), by the sum of:
 - (i) the total number of discharges for assessed private hospitals that are not a private teaching hospital; and
 - (ii) 2.5 times the number of discharges for a private teaching hospital, described in Subsection (1)(b).
 - (d) The division may, by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, adjust the formula described in Subsection (1)(c) to address unforeseen circumstances in the administration of the assessment under this part.
 - (e) Any quarterly changes to the uniform assessment rate shall be applied 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 2017, the hospital's cost report data for the hospital's fiscal year ending between July 1, 2013, and June 30, 2014; 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 CMS 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.
- (b) If a hospital is not certified by the Medicare program and is not required to file a 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) 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.
- (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 assessment for each hospital shall be separately calculated by the department; and
 - (b) each separate hospital shall pay the assessment imposed by this part.
- (5) If multiple hospitals use the 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.

Renumbered and Amended by Chapter 306, 2023 General Session

26B-3-508 State teaching hospital and non-state government hospital mandatory intergovernmental transfer.

- (1) The state teaching hospital and a non-state government hospital shall make an intergovernmental transfer to the Medicaid Expansion Fund created in Section 26B-1-315, in accordance with this section.
- (2) The hospitals described in Subsection (1) shall pay the intergovernmental transfer beginning on the later of CMS approval of:
 - (a) the health improvement program waiver under Section 26B-3-207; or
 - (b) the assessment for private hospitals in this part.
- (3) The intergovernmental transfer is apportioned as follows:
 - (a) the state teaching hospital is responsible for:
 - (i) 30% of the portion of the hospital share specified in Subsections 26B-3-506(1)(a) through (c); and
 - (ii) 0% of the hospital share specified in Subsection 26B-3-506(1)(d); and
 - (b) non-state government hospitals are responsible for:
 - (i) 1% of the portion of the hospital share specified in Subsections 26B-3-506(1)(a) through (c); and
 - (ii) 0% of the hospital share specified in Subsection 26B-3-506(1)(d).
- (4) The department shall, by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, designate:
 - (a) the method of calculating the amounts designated in Subsection (3); and
 - (b) the schedule for the intergovernmental transfers.

Renumbered and Amended by Chapter 306, 2023 General Session

26B-3-509 Penalties and interest.

- (1) A hospital that fails to pay a quarterly assessment, make the mandated intergovernmental transfer, or file a return as required under this part, within the time required by this 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:
 - (a) a penalty equal to 5% of the quarterly amount not paid on or before the due date; 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.
- (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 part.

Renumbered and Amended by Chapter 306, 2023 General Session

26B-3-510 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.

Renumbered and Amended by Chapter 306, 2023 General Session

26B-3-511 Outpatient upper payment limit supplemental payments.

- (1) Beginning on the effective date of the assessment imposed under this part, and for each subsequent fiscal year, the department shall implement an outpatient upper payment limit program for private hospitals that shall supplement the reimbursement to private hospitals in accordance with Subsection (2).
- (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
 - (b) is allocated based on the Medicaid state plan.
- (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;
 - (b) the effective date of the Medicaid state plan amendment necessary to implement the payments under this section; or

- (c) the effective date of the coverage provided through the health coverage improvement program waiver.

Renumbered and Amended by Chapter 306, 2023 General Session

26B-3-512 Repeal of assessment.

- (1) The assessment imposed by this 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 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 part; or
 - (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, 2015; or
 - (b) this part is repealed in accordance with Section 631-1-226.
- (2) If the assessment is repealed under Subsection (1):
 - (a) the division may not collect any assessment or intergovernmental transfer under this part;
 - (b) the department shall disburse money in the special Medicaid Expansion Fund in accordance with the requirements in Subsection 26B-1-315(4), to the extent federal matching is not reduced by CMS due to the repeal of the assessment;
 - (c) any money remaining in the Medicaid Expansion Fund after the disbursement described in Subsection (2)(b) that was derived from assessments imposed by this part shall be refunded to the hospitals in proportion to the amount paid by each hospital for the last three fiscal years; and
 - (d) any money remaining in the Medicaid Expansion Fund after the disbursements described in Subsections (2)(b) and (c) shall be deposited into the General Fund by the end of the fiscal year that the assessment is suspended.

Renumbered and Amended by Chapter 306, 2023 General Session

Part 6
Medicaid Expansion Hospital Assessment

26B-3-601 Definitions.

As used in this part:

- (1) "Assessment" means the Medicaid expansion hospital assessment established by this part.
- (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:
 - (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

- (b) a similar report adopted by the department by administrative rule, if the report under Subsection (3)(a) is no longer available.
- (4) "Division" means the Division of Integrated Healthcare within the department.
- (5) "Hospital share" means the hospital share described in Section 26B-3-605.
- (6) "Medicaid accountable care organization" means a managed care organization, as defined in 42 C.F.R. Sec. 438, that contracts with the department under the provisions of Section 26B-3-202.
- (7) "Medicaid Expansion Fund" means the Medicaid Expansion Fund created in Section 26B-1-315.
- (8) "Medicaid waiver expansion" means the same as that term is defined in Section 26B-3-210.
- (9) "Medicare cost report" means CMS-2552-10, the cost report for electronic filing of hospitals.
- (10)
 - (a) "Non-state government hospital" means a hospital owned by a non-state government entity.
 - (b) "Non-state government hospital" does not include:
 - (i) the Utah State Hospital; or
 - (ii) a hospital owned by the federal government, including the Veterans Administration Hospital.
- (11)
 - (a) "Private hospital" means:
 - (i) a privately owned general acute hospital operating in the state as defined in Section 26B-2-201; or
 - (ii) a privately owned specialty hospital operating in the state, including a privately owned hospital for which inpatient admissions are predominantly:
 - (A) rehabilitation;
 - (B) psychiatric;
 - (C) chemical dependency; or
 - (D) long-term acute care services.
 - (b) "Private hospital" does not include a facility for residential treatment as defined in Section 26B-2-101.
- (12) "Qualified Medicaid expansion" means an expansion of the Medicaid program in accordance with Subsection 26B-3-113(5).
- (13) "State teaching hospital" means a state owned teaching hospital that is part of an institution of higher education.

Renumbered and Amended by Chapter 306, 2023 General Session

26B-3-602 Application.

- (1) Other than for the imposition of the assessment described in this part, nothing in this part shall affect the nonprofit or tax exempt status of any nonprofit charitable, religious, or educational health care provider under any:
 - (a) state law;
 - (b) ad valorem property tax requirement;
 - (c) sales or use tax requirement; or
 - (d) other requirements imposed by taxes, fees, or assessments, whether imposed or sought to be imposed, by the state or any political subdivision of the state.
- (2) A hospital paying an assessment under this part may include the assessment as an allowable cost of a hospital for purposes of any applicable Medicaid reimbursement formula.
- (3) This part does not authorize a political subdivision of the state to:
 - (a) license a hospital for revenue;

- (b) impose a tax or assessment upon a hospital; or
- (c) impose a tax or assessment measured by the income or earnings of a hospital.

Renumbered and Amended by Chapter 306, 2023 General Session

26B-3-603 Assessment.

- (1) An assessment is imposed on each private hospital:
 - (a) beginning upon the later of:
 - (i) April 1, 2019; and
 - (ii) CMS approval of the assessment under this part;
 - (b) in the amount designated in Sections 26B-3-606 and 26B-3-607; and
 - (c) in accordance with Section 26B-3-604.
- (2) The assessment imposed by this part is due and payable in accordance with Subsection 26B-3-604(4).

Renumbered and Amended by Chapter 306, 2023 General Session

26B-3-604 Collection of assessment -- Deposit of revenue -- Rulemaking.

- (1) The department shall act as the collecting agent for the assessment imposed under Section 26B-3-603.
- (2) The department shall administer and enforce the provisions of this part, and may make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, necessary to:
 - (a) collect the assessment, intergovernmental transfers, and penalties imposed under this part;
 - (b) audit records of a facility that:
 - (i) is subject to the assessment imposed under this part; and
 - (ii) does not file a Medicare cost report; and
 - (c) select a report similar to the Medicare cost report if Medicare no longer uses a Medicare cost report.
- (3) The department shall:
 - (a) administer the assessment in this part separately from the assessments in Part 7, Hospital Provider Assessment, and Part 5, Inpatient Hospital Assessment; and
 - (b) deposit assessments collected under this part into the Medicaid Expansion Fund.
- (4)
 - (a) Hospitals shall pay the quarterly assessments imposed by this part to the division within 15 business days after the original invoice date that appears on the invoice issued by the division.
 - (b) The department may make rules creating requirements to allow the time for paying the assessment to be extended.

Renumbered and Amended by Chapter 306, 2023 General Session

26B-3-605 Hospital share.

- (1) The hospital share is:
 - (a) for the period from April 1, 2019, through June 30, 2020, \$15,000,000; and
 - (b) beginning July 1, 2020, 100% of the state's net cost of the qualified Medicaid expansion, after deducting appropriate offsets and savings expected as a result of implementing the qualified Medicaid expansion, including:
 - (i) savings from:

- (A) the Primary Care Network program;
 - (B) the health coverage improvement program, as defined in Section 26B-3-207;
 - (C) the state portion of inpatient prison medical coverage;
 - (D) behavioral health coverage; and
 - (E) county contributions to the non-federal share of Medicaid expenditures; and
- (ii) any funds appropriated to the Medicaid Expansion Fund.
- (2)
- (a) Beginning July 1, 2020, the hospital share is capped at no more than \$15,000,000 annually.
 - (b) Beginning July 1, 2020, the division shall prorate the cap specified in Subsection (2)(a) in any year in which the qualified Medicaid expansion is not in effect for the full fiscal year.

Renumbered and Amended by Chapter 306, 2023 General Session

26B-3-606 Hospital financing.

- (1) Private hospitals shall be assessed under this part for the portion of the hospital share described in Section 26B-3-611.
- (2) In the report described in Subsection 26B-3-113(8), the department shall calculate 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.

Renumbered and Amended by Chapter 306, 2023 General Session

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).
 - (c) The division shall calculate the uniform assessment rate described in Subsection (1)(a) by dividing the hospital share for assessed private hospitals, as described in Subsection 26B-3-606(1), by the sum of:
 - (i) the total number of discharges for assessed private hospitals that are not a private teaching hospital; and
 - (ii) 2.5 times the number of discharges for a private teaching hospital, described in Subsection (1)(b).
 - (d) The division may make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to adjust the formula described in Subsection (1)(c) to address unforeseen circumstances in the administration of the assessment under this part.
 - (e) The division shall apply any quarterly changes to the uniform assessment rate 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.
 - (b) If a hospital is not certified by the Medicare program and is not required to file a 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 part.
- (5) If multiple hospitals use the 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.

Renumbered and Amended by Chapter 306, 2023 General Session

26B-3-608 State teaching hospital and non-state government hospital mandatory intergovernmental transfer.

- (1) A state teaching hospital and a non-state government hospital shall make an intergovernmental transfer to the Medicaid Expansion Fund, in accordance with this section.
- (2) The hospitals described in Subsection (1) shall pay the intergovernmental transfer beginning on the later of:
 - (a) April 1, 2019; or
 - (b) CMS approval of the assessment for private hospitals in this part.
- (3) The intergovernmental transfer is apportioned between the non-state government hospitals as follows:
 - (a) the state teaching hospital shall pay for the portion of the hospital share described in Section 26B-3-611; and
 - (b) non-state government hospitals shall pay for the portion of the hospital share described in Section 26B-3-611.
- (4) The department shall, by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, designate:
 - (a) the method of calculating the amounts designated in Subsection (3); and
 - (b) the schedule for the intergovernmental transfers.

Renumbered and Amended by Chapter 306, 2023 General Session

26B-3-609 Penalties.

- (1) A hospital that fails to pay a quarterly assessment, make the mandated intergovernmental transfer, or file a return as required under this part, within the time required by this 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:
 - (a) a penalty equal to 5% of the quarterly amount not paid on or before the due date; 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.
- (3) Upon making a record of the division's actions, and upon reasonable cause shown, the division may waive or reduce any of the penalties imposed under this part.

Renumbered and Amended by Chapter 306, 2023 General Session

26B-3-610 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.

Renumbered and Amended by Chapter 306, 2023 General Session

26B-3-611 Hospital financing of the hospital share.

- (1) For the first two full fiscal years that the assessment is in effect, the department shall:
 - (a) assess private hospitals under this part for 69% of the hospital share;
 - (b) require the state teaching hospital to make an intergovernmental transfer under this part for 30% of the hospital share; and
 - (c) require non-state government hospitals to make an intergovernmental transfer under this 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.

Renumbered and Amended by Chapter 306, 2023 General Session

26B-3-612 Suspension of assessment.

- (1) The department shall suspend the assessment imposed by this part when the executive director certifies that:
 - (a) action by Congress is in effect that disqualifies the assessment imposed by this part from counting toward state Medicaid funds available to be used to determine the amount of federal financial participation;
 - (b) 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:
 - (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 at least one of the Medicaid programs described in this part; or
 - (c) 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, 2015.
- (2) If the assessment is suspended under Subsection (1):
 - (a) the division may not collect any assessment or intergovernmental transfer under this part;
 - (b) the division shall disburse money in the Medicaid Expansion Fund that was derived from assessments imposed by this part in accordance with the requirements in Subsection 26B-1-315(4), to the extent federal matching is not reduced by CMS due to the repeal of the assessment; and
 - (c) the division shall refund any money remaining in the Medicaid Expansion Fund after the disbursement described in Subsection (2)(b) that was derived from assessments imposed by this part to the hospitals in proportion to the amount paid by each hospital for the last three fiscal years.

Renumbered and Amended by Chapter 306, 2023 General Session

Part 7
Hospital Provider Assessment

26B-3-701 Definitions.

As used in this part:

- (1) "Accountable care organization" means a managed care organization, as defined in 42 C.F.R. Sec. 438, that contracts with the department under the provisions of Section 26B-3-202.
- (2) "Assessment" means the Medicaid hospital provider assessment established by this part.
- (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 Report or on Worksheet S-3 Part I, column 15, lines 14, 16, and 17 of the 2552-10 Medicare Cost Report for the applicable assessment year.
- (4) "Division" means the Division of Integrated Healthcare of the department.
- (5) "Hospital":
 - (a) means a privately owned:
 - (i) general acute hospital operating in the state as defined in Section 26B-2-201; and

- (ii) specialty hospital operating in the state, which shall include a privately owned hospital whose inpatient admissions are predominantly:
 - (A) rehabilitation;
 - (B) psychiatric;
 - (C) chemical dependency; or
 - (D) long-term acute care services; and
- (b) does not include:
 - (i) a human services program, as defined in Section 26B-2-101;
 - (ii) a hospital owned by the federal government, including the Veterans Administration Hospital; or
 - (iii) a hospital that is owned by the state government, a state agency, or a political subdivision of the state, including:
 - (A) a state-owned teaching hospital; and
 - (B) the Utah State Hospital.
- (6) "Medicare Cost Report" means CMS-2552-96 or CMS-2552-10, the cost report for electronic filing of hospitals.
- (7) "State plan amendment" means a change or update to the state Medicaid plan.

Renumbered and Amended by Chapter 306, 2023 General Session

26B-3-702 Legislative findings.

- (1) The Legislature finds that there is an important state purpose to improve the access of Medicaid patients to quality care in Utah hospitals because of continuous decreases in state revenues and increases in enrollment under the Utah Medicaid program.
- (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.

Renumbered and Amended by Chapter 306, 2023 General Session

26B-3-703 Application of part.

- (1) Other than for the imposition of the assessment described in this part, nothing in this part shall affect the nonprofit or tax exempt status of any nonprofit charitable, religious, or educational health care provider under:
 - (a) Section 501(c), as amended, of the Internal Revenue Code;
 - (b) other applicable federal law;
 - (c) any state law;
 - (d) any ad valorem property taxes;
 - (e) any sales or use taxes; or
 - (f) any other taxes, fees, or assessments, whether imposed or sought to be imposed by the state or any political subdivision, county, municipality, district, authority, or any agency or department thereof.
- (2) All assessments paid under this part may be included as an allowable cost of a hospital for purposes of any applicable Medicaid reimbursement formula.
- (3) This part does not authorize a political subdivision of the state to:

- (a) license a hospital for revenue;
- (b) impose a tax or assessment upon hospitals; or
- (c) impose a tax or assessment measured by the income or earnings of a hospital.

Renumbered and Amended by Chapter 306, 2023 General Session

26B-3-704 Assessment, collection, and payment of hospital provider assessment.

- (1) A uniform, broad based, assessment is imposed on each hospital as defined in Subsection 26B-3-701(5)(a):
 - (a) in the amount designated in Section 26B-3-705; and
 - (b) in accordance with Section 26B-3-706.
- (2)
 - (a) The assessment imposed by this part is due and payable on a quarterly basis in accordance with Section 26B-3-706.
 - (b) The collecting agent for this assessment is the department which is vested with the administration and enforcement of this part, including the right to adopt administrative rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, necessary to:
 - (i) implement and enforce the provisions of this act; and
 - (ii) audit records of a facility:
 - (A) that is subject to the assessment imposed by this part; and
 - (B) does not file a Medicare Cost Report.
 - (c) The department shall forward proceeds from the assessment imposed by this part to the state treasurer for deposit in the expendable special revenue fund as specified in Section 26B-1-316.
- (3) The department may, by rule, extend the time for paying the assessment.

Renumbered and Amended by Chapter 306, 2023 General Session

26B-3-705 Calculation of assessment.

- (1)
 - (a) An annual assessment is payable on a quarterly basis for each hospital in an amount calculated at a uniform assessment rate for each hospital discharge, in accordance with this section.
 - (b) The uniform assessment rate shall be determined using the total number of hospital discharges for assessed hospitals divided into the total non-federal portion in an amount consistent with Section 26B-3-707 that is needed to support capitated rates for accountable care organizations for purposes of hospital services provided to Medicaid enrollees.
 - (c) Any quarterly changes to the uniform assessment rate shall be applied uniformly to all assessed hospitals.
 - (d) The annual uniform assessment rate may not generate more than:
 - (i) \$1,000,000 to offset Medicaid mandatory expenditures; and
 - (ii) the non-federal share to seed amounts needed to support capitated rates for accountable care organizations as provided for in Subsection (1)(b).
- (2)
 - (a) For each state fiscal year, discharges shall be determined using the data from each hospital's Medicare Cost Report contained in the Centers for Medicare and Medicaid Services' Healthcare Cost Report Information System file. The hospital's discharge data will be derived as follows:

- (i) for state fiscal year 2013, the hospital's cost report data for the hospital's fiscal year ending between July 1, 2009, and June 30, 2010;
 - (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;
 - (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;
 - (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
 - (v) 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 prior to the assessment fiscal year.
- (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:
- (i) the hospital shall submit to the division its applicable fiscal year discharges with supporting documentation;
 - (ii) the division shall determine the hospital's discharges from the information submitted under Subsection (2)(c)(i); and
 - (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.
- (3) Except as provided in Subsection (4), if a hospital is owned by an organization that owns more than one hospital in the state:
- (a) the assessment for each hospital shall be separately calculated by the department; and
 - (b) each separate hospital shall pay the assessment imposed by this part.
- (4) Notwithstanding the requirement of Subsection (3), if multiple hospitals use the 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.

Renumbered and Amended by Chapter 306, 2023 General Session

26B-3-706 Quarterly notice -- Collection.

Quarterly assessments imposed by this 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.

Renumbered and Amended by Chapter 306, 2023 General Session

26B-3-707 Medicaid hospital adjustment under accountable care organization rates.

- (1) To preserve and improve access to hospital services, the division shall incorporate into the accountable care organization rate structure calculation consistent with the certified actuarial rate range:
- (a) \$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

- (b) an amount equal to the difference between payments made to hospitals by accountable care organizations for the Medicaid eligibility categories covered in Utah, based on submitted encounter data and the maximum amount that could be paid for those services to be used for directed payments to hospitals for inpatient and outpatient services.
- (2)
- (a) To preserve and improve the quality of inpatient and outpatient hospital services authorized under Subsection (1)(b), the division shall amend its quality strategies required by 42 C.F.R. Sec. 438.340 to include quality measures selected from the CMS hospital quality improvement programs.
 - (b) To better address the unique needs of rural and specialty hospitals, the division may adopt different quality standards for rural and specialty hospitals.
 - (c) The division shall make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to adopt the selected quality measures and prescribe penalties for not meeting the quality standards that are established by the division by rule.
 - (d) The division shall apply the same quality measures and penalties under this Subsection (2) to new directed payments made to the University of Utah Hospital and Clinics.

Renumbered and Amended by Chapter 306, 2023 General Session
Amended by Chapter 495, 2023 General Session

26B-3-708 Penalties and interest.

- (1) A facility that fails to pay any assessment or file a return as required under this part, within the time required by this 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).
 - (b) If a hospital fails to timely pay the full amount of a quarterly assessment, the department shall add to the assessment:
 - (i) a penalty equal to 5% of the quarterly amount not paid on or before the due date; 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
 - (B) any unpaid penalty assessment.
 - (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.

Renumbered and Amended by Chapter 306, 2023 General Session

26B-3-709 Repeal of assessment.

- (1) The repeal of the assessment imposed by this 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 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 part;
 - (c) the effective date of:
 - (i) an appropriation for any state fiscal year from the General Fund for hospital payments under the state Medicaid program that is less than the amount appropriated for state fiscal year 2012;
 - (ii) the annual revenues of the state General Fund budget return to the level that was appropriated for fiscal year 2008;
 - (iii) a division change in rules that reduces any of the following below July 1, 2011, payments:
 - (A) aggregate hospital inpatient payments;
 - (B) adjustment payment rates; or
 - (C) any cost settlement protocol; or
 - (iv) a division change in rules that reduces the aggregate outpatient payments below July 1, 2011, payments; and
 - (d) the sunset of this part in accordance with Section 63I-1-226.
- (2) If the assessment is repealed under Subsection (1), money in the fund that was derived from assessments imposed by this part, before the determination made under Subsection (1), shall be disbursed under Section 26B-3-707 to the extent federal matching is not reduced due to the impermissibility of the assessments. Any funds remaining in the special revenue fund shall be refunded to the hospitals in proportion to the amount paid by each hospital.

Renumbered and Amended by Chapter 306, 2023 General Session

Part 8

Ambulance Service Provider Assessment

26B-3-801 Definitions.

As used in this part:

- (1) "Ambulance service provider" means:
 - (a) an ambulance provider as defined in Section 26B-4-101; or
 - (b) a non-911 service provider as defined in Section 26B-4-101.
- (2) "Assessment" means the Medicaid ambulance service provider assessment established by this part.
- (3) "Division" means the Division of Integrated Healthcare 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 26B-3-804.
- (5) "Total transports" means the number of total ambulance transports applicable to a given fiscal year, as determined under Subsection 26B-3-803(5).

Renumbered and Amended by Chapter 306, 2023 General Session

26B-3-802 Assessment, collection, and payment of ambulance service provider assessment.

- (1) An ambulance service provider shall pay an assessment to the division:
 - (a) in the amount designated in Section 26B-3-803;
 - (b) in accordance with this part;
 - (c) quarterly, on a day determined by the division by rule made under Subsection (2)(b); and
 - (d) no more than 15 business days after the day on which the division issues the ambulance service provider notice of the assessment.
- (2) The division shall:
 - (a) collect the assessment described in Subsection (1);
 - (b) determine, by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, standards and procedures for implementing and enforcing the provisions of this part; and
 - (c) transfer assessment proceeds to the state treasurer for deposit into the Ambulance Service Provider Assessment Expendable Revenue Fund created in Section 26B-1-317.

Renumbered and Amended by Chapter 306, 2023 General Session

26B-3-803 Calculation of assessment.

- (1) The division shall calculate a uniform assessment per transport as described in this section.
- (2) The assessment due from a given ambulance service provider equals the non-federal portion divided by total transports, multiplied by the number of transports for the ambulance service provider.
- (3) The division shall apply any quarterly changes to the assessment rate, calculated as described in Subsection (2), uniformly to all assessed ambulance service providers.
- (4) The assessment may not generate more than the total of:
 - (a) an annual amount of \$20,000 to offset Medicaid administration expenses; and
 - (b) the non-federal portion.
- (5)
 - (a) For each state fiscal year, the division shall calculate total transports using data from the Emergency Medical System as follows:
 - (i) for state fiscal year 2016, the division shall use ambulance service provider transports during the 2014 calendar year; and
 - (ii) for a fiscal year after 2016, the division shall use ambulance service provider 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.

Renumbered and Amended by Chapter 306, 2023 General Session

26B-3-804 Medicaid ambulance service provider adjustment under fee-for-service rates.

The division shall, if the assessment imposed by this 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.

Renumbered and Amended by Chapter 306, 2023 General Session

26B-3-805 Penalties.

The division shall require an ambulance service provider that fails to pay an assessment due under this 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.

Renumbered and Amended by Chapter 306, 2023 General Session

26B-3-806 Repeal of assessment.

- (1) This 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 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 part.
- (2) If this part is repealed under Subsection (1):
 - (a) money in the Ambulance Service Provider Assessment Expendable Revenue Fund that was derived from assessments imposed by this part, deposited before the determination made under Subsection (1), shall be disbursed under Section 26B-1-317 to the extent federal matching is not reduced due to the impermissibility of the assessments; and
 - (b) any funds remaining in the special revenue fund shall be refunded to each ambulance service provider in proportion to the amount paid by the ambulance service provider.

Renumbered and Amended by Chapter 306, 2023 General Session

Part 9
Utah Children's Health Insurance Program

26B-3-901 Definitions.

As used in this part:

- (1) "Child" means an individual who is younger than 19 years old.
- (2) "Member" means a child enrolled in the program.
- (3) "Plan" means the department's plan submitted to the United States Department of Health and Human Services pursuant to 42 U.S.C. Sec. 1397ff.
- (4) "Program" means the Utah Children's Health Insurance Program created by this part.
- (5) "Traditionally eligible child" means, subject to limitations created by the federal government, a child who is:
 - (a) a citizen of the United States;
 - (b) a qualified non-citizen;

- (c) a Supplemental Security Income recipient living in the United States on August 22, 1996, that meets the federal government's criteria for one of the grand-fathered Supplemental Security Income recipient non-citizen groups; or
- (d) a lawfully present child.

Renumbered and Amended by Chapter 306, 2023 General Session
Amended by Chapter 332, 2023 General Session

26B-3-902 Creation and administration of the Utah Children's Health Insurance Program.

- (1) There is created the Utah Children's Health Insurance Program to be administered by the department in accordance with the provisions of:
 - (a) this part; and
 - (b) the State Children's Health Insurance Program, 42 U.S.C. Sec. 1397aa et seq.
- (2) The department shall:
 - (a) prepare and submit the state's children's health insurance plan before May 1, 1998, and any amendments to the United States Department of Health and Human Services in accordance with 42 U.S.C. Sec. 1397ff; and
 - (b) make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, regarding:
 - (i) eligibility requirements consistent with Section 26B-3-108;
 - (ii) program benefits;
 - (iii) the level of coverage for each program benefit;
 - (iv) cost-sharing requirements for members, which may not:
 - (A) exceed the guidelines set forth in 42 U.S.C. Sec. 1397ee; or
 - (B) impose deductible, copayment, or coinsurance requirements on a member for well-child, well-baby, and immunizations;
 - (v) the administration of the program; and
 - (vi) a requirement that:
 - (A) members in the program shall participate in the electronic exchange of clinical health records established in accordance with Section 26B-8-411 unless the member opts out of participation;
 - (B) prior to enrollment in the electronic exchange of clinical health records the member shall receive notice of the enrollment in the electronic exchange of clinical health records and the right to opt out of participation at any time; and
 - (C) beginning July 1, 2012, when the program sends enrollment or renewal information to the member and when the member logs onto the program's website, the member shall receive notice of the right to opt out of the electronic exchange of clinical health records.

Renumbered and Amended by Chapter 306, 2023 General Session

26B-3-903 Eligibility.

- (1) A traditionally eligible child may enroll in the program if the child:
 - (a) is a bona fide Utah resident;
 - (b) does not have access to or coverage under other health insurance, including any coverage available through a parent or legal guardian's employer;
 - (c) is ineligible for Medicaid benefits;
 - (d) resides in a household whose gross family income, as defined by rule, is at or below 200% of the federal poverty level; and

- (e) is not an inmate of a public institution or a patient in an institution for mental diseases.
- (2) A child who qualifies for enrollment in the program under Subsection (1) may not be denied enrollment due to a diagnosis or pre-existing condition.
- (3)
 - (a) The department shall determine eligibility and send notification of the eligibility decision within 30 days after receiving the application for coverage.
 - (b) If the department cannot reach a decision because the applicant fails to take a required action, or because there is an administrative or other emergency beyond the department's control, the department shall:
 - (i) document the reason for the delay in the applicant's case record; and
 - (ii) inform the applicant of the status of the application and time frame for completion.
- (4) The department may not close enrollment in the program for a child who is eligible to enroll in the program under the provisions of Subsection (1).
- (5) The program shall:
 - (a) apply for grants to make technology system improvements necessary to implement a simplified enrollment and renewal process in accordance with Subsection (5)(b); and
 - (b) if funding is available, implement a simplified enrollment and renewal process.

Renumbered and Amended by Chapter 306, 2023 General Session
Amended by Chapter 332, 2023 General Session

26B-3-904 Program benefits.

- (1) Except as provided in Subsection (3), medical and dental program benefits shall be benchmarked, in accordance with 42 U.S.C. Sec. 1397cc, as follows:
 - (a) medical program benefits, including behavioral health care benefits, shall be benchmarked effective July 1, 2019, and on July 1 every third year thereafter, to:
 - (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
 - (ii) comply with the Mental Health Parity and Addiction Equity Act, Pub. L. No. 110-343; and
 - (b) dental program benefits shall be benchmarked effective July 1, 2019, and on July 1 every third year thereafter in accordance with the Children's Health Insurance Program Reauthorization Act of 2009, to be substantially equal to a dental benefit plan that has the largest insured, commercial, non-Medicaid enrollment of covered lives that is offered in the state, except that the utilization review mechanism for orthodontia shall be based on medical necessity.
- (2) On or before July 1 of each year, the department shall publish the benchmark for dental program benefits established under Subsection (1)(b).
- (3) The program benefits:
 - (a) for enrollees who are at or below 100% of the federal poverty level are exempt from the benchmark requirements of Subsections (1) and (2); and
 - (b) shall include treatment for autism spectrum disorder as defined in Section 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.

Renumbered and Amended by Chapter 306, 2023 General Session

26B-3-905 Limitation of benefits.

Abortion is not a covered benefit, except as provided in 42 U.S.C. Sec. 1397ee.

Renumbered and Amended by Chapter 306, 2023 General Session

26B-3-906 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:
 - (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
 - (d) administrative costs.

Renumbered and Amended by Chapter 306, 2023 General Session

26B-3-907 Evaluation.

The department shall develop performance measures and annually evaluate the program's performance.

Renumbered and Amended by Chapter 306, 2023 General Session

26B-3-908 Managed care -- Contracting for services.

- (1) Program benefits provided to a member under the program, as described in Section 26B-3-904, shall be delivered by a managed care organization if the department determines that adequate services are available where the member lives or resides.
- (2) The department may contract with a managed care organization to provide program benefits. The department shall evaluate a potential contract with a managed care organization based on:
 - (a) the managed care organization's:
 - (i) ability to manage medical expenses, including mental health costs;
 - (ii) proven ability to handle accident and health insurance;
 - (iii) efficiency of claim paying procedures;
 - (iv) proven ability for managed care and quality assurance;
 - (v) provider contracting and discounts;
 - (vi) pharmacy benefit management;
 - (vii) estimated total charges for administering the pool;
 - (viii) ability to administer the pool in a cost-efficient manner;
 - (ix) ability to provide adequate providers and services in the state; and
 - (x) ability to meet quality measures for emergency room use and access to primary care established by the department under Subsection 26B-3-204(4); and
 - (b) other factors established by the department.
- (3) The department may enter into separate managed care organization contracts to provide dental benefits required by Section 26B-3-904.
- (4) The department's contract with a managed care organization for the program's benefits shall include risk sharing provisions in which the plan shall accept at least 75% of the risk for any

difference between the department's premium payments per member and actual medical expenditures.

- (5)
- (a) The department may contract with the Group Insurance Division within the Utah State Retirement Office to provide services under Subsection (1) if no managed care organization is willing to contract with the department or the department determines no managed care organization meets the criteria established under Subsection (2).
 - (b) In accordance with Section 49-20-201, a contract awarded under Subsection (5)(a) is not subject to the risk sharing required by Subsection (4).

Renumbered and Amended by Chapter 306, 2023 General Session

26B-3-909 State contractor -- Employee and dependent health benefit plan coverage.

- (1) For purposes of Sections 17B-2a-818.5, 19-1-206, 63A-5b-607, 63C-9-403, 72-6-107.5, and 79-2-404, "qualified health coverage" means, at the time the contract is entered into or renewed:
- (a) a health benefit plan and employer contribution level with a combined actuarial value at least actuarially equivalent to the combined actuarial value of:
 - (i) the benchmark plan determined by the program under Subsection 26B-3-904(1)(a); and
 - (ii) a contribution level at which the employer pays at least 50% of the premium or contribution amounts for the employee and the dependents of the employee who reside or work in the state; or
 - (b) a federally qualified high deductible health plan that, at a minimum:
 - (i) has a deductible that is:
 - (A) the lowest deductible permitted for a federally qualified high deductible health plan; or
 - (B) a deductible that is higher than the lowest deductible permitted for a federally qualified high deductible health plan, but includes an employer contribution to a health savings account in a dollar amount at least equal to the dollar amount difference between the lowest deductible permitted for a federally qualified high deductible plan and the deductible for the employer offered federally qualified high deductible plan;
 - (ii) has an out-of-pocket maximum that does not exceed three times the amount of the annual deductible; and
 - (iii) provides that the employer pays 60% of the premium or contribution amounts for the employee and the dependents of the employee who work or reside in the state.
- (2) The department shall:
- (a) on or before July 1, 2016:
 - (i) determine the commercial equivalent of the benchmark plan described in Subsection (1)(a); and
 - (ii) post the commercially equivalent benchmark plan described in Subsection (2)(a)(i) on the department's website, noting the date posted; and
 - (b) update the posted commercially equivalent benchmark plan annually and at the time of any change in the benchmark.

Renumbered and Amended by Chapter 306, 2023 General Session

26B-3-910 Alternative eligibility -- Report -- Alternative Eligibility Expendable Revenue Fund.

- (1) A child who is not a traditionally eligible child may enroll in the program if:
- (a) the child:

- (i) has been living in the state for at least 180 days before the day on which the child applies for the program; and
 - (ii) meets the requirements described in Subsections 26B-3-903(1)(a) through (e); and
 - (b) the child's parent has unsubsidized employment.
- (2)
- (a) Enrollment under Subsection (1) is subject to funds in the Alternative Eligibility Expendable Revenue Fund.
 - (b) The department may create a waiting list for enrollment under Subsection (2)(a) if eligible applicants exceed funds in the Alternative Eligibility Expendable Revenue Fund.
- (3) Notwithstanding Section 26B-3-904, the program benefits, coverage, and cost sharing for a child enrolled under this section shall be equal to the benefits, coverage, and cost sharing provided to a child who:
- (a) is eligible under Subsection 26B-3-903(1); and
 - (b) resides in a household that has a gross family income equal to 200% of the federal poverty level.
- (4) Notwithstanding Section 26B-3-906, program services provided to a child enrolled under this section shall be funded by the Alternative Eligibility Expendable Revenue Fund.
- (5) Each year the department enrolls a child in the program under this section, the department shall submit a report to the Health and Human Services Interim Committee before November 30 detailing:
- (a) the number of individuals served under the program;
 - (b) average duration of coverage for individuals served under the program;
 - (c) the cost of the program; and
 - (d) any benefits of the program, including data showing:
 - (i) percentage of enrolled individuals who had well-child visits with a primary care practitioner at recommended ages;
 - (ii) percentage of enrolled individuals who received a comprehensive or periodic oral evaluation;
 - (iii) percentage of enrolled individuals who received recommended immunizations at recommended ages;
 - (iv) rate of emergency department visits per 1,000 member months;
 - (v) rate of medication adherence to treat chronic conditions; and
 - (vi) a comparison of utilization patterns before and after enrollment.
- (6)
- (a) There is created an expendable special revenue fund known as the "Alternative Eligibility Expendable Revenue Fund."
 - (b) The Alternative Eligibility Expendable Revenue Fund shall consist of:
 - (i) appropriations by the Legislature;
 - (ii) any other funds received as donations for the fund; and
 - (iii) interest earned on the account.
 - (c) If the balance of the Alternative Eligibility Expendable Revenue Fund exceeds \$4,500,000, state funds shall be transferred from the Alternative Eligibility Expendable Revenue Fund to the General Fund in an amount equal to the amount needed to reduce the balance of the Alternative Eligibility Expendable Revenue Fund to \$4,500,000.
 - (d) Money in the Alternative Eligibility Expendable Revenue Fund shall be used to provide benefits to a child enrolled in the program under this section.

Enacted by Chapter 332, 2023 General Session

Part 10 Medical Benefits Recovery

26B-3-1001 Definitions.

As used in this part:

- (1) "Annuity" shall have the same meaning as provided in Section 31A-1-301.
- (2) "Care facility" means:
 - (a) a nursing facility;
 - (b) an intermediate care facility for an individual with an intellectual disability; or
 - (c) any other medical institution.
- (3) "Claim" means:
 - (a) a request or demand for payment; or
 - (b) a cause of action for money or damages arising under any law.
- (4) "Employee welfare benefit plan" means a medical insurance plan developed by an employer under 29 U.S.C. Sec. 1001, et seq., the Employee Retirement Income Security Act of 1974 as amended.
- (5) "Health insurance entity" means:
 - (a) an insurer;
 - (b) a person who administers, manages, provides, offers, sells, carries, or underwrites health insurance, as defined in Section 31A-1-301;
 - (c) a self-insured plan;
 - (d) a group health plan, as defined in Subsection 607(1) of the federal Employee Retirement Income Security Act of 1974;
 - (e) a service benefit plan;
 - (f) a managed care organization;
 - (g) a pharmacy benefit manager;
 - (h) an employee welfare benefit plan; or
 - (i) a person who is, by statute, contract, or agreement, legally responsible for payment of a claim for a health care item or service.
- (6) "Inpatient" means an individual who is a patient and a resident of a care facility.
- (7) "Insurer" includes:
 - (a) a group health plan as defined in Subsection 607(1) of the federal Employee Retirement Income Security Act of 1974;
 - (b) a health maintenance organization; and
 - (c) any entity offering a health service benefit plan.
- (8) "Medical assistance" means:
 - (a) all funds expended for the benefit of a recipient under this chapter or Titles XVIII and XIX, federal Social Security Act; and
 - (b) any other services provided for the benefit of a recipient by a prepaid health care delivery system under contract with the department.
- (9) "Office of Recovery Services" means the Office of Recovery Services within the department.
- (10) "Provider" means a person or entity who provides services to a recipient.
- (11) "Recipient" means:
 - (a) an individual who has applied for or received medical assistance from the state;

- (b) the guardian, conservator, or other personal representative of an individual under Subsection (11)(a) if the individual is a minor or an incapacitated person; or
 - (c) the estate and survivors of an individual under Subsection (11)(a), if the individual is deceased.
- (12) "Recovery estate" means, regarding a deceased recipient:
- (a) all real and personal property or other assets included within a decedent's estate as defined in Section 75-1-201;
 - (b) the decedent's augmented estate as defined in Section 75-2-203; and
 - (c) that part of other real or personal property in which the decedent had a legal interest at the time of death including assets conveyed to a survivor, heir, or assign of the decedent through joint tenancy, tenancy in common, survivorship, life estate, living trust, or other arrangement.
- (13) "State plan" means the state Medicaid program as enacted in accordance with Title XIX, federal Social Security Act.
- (14) "TEFRA lien" means a lien, authorized under the Tax Equity and Fiscal Responsibility Act of 1982, against the real property of an individual prior to the individual's 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.

Renumbered and Amended by Chapter 306, 2023 General Session

26B-3-1002 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 part.

Renumbered and Amended by Chapter 306, 2023 General Session

26B-3-1003 Assignment of rights to benefits.

- (1)
 - (a) Except as provided in Subsection 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 payment of benefits directly to the department; and
 - (ii) is effective for all medical assistance.
- (2) The department may recover the assigned benefits or payments in accordance with Section 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.

Renumbered and Amended by Chapter 306, 2023 General Session

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, 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 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 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:
 - (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 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.

Renumbered and Amended by Chapter 306, 2023 General Session

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.

Renumbered and Amended by Chapter 306, 2023 General Session

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;
- (2) specifically describe and request any additional information from the department that is necessary to process the claim; and
- (3) provide the department or its agent a copy of any relevant or applicable insurance or benefit policy.

Renumbered and Amended by Chapter 306, 2023 General Session

26B-3-1007 Employee benefit plans.

As allowed pursuant to 29 U.S.C. Sec. 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.

Renumbered and Amended by Chapter 306, 2023 General Session

26B-3-1008 Statute of limitations -- Survival of right of action -- Insurance policy not to limit time allowed for recovery.

- (1)
 - (a) Subject to Subsection (6), action commenced by the department under this part against a health insurance entity shall be commenced within:
 - (i) subject to Subsection (7), six years after the day on which the department submits the claim for recovery or payment for the health care item or service upon which the action is based;
 - or
 - (ii) six months after the date of the last payment for medical assistance, whichever is 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
 - (ii) six months after the date of the last payment for medical assistance, whichever is later.
- (2) The death of the recipient does not abate any right of action established by this part.
- (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.
- (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).
- (4) The provisions of this section do not apply to Section 26B-3-1013 or Sections 26B-3-1015 through 26B-3-1023.
- (5) The provisions of this section supersede any other sections regarding the time 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.

Renumbered and Amended by Chapter 306, 2023 General Session

26B-3-1009 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 26B-3-1003 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 26B-3-1011(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 costs for the recipient to the state.
 - (ii) The department is responsible for any repayment to the federal government related to the medical assistance the department is prohibited from recovering under Subsection (1)(c)(i).
- (2)

- (a) The department shall mail or deliver written notice of the department's claim or lien to the third-party at the third-party's principal place of business or last-known address.
- (b) The notice shall include:
 - (i) the recipient's name;
 - (ii) the approximate date of illness or injury;
 - (iii) a general description of the type of illness or injury; and
 - (iv) if applicable, the general location where the injury is alleged to have occurred.
- (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.

Renumbered and Amended by Chapter 306, 2023 General Session

26B-3-1010 Action by department -- Notice to recipient.

- (1)
 - (a) Within 30 days after commencing an action under Subsection 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 the notice; or
 - (ii) if no last-known address is available, by publishing a notice:
 - (A) once a week for three successive weeks in a newspaper of general circulation in the county where the recipient resides; and
 - (B) in accordance with Section 45-1-101 for three weeks.
 - (b) Proof of service shall be filed in the action.
 - (c) The recipient may intervene in the department's action at any time before trial.
- (2) The notice required by Subsection (1) shall name the court in which the action is commenced and advise the recipient of:
 - (a) the right to intervene in the proceeding;
 - (b) the right to obtain a private attorney; and
 - (c) the department's right to recover medical assistance directly from the third party.

Renumbered and Amended by Chapter 306, 2023 General Session

26B-3-1011 Notice of claim by recipient -- Department response -- Conditions for proceeding -- Collection agreements.

- (1)

- (a) A recipient may not file a claim, commence an action, or settle, compromise, release, or waive a claim against a third party for recovery of medical costs for an injury, disease, or disability for which the department has provided or has become obligated to provide medical assistance, without the department's written consent as provided in Subsection (2)(b) or (4).
- (b) For purposes of Subsection (1)(a), consent may be obtained if:
 - (i) a recipient who files a claim, or commences an action against a third party notifies the department in accordance with Subsection (1)(d) within 10 days of the recipient making the claim or commencing an action; or
 - (ii) an attorney, who has been retained by the recipient to file a claim, or commence an action against a third party, notifies the department in accordance with Subsection (1)(d) of the recipient's claim:
 - (A) within 30 days after being retained by the recipient for that purpose; or
 - (B) within 30 days from the date the attorney either knew or should have known that the recipient received medical assistance from the department.
- (c) Service of the notice of claim to the department shall be made by certified mail, personal service, or by e-mail in accordance with Rule 5 of the Utah Rules of Civil Procedure, to the director of the Office of Recovery Services.
- (d) The notice of claim shall include the following information:
 - (i) the name of the recipient;
 - (ii) the recipient's Social Security number;
 - (iii) the recipient's date of birth;
 - (iv) the name of the recipient's attorney if applicable;
 - (v) the name or names of individuals or entities against whom the recipient is making the claim, if known;
 - (vi) the name of the third party's insurance carrier, if known;
 - (vii) the date of the incident giving rise to the claim; and
 - (viii) a short statement identifying the nature of the recipient's claim.
- (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 recipient's attorney and shall notify the recipient or the recipient's attorney in writing of the following:
 - (i) if the department has a claim or lien pursuant to Section 26B-3-1009 or has become obligated to provide medical assistance; and
 - (ii) whether the department is denying or granting written consent in accordance with Subsection (1)(a).
 - (b) The department shall provide the recipient's attorney the opportunity to enter into a collection agreement with the department, with the recipient's consent, unless:
 - (i) the department, prior to the receipt of the notice of the recipient's claim pursuant to Subsection (1), filed a written claim with the third party, the third party agreed to make payment to the department before the date the department received notice of the recipient's claim, and the agreement is documented in the department's record; or
 - (ii) there has been a failure by the recipient's attorney to comply with any provision of this section by:
 - (A) failing to comply with the notice provisions of this section;
 - (B) failing or refusing to enter into a collection agreement;
 - (C) failing to comply with the terms of a collection agreement with the department; or
 - (D) failing to disburse funds owed to the state in accordance with this section.
- (c)

- (i) The collection agreement shall be:
 - (A) consistent with this section and the attorney's obligation to represent the recipient and represent the state's claim; and
 - (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
 - (c) may not negotiate, compromise, settle, or waive the department's claim without the department's consent.

Renumbered and Amended by Chapter 306, 2023 General Session

26B-3-1012 Department's right to intervene -- Department's interests protected -- Remitting funds -- Disbursements -- Liability and penalty for noncompliance.

- (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 26B-3-1011, 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 26B-3-1009(3).
- (3) Any amounts assigned to and recoverable by the department pursuant to Sections 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 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.
 - (c) The department's consent to another date for remittance may not be unreasonably 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.

Renumbered and Amended by Chapter 306, 2023 General Session

26B-3-1013 Estate and trust recovery.

- (1)
 - (a) Except as provided in Subsection (1)(b), upon a recipient's death, the department may recover from the recipient's recovery estate and any trust, in which the recipient is the grantor and a beneficiary, medical assistance correctly provided for the benefit of the recipient when the recipient was 55 years old or older.
 - (b) The department may not make an adjustment or a recovery under Subsection (1)(a):
 - (i) while the deceased recipient's spouse is still living; or
 - (ii) if the deceased recipient has a surviving child who is:
 - (A) under 21 years old; or
 - (B) blind or disabled, as defined in the state plan.
- (2)
 - (a) The amount of medical assistance correctly provided for the benefit of a recipient and recoverable under this section is a lien against the deceased recipient's recovery estate or any trust when the recipient is the grantor and a beneficiary.
 - (b) The lien holds the same priority as reasonable and necessary medical expenses of the last illness as provided in Section 75-3-805.
- (3)
 - (a) For a lien described in Subsection (2), the department shall provide notice in accordance with Section 38-12-102.
 - (b) Before final distribution, the department shall perfect the lien as follows:
 - (i) for an estate, by presenting the lien to the estate's personal representative in accordance with Section 75-3-804; and
 - (ii) for a trust, by presenting the lien to the trustee in accordance with Section 75-7-510.
 - (c) The department may file an amended lien before the entry of the final order to close the estate or trust.
- (4) Claims against a deceased recipient's inter vivos trust shall be presented in accordance with Sections 75-7-509 and 75-7-510.
- (5) Any trust provision that denies recovery for medical assistance is void at the time of its making.

- (6) Nothing in this section affects the right of the department to recover Medicaid assistance before a recipient's death under Section 26B-3-1003 or 26B-3-1014.
- (7) A lien imposed under this section is of indefinite duration.

Renumbered and Amended by Chapter 306, 2023 General Session

26B-3-1014 Recovery from recipient of incorrectly provided medical assistance.

The department may:

- (1) recover medical assistance incorrectly provided, whether due to administrative or factual error or fraud, from the recipient or the recipient's recovery estate; and
- (2) pursuant to a judgment, impose a lien against real property of the recipient.

Renumbered and Amended by Chapter 306, 2023 General Session

26B-3-1015 TEFRA liens authorized -- Grounds for TEFRA liens -- Exemptions.

- (1) Except as provided in Subsections (2) and (3), the department may impose a TEFRA lien on the real property of an individual for the amount of medical assistance provided for, or to, the individual while the individual is an inpatient in a care facility, if:
 - (a) the individual is an inpatient in a care facility;
 - (b) the individual is required, as a condition of receiving services under the state plan, to spend for costs of medical care all but a minimal amount of the individual's income required for personal needs; and
 - (c) the department determines that the individual cannot reasonably be expected to:
 - (i) be discharged from the care facility; and
 - (ii) return to the individual's home.
- (2) The department may not impose a lien on the home of an individual described in Subsection (1), if any of the following individuals are lawfully residing in the home:
 - (a) the spouse of the individual;
 - (b) a child of the individual, if the child is:
 - (i) under 21 years old; or
 - (ii) blind or permanently and totally disabled, as defined in Title 42 U.S.C. Sec. 1382c(a)(3)(F);or
 - (c) a sibling of the individual, if the sibling:
 - (i) has an equity interest in the home; and
 - (ii) resided in the home for at least one year immediately preceding the day on which the individual was admitted to the care facility.
- (3) The department may not impose a TEFRA lien on the real property of an individual, unless:
 - (a) the individual has been an inpatient in a care facility for the 180-day period immediately preceding the day on which the lien is imposed;
 - (b) the department serves:
 - (i) a preliminary notice of intent to impose a TEFRA lien relating to the real property, in accordance with Section 26B-3-1017; and
 - (ii) a final notice of intent to impose a TEFRA lien relating to the real property, in accordance with Section 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.

Renumbered and Amended by Chapter 306, 2023 General Session

26B-3-1016 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.

Renumbered and Amended by Chapter 306, 2023 General Session

26B-3-1017 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 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 26B-3-1015(1), and, if the department is aware that the individual has a legally authorized representative, on the representative;
 - (b) include a statement indicating that, according to the department's records, the individual:
 - (i) meets the criteria described in Subsections 26B-3-1015(1)(a) and (b);
 - (ii) has been an inpatient in a care facility for a period of at least 180 days immediately preceding the day on which the department provides the notice to the individual; 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;
 - (c) indicate that the department intends to impose a TEFRA lien on real property belonging to the individual;
 - (d) describe the real property that the TEFRA lien will apply to;
 - (e) describe the current amount of, and purpose of, the TEFRA lien;
 - (f) indicate that the amount of the lien may continue to increase as the individual continues to receive medical assistance;
 - (g) indicate that the individual may seek to prevent the TEFRA lien from being imposed on the real property by providing documentation to the department that:
 - (i) establishes that the individual does not meet the criteria described in Subsection 26B-3-1015(1)(a) or (b);
 - (ii) establishes that the individual has not been an inpatient in a care facility for a period of at least 180 days;
 - (iii) rebuts the presumption described in Section 26B-3-1016; or
 - (iv) establishes that the real property is exempt from imposition of a TEFRA lien under Subsection 26B-3-1015(2);
 - (h) indicate that if the owner fails to provide the documentation described in Subsection (2)(g) within 30 days after the day on which the preliminary notice of intent is served, the department will issue a final notice of intent to impose a TEFRA lien on the real property and will proceed to impose the lien;
 - (i) identify the type of documentation that the owner may provide to comply with Subsection (2)(g);
 - (j) describe the circumstances under which a TEFRA lien is required to be released; and

- (k) describe the circumstances under which the department may seek to recover the lien.

Renumbered and Amended by Chapter 306, 2023 General Session

26B-3-1018 Final notice of intent to impose a TEFRA lien.

- (1) The department may issue a final notice of intent to impose a TEFRA lien on real property if:
 - (a) a preliminary notice of intent relating to the property is served in accordance with Section 26B-3-1017;
 - (b) it is at least 30 days after the day on which the preliminary notice of intent was served; and
 - (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:
 - (a) be served in person, or by certified mail, on the individual described in Subsection 26B-3-1015(1), who owns the property, and, if the department is aware that the 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 26B-3-1015(1)(a) and (b);
 - (ii) has been an inpatient in a care facility for a period of at least 180 days immediately preceding the day on which the department provides the notice to the individual; 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;
 - (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;
 - (i) describe the circumstances under which the department may seek to recover the lien;
 - (j) describe the right of the individual to challenge the decision of the department in an adjudicative proceeding; and
 - (k) indicate that failure by the individual to successfully challenge the decision of the department will result in the TEFRA lien being imposed.

Renumbered and Amended by Chapter 306, 2023 General Session

26B-3-1019 Review of department decision.

An individual who has been served with a final notice of intent to impose a TEFRA lien under Section 26B-3-1018 may seek agency or judicial review of that decision under Title 63G, Chapter 4, Administrative Procedures Act.

Renumbered and Amended by Chapter 306, 2023 General Session

26B-3-1020 Dissolution and removal of TEFRA lien.

- (1) A TEFRA lien shall dissolve and be removed by the department if the individual described in Subsection 26B-3-1015(1):

- (a)
 - (i) is discharged from the care facility; and
 - (ii) returns to the individual's home; or
- (b) provides sufficient documentation to the department that:
 - (i) rebuts the presumption described in Section 26B-3-1016; or
 - (ii) any of the following individuals are lawfully residing in the individual's home:
 - (A) the spouse of the individual;
 - (B) a child of the individual, if the child is under 21 years old or blind or permanently and totally disabled, as defined in Title 42 U.S.C. Sec. 1382c(a)(3)(F); or
 - (C) a sibling of the individual, if the sibling has an equity interest in the home and resided in the home for at least one year immediately preceding the day on which the individual was admitted to the care facility.
- (2) An individual described in Subsection 26B-3-1015(1)(a) may, at any time after the department has imposed a lien under Sections 26B-3-1015 through 26B-3-1023, file a request for the department to remove the lien.
- (3) A request filed under Subsection (2) shall be considered and reviewed pursuant to Title 63G, Chapter 4, Administrative Procedures Act.

Renumbered and Amended by Chapter 306, 2023 General Session

26B-3-1021 Expenditures included in lien -- Other proceedings.

- (1) A TEFRA lien imposed on real property under Sections 26B-3-1015 through 26B-3-1023 includes all expenses 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 property.
- (2) Nothing in Sections 26B-3-1015 through 26B-3-1023 affect or prevent the department from bringing or pursuing any other legally authorized action to recover medical assistance or to set aside a fraudulent or improper conveyance.

Renumbered and Amended by Chapter 306, 2023 General Session

26B-3-1022 Contract with another government agency.

If the department contracts with another government agency to recover funds paid for medical assistance under this part, that government agency shall be the sole agency that determines whether to impose or remove a TEFRA lien under Sections 26B-3-1015 through 26B-3-1023.

Renumbered and Amended by Chapter 306, 2023 General Session

26B-3-1023 Precedence of the Tax Equity and Fiscal Responsibility Act of 1982.

If any provision of Sections 26B-3-1015 through 26B-3-1023 conflict with the requirements of the Tax Equity and Fiscal Responsibility Act of 1982 for imposing a lien against the property of an individual prior to the individual's death, under 42 U.S.C. Sec. 1396p, the provisions of the Tax Equity and Fiscal Responsibility Act of 1982 take precedence and shall be complied with by the department.

Renumbered and Amended by Chapter 306, 2023 General Session

26B-3-1024 Legal recognition of electronic claims records.

Pursuant to Title 46, Chapter 4, Uniform Electronic Transactions Act:

- (1) a claim submitted to the department for payment may not be denied legal effect, enforceability, or admissibility as evidence in any court in any civil action because it is in electronic form; and
- (2) a third party shall accept an electronic record of payments by the department for medical services on behalf of a recipient as evidence in support of the department's claim.

Renumbered and Amended by Chapter 306, 2023 General Session

26B-3-1025 Direct payment to the department by third party.

- (1) Any third party required to make payment to the department pursuant to this part shall make the payment directly to the department or its designee.
- (2) The department may negotiate a payment or payment instrument it receives in connection with Subsection (1) without the cosignature or other participation of the recipient or any other party.

Renumbered and Amended by Chapter 306, 2023 General Session

26B-3-1026 Attorney general or county attorney to represent department.

The attorney general or a county attorney shall represent the department in any action commenced under this part.

Renumbered and Amended by Chapter 306, 2023 General Session

26B-3-1027 Department's right to attorney fees and costs.

In any action brought by the department under this part in which it prevails, the department shall recover along with the principal sum and interest, a reasonable attorney fee and costs incurred.

Renumbered and Amended by Chapter 306, 2023 General Session

26B-3-1028 Application of provisions contrary to federal law prohibited.

In no event shall any provision contained in this part be applied contrary to existing federal law.

Renumbered and Amended by Chapter 306, 2023 General Session

Part 11 Utah False Claims Act

26B-3-1101 Definitions.

As used in this part:

- (1) "Benefit" means the receipt of money, goods, or any other thing of pecuniary value.
- (2) "Claim" means any request or demand for money or property:
 - (a) made to any:
 - (i) employee, officer, or agent of the state;
 - (ii) contractor with the state; or
 - (iii) grantee or other recipient, whether or not under contract with the state; and
 - (b) if:

- (i) any portion of the money or property requested or demanded was issued from or provided by the state; or
 - (ii) the state will reimburse the contractor, grantee, or other recipient for any portion of the money or property.
- (3) "False statement" or "false representation" means a wholly or partially untrue statement or representation which is:
- (a) knowingly made; and
 - (b) a material fact with respect to the claim.
- (4) "Health care provider" means the same as that term is defined in Section 26B-8-411.
- (5) "Knowing" and "knowingly":
- (a) for purposes of criminal prosecutions for violations of this part, is one of the culpable mental states described in Subsection 26B-3-1108(1); and
 - (b) for purposes of civil prosecutions for violations of this part, is the required culpable mental state as defined in Subsection 26B-3-1109(1).
- (6) "Medical benefit" means a benefit paid or payable to:
- (a) a health care provider; or
 - (b) a recipient or a provider under a program administered by the state under:
 - (i) Titles V and XIX of the federal Social Security Act;
 - (ii) Title X of the federal Public Health Services Act;
 - (iii) the federal Child Nutrition Act of 1966 as amended by Pub. L. No. 94-105; and
 - (iv) any programs for medical assistance of the state.
- (7) "Person" means an individual, corporation, unincorporated association, professional corporation, partnership, or other form of business association.

Renumbered and Amended by Chapter 306, 2023 General Session
Amended by Chapter 331, 2023 General Session

26B-3-1102 False statement or representation relating to medical benefits.

- (1) A person may not make or cause to be made a false statement or false representation of a material fact in an application for medical benefits.
- (2) A person may not make or cause to be made a false statement or false representation of a material fact for use in determining rights to a medical benefit.
- (3) A person, who having knowledge of the occurrence of an event affecting the person's initial or continued right to receive a medical benefit or the initial or continued right of any other person on whose behalf the person has applied for or is receiving a medical benefit, may not conceal or fail to disclose that event with intent to obtain a medical benefit to which the person or any other person is not entitled or in an amount greater than that to which the person or any other person is entitled.

Renumbered and Amended by Chapter 306, 2023 General Session

26B-3-1103 Kickbacks or bribes prohibited.

- (1) For purposes of this section, kickback or bribe:
 - (a) includes rebates, compensation, or any other form of remuneration which is:
 - (i) direct or indirect;
 - (ii) overt or covert; or
 - (iii) in cash or in kind; and

- (b) does not include a rebate paid to the state under 42 U.S.C. Sec. 1396r-8 or any state supplemental rebates.
- (2) A person may not solicit, offer, pay, or receive a kickback or bribe in return for or to induce:
 - (a) the purchasing, leasing, or ordering of any goods or services for which payment is or may be made in whole or in part pursuant to a medical benefit program; or
 - (b) the referral of an individual to another person for the furnishing of any goods or services for which payment is or may be made in whole or in part pursuant to a medical benefit program.

Renumbered and Amended by Chapter 306, 2023 General Session

26B-3-1104 False statements or false representations relating to qualification of health institution or facility prohibited -- Felony.

- (1) A person may not knowingly, intentionally, or recklessly make, induce, or seek to induce, the making of a false statement or false representation of a material fact with respect to the conditions or operation of an institution or facility in order that the institution or facility may qualify, upon initial certification or upon recertification, as a hospital, skilled nursing facility, intermediate care facility, or home health agency.
- (2) A person who violates this section is guilty of a second degree felony.

Renumbered and Amended by Chapter 306, 2023 General Session

26B-3-1105 Conspiracy to defraud prohibited.

A person may not enter into an agreement, combination, or conspiracy to defraud the state by obtaining or aiding another to obtain the payment or allowance of a false, fictitious, or fraudulent claim for a medical benefit.

Renumbered and Amended by Chapter 306, 2023 General Session

26B-3-1106 False claims for medical benefits prohibited.

- (1) A person may not make or present or cause to be made or presented to an employee or officer of the state a claim for a medical benefit:
 - (a) which is wholly or partially false, fictitious, or fraudulent;
 - (b) for services which were not rendered or for items or materials which were not delivered;
 - (c) which misrepresents the type, quality, or quantity of items or services rendered;
 - (d) representing charges at a higher rate than those charged by the provider to the general public;
 - (e) for items or services which the person or the provider knew were not medically necessary in accordance with professionally recognized standards;
 - (f) which has previously been paid;
 - (g) for services also covered by one or more private sources when the person or provider knew of the private sources without disclosing those sources on the claim; or
 - (h) where a provider:
 - (i) unbundles a product, procedure, or group of procedures usually and customarily provided or performed as a single billable product or procedure into artificial components or separate procedures; and
 - (ii) bills for each component of the product, procedure, or group of procedures:
 - (A) as if they had been provided or performed independently and at separate times; and

(B) the aggregate billing for the components exceeds the amount otherwise billable for the usual and customary single product or procedure.

- (2) In addition to the prohibitions in Subsection (1), a person may not:
- (a) fail to credit the state for payments received from other sources;
 - (b) recover or attempt to recover payment in violation of the provider agreement from:
 - (i) a recipient under a medical benefit program; or
 - (ii) the recipient's family;
 - (c) falsify or alter with intent to deceive, any report or document required by state or federal law, rule, or Medicaid provider agreement;
 - (d) retain any unauthorized payment as a result of acts described by this section; or
 - (e) aid or abet the commission of any act prohibited by this section.

Renumbered and Amended by Chapter 306, 2023 General Session

26B-3-1107 Knowledge of past acts not necessary to establish fact that false statement or representation knowingly made.

In prosecution under this part, 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.

Renumbered and Amended by Chapter 306, 2023 General Session

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 part is knowingly, intentionally, or recklessly as defined in Section 76-2-103.
 - (b) The culpable mental state required for a criminal violation of this part for kickbacks and bribes under Section 26B-3-1103 is knowingly and intentionally as defined in Section 76-2-103.
- (2) The punishment for a criminal violation of any provision of this part, except as provided under Section 26B-3-1104, 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 part, except as provided under Section 26B-3-1104, is:
- (a) a second degree felony if the value of the property or service is or exceeds \$5,000;
 - (b) a third degree felony if the value of the property or service is or exceeds \$1,500 but is less than \$5,000;
 - (c) a class A misdemeanor if the value of the property or service is or exceeds \$500 but is less than \$1,500; or
 - (d) a class B misdemeanor if the value of the property or service is less than \$500.

Amended by Chapter 111, 2023 General Session

Renumbered and Amended by Chapter 306, 2023 General Session

26B-3-1109 Civil penalties.

- (1) The culpable mental state required for a civil violation of this part 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
 - (iii) acts in reckless disregard of the truth or falsity of the information; and
 - (b) does not require a specific intent to defraud.
- (2) Any person who violates this part 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 sustains because of the person's violation of this part;
 - (b) pay to the state its costs of enforcement of this part in that case, including the cost of investigators, attorneys, and other public employees, as determined by the state; and
 - (c) pay to the state a civil penalty equal to:
 - (i) three times the amount of damages that the state sustains because of the person's violation of this part; and
 - (ii) not less than \$5,000 or more than \$10,000 for each claim filed or act done in violation of this part.
- (3) Any civil penalties assessed under Subsection (2) shall be awarded by the court as part of its judgment in both criminal and civil actions.
- (4) A criminal action need not be brought against a person in order for that person to be civilly liable under this section.

Renumbered and Amended by Chapter 306, 2023 General Session

26B-3-1110 Revocation of license of assisted living facility -- Appointment of receiver.

- (1) If the license of an assisted living facility is revoked for violation of this part, the county attorney may file a petition with the district court for the county in which the facility is located for the appointment of a receiver.
- (2) The district court shall issue an order to show cause why a receiver should not be appointed returnable within five days after the filing of the petition.
- (3)
 - (a) If the court finds that the facts warrant the granting of the petition, the court shall appoint a receiver to take charge of the facility.
 - (b) The court may determine fair compensation for the receiver.
- (4) A receiver appointed pursuant to this section shall have the powers and duties prescribed by the court.

Renumbered and Amended by Chapter 306, 2023 General Session

26B-3-1111 Presumption based on paid state warrant -- Value of medical benefits -- Repayment of benefits.

- (1) In any civil or criminal action brought under this part, a paid state warrant, made payable to the order of a party, creates a presumption that the party received funds from the state.
- (2) In any civil or criminal action brought under this part, the value of the benefits received shall be the ordinary or usual charge for similar benefits in the private sector.
- (3) In any criminal action under this part, the repayment of funds or other benefits obtained in violation of the provisions of this part does not constitute a defense to, or grounds for dismissal of that action.

Renumbered and Amended by Chapter 306, 2023 General Session

26B-3-1112 Violation of other laws.

- (1) The provisions of this part are:
 - (a) not exclusive, and the remedies provided for in this part are in addition to any other remedies provided for under:
 - (i) any other applicable law; or
 - (ii) common law; and
 - (b) to be liberally construed and applied to:
 - (i) effectuate the chapter's remedial and deterrent purposes; and
 - (ii) serve the public interest.
- (2) If any provision of this part or the application of this part to any person or circumstance is held unconstitutional:
 - (a) the remaining provisions of this part are not affected; and
 - (b) the application of this part to other persons or circumstances are not affected.

Renumbered and Amended by Chapter 306, 2023 General Session

26B-3-1113 Medicaid fraud enforcement.

- (1) This part shall be enforced in accordance with this section.
- (2) The department is responsible for:
 - (a)
 - (i) investigating and prosecuting suspected civil violations of this part; or
 - (ii) referring suspected civil violations of this part to the attorney general for investigation and prosecution; and
 - (b) promptly referring suspected criminal violations of this part to the attorney general for criminal investigation and prosecution.
- (3) The attorney general has:
 - (a) concurrent jurisdiction with the department for investigating and prosecuting suspected civil violations of this part; and
 - (b) exclusive jurisdiction to investigate and prosecute all suspected criminal violations of this part.
- (4) The department and the attorney general share concurrent civil enforcement authority under this part and may enter into an interagency agreement regarding the investigation and prosecution of violations of this 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 part which comes to the attention of any state government officer or agency shall be reported to the attorney general or the department.
 - (b) All state government officers and agencies shall cooperate with and assist in any prosecution for violation of this part.

Renumbered and Amended by Chapter 306, 2023 General Session

26B-3-1114 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 part;
 - (b) a person is committing, has committed, or is about to commit a violation of this 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 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:
 - (i) the facts and circumstances concerning the alleged violation of this part; and
 - (ii) other information considered necessary by the attorney general;
 - (b) examine under oath a person in connection with the alleged violation of this 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.
- (3) The attorney general may not release or disclose information that is obtained under Subsection (2)(a) or (b), or any documentary material or other record derived from the information obtained under Subsection (2)(a) or (b), except:
 - (a) by court order for good cause shown;
 - (b) with the consent of the person who provided 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.
- (4) The attorney general may use documentary material derived from information obtained under Subsection (2)(a) or (b), or copies of that material, as the attorney general determines necessary in the enforcement of this part, including presentation before a court.
- (5)
 - (a) If a person fails to file a statement as required by Subsection (2)(a) or fails to submit to an examination as required by Subsection (2)(b), the attorney general may file in district court a complaint for an order to compel the person to within a period stated by court order:
 - (i) file the statement required by Subsection (2)(a); or
 - (ii) submit to the examination required by Subsection (2)(b).
 - (b) Failure to comply with an order entered under Subsection (5)(a) is punishable as contempt.
- (6) A civil investigative demand shall:
 - (a) state the rule or statute under which the alleged violation of this part is being investigated;
 - (b) describe the:
 - (i) general subject matter of the investigation; and
 - (ii) class or classes of documentary material to be produced with reasonable specificity to fairly indicate the documentary material demanded;
 - (c) designate a date within which the documentary material is to be produced; and
 - (d) identify an authorized employee of the attorney general to whom the documentary material is to be made available for inspection and copying.
- (7) A civil investigative demand may require disclosure of any documentary material that is discoverable under the Utah Rules of Civil Procedure.
- (8) Service of a civil investigative demand may be made by:
 - (a) delivering an executed copy of the demand to the person to be served or to a partner, an officer, or an agent authorized by appointment or by law to receive service of 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.
- (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 part, including presentation before a court.
- (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.
 - (b) A complaint under this Subsection (12) shall be filed in district court before the earlier of:
 - (i) the return date specified in the demand; or
 - (ii) the 20th day after the date the demand is served.
- (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.
- (14)
 - (a) A person who has committed a violation of this part in relation to the Medicaid program in this state or to any other medical benefit program administered by 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
 - (ii) the person refuses to surrender the documentary material.

- (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.
- (18) Failure to comply with a final order entered under Subsection (17) is punishable by contempt.

Renumbered and Amended by Chapter 306, 2023 General Session

26B-3-1115 Limitation of actions -- Civil acts antedating this section -- Civil burden of proof -- Estoppel -- Joint civil liability -- Venue.

- (1) An action under this part may not be brought after the later of:
- (a) six years after the date on which the violation was committed; or
 - (b) three years after the date an official of the state charged with responsibility to act in the circumstances discovers the violation, but in no event more than 10 years after the date on which the violation was committed.
- (2) A civil action brought under this part may be brought for acts occurring prior to the effective date of this section if the limitations period set forth in Subsection (1) has not lapsed.
- (3) In any civil action brought under this part the state shall be required to prove by a preponderance of evidence, all essential elements of the cause of action including damages.
- (4) Notwithstanding any other provision of law, a final judgment rendered in favor of the state in any criminal proceeding under this part, whether upon a verdict after trial or upon a plea of guilty or nolo contendere, shall estop the defendant from denying the essential elements of the offense in any civil action under this part which involves the same transaction.
- (5) Civil liability under this part shall be joint and several for a violation committed by two or more persons.
- (6) Any action brought by the state under this part shall be brought in district court in Salt Lake County or in any county where the defendant resides or does business.

Renumbered and Amended by Chapter 306, 2023 General Session

**Chapter 4
Health Care - Delivery and Access**

**Part 1
Utah Emergency Medical Services System**

Superseded 7/1/2024

26B-4-101 Definitions.

As used in this part:

- (1)
- (a) "911 ambulance or paramedic services" means:
 - (i) either:
 - (A) 911 ambulance service;
 - (B) 911 paramedic service; or
 - (C) both 911 ambulance and paramedic service; and
 - (ii) a response to a 911 call received by a designated dispatch center that receives 911 or E911 calls.

- (b) "911 ambulance or paramedic services" does not mean a seven or 10 digit telephone call received directly by an ambulance provider licensed under this part.
- (2) "Ambulance" means a ground, air, or water vehicle that:
 - (a) transports patients and is used to provide emergency medical services; and
 - (b) is required to obtain a permit under Section 26B-4-118 to operate in the state.
- (3) "Ambulance provider" means an emergency medical service provider that:
 - (a) transports and provides emergency medical care to patients; and
 - (b) is required to obtain a license under Sections 26B-4-150 through 26B-4-170.
- (4)
 - (a) "Behavioral emergency services" means delivering a behavioral health intervention to a patient in an emergency context within a scope and in accordance with guidelines established by the department.
 - (b) "Behavioral emergency services" does not include engaging in the:
 - (i) practice of mental health therapy as defined in Section 58-60-102;
 - (ii) practice of psychology as defined in Section 58-61-102;
 - (iii) practice of clinical social work as defined in Section 58-60-202;
 - (iv) practice of certified social work as defined in Section 58-60-202;
 - (v) practice of marriage and family therapy as defined in Section 58-60-302;
 - (vi) practice of clinical mental health counseling as defined in Section 58-60-402; or
 - (vii) practice as a substance use disorder counselor as defined in Section 58-60-502.
- (5) "Committee" means the State Emergency Medical Services Committee created by Section 26B-1-204.
- (6) "Community paramedicine" means medical care:
 - (a) provided by emergency medical service personnel; and
 - (b) provided to a patient who is not:
 - (i) in need of ambulance transportation; or
 - (ii) located in a health care facility as defined in Section 26B-2-201.
- (7) "Direct medical observation" means in-person observation of a patient by a physician, registered nurse, physician's assistant, or individual licensed under Section 26B-4-116.
- (8) "Emergency medical condition" means:
 - (a) a medical condition that manifests itself by symptoms of sufficient severity, including severe pain, that a prudent layperson, who possesses an average knowledge of health and medicine, could reasonably expect the absence of immediate medical attention to result in:
 - (i) placing the individual's health in serious jeopardy;
 - (ii) serious impairment to bodily functions; or
 - (iii) serious dysfunction of any bodily organ or part; or
 - (b) a medical condition that in the opinion of a physician or the physician's designee requires direct medical observation during transport or may require the intervention of an individual licensed under Section 26B-4-116 during transport.
- (9)
 - (a) "Emergency medical service personnel" means an individual who provides emergency medical services or behavioral emergency services to a patient and is required to be licensed or certified under Section 26B-4-116.
 - (b) "Emergency medical service personnel" includes a paramedic, medical director of a licensed emergency medical service provider, emergency medical service instructor, behavioral emergency services technician, other categories established by the committee, and a certified emergency medical dispatcher.
- (10) "Emergency medical service providers" means:

- (a) licensed ambulance providers and paramedic providers;
 - (b) a facility or provider that is required to be designated under Subsection 26B-4-117(1)(a); and
 - (c) emergency medical service personnel.
- (11) "Emergency medical services" means:
- (a) medical services;
 - (b) transportation services;
 - (c) behavioral emergency services; or
 - (d) any combination of the services described in Subsections (11)(a) through (c).
- (12) "Emergency medical service vehicle" means a land, air, or water vehicle that is:
- (a) maintained and used for the transportation of emergency medical personnel, equipment, and supplies to the scene of a medical emergency; and
 - (b) required to be permitted under Section 26B-4-118.
- (13) "Governing body":
- (a) means the same as that term is defined in Section 11-42-102; and
 - (b) for purposes of a "special service district" under Section 11-42-102, means a special service district that has been delegated the authority to select a provider under this part by the special service district's legislative body or administrative control board.
- (14) "Interested party" means:
- (a) a licensed or designated emergency medical services provider that provides emergency medical services within or in an area that abuts an exclusive geographic service area that is the subject of an application submitted pursuant to Sections 26B-4-150 through 26B-4-170;
 - (b) any municipality, county, or fire district that lies within or abuts a geographic service area that is the subject of an application submitted pursuant to Sections 26B-4-150 through 26B-4-170; or
 - (c) the department when acting in the interest of the public.
- (15) "Level of service" means the level at which an ambulance provider type of service is licensed as:
- (a) emergency medical technician;
 - (b) advanced emergency medical technician; or
 - (c) paramedic.
- (16) "Medical control" means a person who provides medical supervision to an emergency medical service provider.
- (17) "Non-911 service" means transport of a patient that is not 911 transport under Subsection (1).
- (18) "Nonemergency secured behavioral health transport" means an entity that:
- (a) provides nonemergency secure transportation services for an individual who:
 - (i) is not required to be transported by an ambulance under Section 26B-4-119; and
 - (ii) requires behavioral health observation during transport between any of the following facilities:
 - (A) a licensed acute care hospital;
 - (B) an emergency patient receiving facility;
 - (C) a licensed mental health facility; and
 - (D) the office of a licensed health care provider; and
 - (b) is required to be designated under Section 26B-4-117.
- (19) "Paramedic provider" means an entity that:
- (a) employs emergency medical service personnel; and
 - (b) is required to obtain a license under Sections 26B-4-150 through 26B-4-170.
- (20) "Patient" means an individual who, as the result of illness, injury, or a behavioral emergency condition, meets any of the criteria in Section 26B-4-119.

- (21) "Political subdivision" means:
- (a) a city, town, or metro township;
 - (b) a county;
 - (c) a special service district created under Title 17D, Chapter 1, Special Service District Act, for the purpose of providing fire protection services under Subsection 17D-1-201(9);
 - (d) a special district created under Title 17B, Limited Purpose Local Government Entities - Special Districts, for the purpose of providing fire protection, paramedic, and emergency services;
 - (e) areas coming together as described in Subsection 26B-4-156(2)(b)(ii); or
 - (f) an interlocal entity under Title 11, Chapter 13, Interlocal Cooperation Act.
- (22) "Trauma" means an injury requiring immediate medical or surgical intervention.
- (23) "Trauma system" means a single, statewide system that:
- (a) organizes and coordinates the delivery of trauma care within defined geographic areas from the time of injury through transport and rehabilitative care; and
 - (b) is inclusive of all prehospital providers, hospitals, and rehabilitative facilities in delivering care for trauma patients, regardless of severity.
- (24) "Triage" means the sorting of patients in terms of disposition, destination, or priority. For prehospital trauma victims, triage requires a determination of injury severity to assess the appropriate level of care according to established patient care protocols.
- (25) "Triage, treatment, transportation, and transfer guidelines" means written procedures that:
- (a) direct the care of patients; and
 - (b) are adopted by the medical staff of an emergency patient receiving facility, trauma center, or an emergency medical service provider.
- (26) "Type of service" means the category at which an ambulance provider is licensed as:
- (a) ground ambulance transport;
 - (b) ground ambulance interfacility transport; or
 - (c) both ground ambulance transport and ground ambulance interfacility transport.

Amended by Chapter 307, 2023 General Session

Effective 7/1/2024

26B-4-101 Definitions.

Reserved.

Amended by Chapter 307, 2023 General Session

Amended by Chapter 307, 2023 General Session, (Coordination Clause)

Superseded 7/1/2024

26B-4-102 Department powers.

The department shall:

- (1) coordinate the emergency medical services within the state;
- (2) administer this part and the rules established pursuant to it;
- (3) establish a voluntary task force representing a diversity of emergency medical service providers to advise the department and the committee on rules;
- (4) establish an emergency medical service personnel peer review board to advise the department concerning discipline of emergency medical service personnel under this part;
- (5) adopt rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to:
 - (a) license ambulance providers and paramedic providers;

- (b) permit ambulances, emergency medical response vehicles, and nonemergency secured behavioral health transport vehicles, including approving an emergency vehicle operator's course in accordance with Section 26B-4-118;
- (c) establish:
 - (i) the qualifications for membership of the peer review board created by this section;
 - (ii) a process for placing restrictions on a license while an investigation is pending;
 - (iii) the process for the investigation and recommendation by the peer review board; and
 - (iv) the process for determining the status of a license while a peer review board investigation is pending;
- (d) establish application, submission, and procedural requirements for licenses, designations, and permits; and
- (e) establish and implement the programs, plans, and responsibilities as specified in other sections of this part;
- (6) develop and implement, in cooperation with state, federal, and local agencies empowered to oversee disaster response activities, plans to provide emergency medical services during times of disaster or emergency;
- (7) establish a pediatric quality improvement resource program; and
- (8) develop and implement a statewide program to provide support and counseling for personnel who have been exposed to one or more stressful incidents in the course of providing emergency services which shall include:
 - (a) ongoing training for agencies providing emergency services and counseling program volunteers;
 - (b) critical incident stress debriefing for personnel at no cost to the emergency provider; and
 - (c) advising the department on training requirements for licensure as a behavioral emergency services technician.

Renumbered and Amended by Chapter 307, 2023 General Session

Superseded 7/1/2024

26B-4-103 Waiver of rules and education and licensing requirements.

- (1) Upon application, the department, or the committee with the concurrence of the department, may waive the requirements of a rule the department, or the committee with the concurrence of the department, has adopted if:
 - (a) the person applying for the waiver satisfactorily demonstrates that:
 - (i) the waiver is necessary for a pilot project to be undertaken by the applicant;
 - (ii) in the particular situation, the requirement serves no beneficial public purpose; or
 - (iii) circumstances warrant that waiver of the requirement outweighs the public benefit to be gained by adherence to the rule; and
 - (b) for a waiver granted under Subsection (1)(a)(ii) or (iii):
 - (i) the committee or department extends the waiver to similarly situated persons upon application; or
 - (ii) the department, or the committee with the concurrence of the department, amends the rule to be consistent with the waiver.
- (2) A waiver of education or licensing requirements may be granted to a veteran, as defined in Section 68-3-12.5, if the veteran:
 - (a) provides to the committee or department documentation showing military education and training in the field in which licensure is sought; and
 - (b) successfully passes any examination required.

(3) No waiver may be granted under this section that is inconsistent with the provisions of this part.

Renumbered and Amended by Chapter 307, 2023 General Session

Superseded 7/1/2024

26B-4-104 Public awareness efforts.

The department may:

- (1) develop programs to inform the public of the emergency medical service system; and
- (2) develop and disseminate emergency medical training programs for the public, which emphasize the prevention and treatment of injuries and illnesses.

Renumbered and Amended by Chapter 307, 2023 General Session

Superseded 7/1/2024

26B-4-105 Emergency medical communications.

Consistent with federal law, the department is the lead agency for coordinating the statewide emergency medical service communication systems under which emergency medical personnel, dispatch centers, and treatment facilities provide medical control and coordination between emergency medical service providers.

Renumbered and Amended by Chapter 307, 2023 General Session

Superseded 7/1/2024

26B-4-106 Data collection.

- (1) The committee shall specify the information that shall be collected for the emergency medical services data system established pursuant to Subsection (2).
- (2)
 - (a) The department shall establish an emergency medical services data system, which shall provide for the collection of information, as defined by the committee, relating to the treatment and care of patients who use or have used the emergency medical services system.
 - (b) The committee shall coordinate with the Health Data Authority created in Chapter 8, Part 5, Utah Health Data Authority, to create a report of data collected by the Health Data Committee under Section 26B-8-504 regarding:
 - (i) appropriate analytical methods;
 - (ii) the total amount of air ambulance flight charges in the state for a one-year period; and
 - (iii) of the total number of flights in a one-year period under Subsection (2)(b)(ii):
 - (A) the number of flights for which a patient had no personal responsibility for paying 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;
 - (C) the range of flight charges for which patients had personal responsibility under Subsection (2)(b)(iii)(B), including the median amount for paid patient personal responsibility; 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
 - (iv) may not include any personally identifiable information.
- (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 public safety dispatchers and first responders in the state.
 - (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 26B-8-506.
- (4) Persons providing emergency medical services:
- (a) shall provide information to the department for the emergency medical services data system established pursuant to Subsection (2)(a);
 - (b) are not required to provide information to the department under Subsection (2)(b); and
 - (c) may provide information to the department under Subsection (2)(b) or (3)(b).

Renumbered and Amended by Chapter 307, 2023 General Session

Superseded 7/1/2024

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 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.
 - (ii) The department shall determine the grant amounts by prorating available funds 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:

- (i) for the purchase of equipment, subject to Subsection (3)(e); or
 - (ii) for the recruitment, training, or retention of licensed emergency medical services 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).

Renumbered and Amended by Chapter 307, 2023 General Session

Superseded 7/1/2024

26B-4-108 Fees for training equipment rental, testing, and quality assurance reviews.

- (1) The department may charge fees, established 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.
- (2)
- (a) Fees collected under Subsections (1)(a) and (b) shall be separate dedicated credits.
 - (b) Fees under Subsection (1)(a) may be used to purchase training equipment.
 - (c) Fees under Subsection (1)(b) may be used to administer tests and conduct quality assurance reviews.

Renumbered and Amended by Chapter 307, 2023 General Session

Superseded 7/1/2024

26B-4-109 Regional Emergency Medical Services Liaisons -- Qualifications -- Duties.

- (1) As used in this section:
- (a) "Liaison" means a regional emergency medical services liaison hired under this section.
 - (b) "Rural county" means a county of the third, fourth, fifth, or sixth class.
- (2) The department shall hire five individuals to serve as regional emergency medical services liaisons to:
- (a) serve the needs of rural counties in providing emergency medical services in accordance with this part;
 - (b) act as a liaison between the department and individuals or entities responsible for emergency medical services in rural counties, including:
 - (i) emergency medical services providers;
 - (ii) local officials; and
 - (iii) local health departments or agencies;
 - (c) provide support and training to emergency medical services providers in rural counties;
 - (d) assist rural counties in utilizing state and federal grant programs for financing emergency medical services; and
 - (e) serve as emergency medical service personnel to assist licensed providers with ambulance staffing needs within rural counties.

- (3) Each liaison hired under Subsection (2):
 - (a) shall reside in a rural county; and
 - (b) shall be licensed as:
 - (i) an advanced emergency medical technician as defined in Section 26B-4-137; or
 - (ii) a paramedic as defined in Section 26B-4-137.
- (4) The department shall provide each liaison with a vehicle and other equipment in accordance with rules established by the department.

Renumbered and Amended by Chapter 307, 2023 General Session

Superseded 7/1/2024

26B-4-110 Community paramedicine program.

- (1) A ground ambulance provider or a designated quick response provider, as designated in accordance with Section 26B-4-117, may develop and implement a community paramedicine program.
- (2)
 - (a) Before providing services, a community paramedicine program shall:
 - (i) implement training requirements as determined by the committee; and
 - (ii) submit a written community paramedicine operational plan to the department that meets requirements established by the committee.
 - (b) A community paramedicine program shall report data, as determined by the committee, related to community paramedicine to the department.
- (3) A service provided as part of a community paramedicine program may not be billed to an individual or a health benefit plan as defined in Section 31A-1-301 unless:
 - (a) the service is provided in partnership with a health care facility as defined in Section 26B-2-201; and
 - (b) the partnering health care facility is the person that bills the individual or health benefit plan.
- (4) Nothing in this section affects any billing authorized under Section 26B-4-152.
- (5) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the committee shall make rules to implement this section.

Renumbered and Amended by Chapter 307, 2023 General Session

Superseded 7/1/2024

26B-4-111 Establishment of statewide trauma system.

The department shall establish and actively supervise a statewide trauma system to:

- (1) promote optimal care for trauma patients;
- (2) alleviate unnecessary death and disability from trauma and emergency illness;
- (3) inform health care providers about trauma system capabilities;
- (4) encourage the efficient and effective continuum of patient care, including prevention, prehospital care, hospital care, and rehabilitative care; and
- (5) minimize the overall cost of trauma care.

Renumbered and Amended by Chapter 307, 2023 General Session

Superseded 7/1/2024

26B-4-112 Statewide trauma system -- Department duties.

In connection with the statewide trauma system established in Section 26B-4-111, the department shall:

- (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 26B-4-113;
 - (f) establishing trauma center designation requirements in accordance with Section 26B-4-114; 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.

Renumbered and Amended by Chapter 307, 2023 General Session

Superseded 7/1/2024

26B-4-113 Statewide trauma system -- Registry 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;
 - (ii) assess trauma care delivery, patient care outcomes, and compliance with the requirements of this part and applicable department rules; and
 - (iii) regularly produce and disseminate reports to data providers, state government, and the public; and
 - (d) support data collection and abstraction by providing:
 - (i) a data collection system and technical assistance to each hospital that submits data; and
 - (ii) funding or, at the discretion of the department, personnel for collection and abstraction for each hospital not designated as a trauma center under the standards established pursuant to Section 26B-4-114.
- (2)
 - (a) Each hospital shall submit trauma data in accordance with rules established under Subsection (1).

- (b) A hospital designated as a trauma center shall submit data as part of the ongoing quality assurance program established in Section 26B-4-112.
- (3) The department shall assess:
 - (a) the effectiveness of the data collected pursuant to Subsection (1); and
 - (b) the impact of the statewide trauma system on the provision of trauma care.
- (4) Data collected under this section shall be subject to Chapter 8, Part 4, Health Statistics.
- (5) No person may be held civilly liable for having provided data to the department in accordance with this section.

Renumbered and Amended by Chapter 307, 2023 General Session

Superseded 7/1/2024

26B-4-114 Statewide trauma system -- Trauma center designations and guidelines.

- (1) The department, after seeking the advice of the trauma system advisory committee, shall establish by rule:
 - (a) trauma center designation requirements; and
 - (b) model state guidelines for triage, treatment, transportation, and transfer of trauma patients to the most appropriate health care facility.
- (2) The department shall designate as a trauma center each hospital that:
 - (a) voluntarily requests a trauma center designation; and
 - (b) meets the applicable requirements established pursuant to Subsection (1).

Renumbered and Amended by Chapter 307, 2023 General Session

Superseded 7/1/2024

26B-4-115 Certificates, Designations, Permits, and Licenses -- General requirement.

- (1) Except as provided in Section 26B-4-104 or 26B-4-122:
 - (a) an individual may not provide emergency medical services without a license or certification issued under Section 26B-4-116;
 - (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 26B-4-117;
 - (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 26B-4-118; and
 - (d) an entity may not respond as an ambulance or paramedic provider without the appropriate license issued under Sections 26B-4-150 through 26B-4-170 for ambulance and paramedic providers.
- (2) Section 26B-4-127 applies to violations of this section.

Renumbered and Amended by Chapter 307, 2023 General Session

Superseded 7/1/2024

26B-4-116 Licensure of emergency medical service personnel.

- (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:

- (i) paramedic;
 - (ii) advanced emergency medical services technician;
 - (iii) emergency medical services technician;
 - (iv) behavioral emergency services technician; and
 - (v) advanced behavioral emergency services technician;
 - (b) a method to monitor the certification status and continuing medical education hours for emergency medical dispatchers; and
 - (c) guidelines for giving credit for out-of-state training and experience.
- (2) The department shall, based on the requirements established in Subsection (1):
- (a) develop, conduct, and authorize training and testing for emergency medical service personnel;
 - (b) issue a license and license renewals to emergency medical service personnel other than emergency medical dispatchers; and
 - (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 26B-4-127, 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 26B-4-124.
- (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 26B-4-125.

Renumbered and Amended by Chapter 307, 2023 General Session

Superseded 7/1/2024

26B-4-117 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:
 - (i) quick response provider;
 - (ii) resource hospital for emergency medical providers;
 - (iii) emergency medical service dispatch center;
 - (iv) emergency patient receiving facilities; and
 - (v) other types of emergency medical service providers as the committee considers 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 26B-4-127, an entity issued a designation under Subsection (2) may only function and hold itself out in accordance with its designation.

Renumbered and Amended by Chapter 307, 2023 General Session

Superseded 7/1/2024

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:
 - (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.

Renumbered and Amended by Chapter 307, 2023 General Session

Superseded 7/1/2024

26B-4-119 Ambulance license required for emergency medical transport.

Except as provided in Section 26B-4-122, only an ambulance operating under a permit issued under Section 26B-4-118 may transport an individual who:

- (1) is in an emergency medical condition;
- (2) is medically or mentally unstable, requiring direct medical observation during transport;
- (3) is physically incapacitated because of illness or injury and in need of immediate 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;
- (6) is receiving or has recently received medications that could cause a sudden 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.

Renumbered and Amended by Chapter 307, 2023 General Session

Superseded 7/1/2024

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.

Renumbered and Amended by Chapter 307, 2023 General Session

Superseded 7/1/2024

26B-4-121 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.

Renumbered and Amended by Chapter 307, 2023 General Session

Superseded 7/1/2024

26B-4-122 Exemptions.

- (1) The following persons may provide emergency medical services to a patient without being licensed under this 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;
 - (d) a private business if emergency medical services are provided only to employees at the place of business and during transport;
 - (e) an agency of the United States government if compliance with this part would be inconsistent with federal law; and
 - (f) police, fire, and other public service personnel if:
 - (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 26B-4-118 in time of disaster.
- (3) Nothing in this 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 26B-4-302.
- (4) Nothing in this 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:

- (a) is staffed by a physician, physician's assistant, nurse practitioner, or registered nurse; and
- (b) treats an individual who has presented himself or was transported to the hospital, clinic, office, or facility.

Renumbered and Amended by Chapter 307, 2023 General Session

Superseded 7/1/2024

26B-4-123 Out-of-state vehicles.

- (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 26B-2-318 and, in the case of an ambulance, a license issued under 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.

Renumbered and Amended by Chapter 307, 2023 General Session

Superseded 7/1/2024

26B-4-124 Background clearance for emergency medical service personnel.

- (1) Subject to Section 26B-4-125, the department shall determine whether to grant background clearance for an individual seeking licensure or certification under Section 26B-4-116 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 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 26B-4-116 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
 - (ii) the applicant:
 - (A) is over 28 years old; and
 - (B) has been convicted of, has pleaded no contest to, or is currently subject to a plea 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 26B-6-210;
 - (g) Division of Professional Licensing records of licensing and certification under Title 58, Occupations and Professions;
 - (h) records in other federal criminal background databases available to the state; and
 - (i) any other records of arrests, warrants for arrest, convictions, pleas in abeyance, 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).
- (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).
- (10) The department may charge fees, in accordance with Section 63J-1-504, to pay 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;
 - (ii) an arrest;
 - (iii) a conviction, including a plea in abeyance; or
 - (iv) a pending diversion agreement.
- (12) The department shall use the Direct Access Clearance System database created under Section 26B-2-241 to manage information about the background clearance status of each individual for whom the department is required to make a determination under Subsection (1).

(13) Clearance granted for an individual licensed or certified under Section 26B-4-123 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.

Renumbered and Amended by Chapter 307, 2023 General Session

Superseded 7/1/2024

26B-4-125 Background check requirements for emergency medical dispatchers.

An emergency medical dispatcher seeking certification under Section 26B-4-116 shall undergo the background clearance process described in Section 26B-4-124 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.

Renumbered and Amended by Chapter 307, 2023 General Session

Superseded 7/1/2024

26B-4-126 Discrimination prohibited.

- (1) No person licensed or designated pursuant to this 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 part does not authorize or require medical assistance or transportation over the objection of an individual on religious grounds.

Renumbered and Amended by Chapter 307, 2023 General Session

Superseded 7/1/2024

26B-4-127 Illegal activity.

- (1) Except as provided in Section 26B-4-104 or 26B-4-122, 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 part unless that person is licensed, certified, or designated under this part; or
 - (b) offer an emergency medical service that requires a license, certification, or designation under this part unless the person is licensed, certified, or designated under this part.
- (2) A person may not advertise or represent that the person holds a license, certification, or designation required under this part, unless that person holds the license, certification, or designation under this 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 part, unless the person performing the service possesses the required license or certification under this part.
- (4) A person may not wear, display, sell, reproduce, or otherwise use any Utah Emergency Medical Services insignia without authorization from the department.
- (5) A person may not reproduce or otherwise use materials developed by the department for licensure or certification testing or examination without authorization from the department.
- (6) A person may not willfully summon an ambulance or emergency response vehicle or report that one is needed when the person knows that the ambulance or emergency response vehicle is not needed.
- (7) A person who violates this section is subject to Section 26B-1-224.

Renumbered and Amended by Chapter 307, 2023 General Session

Superseded 7/1/2024

26B-4-128 Prohibition on the use of "911".

- (1) As used in this section:
 - (a) "Emergency services" means services provided by a person in response to an emergency.
 - (b) "Emergency services" includes:
 - (i) fire protection services;
 - (ii) paramedic services;
 - (iii) law enforcement services;
 - (iv) 911 ambulance or paramedic services; and
 - (v) any other emergency services.
- (2) A person may not use "911" or other similar sequence of numbers in the person's name with the purpose to deceive the public that the person operates or represents emergency services, unless the person is authorized to provide emergency services.
- (3) A violation of Subsection (2) is:
 - (a) a class C misdemeanor; and
 - (b) subject to a fine of up to \$500 per violation.

Renumbered and Amended by Chapter 307, 2023 General Session

Superseded 7/1/2024

26B-4-129 Discipline of emergency medical services personnel.

- (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 26B-4-116;
 - (b) the individual has engaged in conduct, as defined by committee rule, that:
 - (i) is unprofessional;
 - (ii) is adverse to the public health, safety, morals, or welfare; or
 - (iii) would adversely affect public trust in the emergency medical service system;
 - (c) the individual has violated Section 26B-4-127 or other provision of this part;
 - (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 26B-4-102; 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 26B-4-133 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 impose sanctions in accordance with Section 26B-1-224.

Renumbered and Amended by Chapter 307, 2023 General Session

Superseded 7/1/2024

26B-4-130 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 26B-4-133 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 26B-1-224.

Renumbered and Amended by Chapter 307, 2023 General Session

Superseded 7/1/2024

26B-4-131 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:
 - (a) the provider ceases or intends to cease operations;
 - (b) the provider becomes insolvent;
 - (c) the department has initiated proceedings to revoke the provider's license and has 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 action or inaction pending a full hearing on the license revocation; or
 - (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 service area.
- (2) If a licensed or designated provider ceases operations or is otherwise unable to provide services, the department may arrange for another licensed provider to provide services on a temporary basis until a license is issued.
- (3) A licensed provider shall give the department 30 days' notice of its intent to cease operations.

Renumbered and Amended by Chapter 307, 2023 General Session

Superseded 7/1/2024

26B-4-132 Investigations for enforcement of part.

- (1) The department may, for the purpose of ascertaining compliance with the provisions of this part, enter and inspect on a routine basis the business premises and equipment of a person:
- (a) with a designation, permit, or license; or
 - (b) who holds himself out to the general public as providing a service for which a designation, permit, or license is required under Section 26B-4-115.
- (2) Before conducting an inspection under Subsection (1), the department shall, after identifying the person in charge:
- (a) give proper identification;
 - (b) describe the nature and purpose of the inspection; and
 - (c) if necessary, explain the authority of the department to conduct the inspection.
- (3) In conducting an inspection under Subsection (1), the department may, after meeting the requirements of Subsection (2):
- (a) inspect records, equipment, and vehicles; and
 - (b) interview personnel.
- (4) An inspection conducted under Subsection (1) shall be during regular operational hours.

Renumbered and Amended by Chapter 307, 2023 General Session

Superseded 7/1/2024

26B-4-133 Cease and desist orders.

The department may issue a cease and desist order to any person who:

- (1) may be disciplined under Section 26B-4-129 or 26B-4-130; or
- (2) otherwise violates this part or any rules adopted under this part.

Renumbered and Amended by Chapter 307, 2023 General Session

Superseded 7/1/2024

26B-4-134 Persons and activities exempt from civil liability.

- (1)
- (a) Except as provided in Subsection (1)(b), a licensed physician, physician's assistant, or licensed registered nurse who, gratuitously and in good faith, gives oral or written instructions to any of the following is not liable for any civil damages as a result of issuing the instructions:
 - (i) an individual licensed or certified under Section 26B-4-116;
 - (ii) an individual who uses a fully automated external defibrillator, as defined in Section 26B-4-301; or

- (iii) an individual who administers CPR, as defined in Section 26B-4-301.
- (b) The liability protection described in Subsection (1)(a) does not apply if the instructions given were the result of gross negligence or willful misconduct.
- (2) An individual licensed or certified under Section 26B-4-116, during either training or after licensure or certification, a licensed physician, a physician assistant, or a registered nurse who, gratuitously and in good faith, provides emergency medical instructions or renders emergency medical care authorized by this part is not liable for any civil damages as a result of any act or omission in providing the emergency medical instructions or medical care, unless the act or omission is the result of gross negligence or willful misconduct.
- (3) An individual licensed or certified under Section 26B-4-116 is not subject to civil liability for failure to obtain consent in rendering emergency medical services authorized by this part to any individual who is unable to give his consent, 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 26B-4-116 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 26B-5-331 is not liable for civil damages for transporting the individual.

Renumbered and Amended by Chapter 307, 2023 General Session

Superseded 7/1/2024

26B-4-135 Notification of air ambulance policies and charges.

- (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 26B-1-405(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 an opportunity to choose the air 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.

Amended by Chapter 307, 2023 General Session, (Coordination Clause)
Renumbered and Amended by Chapter 307, 2023 General Session

Superseded 7/1/2024

26B-4-136 Volunteer Emergency Medical Service Personnel Health Insurance Program -- Creation -- Administration -- Eligibility -- Benefits -- Rulemaking -- Advisory board.

- (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:
 - (i) is licensed as a ground ambulance provider under Sections 26B-4-150 through 26B-4-170; and
 - (ii) as of January 1, 2022, does not offer health insurance benefits to volunteer emergency medical service personnel.
 - (c) "PEHP" means the Public Employees' Benefit and Insurance Program created in Section 49-20-103.
 - (d) "Political subdivision" means a county, a municipality, a limited purpose government entity described in Title 17B, Limited Purpose Local Government Entities - Special Districts, or Title 17D, Limited Purpose Local Government Entities - Other Entities, or an entity created by an interlocal agreement under Title 11, Chapter 13, Interlocal Cooperation Act.
 - (e) "Qualifying association" means an association that represents two or more political subdivisions in the state.
- (2) The Volunteer Emergency Medical Service Personnel Health Insurance Program shall promote recruitment and retention of volunteer emergency medical service personnel by making health insurance available to volunteer emergency medical service personnel.
- (3) The department shall contract with a qualifying association to create, implement, and administer the Volunteer Emergency Medical Service Personnel Health Insurance Program described in this section.
- (4) Participation in the program is limited to emergency medical service personnel who:
- (a) are licensed under Section 26B-4-116 and are able to perform all necessary functions associated with the license;
 - (b) provide emergency medical services under the direction of a local governmental entity:
 - (i) by responding to 20% of calls for emergency medical services in a rolling twelve-month period;
 - (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. Sec. 553.106;
 - (c) are not eligible for a health benefit plan through an employer or a spouse's employer;

- (d) are not eligible for medical coverage under a government sponsored healthcare program; and
 - (e) reside in the state.
- (5)
- (a) A participant in the program is eligible to participate in PEHP in accordance with Subsection (5)(b) and Subsection 49-20-201(3).
 - (b) Benefits available to program participants under PEHP are limited to health insurance that:
 - (i) covers the program participant and the program participant's eligible dependents on a July 1 plan year;
 - (ii) accepts enrollment during an open enrollment period or for a special enrollment event, including the initial eligibility of a program participant;
 - (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
 - (B) PEHP.
- (7) For purposes of this section, the qualifying association that receives the contract under Subsection (3) shall be considered the public agency for whom the program participant is volunteering under 29 C.F.R. Sec. 553.101.

Amended by Chapter 16, 2023 General Session

Renumbered and Amended by Chapter 307, 2023 General Session

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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;
2. Enhance the states' ability to protect the public's health and safety, especially patient safety;

3. Encourage the cooperation of member states in the areas of EMS personnel licensure and regulation;
4. Support licensing of military members who are separating from an active duty tour and their spouses;
5. Facilitate the exchange of information between member states regarding EMS personnel licensure, adverse action and significant investigatory information;
6. Promote compliance with the laws governing EMS personnel practice in each member state; and
7. Invest all member states with the authority to hold EMS personnel accountable through the mutual recognition of member state licenses.

SECTION 2. DEFINITIONS

In this compact:

- 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 use 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.
- E. "Commission" means: the national administrative body of which all states that have enacted the compact are members.
- F. "Emergency Medical Technician (EMT)" 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.
- 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.
- K. "Privilege to Practice" means: an individual's authority to deliver emergency 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.

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 had an opportunity to respond.

R. "State" means: means any state, commonwealth, district, or territory of the United States.

S. "State EMS Authority" means: the board, office, or other agency with the legislative mandate to license EMS personnel.

SECTION 3. HOME STATE LICENSURE

A. Any member state in which an individual holds a current license shall be deemed a home state for purposes of this compact.

B. Any member state may require an individual to obtain and retain a license to be authorized to practice in the member state under circumstances not authorized by the privilege to practice under the terms of this compact.

C. A home state's license authorizes an individual to practice in a remote state under the privilege to practice only if the home state:

1. Currently requires the use of the National Registry of Emergency Medical Technicians (NREMT) examination as a condition of issuing initial licenses at the EMT and paramedic levels;

2. Has a mechanism in place for receiving and investigating complaints about individuals;

3. Notifies the Commission, in compliance with the terms herein, of any adverse action or significant investigatory information regarding an individual;

4. No later than five years after activation of the Compact, requires a criminal background check of all applicants for initial licensure, including the use of the results of fingerprint or other biometric data checks compliant with the requirements of the Federal Bureau of Investigation with the exception of federal employees who have suitability determination in accordance with 5 C.F.R. Sec. 731.202 and submit documentation of such 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.

B. To exercise the privilege to practice under the terms and provisions of this compact, an individual must:

1. Be at least 18 years of age;

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.

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 transport to a third member state;
5. Other conditions as determined by rules promulgated by the commission.

SECTION 6. RELATIONSHIP TO EMERGENCY MANAGEMENT ASSISTANCE COMPACT

Upon a member state's governor's declaration of a state of emergency or disaster that activates the Emergency Management Assistance Compact (EMAC), all relevant terms and provisions of EMAC shall apply and to the extent any terms or provisions of this Compact conflicts with EMAC, the terms of EMAC shall prevail with respect to any individual practicing in the remote state in response to such declaration.

SECTION 7. VETERANS, SERVICE MEMBERS SEPARATING FROM ACTIVE DUTY MILITARY, AND THEIR SPOUSES

A. Member states shall consider a veteran, active military service member, and member of the National Guard and Reserves separating from an active duty tour, and a spouse thereof, who holds a current valid and unrestricted NREMT certification at or above the level of the state license being sought as satisfying the minimum training and examination requirements for such licensure.

B. Member states shall expedite the processing of licensure applications submitted by veterans, active military service members, and members of the National Guard and Reserves separating from an active duty tour, and their spouses.

C. All individuals functioning with a privilege to practice under this Section remain subject to the Adverse Actions provisions of Section VIII.

SECTION 8. ADVERSE ACTIONS

A. A home state shall have exclusive power to impose adverse action against an individual's license issued by the home state.

B. 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.

1. All home state adverse action orders shall include a statement that the individual's compact privileges are inactive. The order may allow the individual to practice in remote states with prior written authorization from both the home state and remote state's EMS 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 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

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 must discuss:

- 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 Commission;
3. Providing reasonable procedures for calling and conducting meetings of the Commission, ensuring reasonable advance notice of all meetings, and providing an opportunity for attendance of such meetings by interested parties, with enumerated exceptions designed to protect the public's interest, the privacy of individuals, and proprietary 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 practicable, the Commission must make public a copy of the vote to close the meeting revealing the vote of each member with no proxy votes allowed;
4. Establishing the titles, duties and authority, and reasonable procedures for the 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 Commission, provided that the standing of any state EMS authority or other regulatory body responsible for EMS personnel licensure to sue or be sued under applicable law shall not be 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;

9. To establish a budget and make expenditures;

10. To borrow money;

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;

12. To provide and receive information from, and to cooperate with, law enforcement agencies;

13. To adopt and use an official seal; and

14. To perform such other functions as may be necessary or appropriate to achieve the purposes of this Compact consistent with the state regulation of EMS personnel licensure 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.

2. The Commission may accept any and all appropriate revenue sources, donations, and grants of money, equipment, supplies, materials, and services.

3. The Commission may levy on and collect an annual assessment from each member state or impose fees on other parties to cover the cost of the operations and activities of the Commission and its staff, which must be in a total amount sufficient to cover 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 determined by the Commission, which shall promulgate a rule binding upon all member 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;
2. Licensure data;
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.

C. Rules or amendments to the rules shall be adopted at a regular or special meeting 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.

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;
2. A governmental subdivision or agency; or
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

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 fees.

C. Dispute Resolution

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.

2. The Commission shall promulgate a rule providing for both mediation and binding dispute resolution for disputes as appropriate.

D. Enforcement

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 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.

Renumbered and Amended by Chapter 307, 2023 General Session

Superseded 7/1/2024

26B-4-150 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 26B-4-151; and
 - (b) establishes maximum rates as provided in Section 26B-4-152.
- (2) A license issued or renewed under Sections 26B-4-150 through 26B-4-170 is valid for four years.

Renumbered and Amended by Chapter 307, 2023 General Session

Superseded 7/1/2024

26B-4-151 Exclusive geographic service areas.

- (1) Each ground ambulance provider license issued under Sections 26B-4-150 through 26B-4-170 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 26B-4-170.
- (2) Each paramedic provider license issued under Sections 26B-4-150 through 26B-4-170 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 26B-4-170.
- (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 and a licensed ambulance provider.
- (4)
 - (a) A licensed ground ambulance or paramedic provider may, as necessary, enter 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.
 - (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.
 - (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.
- (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.
- (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;
 - (b) if each licensed provider that would be affected by the alignment agrees to the alignment; and
 - (c) taking into consideration the requirements of:
 - (i) Section 11-48-103; and
 - (ii) Section 26B-4-162.

Renumbered and Amended by Chapter 307, 2023 General Session

Superseded 7/1/2024

26B-4-152 Establishment of maximum rates.

- (1) The department shall, after receiving recommendations under Subsection (2), establish maximum rates for ground ambulance providers and paramedic providers that are just and reasonable.
- (2) The committee may make recommendations to the department on the maximum rates that should be set under Subsection (1).
- (3)
 - (a) The department shall prohibit ground ambulance providers and paramedic providers from charging fees for transporting a patient when the provider does not transport the patient.
 - (b) The provisions of Subsection (3)(a) do not apply to ambulance providers or paramedic providers in a geographic service area which contains a town as defined in Subsection 10-2-301(2)(f).

Renumbered and Amended by Chapter 307, 2023 General Session

Superseded 7/1/2024

26B-4-153 Ground ambulance and paramedic licenses -- Application and department review.

- (1) Except as provided in Section 26B-4-167, an applicant for a ground ambulance or paramedic license shall apply to the department for a license only by:
 - (a) submitting a completed application;
 - (b) providing information in the format required by the department; and
 - (c) paying the required fees, including the cost of the hearing officer.
- (2) The department shall make rules establishing minimum qualifications and requirements for:
 - (a) personnel;
 - (b) capital reserves;
 - (c) equipment;

- (d) a business plan;
 - (e) operational procedures;
 - (f) medical direction agreements;
 - (g) management and control; and
 - (h) other matters that may be relevant to an applicant's ability to provide ground ambulance or paramedic service.
- (3) An application for a license to provide ground ambulance service or paramedic service shall be for all ground ambulance services or paramedic services arising within the 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 26B-4-162 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.

Renumbered and Amended by Chapter 307, 2023 General Session

Superseded 7/1/2024

26B-4-154 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 26B-4-153, 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 26B-4-156 is considered an approved applicant for purposes of Section 26B-4-156 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 26B-4-153(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.

Renumbered and Amended by Chapter 307, 2023 General Session

Superseded 7/1/2024

26B-4-155 Selection of provider by political subdivision.

- (1)
 - (a) Only an applicant approved under Section 26B-4-154 may respond to a request for a proposal issued in accordance with Section 26B-4-156 or Section 26B-4-158 by a political subdivision.
 - (b) A response to a request for proposal is subject to the maximum rates established by the department under Section 26B-4-152.
 - (c) A political subdivision may award a contract to an applicant in response to a request for proposal:
 - (i) in accordance with Section 26B-4-156; 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 26B-4-156(2);
 - (ii) is valid for four years;
 - (iii) is not subject to a request for license from another applicant under the provisions of Sections 26B-4-160 through 26B-4-163 during the four-year term, unless the applicant's license is revoked under Section 26B-4-130;
 - (iv) is subject to revocation or revision under Subsection (3)(d); and
 - (v) is subject to supervision by the department under Sections 26B-4-129 and 26B-4-130.
- (3) Notwithstanding Subsection (2)(b), a political subdivision may terminate a contract described in Subsection (1)(c), with or without cause, if:
 - (a) the contract:
 - (i) is entered into on or after May 5, 2021; and
 - (ii) allows an applicant to provide 911 ambulance services;
 - (b) the political subdivision provides written notice to the applicant described in Subsection (3)(a) (ii) and the department:
 - (i) at least 18 months before the day on which the contract is terminated; or
 - (ii) within a period of time shorter than 18 months before the day on which the contract is terminated, if otherwise agreed to by the applicant and the department;
 - (c) the political subdivision selects another applicant to provide 911 ambulance services for the political subdivision in accordance with Section 26B-4-156;
 - (d) the department:

- (i) revokes the license of the applicant described in Subsection (3)(a)(ii), or issues a new or revised license for the applicant described in Subsection (3)(a)(ii):
 - (A) in order to remove the area that is subject to the contract from the applicant's exclusive geographic service area; and
 - (B) to take effect the day on which the contract is terminated; and
 - (ii) issues a new or revised license for the applicant described in Subsection (3)(c):
 - (A) in order to allow the applicant to provide 911 ambulance services for the area described in Subsection (3)(d)(i)(A); and
 - (B) to take effect the day on which the contract is terminated; and
 - (e) the termination does not create an orphaned area.
- (4) Except as provided in Subsection 26B-4-157(4)(a), the provisions of Sections 26B-4-160 through 26B-4-163 do not apply to a license issued under this section.

Renumbered and Amended by Chapter 307, 2023 General Session

Superseded 7/1/2024

26B-4-156 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 26B-4-153 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 26B-4-157 if the contract is for 911 ambulance or paramedic services; or
 - (ii) the political subdivision complies with Sections 26B-4-157 and 26B-4-158, if the contract is for non-911 services.
 - (b)
 - (i) The provisions of this section and Sections 26B-4-155, 26B-4-157, and 26B-4-158 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 26B-4-157, the provisions of Sections 26B-4-160 through 26B-4-163 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 26B-4-157 and Section 26B-4-158, a license for the non-911 services in the geographic service area that is within the boundaries of the political subdivision may be issued:
 - (A) under the public convenience and necessity provisions of Sections 26B-4-160 through 26B-4-163; or
 - (B) by a request for proposal issued by the department under Section 26B-4-159.
 - (c)
 - (i) As used in this Subsection (1)(c):
 - (A) "Fire district" means a special district under Title 17B, Limited Purpose Local Government Entities - Special Districts, that:
 - (I) is located in a county of the first or second class; and
 - (II) provides fire protection, paramedic, and emergency services.

- (B) "Participating municipality" means a city or town whose area is partly or entirely included within a county service area or fire district.
 - (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 26B-4-157, 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 26B-4-157:
 - (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
 - (iii) exclude portions of the geographic service area within the political subdivision's boundaries if another political subdivision or licensed provider agrees to include the excluded 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.

Amended by Chapter 16, 2023 General Session

Renumbered and Amended by Chapter 307, 2023 General Session

Superseded 7/1/2024

26B-4-157 Use of competitive sealed proposals -- Procedure -- Appeal rights.

- (1)
 - (a) Competitive sealed proposals for paramedic or 911 ambulance services under Section 26B-4-156, or for non-911 services under Section 26B-4-158, 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) The governing body of the political subdivision shall publish notice of the request for proposals for the political subdivision, as a class A notice under Section 63G-30-102, 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 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) A political subdivision may select an applicant approved by the department under Section 26B-4-153 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 26B-4-154 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 26B-4-162(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:
 - (i) based on full cost accounting in accordance with generally accepted accounting principals; and

- (ii) if the applicant is a governmental entity, in addition to the requirements of Subsection (4)(e)(i), in accordance with generally accepted government auditing standards 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:
 - (A) response times;
 - (B) staging locations;
 - (C) experience;
 - (D) quality of care; and
 - (E) cost, consistent with the cost accounting method in Subsection (4)(e)(i).
- (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, apply to the procurement process required by this section, except as provided in Subsection (5)(c).
 - (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 26B-4-156.
 - (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.

Renumbered and Amended by Chapter 307, 2023 General Session

Amended by Chapter 435, 2023 General Session

Superseded 7/1/2024

26B-4-158 Non-911 provider -- Finding of meritorious complaint -- Request for proposals.

- (1)
 - (a) This section applies to a non-911 provider license under this part.
 - (b) The department shall, in accordance with Subsections (3) and (4):
 - (i) receive a complaint about a non-911 provider;
 - (ii) determine whether the complaint has merit;
 - (iii) issue a finding of:
 - (A) a meritorious complaint; or
 - (B) a non-meritorious complaint; and
 - (iv) forward a finding of a meritorious complaint to the governing body of the political subdivision:
 - (A) in which the non-911 provider is licensed; or

- (B) that provides the non-911 services, if different from Subsection (1)(b)(iv)(A).
- (2)
 - (a) A political subdivision that receives a finding of a meritorious complaint from the department:
 - (i) shall take corrective action that the political subdivision determines is appropriate; and
 - (ii) shall, if the political subdivision determines corrective action will not resolve the complaint or is not appropriate:
 - (A) issue a request for proposal for non-911 service in the geographic service area if the political subdivision will not respond to the request for proposal; or
 - (B)
 - (I) make a finding that a request for proposal for non-911 services is appropriate and the political subdivision intends to respond to a request for proposal; and
 - (II) submit the political subdivision's findings to the department with a request that the department issue a request for proposal in accordance with Section 26B-4-159.
 - (b)
 - (i) If Subsection (2)(a)(ii)(A) applies, the political subdivision shall issue the request for proposal in accordance with Sections 26B-4-155 through 26B-4-157.
 - (ii) If Subsection (2)(a)(ii)(B) applies, the department shall issue a request for proposal for non-911 services in accordance with Section 26B-4-159.
- (3) The department shall make a determination under Subsection (1)(b) if:
 - (a) the department receives a written complaint from any of the following in the geographic service area:
 - (i) a hospital;
 - (ii) a health care facility;
 - (iii) a political subdivision; or
 - (iv) an individual; and
 - (b) the department determines, in accordance with Subsection (1)(b), that the complaint has merit.
- (4)
 - (a) If the department receives a complaint under Subsection (1)(b), the department shall request a written response from the non-911 provider concerning the complaint.
 - (b) The department shall make a determination under Subsection (1)(b) based on:
 - (i) the written response from the non-911 provider; and
 - (ii) other information that the department may have concerning the quality of service of the non-911 provider.
 - (c)
 - (i) The department's determination under Subsection (1)(b) is not subject to an adjudicative proceeding under Title 63G, Chapter 4, Administrative Procedures Act.
 - (ii) The department shall adopt administrative rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to implement the provisions of Subsection (1)(b).

Renumbered and Amended by Chapter 307, 2023 General Session

Superseded 7/1/2024

26B-4-159 Use of competitive sealed proposals -- Procedure -- Appeal rights.

- (1)
 - (a) The department shall issue a request for proposal for non-911 services in a geographic service area if the department receives a request from a political subdivision under Subsection 26B-4-158(2)(a)(ii)(B) to issue a request for proposal for non-911 services.

- (b) Competitive sealed proposals for non-911 services under Subsection (1)(a) shall be solicited through a request for proposal and the provisions of this section.
- (c)
 - (i) Notice of the request for proposals shall be published:
 - (A) at least once a week for three consecutive weeks in a newspaper of general circulation published in the county; or
 - (B) if there is no such newspaper, then notice shall be posted for at least 20 days in at least five public places in the county; and
 - (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 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 26B-4-153 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 26B-4-154 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.
- (4) In seeking competitive sealed proposals and awarding contracts under this section, the department:
 - (a) shall consider the public convenience and necessity factors listed in Subsections 26B-4-162(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:
 - (i) based on full cost accounting in accordance with generally accepted accounting principals; and
 - (ii) if the applicant is a governmental entity, in addition to the requirements of Subsection (4)(e) (i), in accordance with generally accepted government auditing standards 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 department in the award of the contract, including by percentage, the relative weight of the factors established under this Subsection (4)(e), which may include:
 - (A) response times;
 - (B) staging locations;
 - (C) experience;
 - (D) quality of care; and
 - (E) cost, consistent with the cost accounting method in Subsection (4)(e)(i).
- (5) A license issued under this section:
 - (a) is for the exclusive geographic service area approved by the department;
 - (b) is valid for four years;
 - (c) is not subject to a request for license from another applicant under the provisions of Sections 26B-4-160 through 26B-4-163 during the four-year term, unless the applicant's license is revoked under Section 26B-4-130;
 - (d) is subject to supervision by the department under Sections 26B-4-129 and 26B-4-130; and
 - (e) except as provided in Subsection (4)(a), is not subject to the provisions of Sections 26B-4-160 through 26B-4-163.

Renumbered and Amended by Chapter 307, 2023 General Session

Superseded 7/1/2024

26B-4-160 Ground ambulance and paramedic licenses -- Parties.

- (1) When an applicant approved under Section 26B-4-153 seeks licensure under the provisions of Sections 26B-4-160 through 26B-4-163, the department shall:
 - (a) issue a notice of agency action to the applicant to commence an informal administrative proceeding;
 - (b) provide notice of the application to all interested parties; and
 - (c) publish notice of the application, at the applicant's expense:
 - (i) once a week for four consecutive weeks, in a newspaper of general circulation in the geographic service area that is the subject of the application; and
 - (ii) in accordance with Section 45-1-101 for four weeks.
- (2) An interested party has 30 days to object to an application.
- (3) If an interested party objects, the presiding officer shall join the interested party as an indispensable party to the proceeding.
- (4) The department may join the proceeding as a party to represent the public interest.

- (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 standing.

Renumbered and Amended by Chapter 307, 2023 General Session

Superseded 7/1/2024

26B-4-161 Ground ambulance and paramedic licenses -- Proceedings.

- (1) The presiding officer shall:
- (a) commence an informal adjudicative proceeding within 120 days of receiving a completed application;
 - (b) meet with the applicant and objecting interested parties and provide no less than 120 days for a negotiated resolution, consistent with the criteria in Section 26B-4-162;
 - (c) set aside a separate time during the proceedings to accept public comment on the application; and
 - (d) present a written decision to the executive director if a resolution has been reached that satisfies the criteria in Section 26B-4-162.
- (2) At any time during an informal adjudicative proceeding under Subsection (1), any party may request conversion of the informal adjudicative proceeding to a formal adjudicative proceeding in accordance with Section 63G-4-202.
- (3) Upon conversion to a formal adjudicative proceeding, a hearing officer shall be assigned to the application as provided in Section 26B-4-163. The hearing officer shall:
- (a) set aside a separate time during the proceedings to accept public comment on the application;
 - (b) apply the criteria established in Section 26B-4-162; and
 - (c) present a recommended decision to the executive director in writing.
- (4) The executive director may, as set forth in a final written order, accept, modify, reject, or remand the decision of a presiding or hearing officer after:
- (a) reviewing the record;
 - (b) giving due deference to the officer's decision; and
 - (c) determining whether the criteria in Section 26B-4-162 have been satisfied.

Renumbered and Amended by Chapter 307, 2023 General Session

Superseded 7/1/2024

26B-4-162 Criteria for determining public convenience and necessity.

- (1) The criteria for determining public convenience and necessity is set forth in Subsections (2) through (6).
- (2) Access to emergency medical services shall be maintained or improved. The officer shall consider the impact on existing services, including the impact on response times, call volumes, populations and exclusive geographic service areas served, and the ability of surrounding licensed providers to service their exclusive geographic service areas. The issuance or amendment of a license may not create an orphaned area.
- (3) The quality of service in the area shall be maintained or improved. The officer shall consider the:
- (a) staffing and equipment standards of the current licensed provider and the applicant;
 - (b) training and licensure levels of the current licensed provider's staff and the applicant's staff;
 - (c) continuing medical education provided by the current licensed provider and the applicant;
 - (d) levels of care as defined by department rule;

- (e) plan of medical control; and
 - (f) the negative or beneficial impact on the regional emergency medical service system to provide service to the public.
- (4) The cost to the public shall be justified. The officer shall consider:
- (a) the financial solvency of the applicant;
 - (b) the applicant's ability to provide services within the rates established under Section 26B-4-152;
 - (c) the applicant's ability to comply with cost reporting requirements;
 - (d) the cost efficiency of the applicant; and
 - (e) the cost effect of the application on the public, interested parties, and the emergency medical services system.
- (5) Local desires concerning cost, quality, and access shall be considered. The officer shall assess and consider:
- (a) the existing provider's record of providing services and the applicant's record and ability to provide similar or improved services;
 - (b) locally established emergency medical services goals, including those established in Subsection (7);
 - (c) comment by local governments on the applicant's business and operations plans;
 - (d) comment by interested parties that are providers on the impact of the application on the parties' ability to provide emergency medical services;
 - (e) comment by interested parties that are local governments on the impact of the application on the citizens it represents; and
 - (f) public comment on any aspect of the application or proposed license.
- (6) Other related criteria:
- (a) the officer considers necessary; or
 - (b) established by department rule.
- (7) Local governments shall establish cost, quality, and access goals for the ground ambulance and paramedic services that serve their areas.
- (8) In a formal adjudicative proceeding, the applicant bears the burden of establishing that public convenience and necessity require the approval of the application for all or part of the exclusive geographic service area requested.

Renumbered and Amended by Chapter 307, 2023 General Session

Superseded 7/1/2024

26B-4-163 Ground ambulance and paramedic licenses -- Hearing and presiding officers.

- (1) The department shall set training standards for hearing officers and presiding officers.
- (2) At a minimum, a presiding officer shall:
 - (a) be familiar with the theory and application of public convenience and necessity; and
 - (b) have a working knowledge of the emergency medical service system in the state.
- (3) In addition to the requirements in Subsection (2), a hearing officer shall also be licensed to practice law in the state.
- (4) The department shall provide training for hearing officer and presiding officer candidates in the theory and application of public convenience and necessity and on the emergency medical system in the state.
- (5) The department shall maintain a roster of no less than five individuals who meet the minimum qualifications for both presiding and hearing officers and the standards set by the department.
- (6) The parties may mutually select an officer from the roster if the officer is available.

- (7) If the parties cannot agree upon an officer under Subsection (4), the department shall randomly select an officer from the roster or from a smaller group of the roster agreed upon by the applicant and the objecting interested parties.

Renumbered and Amended by Chapter 307, 2023 General Session

Superseded 7/1/2024

26B-4-164 Local approvals.

- (1) Licensed ambulance providers and paramedic providers shall meet all local zoning and business licensing standards generally applicable to businesses operating within the jurisdiction.
- (2) Publicly subsidized providers shall demonstrate approval of the taxing authority that will provide the subsidy.
- (3) A publicly operated service shall demonstrate that the governing body has approved the provision of services to the entire exclusive geographic service area that is the subject of the license, including those areas that may lie outside the territorial or jurisdictional boundaries of the governing body.

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Superseded 7/1/2024

26B-4-165 Limitation on repetitive applications.

A person who has previously applied for a license under Sections 26B-4-160 through 26B-4-163 may not apply for a license for the same service that covers any exclusive geographic service area that was the subject of the prior application unless:

- (1) one year has passed from the date of the issuance of a final decision under Section 26B-4-161;
or
- (2) all interested parties and the department agree that a new application is in the public interest.

Renumbered and Amended by Chapter 307, 2023 General Session

Superseded 7/1/2024

26B-4-166 License for air ambulance providers.

- (1) An applicant for an air ambulance provider shall apply to the department for a license only by:
 - (a) submitting a complete application;
 - (b) providing information in the format required by the department; and
 - (c) paying the required fees.
- (2) The department may make rules establishing minimum qualifications and requirements for:
 - (a) personnel;
 - (b) capital reserves;
 - (c) equipment;
 - (d) business plan;
 - (e) operational procedures;
 - (f) resource hospital and medical direction agreements;
 - (g) management and control qualifications and requirements; and
 - (h) other matters that may be relevant to an applicant's ability to provide air ambulance services.

- (3) Upon receiving a completed application and the required fees, the department shall review the application and determine whether the application meets the minimum requirements for licensure.
- (4) The department may deny an application for an air ambulance if:
 - (a) the department finds that the application contains any materially false or misleading information or is incomplete;
 - (b) the application demonstrates that the applicant fails to meet the minimum requirements for licensure; or
 - (c) the department finds after inspection that the applicant does not meet the minimum requirements for licensure.
- (5) If the department denies an application under this section, it shall notify the applicant in writing setting forth the grounds for the denial.

Renumbered and Amended by Chapter 307, 2023 General Session

Superseded 7/1/2024

26B-4-167 License renewals.

- (1) A licensed provider desiring to renew its license shall meet the renewal requirements established by department rule.
- (2) The department shall issue a renewal license for a ground ambulance provider or a paramedic provider upon the licensee's application for a renewal and without a public hearing if:
 - (a) the applicant was licensed under the provisions of Sections 26B-4-160 through 26B-4-163; and
 - (b) there has been:
 - (i) no change in controlling interest in the ownership of the licensee as defined in Section 26B-4-169;
 - (ii) no serious, substantiated public complaints filed with the department against the licensee during the term of the previous license;
 - (iii) no material or substantial change in the basis upon which the license was originally granted;
 - (iv) no reasoned objection from the committee or the department; and
 - (v) no change to the license type.
- (3)
 - (a)
 - (i) The provisions of this Subsection (3) apply to a provider licensed under the provisions of Sections 26B-4-155 and 26B-4-156.
 - (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 26B-4-155 and 26B-4-156.
 - (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 26B-4-155 and 26B-4-156.
- (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.

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Superseded 7/1/2024

26B-4-168 Annexations.

- (1) A municipality shall comply with the provisions of this section if the municipality is licensed under this 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; and
 - (b) currently serviced by another provider licensed under this part.
- (2)
 - (a)
 - (i) At least 45 days prior to approving a petition for annexation, the municipality shall certify to the department that by the time of the approval of the annexation the municipality can meet or exceed the current level of service provided by the existing licensee for the annexed area by meeting the requirements of Subsections (2)(b)(ii)(A) through (D); 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 (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 petition for annexation while an adjudicative proceeding requested under this Subsection (3)(b)(i) is pending.
 - (ii) The department shall conduct an adjudicative proceeding when requested under Subsection (3)(b)(i).
 - (iii) Notwithstanding the provisions of Sections 26B-4-153 through 26B-4-163, 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.

Renumbered and Amended by Chapter 307, 2023 General Session

Superseded 7/1/2024

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 26B-4-162.
- (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:
 - (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 at the time of the transfer;
 - (ii) the majority owners on January 1, 1999, have been disclosed to the department by October 1, 1999, and the majority owners on January 1, 1999, retain a majority interest in 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.

Renumbered and Amended by Chapter 307, 2023 General Session

Superseded 7/1/2024

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 26B-4-151, 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 26B-4-153(4).
- (4) An amendment of a license under this section may not alter:
 - (a) other terms of the original license, including the applicable geographic service area; or
 - (b) the license of other providers that provide interfacility transport services in the geographic service area.
- (5) Notwithstanding Subsection (2), any license for an overlap area terminates upon:
 - (a) relinquishment by the provider; or
 - (b) revocation by the department.

Renumbered and Amended by Chapter 307, 2023 General Session

Part 2
Cannabinoid Research and Medical Cannabis

26B-4-201 Definitions.

As used in this part:

- (1) "Active tetrahydrocannabinol" means THC, any THC analog, and tetrahydrocannabinolic acid.
- (2) "Advertise" or "advertising" means information provided by a medical cannabis pharmacy in any medium:
 - (a) to the public; and
 - (b) that is not age restricted to an individual who is at least 21 years old.
- (3) "Advisory board" means the Medical Cannabis Policy Advisory Board created in Section 26B-1-435.
- (4) "Cannabis Research Review Board" means the Cannabis Research Review Board created in Section 26B-1-420.

- (5) "Cannabis" means marijuana.
- (6) "Cannabis cultivation facility" means the same as that term is defined in Section 4-41a-102.
- (7) "Cannabis processing facility" means the same as that term is defined in Section 4-41a-102.
- (8) "Cannabis product" means a product that:
 - (a) is intended for human use; and
 - (b) contains cannabis or any tetrahydrocannabinol or THC analog in a total concentration of 0.3% or greater on a dry weight basis.
- (9) "Cannabis production establishment" means the same as that term is defined in Section 4-41a-102.
- (10) "Cannabis production establishment agent" means the same as that term is defined in Section 4-41a-102.
- (11) "Cannabis production establishment agent registration card" means the same as that term is defined in Section 4-41a-102.
- (12) "Community location" means a public or private elementary or secondary school, a church, a public library, a public playground, or a public park.
- (13) "Conditional medical cannabis card" means an electronic medical cannabis card that the department issues in accordance with Subsection 26B-4-213(1)(b) to allow an applicant for a medical cannabis card to access medical cannabis during the department's review of the application.
- (14) "Controlled substance database" means the controlled substance database created in Section 58-37f-201.
- (15) "Delivery address" means:
 - (a) for a medical cannabis cardholder who is not a facility, the medical cannabis cardholder's home address; or
 - (b) for a medical cannabis cardholder that is a facility, the facility's address.
- (16) "Department" means the Department of Health and Human Services.
- (17) "Designated caregiver" means:
 - (a) an individual:
 - (i) whom an individual with a medical cannabis patient card or a medical cannabis guardian card designates as the patient's caregiver; and
 - (ii) who registers with the department under Section 26B-4-214; or
 - (b)
 - (i) a facility that an individual designates as a designated caregiver in accordance with Subsection 26B-4-214(1)(b); or
 - (ii) an assigned employee of the facility described in Subsection 26B-4-214(1)(b)(ii).
- (18) "Directions of use" means recommended routes of administration for a medical cannabis treatment and suggested usage guidelines.
- (19) "Dosing guidelines" means a quantity range and frequency of administration for a recommended treatment of medical cannabis.
- (20) "Financial institution" means a bank, trust company, savings institution, or credit union, chartered and supervised under state or federal law.
- (21) "Government issued photo identification" means any of the following forms of identification:
 - (a) a valid state-issued driver license or identification card;
 - (b) a valid United States federal-issued photo identification, including:
 - (i) a United States passport;
 - (ii) a United States passport card;
 - (iii) a United States military identification card; or
 - (iv) a permanent resident card or alien registration receipt card; or

- (c) a foreign passport.
- (22) "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 delivery address to fulfill electronic orders that the state central patient portal facilitates.
- (23) "Inventory control system" means the system described in Section 4-41a-103.
- (24) "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 26B-4-230(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 total, greater than 20 grams of active tetrahydrocannabinol.
- (25) "Legal use termination date" means a date on the label of a container of unprocessed cannabis flower:
 - (a) that is 60 days after the date of purchase of the cannabis; and
 - (b) after which, the cannabis is no longer in a medicinal dosage form outside of the primary residence of the relevant medical cannabis patient cardholder.
- (26) "Limited medical provider" means an individual who:
 - (a) meets the recommending qualifications; and
 - (b) has no more than 15 patients with a valid medical cannabis patient card or provisional patient card as a result of the individual's recommendation, in accordance with Subsection 26B-4-204(1)(b).
- (27) "Marijuana" means the same as that term is defined in Section 58-37-2.
- (28) "Medical cannabis" means cannabis in a medicinal dosage form or a cannabis product in a medicinal dosage form.
- (29) "Medical cannabis card" means a medical cannabis patient card, a medical cannabis guardian card, a medical cannabis caregiver card, or a conditional medical cannabis card.
- (30) "Medical cannabis cardholder" means:
 - (a) a holder of a medical cannabis card; or
 - (b) a facility or assigned employee, described in Subsection(17)(b), only:
 - (i) within the scope of the facility's or assigned employee's performance of the role of a medical cannabis patient cardholder's caregiver designation under Subsection 26B-4-214(1)(b); and
 - (ii) while in possession of documentation that establishes:
 - (A) a caregiver designation described in Subsection 26B-4-214(1)(b);
 - (B) the identity of the individual presenting the documentation; and
 - (C) the relation of the individual presenting the documentation to the caregiver designation.
- (31) "Medical cannabis caregiver card" means an electronic document that a cardholder may print or store on an electronic device or a physical card or document that:
 - (a) the department issues to an individual whom a medical cannabis patient cardholder or a medical cannabis guardian cardholder designates as a designated caregiver; and
 - (b) is connected to the electronic verification system.
- (32) "Medical cannabis courier" means the same as that term is defined in Section 4-41a-102.
- (33) "Medical cannabis courier agent" means the same as that term is defined in Section 4-41a-102.
- (34)

- (a) "Medical cannabis device" means a device that an individual uses to ingest or inhale cannabis in a medicinal dosage form or a cannabis product in a medicinal dosage form.
- (b) "Medical cannabis device" does not include a device that:
 - (i) facilitates cannabis combustion; or
 - (ii) an individual uses to ingest substances other than cannabis.
- (35) "Medical cannabis guardian card" means an electronic document that a cardholder may print or store on an electronic device or a physical card or document that:
 - (a) the department issues to the parent or legal guardian of a minor with a qualifying condition; and
 - (b) is connected to the electronic verification system.
- (36) "Medical cannabis patient card" means an electronic document that a cardholder may print or store on an electronic device or a physical card or document that:
 - (a) the department issues to an individual with a qualifying condition; and
 - (b) is connected to the electronic verification system.
- (37) "Medical cannabis pharmacy" means a person that:
 - (a)
 - (i) acquires or intends to acquire medical cannabis or a cannabis product in a medicinal dosage form from a cannabis processing facility or another medical cannabis pharmacy or a medical cannabis device; or
 - (ii) possesses medical cannabis or a medical cannabis device; and
 - (b) sells or intends to sell medical cannabis or a medical cannabis device to a medical cannabis cardholder.
- (38) "Medical cannabis pharmacy agent" means an individual who holds a valid medical cannabis pharmacy agent registration card issued by the department.
- (39) "Medical cannabis pharmacy agent registration card" means a registration card issued by the department that authorizes an individual to act as a medical cannabis pharmacy agent.
- (40) "Medical cannabis shipment" means the same as that term is defined in Section 4-41a-102.
- (41) "Medical cannabis treatment" means cannabis in a medicinal dosage form, a cannabis product in a medicinal dosage form, or a medical cannabis device.
- (42)
 - (a) "Medicinal dosage form" means:
 - (i) for processed medical cannabis or a medical cannabis product, the following with a specific and consistent cannabinoid content:
 - (A) a tablet;
 - (B) a capsule;
 - (C) a concentrated liquid or viscous oil;
 - (D) a liquid suspension that, after December 1, 2022, does not exceed 30 ml;
 - (E) a topical preparation;
 - (F) a transdermal preparation;
 - (G) a sublingual preparation;
 - (H) a gelatinous cube, gelatinous rectangular cuboid, or lozenge in a cube or rectangular cuboid shape;
 - (I) a resin or wax; or
 - (J) an aerosol; or
 - (ii) for unprocessed cannabis flower, a container described in Section 4-41a-602 that:
 - (A) contains cannabis flowers in a quantity that varies by no more than 10% from the stated weight at the time of packaging;

- (B) at any time the medical cannabis cardholder transports or possesses the container in public, is contained within an opaque bag or box that the medical cannabis pharmacy provides; and
 - (C) is labeled with the container's content and weight, the date of purchase, the legal use termination date, and after December 31, 2020, a barcode that provides information connected to an inventory control system .
- (b) "Medicinal dosage form" includes a portion of unprocessed cannabis flower that:
 - (i) the medical cannabis cardholder has recently removed from the container described in Subsection (42)(a)(ii) for use; and
 - (ii) does not exceed the quantity described in Subsection (42)(a)(ii).
 - (c) "Medicinal dosage form" does not include:
 - (i) any unprocessed cannabis flower outside of the container described in Subsection (42)(a)(ii), except as provided in Subsection (42)(b);
 - (ii) any unprocessed cannabis flower in a container described in Subsection (42)(a)(ii) after the legal use termination date;
 - (iii) a process of vaporizing and inhaling concentrated cannabis by placing the cannabis on a nail or other metal object that is heated by a flame, including a blowtorch;
 - (iv) a liquid suspension that is branded as a beverage ; or
 - (v) a substance described in Subsection (42)(a)(i) or (ii) if the substance is not measured in grams, milligrams, or milliliters.
- (43) "Nonresident patient" means an individual who:
- (a) is not a resident of Utah or has been a resident of Utah for less than 45 days;
 - (b) has a currently valid medical cannabis card or the equivalent of a medical cannabis card under the laws of another state, district, territory, commonwealth, or insular possession of the United States; and
 - (c) has been diagnosed with a qualifying condition as described in Section 26B-4-203.
- (44) "Payment provider" means an entity that contracts with a cannabis production establishment or medical cannabis pharmacy to facilitate transfers of funds between the establishment or pharmacy and other businesses or individuals.
- (45) "Pharmacy medical provider" means the medical provider required to be on site at a medical cannabis pharmacy under Section 26B-4-219.
- (46) "Provisional patient card" means a card that:
- (a) the department issues to a minor with a qualifying condition for whom:
 - (i) a recommending medical provider has recommended a medical cannabis treatment; and
 - (ii) the department issues a medical cannabis guardian card to the minor's parent or legal guardian; and
 - (b) is connected to the electronic verification system.
- (47) "Qualified medical provider" means an individual:
- (a) who meets the recommending qualifications; and
 - (b) whom the department registers to recommend treatment with cannabis in a medicinal dosage form under Section 26B-4-204.
- (48) "Qualified Patient Enterprise Fund" means the enterprise fund created in Section 26B-1-310.
- (49) "Qualifying condition" means a condition described in Section 26B-4-203.
- (50) "Recommend" or "recommendation" means, for a recommending medical provider, the act of suggesting the use of medical cannabis treatment, which:
- (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, with or without dosing guidelines.

- (51) "Recommending medical provider" means a qualified medical provider or a limited medical provider.
- (52) "Recommending qualifications" means that an individual:
- (a)
 - (i) has the authority to write a prescription;
 - (ii) is licensed to prescribe a controlled substance under Title 58, Chapter 37, Utah Controlled Substances Act; and
 - (iii) possesses the authority, in accordance with the individual's scope of practice, to prescribe a Schedule II controlled substance; and
 - (b) is licensed as:
 - (i) a podiatrist under Title 58, Chapter 5a, Podiatric Physician Licensing Act;
 - (ii) an advanced practice registered nurse under Title 58, Chapter 31b, Nurse Practice Act;
 - (iii) a physician under Title 58, Chapter 67, Utah Medical Practice Act, or Title 58, Chapter 68, Utah Osteopathic Medical Practice Act; or
 - (iv) a physician assistant under Title 58, Chapter 70a, Utah Physician Assistant Act.
- (53) "State central patient portal" means the website the department creates, in accordance with Section 26B-4-236, to facilitate patient safety, education, and an electronic medical cannabis order.
- (54) "State electronic verification system" means the system described in Section 26B-4-202.
- (55) "Targeted marketing" means the promotion by a medical cannabis pharmacy of a medical cannabis product, medical cannabis brand, or a medical cannabis device using any of the following methods:
- (a) electronic communication to an individual who is at least 21 years old and has requested to receive promotional information from the medical cannabis pharmacy;
 - (b) an in-person marketing event that is:
 - (i) held inside a medical cannabis pharmacy; and
 - (ii) in an area where only a medical cannabis cardholder may access the event; or
 - (c) other marketing material that is physically available or digitally displayed in:
 - (i) a medical cannabis pharmacy; and
 - (ii) an area where only a medical cannabis cardholder has access.
- (56) "Tetrahydrocannabinol" or "THC" means a substance derived from cannabis or a synthetic equivalent as described in Subsection 58-37-4(2)(a)(iii)(AA).
- (57) "THC analog" means the same as that term is defined in Section 4-41-102.

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Amended by Chapter 317, 2023 General Session

26B-4-202 Electronic verification system.

- (1) The Department of Agriculture and Food, the department, the Department of Public Safety, and the Division of Technology Services shall:
- (a) enter into a memorandum of understanding in order to determine the function and operation of the state electronic verification system in accordance with Subsection (2);
 - (b) coordinate with the Division of Purchasing, under Title 63G, Chapter 6a, Utah Procurement Code, to develop a request for proposals for a third-party provider to develop and maintain the state electronic verification system in coordination with the Division of Technology Services; and
 - (c) select a third-party provider who:

- (i) meets the requirements contained in the request for proposals issued under Subsection (1) (b); and
 - (ii) may not have any commercial or ownership interest in a cannabis production establishment or a medical cannabis pharmacy.
- (2) The Department of Agriculture and Food, the department, the Department of Public Safety, and the Division of Technology Services shall ensure that 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 guardian card in accordance with Section 26B-4-213;
 - (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 treatment with cannabis in a medicinal dosage form or a cannabis product in a medicinal dosage form and optionally recommend dosing guidelines;
 - (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
 - (iv) submit an initial application, renewal application, or application payment on behalf of an individual applying for any of the following:
 - (A) a medical cannabis patient card;
 - (B) a medical cannabis guardian card; or
 - (C) a medical cannabis caregiver card;
 - (d) allows a medical cannabis pharmacy medical provider or medical cannabis pharmacy agent, in accordance with Subsection 4-41a-1101(10)(a), to:
 - (i) access the electronic verification system to review the history within the system of a patient with whom the provider or agent is interacting, limited to read-only access for medical cannabis pharmacy agents unless the medical cannabis pharmacy's pharmacist in 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;
 - (iii) record a limited medical provider's renewal of the provider's previous recommendation; and
 - (iv) submit an initial application, renewal application, or application payment on behalf of an individual applying for any of the following:
 - (A) a medical cannabis patient card;
 - (B) a medical cannabis guardian card; or
 - (C) a medical cannabis caregiver card;

- (e) connects with:
 - (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:
 - (i) the department to the extent necessary to carry out the department's functions and responsibilities under this part;
 - (ii) the Department of Agriculture and Food to the extent necessary to carry out the functions and responsibilities of the Department of Agriculture and Food under Title 4, Chapter 41a, Cannabis Production Establishments and Pharmacies; and
 - (iii) the Division of Professional Licensing to the extent necessary to carry out the functions and responsibilities related to the participation of the following in the 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, Nurse Practice Act;
 - (D) a physician licensed under Title 58, Chapter 67, Utah Medical Practice Act, or Title 58, Chapter 68, Utah Osteopathic Medical Practice Act; or
 - (E) a physician assistant licensed under Title 58, Chapter 70a, Utah Physician Assistant Act;
 - (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 4-41a-1102(3)(a)(ii) to the controlled substance database;
 - (i) provides access to state or local law enforcement:
 - (i) during a law enforcement encounter, without a warrant, using the individual's driver license or state ID, only for the purpose of determining if the individual subject to the law enforcement encounter has a valid medical cannabis card; or
 - (ii) after obtaining a warrant; and
 - (j) 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) 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 employee's identity and the designation described in Subsection (3)(a)(i); and
 - (iii) the department grants to the employee access to the electronic verification system.
- (b) An employee of a business that employs 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 and the employing business jointly provide written notice to the department of the employee's identity and the designation described in Subsection (3)(b)(i); and
 - (iii) the department grants to the employee access to the electronic verification system.
- (4)
- (a) As used in this Subsection (4), "prescribing provider" means:
- (i) a podiatrist licensed under Title 58, Chapter 5a, Podiatric Physician Licensing Act;
 - (ii) an advanced practice registered nurse licensed under Title 58, Chapter 31b, Nurse Practice Act;
 - (iii) a physician licensed under Title 58, Chapter 67, Utah Medical Practice Act, or Title 58, Chapter 68, Utah Osteopathic Medical Practice Act; or
 - (iv) a physician assistant licensed under Title 58, Chapter 70a, Utah Physician Assistant Act.
- (b) A prescribing provider may access information in the electronic verification system regarding a patient the prescribing provider treats.
- (5) The department may release limited data that the system collects for the purpose of:
- (a) conducting medical and other department approved research;
 - (b) providing the report required by Section 26B-4-222; and
 - (c) other official department purposes.
- (6) The department shall make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to establish:
- (a) the limitations on access to the data in the state electronic verification system as 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 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.

Amended by Chapter 273, 2023 General Session

Renumbered and Amended by Chapter 307, 2023 General Session

Amended by Chapter 307, 2023 General Session, (Coordination Clause)

Amended by Chapter 317, 2023 General Session

26B-4-203 Qualifying condition.

- (1) By designating a particular condition under Subsection (2) for which the use of medical cannabis to treat symptoms is decriminalized, the Legislature does not conclusively state that:
 - (a) current scientific evidence clearly supports the efficacy of a medical cannabis treatment for the condition; or
 - (b) a medical cannabis treatment will treat, cure, or positively affect the condition.
- (2) For the purposes of this part, each of the following conditions is a qualifying condition:
 - (a) HIV or acquired immune deficiency syndrome;
 - (b) Alzheimer's disease;
 - (c) amyotrophic lateral sclerosis;
 - (d) cancer;
 - (e) cachexia;
 - (f) persistent nausea that is not significantly responsive to traditional treatment, except for nausea related to:
 - (i) pregnancy;
 - (ii) cannabis-induced cyclical vomiting syndrome; or
 - (iii) cannabinoid hyperemesis syndrome;
 - (g) Crohn's disease or ulcerative colitis;
 - (h) epilepsy or debilitating seizures;
 - (i) multiple sclerosis or persistent and debilitating muscle spasms;
 - (j) post-traumatic stress disorder that is being treated and monitored by a licensed mental health therapist, as that term is defined in Section 58-60-102, and that:
 - (i) has been diagnosed by a healthcare provider or mental health provider employed or contracted by the United States Veterans Administration, evidenced by copies of medical records from the United States Veterans Administration that are included as part of the qualified medical provider's pre-treatment assessment and medical record documentation;or

- (ii) has been diagnosed or confirmed, through face-to-face or telehealth evaluation of the patient, by a provider who is:
 - (A) a licensed board-eligible or board-certified psychiatrist;
 - (B) a licensed psychologist with a master's-level degree;
 - (C) a licensed clinical social worker with a master's-level degree;
 - (D) a licensed advanced practice registered nurse who is qualified to practice within the psychiatric mental health nursing specialty and who has completed the clinical practice requirements in psychiatric mental health nursing, including in psychotherapy, in accordance with Subsection 58-31b-302(5)(g); or
 - (E) a licensed physician assistant who is qualified to specialize in mental health care under Section 58-70a-501.1;
- (k) autism;
- (l) a terminal illness when the patient's remaining life expectancy is less than six months;
- (m) a condition resulting in the individual receiving hospice care;
- (n) a rare condition or disease that:
 - (i) affects less than 200,000 individuals in the United States, as defined in Section 526 of the Federal Food, Drug, and Cosmetic Act; and
 - (ii) is not adequately managed despite treatment attempts using:
 - (A) conventional medications other than opioids or opiates; or
 - (B) physical interventions;
- (o) pain lasting longer than two weeks that is not adequately managed, in the qualified medical provider's opinion, despite treatment attempts using:
 - (i) conventional medications other than opioids or opiates; or
 - (ii) physical interventions;
- (p) pain that is expected to last for two weeks or longer for an acute condition, including a surgical procedure, for which a medical professional may generally prescribe opioids for a limited duration, subject to Subsection 26B-4-213(5)(c); and
- (q) a condition that the Compassionate Use Board approves under Section 26B-1-421, on an individual, case-by-case basis.

Renumbered and Amended by Chapter 307, 2023 General Session
Amended by Chapter 317, 2023 General Session

26B-4-204 Qualified medical provider registration -- Continuing education -- Treatment recommendation -- Limited medical provider.

- (1)
 - (a)
 - (i) Except as provided in Subsection (1)(b), an individual may not recommend a medical cannabis treatment unless the department registers the individual as a qualified medical provider in accordance with this section.
 - (ii) Notwithstanding Subsection (1)(a)(i), a qualified medical provider who is podiatrist licensed under Title 58, Chapter 5a, Podiatric Physician Licensing Act, may not recommend a medical cannabis treatment except within the course and scope of a practice of podiatry, as that term is defined in Section 58-5a-102.
 - (b) 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) the individual or the individual's employee sends electronically to a medical cannabis pharmacy; or
 - (B) the individual gives to the patient in writing for the patient to deliver to a medical cannabis pharmacy; and
 - (ii) may include:
 - (A) directions of use or dosing guidelines; and
 - (B) an indication of a need for a caregiver in accordance with Subsection 26B-4-213(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 prescription the provider would issue for a controlled substance, including:
 - (i) the date of issuance;
 - (ii) the provider's name, address and contact information, controlled substance license information, and signature; and
 - (iii) the patient's name, address and contact information, age, and diagnosed qualifying condition.
- (e) In considering making a recommendation as a limited medical provider, an individual may consult information that the department makes available on the department's website for recommending providers.
- (2)
 - (a) The department shall, within 15 days after the day on which the department receives an application from an individual, register and issue a qualified medical provider registration card to the individual if the individual:
 - (i) provides to the department the individual's name and address;
 - (ii) provides to the department an acknowledgment that the individual has completed four hours of continuing education related to medical cannabis;
 - (iii) provides to the department evidence that the individual meets the recommending qualifications;
 - (iv) for an applicant on or after November 1, 2021, provides to the department the information described in Subsection (10)(a); and
 - (v) pays the department a fee in an amount that:
 - (A) the department sets, in accordance with Section 63J-1-504; and
 - (B) does not exceed \$300 for an initial registration.

- (b) The department may not register an individual as a qualified medical provider if the individual is:
 - (i) a pharmacy medical provider; or
 - (ii) an owner, officer, director, board member, employee, or agent of a cannabis production establishment, a medical cannabis pharmacy, or a medical cannabis courier.
- (3)
 - (a) An individual shall complete the continuing education related to medical cannabis in the following amounts:
 - (i) for an individual as a condition precedent to registration, four hours; and
 - (ii) for a qualified medical provider as a condition precedent to renewal, four hours every two years.
 - (b) The department may, in consultation with the Division of Professional Licensing, develop continuing education related to medical cannabis.
 - (c) The continuing education described in this Subsection (3) may discuss:
 - (i) the provisions of this part;
 - (ii) general information about medical cannabis under federal and state law;
 - (iii) the latest scientific research on the endocannabinoid system and medical cannabis, including risks and benefits;
 - (iv) recommendations for medical cannabis as it relates to the continuing care of a patient in pain management, risk management, potential addiction, or palliative care; and
 - (v) best practices for recommending the form and dosage of medical cannabis products based on the qualifying condition underlying a medical cannabis recommendation.
- (4)
 - (a) Except as provided in Subsection (4)(b), a qualified medical provider may not recommend a medical cannabis treatment to more than 1.5% of the total amount of medical cannabis patient cardholders.
 - (b) If a qualified medical provider receives payment from an insurance plan for services provided under this chapter, then the patient whose insurance plan was billed does not count toward the 1.5% patient cap described in Subsection (4)(a).
- (5) A recommending medical provider may recommend medical cannabis to an individual under this 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), a person may not advertise that the person or the person's employee recommends a medical cannabis treatment.
 - (b) Notwithstanding Subsection (6)(a) and Section 4-41a-109, a qualified medical provider or clinic or office that employs a qualified medical provider may advertise the following:
 - (i) a green cross;
 - (ii) the provider's or clinic's name and logo;
 - (iii) a qualifying condition that the individual treats;
 - (iv) that the individual is registered as a qualified medical provider and recommends medical cannabis; or
 - (v) a scientific study regarding medical cannabis use.
- (7)
 - (a) A qualified medical provider registration card expires two years after the day on which the department issues the card.

- (b) The department shall renew a qualified medical provider's registration card if the provider:
 - (i) applies for renewal;
 - (ii) is eligible for a qualified medical provider registration card under this section, including maintaining an unrestricted license under the recommending qualifications;
 - (iii) certifies to the department in a renewal application that the information in Subsection (2)(a) is accurate or updates the information;
 - (iv) submits a report detailing the completion of the continuing education requirement described in Subsection (3); and
 - (v) pays the department a fee in an amount that:
 - (A) the department sets, in accordance with Section 63J-1-504; and
 - (B) does not exceed \$50 for a registration renewal.
- (8) The department may revoke the registration of a qualified medical provider who fails to maintain compliance with the requirements of this section.
- (9) A recommending medical provider may not receive any compensation or benefit for the qualified medical provider's medical cannabis treatment recommendation from:
 - (a) a cannabis production establishment or an owner, officer, director, board member, employee, or agent of a cannabis production establishment;
 - (b) a medical cannabis pharmacy or an owner, officer, director, board member, employee, or agent of a medical cannabis pharmacy; or
 - (c) a recommending medical provider or pharmacy medical provider.
- (10)
 - (a) On or before November 1, 2021, a qualified medical provider shall report to the department, in a manner designated by the department:
 - (i) if applicable, that the qualified medical provider or the entity that employs the qualified medical provider represents online or on printed material that the qualified medical provider is a qualified medical provider or offers medical cannabis recommendations to patients; and
 - (ii) the fee amount that the qualified medical provider or the entity that employs the qualified medical provider charges a patient for a medical cannabis recommendation, either as an actual cash rate or, if the provider or entity bills insurance, an average cash rate.
 - (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):
 - (A) the name of the qualified medical provider and, if applicable, the name of the entity that employs the qualified medical provider;
 - (B) the address of the qualified medical provider's office or, if applicable, the entity that employs the qualified medical provider; and
 - (C) the fee amount described in Subsection (10)(a)(ii); and
 - (ii) share data collected under this Subsection (10) with the state auditor for use in the health care price transparency tool described in Section 67-3-11.

Amended by Chapter 273, 2023 General Session

Amended by Chapter 307, 2023 General Session, (Coordination Clause)

Renumbered and Amended by Chapter 307, 2023 General Session

Amended by Chapter 317, 2023 General Session

26B-4-205 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:
 - (a) civil or criminal liability; or
 - (b) licensure sanctions under Title 58, Chapter 17b, Pharmacy Practice Act, Title 58, 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.
- (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, Chapter 68, Utah Osteopathic Medical Practice Act, or a physician assistant licensed under Title 58, Chapter 70a, Utah Physician Assistant Act:
 - (i)
 - (A) whom the department has registered as a qualified medical provider; or
 - (B) who makes a recommendation as a limited medical provider; and
 - (ii) who recommends treatment with cannabis in a medicinal dosage form or a cannabis product in a medicinal dosage form to a patient in accordance with this part; and
 - (b) a pharmacist licensed under Title 58, Chapter 17b, Pharmacy Practice Act:
 - (i) whom the department has registered as a pharmacy medical provider; and
 - (ii) who dispenses, in a medical cannabis pharmacy, treatment with cannabis in a medicinal dosage form or a cannabis product in a medicinal dosage form to a medical cannabis cardholder in accordance with this part.
- (3) Nothing in this section or part reduces or in any way negates the duty of an individual described in Subsection (2) to use reasonable and ordinary care in the treatment of a patient:
 - (a) who may have a qualifying condition; and
 - (b)
 - (i) for whom the individual described in Subsection (2)(a)(i) or (ii) has recommended or might consider recommending a treatment with cannabis or a cannabis product; or
 - (ii) with whom the pharmacist described in Subsection (2)(b) has interacted in the dosing or dispensing of cannabis or a cannabis product.
- (4)
 - (a) As used in this Subsection (4), "healthcare facility" means a health care facility as defined in Section 26B-2-201.
 - (b) A healthcare facility may adopt restrictions on the possession, use, and storage of medical cannabis on the premises of the healthcare facility by a medical cannabis cardholder who resides at or is actively receiving treatment or care at the healthcare facility.
 - (c) An employee or agent of a healthcare facility described in this Subsection (4) is not subject to civil or criminal liability for carrying out employment duties, including:
 - (i) providing or supervising care to a medical cannabis cardholder; or
 - (ii) in accordance with a caregiver designation under Section 26B-4-214 for a medical cannabis cardholder residing at the healthcare facility, purchasing, transporting, or possessing medical cannabis for the relevant patient and in accordance with the designation.
 - (d) Nothing in this section requires a healthcare facility to adopt a restriction under Subsection (4) (b).

Renumbered and Amended by Chapter 307, 2023 General Session

26B-4-207 Nondiscrimination for medical care or government employment -- Notice to prospective and current public employees -- No effect on private employers.

- (1) For purposes of medical care, including an organ or tissue transplant, a patient's use, in accordance with this part, of cannabis in a medicinal dosage form or a cannabis product in a medicinal dosage form:
 - (a) is considered the equivalent of the authorized use of any other medication used at the discretion of a physician; and
 - (b) does not constitute the use of an illicit substance or otherwise disqualify an 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 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 officer 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 part; or
 - (B) hiring a prospective employee whose assignments or duties would include an assignment or duty that arises from or directly relates to an obligation under this part.
 - (ii) The employer described in Subsection (3)(a)(i) shall give the employee or prospective employee described in Subsection (3)(a)(i) a written notice that notifies the employee or prospective employee:

- (A) that the employee's or prospective employee's job duties may require the employee or prospective employee to engage in conduct which is in violation of the criminal laws of the United States; and
- (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.

Renumbered and Amended by Chapter 307, 2023 General Session

26B-4-208 No insurance requirement.

Nothing in this part requires an insurer, a third-party administrator, or an employer to pay or reimburse for cannabis, a cannabis product, or a medical cannabis device.

Renumbered and Amended by Chapter 307, 2023 General Session

26B-4-209 No effect on use of hemp extract -- Cannabidiol -- Approved drugs.

- (1) Nothing in this part prohibits an individual from purchasing, selling, possessing, or using a cannabinoid product in accordance with Section 4-41-402.
- (2) Nothing in this part restricts or otherwise affects the prescription, distribution, or dispensing of a product that the United States Food and Drug Administration has approved.

Renumbered and Amended by Chapter 307, 2023 General Session

26B-4-210 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.

Renumbered and Amended by Chapter 307, 2023 General Session

26B-4-211 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:

- (1) this part;
- (2) Title 4, Chapter 41a, Cannabis Production Establishments and Pharmacies; or
- (3) Subsection 58-37-3.7(2) or (3).

Renumbered and Amended by Chapter 307, 2023 General Session

26B-4-212 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 products; and
 - (ii) that is approved by an IRB.
 - (b) "Board" means the Cannabis Research Review Board created in Section 26B-1-420.
 - (c) "Cannabinoid product" means the same as that term is defined in Section 58-37-3.6.
 - (d) "Cannabis" means the same as that term is defined in Section 58-37-3.6.
 - (e) "Expanded cannabinoid product" means the same as that term is defined in Section 58-37-3.6.
 - (f) "Institutional review board" or "IRB" means an institutional review board that is registered for human subject research by the United States Department of Health and Human Services.
- (2) A person conducting an approved study may, for the purposes of the study:
 - (a) process a cannabinoid product or an expanded cannabinoid product;
 - (b) possess a cannabinoid product or an expanded cannabinoid product; and
 - (c) administer a cannabinoid product, or an expanded cannabinoid product to an individual in accordance with the approved study.
- (3) A person conducting an approved study may:
 - (a) import cannabis, a cannabinoid product, or an expanded cannabinoid product from another state if:
 - (i) the importation complies with federal law; and
 - (ii) the person uses the cannabis, cannabinoid product, or expanded cannabinoid product in accordance with the approved study; or
 - (b) obtain cannabis, a cannabinoid product, or an expanded cannabinoid product from the National Institute on Drug Abuse.
- (4) A person conducting an approved study may distribute cannabis, a cannabinoid product, or an expanded cannabinoid product outside the state if:
 - (a) the distribution complies with federal law; and
 - (b) the distribution is for the purposes of, and in accordance with, the approved study.

Renumbered and Amended by Chapter 307, 2023 General Session

26B-4-213 Medical cannabis patient card -- Medical cannabis guardian card -- Conditional medical cannabis card -- Application -- Fees -- Studies.

- (1)
- (a) Subject to Section 26B-4-246, within 15 days after the day on which an individual who satisfies the eligibility criteria in this section or Section 26B-4-214 submits an application in accordance with this section or Section 26B-4-214, the department shall:
 - (i) issue a medical cannabis patient card to an individual described in Subsection (2)(a);
 - (ii) issue a medical cannabis guardian card to an individual described in Subsection (2)(b);
 - (iii) issue a provisional patient card to a minor described in Subsection (2)(c); and
 - (iv) issue a medical cannabis caregiver card to an individual described in Subsection 26B-4-214(4).
 - (b)
 - (i) 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 4-41a-1101(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:
 - (A) 60 days; or
 - (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:
 - (i)
 - (A) the individual is at least 21 years old; or
 - (B) the individual is 18, 19, or 20 years old, the individual petitions the Compassionate Use Board under Section 26B-1-421, and the Compassionate Use Board recommends department approval of the petition;
 - (ii) the individual is a Utah resident;
 - (iii) the individual's recommending medical provider recommends treatment with medical cannabis in accordance with Subsection (4);
 - (iv) the individual signs an acknowledgment stating that the individual received the information described in Subsection (9); and
 - (v) the individual pays to the department a fee in an amount that, subject to Subsection 26B-1-310(5), the department sets in accordance with Section 63J-1-504.
 - (b)
 - (i) An individual is eligible for a medical cannabis guardian card if the individual:
 - (A) is at least 18 years old;
 - (B) is a Utah resident;

- (C) is the parent or legal guardian of a minor for whom the minor's qualified medical provider recommends a medical cannabis treatment, the individual petitions the Compassionate Use Board under Section 26B-1-421, and the Compassionate Use Board recommends department approval of the petition;
 - (D) the individual signs an acknowledgment stating that the individual received the information described in Subsection (9);
 - (E) pays to the department a fee in an amount that, subject to Subsection 26B-1-310(5), the department sets in accordance with Section 63J-1-504, plus the cost of the criminal background check described in Section 26B-4-215.
- (ii) The department shall notify the Department of Public Safety of each individual that the department registers for a medical cannabis guardian card.
- (c)
- (i) A minor is eligible for a provisional patient card if:
 - (A) the minor has a qualifying condition;
 - (B) the minor's qualified medical provider recommends a medical cannabis treatment to address the minor's qualifying condition;
 - (C) one of the minor's parents or legal guardians petitions the Compassionate Use Board under Section 26B-1-421, and the Compassionate Use Board recommends 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 26B-4-214.
 - (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) 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 26B-4-214(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 government issued 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

- 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 described in Subsections 26B-4-204(1)(c) and (d).
- (ii) If a recommending medical provider makes the indication described in Subsection (3)(c)(i):
 - (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;
 - (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) visit with the patient face-to-face for an initial recommendation unless the patient:
 - (i) prefers a virtual visit; and
 - (ii)
 - (A) is on hospice or has a terminal illness according to the patient's medical provider; or
 - (B) is a resident of an assisted living facility, as defined in Section 26B-2-201, or a nursing care facility, as defined in Section 26B-2-201;
 - (b) 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 government issued photo identification described in Subsection (3)(a);
 - (ii) review any record related to the patient and, for a minor patient, the patient's parent or legal guardian in:
 - (A) for a qualified medical provider, the state electronic verification system; and
 - (B) the controlled substance database created in Section 58-37f-201; and
 - (iii) consider the recommendation in light of the patient's qualifying condition, history of substance use or opioid use disorder, and history of medical cannabis and controlled substance use during a visit with the patient; and
 - (c) state in the recommending medical provider's recommendation that the patient:
 - (i) suffers from a qualifying condition, including the type of qualifying condition; and
 - (ii) may benefit from treatment with cannabis in a medicinal dosage form or a cannabis product in a medicinal dosage form.
- (5)
- (a) Except as provided in Subsection (5)(b) or (c), a medical cannabis card that the department issues under this section is valid for the lesser of:

- (i) an amount of time that the recommending medical provider determines; or
 - (ii) one year from the day the card is issued.
- (b)
- (i) A medical cannabis card that the department issues in relation to a terminal illness described in Section 26B-4-203 expires after one year.
 - (ii) The recommending medical provider may revoke a recommendation that the provider made in relation to a terminal illness described in Section 26B-4-203 if the medical cannabis cardholder no longer has the terminal illness.
- (c) A medical cannabis card that the department issues in relation to acute pain as described in Section 26B-4-203 expires 30 days after the day on which the department first issues a conditional or full medical cannabis card.
- (6)
- (a) A medical cannabis patient card or a medical cannabis guardian card is renewable if:
 - (i) at the time of renewal, the cardholder meets the requirements of Subsection (2)(a) or (b); or
 - (ii) the cardholder received the medical cannabis card through the recommendation of the Compassionate Use Board under Section 26B-1-421.
 - (b) The recommending medical provider who made the underlying recommendation for the card of a cardholder described in Subsection (6)(a) may renew the cardholder's card through phone or video conference with the cardholder, at the recommending medical 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 26B-1-310(5), the department sets in accordance with Section 63J-1-504; and
 - (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 part 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 part 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)
- (a) The department may revoke a medical cannabis card that the department issues under this section if:
 - (i) the recommending medical provider withdraws the medical provider's recommendation for medical cannabis; or
 - (ii) the cardholder:
 - (A) violates this part; or
 - (B) is convicted under state or federal law of, after March 17, 2021, a drug distribution offense.
 - (b) The department may not refuse to issue a medical cannabis card to a patient solely based on a prior revocation under Subsection (8)(a)(i).
- (9) The department shall establish by rule, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, a process to provide information regarding the following to an individual receiving a medical cannabis card:
- (a) risks associated with medical cannabis treatment;
 - (b) the fact that a condition's listing as a qualifying condition does not suggest that medical cannabis treatment is an effective treatment or cure for that condition, as described in Subsection 26B-4-203(1); and
 - (c) other relevant warnings and safety information that the department determines.
- (10) The department may establish procedures by rule, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to implement the application and issuance 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.
 - (b) The department may only provide the registration process described in Subsection (11)(a):
 - (i) to a nonresident patient; and
 - (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 26B-4-201, could approve the research study.
 - (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 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.

Amended by Chapter 273, 2023 General Session

Amended by Chapter 307, 2023 General Session, (Coordination Clause)

Renumbered and Amended by Chapter 307, 2023 General Session

Amended by Chapter 317, 2023 General Session

26B-4-214 Medical cannabis caregiver card -- Registration -- Renewal -- Revocation.

- (1)
- (a) A cardholder described in Section 26B-4-213 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 26B-4-213 may designate one of the following types of facilities as one of the caregivers described in Subsection (1)(a):
 - (A) for a patient or resident, an assisted living facility, as that term is defined in Section 26B-2-201;
 - (B) for a patient or resident, a nursing care facility, as that term is defined in Section 26B-2-201; or
 - (C) for a patient, a general acute hospital, as that term is defined in Section 26B-2-201.
 - (ii) A facility may:
 - (A) assign one or more employees to assist patients with medical cannabis treatment under the caregiver designation described in this Subsection (1)(b); and
 - (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 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 26B-4-213(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 26B-4-213.
 - (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 26B-4-203, 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:
 - (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 26B-4-246.
 - (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) 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;
 - (b) in accordance with this part, may purchase, possess, transport, or assist the patient in the use of cannabis in a medicinal dosage form, a cannabis product in a medicinal dosage form, or a medical cannabis device on behalf of the designating medical cannabis 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:
 - (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 26B-4-213 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 to file an application for another medical cannabis caregiver card;

- (iii) may receive an additional medical cannabis caregiver card in relation to each additional medical cannabis patient who designates the caregiver; and
 - (iv) is not subject to an additional background check.
- (4) An individual is eligible for a medical cannabis caregiver card if the individual:
- (a) is at least 21 years old;
 - (b) is a Utah resident;
 - (c) pays to the department a fee in an amount that, subject to Subsection 26B-1-310(5), the department sets in accordance with Section 63J-1-504, plus the cost of the criminal background check described in Section 26B-4-215;
 - (d) signs an acknowledgment stating that the applicant received the information described in Subsection 26B-4-213(9) .
- (5) An eligible applicant for a medical cannabis caregiver card shall:
- (a) submit an application for a medical cannabis caregiver card to the department through an electronic application connected to the state electronic verification system; and
 - (b) submit the following information in the application described in Subsection (5)(a):
 - (i) the applicant's name, gender, age, and address;
 - (ii) the name, gender, age, and address of the cardholder described in Section 26B-4-213 who designated the applicant;
 - (iii) if a medical cannabis guardian cardholder designated the caregiver, the name, gender, and age of the minor receiving a medical cannabis treatment in relation to the medical cannabis guardian cardholder; and
 - (iv) any additional information that the department requests to assist in matching the application with the designating medical cannabis patient.
- (6) Except as provided in Subsection (6)(b), a medical cannabis caregiver card that the department issues under this section is valid for the lesser of:
- (a) an amount of time that the cardholder described in Section 26B-4-213 who designated the caregiver determines; or
 - (b) the amount of time remaining before the card of the cardholder described in Section 26B-4-213 expires.
- (7)
- (a) If a designated caregiver meets the requirements of Subsection (4), the designated caregiver's medical cannabis caregiver card renews automatically at the time the cardholder described in Section 26B-4-213 who designated the caregiver:
 - (i) renews the cardholder's card; and
 - (ii) renews the caregiver's designation, in accordance with Subsection (7)(b).
 - (b) The department shall provide a method in the card renewal process to allow a cardholder described in Section 26B-4-213 who has designated a caregiver to:
 - (i) signify that the cardholder renews the caregiver's designation;
 - (ii) remove a caregiver's designation; or
 - (iii) designate a new caregiver.
- (8) The department shall record the issuance or revocation of a medical cannabis card under this section in the controlled substance database.

Renumbered and Amended by Chapter 307, 2023 General Session

Amended by Chapter 317, 2023 General Session

26B-4-215 Designated caregiver -- Guardian -- Criminal background check.

- (1) Except for an applicant reapplying for a medical cannabis card within less than one year after the expiration of the applicant's previous medical cannabis card, each applicant for a medical cannabis guardian card under Section 26B-4-213 or a medical cannabis caregiver card under Section 26B-4-214 shall:
 - (a) submit to the department, at the time of application:
 - (i) a fingerprint card in a form acceptable to the Department of Public Safety; and
 - (ii) a signed waiver in accordance with Subsection 53-10-108(4) acknowledging the registration of the applicant's fingerprints in the Federal Bureau of Investigation Next Generation Identification System's Rap Back Service; and
 - (b) consent to a fingerprint background check by:
 - (i) the Bureau of Criminal Identification; and
 - (ii) the Federal Bureau of Investigation.
- (2) The Bureau of Criminal Identification shall:
 - (a) check the fingerprints the applicant submits under Subsection (1)(a) against the applicable state, regional, and national criminal records databases, including the Federal 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)(a) 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 applicant who submits fingerprints under Subsection (1)(a) 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 Identification.

Renumbered and Amended by Chapter 307, 2023 General Session

26B-4-216 Medical cannabis card -- Patient and designated caregiver requirements -- Rebuttable presumption.

- (1)
 - (a) A medical cannabis cardholder who possesses medical cannabis that the cardholder purchased under this part:
 - (i) shall carry:
 - (A) at all times the cardholder's medical cannabis card; and
 - (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 links the medical cannabis to the inventory control system;
 - (ii) may possess up to the legal dosage limit of:
 - (A) unprocessed cannabis in medicinal dosage form; and
 - (B) a cannabis product in medicinal dosage form;
 - (iii) may not possess more medical cannabis than described in Subsection (1)(a)(ii);

- (iv) may only possess the medical cannabis in the container in which the cardholder received the medical cannabis from the medical cannabis pharmacy; and
 - (v) may not alter or remove any label described in Section 4-41a-602 from the container described in Subsection (1)(a)(iv).
- (b) Except as provided in Subsection (1)(c) or (e), a medical cannabis cardholder who possesses medical cannabis in violation of Subsection (1)(a) is:
- (i) guilty of an infraction; and
 - (ii) subject to a \$100 fine.
- (c) A medical cannabis cardholder or a nonresident patient who possesses medical cannabis in an amount that is greater than the legal dosage limit and equal to or less than twice the legal dosage limit is:
- (i) for a first offense:
 - (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.
- (d) An individual who is guilty of a violation described in Subsection (1)(b) or (c) is not guilty of a violation of Title 58, Chapter 37, Utah Controlled Substances Act, for the conduct underlying the penalty described in Subsection (1)(b) or (c).
- (e) A nonresident patient who possesses medical cannabis that is not in a medicinal dosage form is:
- (i) for a first offense:
 - (A) guilty of an infraction; and
 - (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.
- (f) A medical cannabis cardholder or a nonresident patient who possesses medical cannabis in an amount that is greater than twice the legal dosage limit is subject to the 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:
 - (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.

Renumbered and Amended by Chapter 307, 2023 General Session

26B-4-219 Pharmacy medical providers -- Registration -- 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) 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:
 - (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 26B-1-310(5), the department sets in accordance with Section 63J-1-504.
- (b) The department may not register a recommending 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
 - (B) offered by the department under Subsection (3)(c) or an accredited or approved continuing education provider that the department recognizes as offering continuing education appropriate for the medical cannabis pharmacy 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:
 - (A) for a pharmacy medical provider who is licensed under Title 58, Chapter 17b, Pharmacy Practice Act, the Board of Pharmacy;
 - (B) for a pharmacy medical provider licensed under Title 58, Chapter 67, Utah Medical Practice Act, the Physicians Licensing Board; and
 - (C) for a pharmacy medical provider licensed under Title 58, Chapter 68, Utah Osteopathic Medical Practice Act, the Osteopathic Physician and Surgeon's Licensing Board.
 - (c) The department may, in consultation with the Division of Professional Licensing, develop the continuing education described in this Subsection (3).
 - (d) The continuing education described in this Subsection (3) may discuss:
 - (i) the provisions of this part;
 - (ii) general information about medical cannabis under federal and state law;
 - (iii) the latest scientific research on the endocannabinoid system and medical cannabis, including risks and benefits;
 - (iv) recommendations for medical cannabis as it relates to the continuing care of a patient in pain management, risk management, potential addiction, and palliative care; or
 - (v) best practices for recommending the form and dosage of a medical cannabis product based on the qualifying condition underlying a medical cannabis recommendation.
- (4)
 - (a) A pharmacy medical provider registration card expires two years after the day on which the department issues or renews the card.
 - (b) A pharmacy medical provider may renew the provider's registration card if the provider:

- (i) is eligible for a pharmacy medical provider 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;
 - (iii) submits a report detailing the completion of the continuing education requirement described in Subsection (3); and
 - (iv) pays to the department a renewal fee in an amount that:
 - (A) subject to Subsection 26B-1-310(5), the department sets in accordance with Section 63J-1-504; and
 - (B) may not exceed the cost of the relatively lower administrative burden of renewal in comparison to the original application process.
- (5)
- (a) Except as provided in Subsection (5)(b), a person may not advertise that the person or another person dispenses medical cannabis.
 - (b) Notwithstanding Subsection (5)(a) and Section 4-41a-109, a registered pharmacy medical provider may advertise the following:
 - (i) a green cross;
 - (ii) that the person is registered as a pharmacy medical provider and dispenses medical cannabis; or
 - (iii) a scientific study regarding medical cannabis use.
- (6)
- (a) The department may revoke a pharmacy medical provider's registration for a violation of this chapter.
 - (b) The department may inspect patient records held by a medical cannabis pharmacy to ensure a pharmacy medical provider is practicing in accordance with this chapter and applicable rules.

Amended by Chapter 273, 2023 General Session

Renumbered and Amended by Chapter 307, 2023 General Session

Amended by Chapter 307, 2023 General Session, (Coordination Clause)

Amended by Chapter 317, 2023 General Session

26B-4-220 Enforcement -- Misdemeanor.

- (1) Except as provided in Title 4, Chapter 41a, Cannabis Production Establishments and Pharmacies, it is unlawful for a medical cannabis cardholder to sell or otherwise give to another medical cannabis cardholder cannabis in a medicinal dosage form, a cannabis product in a medicinal dosage form, a medical cannabis device, or any cannabis residue remaining in or from a medical cannabis device.
- (2)
- (a) Except as provided in Subsection (2)(b), a medical cannabis cardholder who violates Subsection (1) is:
 - (i) guilty of a class B misdemeanor; and
 - (ii) subject to a \$1,000 fine.
 - (b) An individual is not guilty under Subsection (2)(a) if the individual:
 - (i)
 - (A) is a designated caregiver; and
 - (B) gives the product described in Subsection (1) to the medical cannabis cardholder who designated the individual as a designated caregiver; or
 - (ii)

- (A) is a medical cannabis guardian cardholder; and
- (B) gives the product described in Subsection (1) to the relevant provisional patient cardholder.
- (c) An individual who is guilty of a violation described in Subsection (2)(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 (2)(a).

Amended by Chapter 273, 2023 General Session

Amended by Chapter 307, 2023 General Session, (Coordination Clause)

Renumbered and Amended by Chapter 307, 2023 General Session

26B-4-222 Report.

- (1) By the November interim meeting each year beginning in 2020, the department shall report to the Health and Human Services Interim Committee on:
 - (a) the number of applications and renewal applications filed for medical cannabis cards;
 - (b) the number of qualifying patients and designated caregivers;
 - (c) the nature of the debilitating medical conditions of the qualifying patients;
 - (d) the age and county of residence of cardholders;
 - (e) the number of medical cannabis cards revoked;
 - (f) the number of practitioners providing recommendations for qualifying patients;
 - (g) the number of license applications and renewal license applications received;
 - (h) the number of licenses the department has issued in each county;
 - (i) the number of licenses the department has revoked;
 - (j) the quantity of medical cannabis shipments that the state central patient portal facilitates;
 - (k) the number of overall purchases of medical cannabis and medical cannabis products from each medical cannabis pharmacy;
 - (l) the expenses incurred and revenues generated from the medical cannabis program; and
 - (m) an analysis of product availability in medical cannabis pharmacies in consultation with the Department of Agriculture and Food.
- (2) The report shall include information provided by the Center for Medical Cannabis Research described in Section 53B-17-1402.
- (3) The department may not include personally identifying information in the report described in this section.
- (4) The department shall report to the working group described in Section 36-12-8.2 as requested by the working group.

Amended by Chapter 273, 2023 General Session

Amended by Chapter 281, 2023 General Session

Renumbered and Amended by Chapter 307, 2023 General Session

26B-4-231 Partial filling -- Pharmacy medical provider directions of use.

- (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 guidelines.
- (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 guidelines, subject to the dosing limits in Subsection 4-41a-1102(2), to fill the quantity remaining of a partially filled medical cannabis treatment recommendation if:
 - (a) the pharmacy medical provider determined dosing guidelines for the partial fill under Subsection 4-41a-1102(5) or (6); 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.
- (5) 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:
 - (a) the recommending medical provider shall provide to the pharmacy medical provider, either through the state electronic verification system or through a medical cannabis pharmacy's recording of a recommendation under the order of a limited medical provider, any of the following information that the recommending medical provider feels would be needed 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
 - (b) before the relevant medical cannabis cardholder may obtain medical cannabis, the pharmacy medical provider shall:
 - (i) review pertinent medical records, including the recommending medical provider documentation described in Subsection (5)(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 (6), after completing the review described in Subsection (5)(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
 - (D) potential adverse reactions.

Renumbered and Amended by Chapter 273, 2023 General Session
Renumbered and Amended by Chapter 307, 2023 General Session
Amended by Chapter 307, 2023 General Session, (Coordination Clause)
Amended by Chapter 317, 2023 General Session

26B-4-236 State central patient portal -- Department duties.

- (1) 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 26B-4-213(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 26B-4-230(4):
 - (i) alert the cardholder of the outstanding need for consultation; and
 - (ii) provide the cardholder with access to the contact information for each pharmacy medical provider;
 - (d) except as provided in Subsection (2)(e), facilitate an electronic medical cannabis order:
 - (i) to a home delivery medical cannabis pharmacy for a medical cannabis shipment; 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 4-41a-1102(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 part.
- (3) The department may make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to implement the state central patient portal.

Amended by Chapter 273, 2023 General Session

Amended by Chapter 307, 2023 General Session, (Coordination Clause)

Renumbered and Amended by Chapter 307, 2023 General Session

Amended by Chapter 317, 2023 General Session

26B-4-243 Guidance for treatment with medical cannabis.

The department, in consultation with the Center for Medical Cannabis Research created in Section 53B-17-1402, shall:

- (1) develop evidence-based guidance for treatment with medical cannabis based on the latest medical research that shall include:
 - (a) for each qualifying condition, a summary of the latest medical research regarding the treatment of the qualifying condition with medical cannabis;
 - (b) risks, contraindications, side effects, and adverse reactions that are associated with medical cannabis use; and
 - (c) potential drug interactions between medical cannabis and medications that have been approved by the United States Food and Drug Administration; and
- (2) educate recommending medical providers, pharmacy medical providers, medical cannabis cardholders, and the public regarding:

- (a) the evidence-based guidance for treatment with medical cannabis described in Subsection (1) (a);
- (b) relevant warnings and safety information related to medical cannabis use; and
- (c) other topics related to medical cannabis use as determined by the department.

Enacted by Chapter 281, 2023 General Session

26B-4-244 Government issued photo identification.

A government issued photo identification is valid for purposes of this chapter if the identification:

- (1) is unexpired;
- (2) expired within the previous six months; or
- (3) is expired and belongs to an individual who:
 - (a) as reported by the individual's recommending medical provider is in hospice or has a terminal illness; or
 - (b) is a patient or resident of:
 - (i) an assisted living facility, as defined in Section 26B-2-201;
 - (ii) a nursing care facility, as defined in Section 26B-2-201; or
 - (iii) a general acute hospital, as defined in Section 26B-2-201.

Enacted by Chapter 317, 2023 General Session

26B-4-245 Purchasing and use limitations.

An individual with a medical cannabis card:

- (1) may purchase, in any one 28-day period, up to the legal dosage limit of:
 - (a) unprocessed cannabis in a medicinal dosage form; and
 - (b) a cannabis product in a medicinal dosage form;
- (2) may not purchase:
 - (a) more medical cannabis than described in Subsection (1)(a); or
 - (b) if the relevant recommending medical provider did not recommend directions of use and dosing guidelines, until the individual consults with the pharmacy medical provider in accordance with Subsection 26B-4-231(4), any medical cannabis; and
- (3) may not use a route of administration that the relevant recommending medical provider or the pharmacy medical provider, in accordance with Subsection 26B-4-231(4), has not recommended.

Enacted by Chapter 273, 2023 General Session

26B-4-246 Denial or revocation of guardian card or caregiver card.

The department may deny or revoke a medical cannabis guardian card or a medical cannabis caregiver card if the applicant or cardholder:

- (1) violates the requirements of this chapter; or
- (2) unless the individual completes any imposed sentence two or more years before the day on which the individual submits the application, has been convicted of any of the following under state or federal law:
 - (a) a drug distribution offense that is a felony within the preceding 10 years; or
 - (b) after December 3, 2018, a drug distribution offense that is a misdemeanor.

Enacted by Chapter 317, 2023 General Session

26B-4-247 Department coordination.

The department shall:

- (1) provide draft rules made under this chapter to the advisory board for the advisory board's review;
- (2) consult with the advisory board regarding:
 - (a) patient education; and
 - (b) fees set by the department that pertain to the medical cannabis program; and
- (3) when appropriate, consult with the advisory board regarding issues that arise in the medical cannabis program.

Enacted by Chapter 273, 2023 General Session

**Part 3
Health Care Access**

26B-4-301 Definitions.

As used in this part:

- (1) "Committee" means the Primary Care Grant Committee described in Section 26B-1-410.
- (2) "Community based organization":
 - (a) means a private entity; and
 - (b) includes for profit and not for profit entities.
- (3) "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) "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 office.
- (5) "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) "Institutional capacity" means the ability of a community based organization to implement public and private contracts.
- (7) "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.
- (8) "Office" means the Office of Emergency Medical Services and Preparedness within the department.
- (9) "Primary care grant" means a grant awarded by the department under Subsection 26B-4-310(1).
- (10)
 - (a) "Primary health care" means:
 - (i) basic and general health care services given when a person seeks assistance to screen for or to prevent illness and disease, or for simple and common illnesses and injuries; and
 - (ii) care given for the management of chronic diseases.
 - (b) "Primary health care" includes:
 - (i) services of physicians, nurses, physician's assistants, and dentists licensed to practice in this state under Title 58, Occupations and Professions;
 - (ii) diagnostic and radiologic services;

- (iii) preventive health services including perinatal services, well-child services, and other services that seek to prevent disease or its consequences;
- (iv) emergency medical services;
- (v) preventive dental services; and
- (vi) pharmaceutical services.

Renumbered and Amended by Chapter 307, 2023 General Session
Amended by Chapter 307, 2023 General Session, (Coordination Clause)

Renumbered 7/1/2024

26B-4-302 Authority to administer CPR or use an AED.

- (1) A person may administer CPR on another person without a license, certificate, or other governmental authorization if the person reasonably believes that the other person is in sudden cardiac arrest.
- (2) A person may use an AED on another person without a license, certificate, or other governmental authorization if the person reasonably believes that the other person is in sudden cardiac arrest.

Renumbered and Amended by Chapter 307, 2023 General Session

Renumbered 7/1/2024

26B-4-303 Immunity.

- (1) Except as provided in Subsection (3), the following persons are not subject to civil liability for any act or omission relating to preparing to care for, responding to care for, or providing care to, another person who reasonably appears to be in sudden cardiac arrest:
 - (a) a person authorized, under Section 26B-4-302, to administer CPR, who:
 - (i) gratuitously and in good faith attempts to administer or administers CPR to another person;
or
 - (ii) fails to administer CPR to another person;
 - (b) a person authorized, under Section 26B-4-302, to use an AED who:
 - (i) gratuitously and in good faith attempts to use or uses an AED; or
 - (ii) fails to use an AED;
 - (c) a person that teaches or provides a training course in administering CPR or using an AED;
 - (d) a person that acquires an AED;
 - (e) a person that owns, manages, or is otherwise responsible for the premises or conveyance where an AED is located;
 - (f) a person who retrieves an AED in response to a perceived or potential sudden cardiac arrest;
 - (g) a person that authorizes, directs, or supervises the installation or provision of an AED;
 - (h) a person involved with, or responsible for, the design, management, or operation of a CPR or AED program;
 - (i) a person involved with, or responsible for, reporting, receiving, recording, updating, giving, or distributing information relating to the ownership or location of an AED under Sections 26B-4-304 through 26B-4-306; or
 - (j) a physician who gratuitously and in good faith:
 - (i) provides medical oversight for a public AED program; or
 - (ii) issues a prescription for a person to acquire or use an AED.
- (2) This section does not relieve a manufacturer, designer, developer, marketer, or commercial distributor of an AED, or an accessory for an AED, of any liability.

- (3) The liability protection described in Subsection (1) does not apply to an act or omission that constitutes gross negligence or willful misconduct.

Renumbered and Amended by Chapter 307, 2023 General Session

Renumbered 7/1/2024

26B-4-304 Reporting location of automatic external defibrillators.

- (1) In accordance with Subsection (2) and except as provided in Subsection (3):
 - (a) a person who owns or leases an AED shall report the person's name, address, and telephone number, and the exact location of the AED, in writing or by a web-based AED registration form, if available, to the emergency medical dispatch center that provides emergency dispatch services for the location where the AED is installed, if the person:
 - (i) installs the AED;
 - (ii) causes the AED to be installed; or
 - (iii) allows the AED to be installed; and
 - (b) a person who owns or leases an AED that is removed from a location where it is installed shall report the person's name, address, and telephone number, and the exact location from which the AED is removed, in writing or by a web-based AED registration form, if available, to the emergency medical dispatch center that provides emergency dispatch services for the location from which the AED is removed, if the person:
 - (i) removes the AED;
 - (ii) causes the AED to be removed; or
 - (iii) allows the AED to be removed.
- (2) A report required under Subsection (1) shall be made within 14 days after the day on which the AED is installed or removed.
- (3) Subsection (1) does not apply to an AED:
 - (a) at a private residence; or
 - (b) in a vehicle or other mobile or temporary location.
- (4) A person who owns or leases an AED that is installed in, or removed from, a private residence may voluntarily report the location of, or removal of, the AED to the emergency medical dispatch center that provides emergency dispatch services for the location where the private residence is located.
- (5) The department may not impose a penalty on a person for failing to comply with the requirements of this section.

Renumbered and Amended by Chapter 307, 2023 General Session

Renumbered 7/1/2024

26B-4-305 Distributors to notify of reporting requirements.

A person in the business of selling or leasing an AED shall, at the time the person provides, sells, or leases an AED to another person, notify the other person, in writing, of the reporting requirements described in Section 26B-4-304.

Renumbered and Amended by Chapter 307, 2023 General Session

Renumbered 7/1/2024

26B-4-306 Duties of emergency medical dispatch centers.

An emergency medical dispatch center shall:

- (1) implement a system to receive and manage the information reported to the emergency medical dispatch center under Section 26B-4-304;
- (2) record in the system described in Subsection (1), all information received under Section 26B-4-304 within 14 days after the day on which the information is received;
- (3) inform a person who calls to report a potential incident of sudden cardiac arrest of 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:
 - (a) help a person determine if a patient is in cardiac arrest; and
 - (b) if needed:
 - (i) provide direction to start CPR;
 - (ii) offer instructions on how to perform CPR; or
 - (iii) offer instructions on how to use an AED, if one is available; and
- (5) provide the information contained in the system described in Subsection (1), upon request, to the office.

Renumbered and Amended by Chapter 307, 2023 General Session

Renumbered 7/1/2024

26B-4-307 Education and training.

- (1) The office shall work in cooperation with federal, state, and local agencies and schools, to encourage individuals to complete courses on the administration of CPR and the use of an AED.
- (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.

Renumbered and Amended by Chapter 307, 2023 General Session

Renumbered 7/1/2024

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 part.
- (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.

Renumbered and Amended by Chapter 307, 2023 General Session

Renumbered 7/1/2024

26B-4-309 Tampering with an AED prohibited -- Penalties.

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
 - (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;
- (2) the person is responding to, or providing care to, a potential sudden cardiac arrest patient; or
- (3) the person acts in good faith with the intent to support, and not to violate, the recognized purposes of the AED.

Renumbered and Amended by Chapter 307, 2023 General Session

26B-4-310 Department to award primary care grants -- Applications.

- (1) Within appropriations specified by the Legislature for this purpose, the department may, in accordance with the recommendation of the committee, award a grant to a public or nonprofit entity to provide primary health care to a medically underserved population.
- (2) When awarding a grant under Subsection (1), the department shall, in accordance with the committee's recommendation, consider:
 - (a) the content of a grant application submitted to the department;
 - (b) whether an application is submitted in the manner and form prescribed by the department; and
 - (c) the criteria established in Section 26B-4-311.
- (3) The application for a grant under Subsection (2)(a) shall contain:
 - (a) a requested award amount;
 - (b) a budget; and
 - (c) a narrative plan of the manner in which the applicant intends to provide the primary health care described in Subsection (1).

Renumbered and Amended by Chapter 307, 2023 General Session

26B-4-311 Content of primary care grant applications.

An applicant for a grant under Section 26B-4-310 shall include, in an application:

- (1) a statement of specific, measurable objectives, and the methods the applicant will use to assess the achievement of those objectives;
- (2) the precise boundaries of the area the applicant will serve, including a description of the medically underserved population the applicant will serve using the grant;
- (3) the results of a need assessment that demonstrates that the population the applicant will serve has a need for the services provided by the applicant;
- (4) a description of the personnel responsible for carrying out the activities of the grant along with a statement justifying the use of any grant funds for the personnel;
- (5) evidence that demonstrates the applicant's existing financial and professional assistance and any attempts by the applicant to obtain financial and professional assistance;
- (6) a list of services the applicant will provide;
- (7) the schedule of fees, if any, the applicant will charge;
- (8) the estimated number of individuals the applicant will serve with the grant award; and
- (9) any other information required by the department in consultation with the committee.

Renumbered and Amended by Chapter 307, 2023 General Session

26B-4-312 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.
- (2) The committee shall, after reviewing the applications transferred to the committee under Subsection (1), make recommendations to the executive director.
- (3) The executive director shall, in accordance with the committee's recommendations, decide which applications to award grants under Subsection 26B-4-310(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 part.
- (5) When reviewing, ranking, and awarding a primary care grant under Subsection 26B-4-310(1), the department shall consider the extent to which an applicant:
 - (a) demonstrates that the area or a population group the applicant will serve under the application has a shortage of primary health care and that the primary health care will be located so that it provides assistance to the greatest number of individuals in the population group;
 - (b) utilizes other sources of funding, including private funding, to provide primary health care;
 - (c) demonstrates the ability and expertise to serve a medically underserved population;
 - (d) agrees to submit a report to the committee annually; and
 - (e) meets other criteria determined by the department in consultation with the committee.
- (6) The department may use up to 5% of the funds appropriated by the Legislature to the primary care grant program to pay the costs of administering the program.

Renumbered and Amended by Chapter 307, 2023 General Session

26B-4-313 Community education and outreach contracts.

- (1) The department may, as funding permits, contract with community based organizations for the purpose of developing culturally and linguistically appropriate programs and services for low income and medically underserved populations to accomplish one or more of the following:
 - (a) to educate individuals:
 - (i) to use private and public health care coverage programs, products, services, and resources in a timely, effective, and responsible manner;
 - (ii) to pursue preventive health care, health screenings, and disease management; and
 - (iii) to locate health care programs and services;
 - (b) to assist individuals to develop:
 - (i) personal health management;
 - (ii) self-sufficiency in daily care; and
 - (iii) life and disease management skills;
 - (c) to support translation of health materials and information;
 - (d) to facilitate an individual's access to primary care and providers, including mental health services; and
 - (e) to measure and report empirical results of the pilot project.
- (2) When awarding a contract for community based services under Subsection (1), the department shall consider the extent to which the applicant:
 - (a) demonstrates that the area or a population group to be served under the application is a medically underserved population and that the services will be located to provide assistance to the greatest number of individuals residing in the area or included in the population group;
 - (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
 - (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 26B-4-311, relating to grants; and
 - (c) that complies with Subsections (4) and (5).
- (4) An applicant under this section and Sections 26B-4-310 through 26B-4-312 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).

Renumbered and Amended by Chapter 307, 2023 General Session

26B-4-314 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.

Renumbered and Amended by Chapter 307, 2023 General Session

26B-4-315 Responsibility of department for coordinating rural health programs.

The department shall be the lead agency responsible for coordinating rural health programs and shall ensure that resources available for rural health are efficiently and effectively used.

Renumbered and Amended by Chapter 307, 2023 General Session

26B-4-316 Rural health development initiatives.

- (1)
 - (a) University of Utah Health 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 University of Utah Health. The program office shall establish and operate a statewide, decentralized, regional program with emphasis on addressing rural health professions workforce education and training needs.
 - (b) The area health education center program shall have three regional centers serving the following geographic areas:
 - (i) the northern center serving Box Elder, Cache, Davis, Rich, Weber, and Morgan counties;
 - (ii) the crossroads center serving Salt Lake, Wasatch, Summit, Tooele, and Utah counties; and

- (iii) the southern center serving Juab, Millard, Piute, Sanpete, Sevier, Wayne, Carbon, Daggett, Duchesne, Emery, Grand, San Juan, Uintah, Beaver, Garfield, Iron, Kane, and Washington counties.
- (3) The area health education center program shall attempt to acquire funding from state, local, federal, and private sources.
- (4) Each area health education center shall provide community-based health professions education programming for the geographic area described in Subsection (2)(b) of this section.

Renumbered and Amended by Chapter 307, 2023 General Session

26B-4-317 Rural County Health Care Special Service District Retirement Grant Program.

- (1) As used in this section:
 - (a) "Participating employer" means an employer that was required to participate in the Utah State Retirement System under Section 49-12-201, 49-12-202, 49-13-201, or 49-13-202.
 - (b) "Retirement liability" means an obligation in excess of \$750,000 owed to the Utah State Retirement Office by a rural county health care special service district as a participating employer.
 - (c) "Rural county health care special service district" means a special service district formed to provide health care in a third, fourth, fifth, or sixth class county as defined in Section 17-50-501.
- (2) Because there is a compelling statewide public purpose in promoting health care in Utah's rural counties, and particularly in ensuring the continued existence and financial viability of hospital services provided by rural county health care special service districts, there is created a grant program to assist rural county health care special service districts in meeting a retirement liability.
- (3)
 - (a) Subject to legislative appropriation and this Subsection (3), the department shall make grants to rural county health care special service districts.
 - (b) To qualify for a grant, a rural county health care special service district shall:
 - (i) file a grant application with the department detailing:
 - (A) the name of the rural county health care special service district;
 - (B) the estimated total amount of the retirement liability;
 - (C) the grant amount that the rural county health care special service district is requesting;and
 - (D) the amount of matching funds to be provided by the rural county health care special service district to help fund the retirement liability as required by Subsection (3)(d); and
 - (ii) commit to provide matching funds as required by Subsection (3)(d).
 - (c) The department shall review each grant application and, subject to legislative appropriation, award grants to each rural health care special service district that qualifies for a grant under Subsection (3)(b).
 - (d) The department may not award a grant to a rural county health care special service district unless the rural county health care special service district commits to provide matching funds to the grant equal to at least 40% of the amount of the grant.

Renumbered and Amended by Chapter 307, 2023 General Session

26B-4-318 Maternal and child health provided by department.

The department shall, as funding permits, provide for maternal and child health services and services for children with a disability if the individual needs the services and the individual cannot reasonably obtain the services from other sources.

Renumbered and Amended by Chapter 307, 2023 General Session

26B-4-319 Testing of newborn infants.

- (1) Except in the case where parents object on the grounds that they are members of a specified, well-recognized religious organization whose teachings are contrary to the tests required by this section, a newborn infant shall be tested for:
 - (a) phenylketonuria (PKU);
 - (b) other heritable disorders which may result in an intellectual or physical disability or death and for which:
 - (i) a preventive measure or treatment is available; and
 - (ii) there exists a reliable laboratory diagnostic test method;
 - (c)
 - (i) an infant born in a hospital with 100 or more live births annually, hearing loss; and
 - (ii) an infant born in a setting other than a hospital with 100 or more live births annually, hearing loss; and
 - (d) critical congenital heart defects using pulse oximetry.
- (2) In accordance with Section 26B-1-209, the department may charge fees for:
 - (a) materials supplied by the department to conduct tests required under Subsection (1);
 - (b) tests required under Subsection (1) conducted by the department;
 - (c) laboratory analyses by the department of tests conducted under Subsection (1); and
 - (d) the administrative cost of follow-up contacts with the parents or guardians of tested infants.
- (3) Tests for hearing loss described in Subsection (1) shall be based on one or more methods approved by the Newborn Hearing Screening Committee created in Section 26B-1-432, including:
 - (a) auditory brainstem response;
 - (b) automated auditory brainstem response; and
 - (c) evoked otoacoustic emissions.
- (4) Results of tests for hearing loss described in Subsection (1) shall be reported to:
 - (a) the department; and
 - (b) when results of tests for hearing loss under Subsection (1) suggest that additional diagnostic procedures or medical interventions are necessary:
 - (i) a parent or guardian of the infant;
 - (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
 - (iii) the Utah Schools for the Deaf and the Blind, created in Section 53E-8-201.

Renumbered and Amended by Chapter 307, 2023 General Session

26B-4-320 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.

Renumbered and Amended by Chapter 307, 2023 General Session

26B-4-321 Immunizations -- Consent of minor to treatment.

- (1) This section:
 - (a) is not intended to interfere with the integrity of the family or to minimize the rights of parents or children; and
 - (b) applies to a minor, who at the time care is sought is:
 - (i) married or has been married;
 - (ii) emancipated as provided for in Section 80-7-105;
 - (iii) a parent with custody of a minor child; or
 - (iv) pregnant.
- (2)
 - (a) A minor described in Subsections (1)(b)(i) and (ii) may consent to:
 - (i) vaccinations against epidemic infections and communicable diseases as defined in Section 26B-7-201; and
 - (ii) examinations and vaccinations required to attend school as provided in Title 53G, Public Education System -- Local Administration.
 - (b) A minor described in Subsections (1)(b)(iii) and (iv) may consent to the vaccinations described in Subsections (2)(a)(i) and (ii), and the vaccine for human papillomavirus only if:
 - (i) the minor represents to the health care provider that the minor is an abandoned minor as defined in Section 76-5-109.3; and
 - (ii) the health care provider makes a notation in the minor's chart that the minor represented to the health care provider that the minor is an abandoned minor under Section 76-5-109.3.
 - (c) Nothing in Subsection (2)(a) or (b) requires a health care provider to immunize a minor.
- (3) The consent of the minor pursuant to this section:
 - (a) is not subject to later disaffirmance because of the minority of the person receiving the medical services;
 - (b) is not voidable because of minority at the time the medical services were provided;
 - (c) has the same legal effect upon the minor and the same legal obligations with regard to the giving of consent as consent given by a person of full age and capacity; and
 - (d) does not require the consent of any other person or persons to authorize the medical services described in Subsections (2)(a) and (b).
- (4) A health care provider who provides medical services to a minor in accordance 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 person prior to rendering the medical services.
- (5) This section does not remove the requirement for parental consent or notice when required by Section 76-7-304 or 76-7-304.5.
- (6) The parents, parent, or legal guardian of a minor who receives medical services pursuant to Subsections (2)(a) and (b) are not liable for the payment for those services unless the parents, parent, or legal guardian consented to the medical services.

Renumbered and Amended by Chapter 307, 2023 General Session

26B-4-323 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.
- (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.

Renumbered and Amended by Chapter 307, 2023 General Session

26B-4-324 Department to award grants for assistance to persons with bleeding disorders.

- (1) As used in this section:
 - (a) "Hemophilia services" means a program for medical care, including the costs of blood transfusions, and the use of blood derivatives and blood clotting factors.
 - (b) "Person with a bleeding disorder" means a person:
 - (i) who is medically diagnosed with hemophilia or a bleeding disorder;
 - (ii) who is not eligible for Medicaid or the Children's Health Insurance Program; and
 - (iii) who meets one or more of the following:
 - (A) the person's insurance coverage excludes coverage for hemophilia services;
 - (B) the person has exceeded the person's insurance plan's annual maximum benefits;
 - (C) the person has exceeded the person's annual or lifetime maximum benefits payable under private health insurance; or
 - (D) the premiums for the person's private insurance coverage, or cost sharing under private coverage, are greater than a percentage of the person's annual adjusted gross income as established by the department by administrative rule.
- (2)
 - (a) Within appropriations specified by the Legislature for this purpose, the department shall make grants to public and nonprofit entities who assist persons with bleeding disorders with the cost of obtaining hemophilia services or the cost of insurance premiums for coverage of hemophilia services.
 - (b) Applicants for grants under this section:
 - (i) shall be submitted to the department in writing; and
 - (ii) shall comply with Subsection (3).
- (3) Applications for grants under this section shall include:
 - (a) a statement of specific, measurable objectives, and the methods to be used to assess the achievement of those objectives;
 - (b) a description of the personnel responsible for carrying out the activities of the grant along with a statement justifying the use of any grant funds for the personnel;
 - (c) letters and other forms of evidence showing that efforts have been made to secure financial and professional assistance and support for the services to be provided under the grant;
 - (d) a list of services to be provided by the applicant;
 - (e) the schedule of fees to be charged by the applicant; and
 - (f) other provisions as determined by the department.
- (4) The department may accept grants, gifts, and donations of money or property for use by the grant program.

- (5) The department shall establish rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, governing the application form, process, and criteria it will use in awarding grants under this section.

Renumbered and Amended by Chapter 307, 2023 General Session

26B-4-325 Medical care for inmates -- Reporting of statistics.

As used in this section:

- (1) "Correctional facility" means a facility operated to house inmates in a secure or nonsecure setting:
 - (a) by the Department of Corrections; or
 - (b) under a contract with the Department of Corrections.
- (2) "Health care facility" means the same as that term is defined in Section 26B-2-201.
- (3) "Inmate" means an individual who is:
 - (a) committed to the custody of the Department of Corrections; and
 - (b) housed at a correctional facility or at a county jail at the request of the Department of Corrections.
- (4) "Medical monitoring technology" means a device, application, or other technology that can be used to improve health outcomes and the experience of care for patients, including evidence-based clinically evaluated software and devices that can be used to monitor and treat diseases and disorders.
- (5) "Terminally ill" means the same as that term is defined in Section 31A-36-102.
- (6) The department shall:
 - (a) for each health care facility owned or operated by the Department of Corrections, assist the Department of Corrections in complying with Section 64-13-39;
 - (b) create policies and procedures for providing services to inmates; and
 - (c) in coordination with the Department of Corrections, develop standard population indicators and performance measures relating to the health of inmates.
- (7) Beginning July 1, 2023, and ending June 30, 2024, the department shall:
 - (a) evaluate and study the use of medical monitoring technology and create a plan for a pilot program that identifies:
 - (i) the types of medical monitoring technology that will be used during the pilot program; and
 - (ii) eligibility for participation in the pilot program; and
 - (b) make the indicators and performance measures described in Subsection (6)(c) available to the public through the Department of Corrections and the department websites.
- (8) Beginning July 1, 2024, and ending June 30, 2029, the department shall implement the pilot program.
- (9) The department shall submit to the Health and Human Services Interim Committee and the Law Enforcement and Criminal Justice Interim Committee:
 - (a) a report on or before October 1 of each year regarding the costs and benefits of the pilot program;
 - (b) a report that summarizes the indicators and performance measures described in Subsection (6)(c) on or before October 1, 2024; and
 - (c) an updated report before October 1 of each year that compares the indicators and population measures of the most recent year to the initial report described in Subsection (9)(b).

Enacted by Chapter 322, 2023 General Session

Part 4 School Health

26B-4-401 Definitions.

As used in this part:

- (1) "Agent" means a coach, teacher, employee, representative, or volunteer.
- (2)
 - (a) "Amateur sports organization" means, except as provided in Subsection (2)(b):
 - (i) a sports team;
 - (ii) a public or private school;
 - (iii) a public or private sports league;
 - (iv) a public or private sports camp; or
 - (v) any other public or private organization that organizes, manages, or sponsors a sporting event for its members, enrollees, or attendees.
 - (b) "Amateur sports organization" does not include a professional:
 - (i) team;
 - (ii) league; or
 - (iii) sporting event.
- (3) "Anaphylaxis" means a potentially life-threatening hypersensitivity to a substance.
 - (a) Symptoms of anaphylaxis may include shortness of breath, wheezing, difficulty breathing, difficulty talking or swallowing, hives, itching, swelling, shock, or asthma.
 - (b) Causes of anaphylaxis may include insect sting, food allergy, drug reaction, and exercise.
- (4) "Asthma action plan" means a written plan:
 - (a) developed with a school nurse, a student's parent or guardian, and the student's health care provider to help control the student's asthma; and
 - (b) signed by the student's:
 - (i) parent or guardian; and
 - (ii) health care provider.
- (5) "Asthma emergency" means an episode of respiratory distress that may include symptoms such as wheezing, shortness of breath, coughing, chest tightness, or breathing difficulty.
- (6) "Child" means an individual who is under the age of 18.
- (7) "Epinephrine auto-injector" means a portable, disposable drug delivery device that contains a measured, single dose of epinephrine that is used to treat a person suffering a potentially fatal anaphylactic reaction.
- (8) "Health care provider" means an individual who is licensed as:
 - (a) a physician under Title 58, Chapter 67, Utah Medical Practice Act;
 - (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
 - (d) a physician assistant under Title 58, Chapter 70a, Utah Physician Assistant Act.
- (9) "Pharmacist" means the same as that term is defined in Section 58-17b-102.
- (10) "Pharmacy intern" means the same as that term is defined in Section 58-17b-102.
- (11) "Physician" means the same as that term is defined in Section 58-67-102.
- (12) "Qualified adult" means a person who:
 - (a) is 18 years of age or older; and
 - (b)

- (i) for purposes of administering an epinephrine auto-injector, has successfully completed the training program established in Section 26B-4-407; and
 - (ii) for purposes of administering stock albuterol, has successfully completed the training program established in Section 26B-4-408.
- (13) "Qualified epinephrine auto-injector entity":
- (a) means a facility or organization that employs, contracts with, or has a similar relationship with a qualified adult who is likely to have contact with another person who may experience anaphylaxis; and
 - (b) includes:
 - (i) recreation camps;
 - (ii) an education facility, school, or university;
 - (iii) a day care facility;
 - (iv) youth sports leagues;
 - (v) amusement parks;
 - (vi) food establishments;
 - (vii) places of employment; and
 - (viii) recreation areas.
- (14) "Qualified health care provider" means a health care provider who:
- (a) is licensed under Title 58, Occupations and Professions; and
 - (b) may evaluate and manage a concussion within the health care provider's scope of practice.
- (15) "Qualified stock albuterol entity" means a public or private school that employs, contracts with, or has a similar relationship with a qualified adult who is likely to have contact with another person who may experience an asthma emergency.
- (16)
- (a) "Sporting event" means any of the following athletic activities that is organized, managed, or sponsored by an organization:
 - (i) a game;
 - (ii) a practice;
 - (iii) a sports camp;
 - (iv) a physical education class;
 - (v) a competition; or
 - (vi) a tryout.
 - (b) "Sporting event" does not include:
 - (i) the issuance of a lift ticket or pass by a ski resort, the use of the ticket or pass, or a ski or snowboarding class or school at a ski resort, unless the skiing or snowboarding is part of a camp, team, or competition that is organized, managed, or sponsored by the ski resort;
 - (ii) as applied to a government entity, merely making available a field, facility, or other location owned, leased, or controlled by the government entity to an amateur sports organization or a child, regardless of whether the government entity charges a fee for the use; or
 - (iii) free play or recess taking place during school hours.
- (17) "Stock albuterol" means a prescription inhaled medication:
- (a) used to treat asthma; and
 - (b) that may be delivered through a device, including:
 - (i) an inhaler; or
 - (ii) a nebulizer with a mouthpiece or mask.
- (18) "Traumatic head injury" means an injury to the head arising from blunt trauma, an acceleration force, or a deceleration force, with one of the following observed or self-reported conditions attributable to the injury:

- (a) transient confusion, disorientation, or impaired consciousness;
- (b) dysfunction of memory;
- (c) loss of consciousness; or
- (d) signs of other neurological or neuropsychological dysfunction, including:
 - (i) seizures;
 - (ii) irritability;
 - (iii) lethargy;
 - (iv) vomiting;
 - (v) headache;
 - (vi) dizziness; or
 - (vii) fatigue.

Renumbered and Amended by Chapter 307, 2023 General Session

26B-4-402 Plan for school health services.

The department shall establish a plan for school health services for pupils in elementary and secondary schools. The department shall cooperate with the State Board of Education and local health departments in developing such plan and shall coordinate activities between these agencies. The plan may provide for the delivery of health services by and through intermediate and local school districts and local health departments.

Renumbered and Amended by Chapter 307, 2023 General Session

26B-4-403 Adoption and enforcement of concussion and head injury policy -- Notice of policy to parent or guardian.

Each amateur sports organization shall:

- (1) adopt and enforce a concussion and head injury policy that:
 - (a) is consistent with the requirements of Section 26B-4-404; and
 - (b) describes the nature and risk of:
 - (i) a concussion or a traumatic head injury; and
 - (ii) continuing to participate in a sporting event after sustaining a concussion or a traumatic head injury;
- (2) ensure that each agent of the amateur sports organization is familiar with, and has a copy of, the concussion and head injury policy; and
- (3) before permitting a child to participate in a sporting event of the amateur sports organization:
 - (a) provide a written copy of the concussion and head injury policy to a parent or legal guardian of a child; and
 - (b) obtain the signature of a parent or legal guardian of the child, acknowledging that the parent or legal guardian has read, understands, and agrees to abide by, the concussion and head injury policy.

Renumbered and Amended by Chapter 307, 2023 General Session

26B-4-404 Removal of child suspected of sustaining concussion or a traumatic head injury -- Medical clearance required before return to participation.

- (1) An amateur sports organization, and each agent of the amateur sports organization, shall:

- (a) immediately remove a child from participating in a sporting event of the amateur sports organization if the child is suspected of sustaining a concussion or a traumatic head injury; and
 - (b) prohibit the child described in Subsection (1)(a) from participating in a sporting event of the amateur sports organization until the child:
 - (i) is evaluated by a qualified health care provider who is trained in the evaluation and management of a concussion; and
 - (ii) provides the amateur sports organization with a written statement from the qualified health care provider described in Subsection (1)(b)(i) stating that:
 - (A) the qualified health care provider has, within three years before the day on which the written statement is made, successfully completed a continuing education course in the evaluation and management of a concussion; and
 - (B) the child is cleared to resume participation in the sporting event of the amateur sports organization.
- (2) This section does not create a new cause of action.

Renumbered and Amended by Chapter 307, 2023 General Session

26B-4-405 School nurses evaluating student injuries.

- (1) A school nurse may assess a child who is suspected of sustaining a concussion or a traumatic head injury during school hours on school property regardless of whether the nurse has received specialized training in the evaluation and management of a concussion.
- (2) A school nurse who does not meet the requirements of Subsections 26B-4-404(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):
 - (a) shall refer the child to a qualified health care provider who is trained in the evaluation and management of a concussion; and
 - (b) may not provide a written statement permitting the child to resume participation in free play or physical education class under Subsection 26B-4-404(1)(b)(ii).
- (3) A school nurse shall undergo training in the evaluation and management of a concussion, as funding allows.

Renumbered and Amended by Chapter 307, 2023 General Session

26B-4-406 Voluntary participation.

- (1) Sections 26B-4-406 through 26B-4-411 do not create a duty or standard of care for:
 - (a) a person to be trained in the use and storage of epinephrine auto-injectors or stock albuterol; or
 - (b) except as provided in Subsection (5), a qualified epinephrine auto-injector entity to store epinephrine auto-injectors or a qualified stock albuterol entity to store stock albuterol on its premises.
- (2) Except as provided in Subsections (3) and (5), a decision by a person to successfully complete a training program under Section 26B-4-407 or 26B-4-408 and to make emergency epinephrine auto-injectors or stock albuterol available under the provisions of Sections 26B-4-406 through 26B-4-411 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 26B-4-407 or 26B-4-408;

- (b) possessing or storing an epinephrine auto-injector or stock albuterol on school 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 Section 26B-4-407 or 26B-4-408; 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
 - (ii) the administration is in accordance with the training received under Section 26B-4-407 or 26B-4-408.
- (4) A school, school board, or school official may encourage a teacher or other school employee to volunteer to become a qualified adult.
- (5)
 - (a) Each primary or secondary school in the state, both public and private, shall make an emergency epinephrine auto-injector available to any teacher or other school employee who:
 - (i) is employed at the school; and
 - (ii) is a qualified adult.
 - (b) This section does not require a school described in Subsection (5)(a) to keep more than one emergency epinephrine auto-injector on the school premises, so long as it may be quickly accessed by a teacher or other school employee, who is a qualified adult, in the event of an emergency.
- (6)
 - (a) Each primary or secondary school in the state, both public and private, may make stock albuterol available to any school employee who:
 - (i) is employed at the school; and
 - (ii) is a qualified adult.
 - (b) A qualified adult may administer stock albuterol to a student who:
 - (i) has a diagnosis of asthma by a health care provider;
 - (ii) has a current asthma action plan on file with the school; and
 - (iii) is showing symptoms of an asthma emergency as described in the student's asthma action plan.
 - (c) This Subsection (6) may not be interpreted to relieve a student's parent or guardian of providing a student's medication or create an expectation that a school will have stock albuterol available.
- (7) No school, school board, or school official shall retaliate or otherwise take adverse action against a teacher or other school employee for:
 - (a) volunteering under Subsection (2);
 - (b) engaging in conduct described in Subsection (3); or
 - (c) failing or refusing to become a qualified adult.

Renumbered and Amended by Chapter 307, 2023 General Session

26B-4-407 Training in use and storage of epinephrine auto-injector.

- (1)
 - (a) Each primary and secondary school in the state, both public and private, shall make initial and annual refresher training, regarding the storage and emergency use of an epinephrine auto-injector, available to any teacher or other school employee who volunteers 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, the

medical director of the local health department, or the local emergency medical services director.

- (2) A person who provides training under Subsection (1) or (6) shall include in the training:
 - (a) techniques for recognizing symptoms of anaphylaxis;
 - (b) standards and procedures for the storage and emergency use of epinephrine auto-injectors;
 - (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).
- (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:
 - (i) authorizing the student to possess or possess and self-administer an epinephrine 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 storage of emergency epinephrine auto-injectors; and
 - (B) a qualified epinephrine auto-injector entity regarding the proper storage and emergency use of epinephrine auto-injectors; and
 - (ii) may, as funding is available, conduct educational programs to train people regarding the use of and storage of emergency epinephrine auto-injectors.
 - (b) A person who volunteers to receive training as a qualified adult to administer an epinephrine auto-injector under the provisions of this Subsection (6) shall demonstrate a need for the training to the department, which may be based upon occupational, volunteer, or family circumstances, and shall include:
 - (i) camp counselors;
 - (ii) scout leaders;
 - (iii) forest rangers;
 - (iv) tour guides; and
 - (v) other persons who have or reasonably expect to have contact with at least one other person as a result of the person's occupational or volunteer status.

Renumbered and Amended by Chapter 307, 2023 General Session

26B-4-408 Training in use and storage of stock albuterol.

(1)

- (a) Each primary and secondary school in the state, both public and private, shall make initial and annual refresher training regarding the storage and emergency use of stock albuterol available to a teacher or school employee who volunteers to become a qualified adult.
- (b) The training described in Subsection (1)(a) shall be provided by the department.
- (2) A person who provides training under Subsection (1) or (6) shall include in the training:
 - (a) techniques for recognizing symptoms of an asthma emergency;
 - (b) standards and procedures for the storage and emergency use of stock albuterol;
 - (c) emergency follow-up procedures, and contacting, if possible, the student's parent; and
 - (d) written materials covering the information required under this Subsection (2).
- (3) A qualified adult shall retain for reference the written materials prepared in accordance with Subsection (2)(d).
- (4)
 - (a) A public or private school shall permit a student to possess and self-administer asthma medication if:
 - (i) the student's parent or guardian signs a statement:
 - (A) authorizing the student to self-administer asthma medication; and
 - (B) acknowledging that the student is responsible for, and capable of, self-administering the asthma medication; and
 - (ii) the student's health care provider provides a written statement that states:
 - (A) it is medically appropriate for the student to self-administer asthma medication and be in possession of asthma medication at all times; and
 - (B) the name of the asthma medication prescribed or authorized for the student's use.
 - (b) Section 53G-8-205 does not apply to the possession and self-administration of asthma medication in accordance with this section.
- (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 provider statements described in Subsection (4).
- (6) The department:
 - (a) shall approve educational programs conducted by other persons to train:
 - (i) people under Subsection (6)(b), regarding the proper use and storage of stock albuterol; and
 - (ii) a qualified stock albuterol entity regarding the proper storage and emergency use of stock albuterol; and
 - (b) may conduct educational programs to train people regarding the use of and storage of stock albuterol.

Renumbered and Amended by Chapter 307, 2023 General Session

26B-4-409 Authority to obtain and use an epinephrine auto-injector or stock albuterol.

- (1) A qualified adult who is a teacher or other school employee at a public or private primary or secondary school in the state, or a school nurse, may obtain from the school district physician, the medical director of the local health department, or the local emergency medical services director a prescription for:
 - (a) epinephrine auto-injectors for use in accordance with this part; or
 - (b) stock albuterol for use in accordance with this part.
- (2)
 - (a) A qualified adult may obtain an epinephrine auto-injector for use in accordance with this part that is dispensed by:
 - (i) a pharmacist as provided under Section 58-17b-1004; or

- (ii) a pharmacy intern as provided under Section 58-17b-1004.
- (b) A qualified adult may obtain stock albuterol for use in accordance with this part that is dispensed by:
 - (i) a pharmacist as provided under Section 58-17b-1004; or
 - (ii) a pharmacy intern as provided under Section 58-17b-1004.
- (3) A qualified adult:
 - (a) may immediately administer an epinephrine auto-injector to a person exhibiting potentially life-threatening symptoms of anaphylaxis when a physician is not immediately available; and
 - (b) shall initiate emergency medical services or other appropriate medical follow-up in accordance with the training materials retained under Section 26B-4-407 after administering an epinephrine auto-injector.
- (4) If a school nurse is not immediately available, a qualified adult:
 - (a) may immediately administer stock albuterol to an individual who:
 - (i) has a diagnosis of asthma by a health care provider;
 - (ii) has a current asthma action plan on file with the school; and
 - (iii) is showing symptoms of an asthma emergency as described in the student's asthma action plan; and
 - (b) shall initiate appropriate medical follow-up in accordance with the training materials retained under Section 26B-4-408 after administering stock albuterol.
- (5)
 - (a) A qualified entity that complies with Subsection (5)(b) or (c), may obtain a supply of epinephrine auto-injectors or stock albuterol, respectively, from a pharmacist under Section 58-17b-1004, or a pharmacy intern under Section 58-17b-1004 for:
 - (i) storing:
 - (A) the epinephrine auto-injectors on the qualified epinephrine auto-injector entity's premises; and
 - (B) stock albuterol on the qualified stock albuterol entity's premises; and
 - (ii) use by a qualified adult in accordance with Subsection (3) or (4).
 - (b) A qualified epinephrine auto-injector entity shall:
 - (i) designate an individual to complete an initial and annual refresher training program regarding the proper storage and emergency use of an epinephrine auto-injector available to a qualified adult; and
 - (ii) store epinephrine auto-injectors in accordance with the standards established by the department in Section 26B-4-411.
 - (c) A qualified stock albuterol entity shall:
 - (i) designate an individual to complete an initial and annual refresher training program regarding the proper storage and emergency use of stock albuterol available to a qualified adult; and
 - (ii) store stock albuterol in accordance with the standards established by the department in Section 26B-4-411.

Renumbered and Amended by Chapter 307, 2023 General Session

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 Sections 26B-4-406 through 26B-4-411 with respect to an anaphylactic reaction or asthma emergency:
 - (a) a qualified adult;

- (b) a physician, pharmacist, or any other person or entity authorized to prescribe or dispense prescription drugs;
 - (c) a person who conducts training described in Section 26B-4-407 or 26B-4-408;
 - (d) a qualified epinephrine auto-injector entity; and
 - (e) a qualified stock albuterol entity.
- (2) Section 53G-9-502 does not apply to the administration of an epinephrine auto-injector or stock albuterol in accordance with this part.
- (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.

Renumbered and Amended by Chapter 307, 2023 General Session

26B-4-411 Administrative rulemaking authority.

The department shall adopt rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to:

- (1) establish and approve training programs in accordance with Sections 26B-4-407 and 26B-4-408;
- (2) establish a procedure for determining who is eligible for training as a qualified adult under Subsection 26B-4-407(6)(b)(v); and
- (3) establish standards for storage of:
 - (a) emergency auto-injectors by a qualified epinephrine auto-injector entity under Section 26B-4-407; and
 - (b) stock albuterol by a qualified stock albuterol entity under Section 26B-4-408.

Renumbered and Amended by Chapter 307, 2023 General Session

**Part 5
Treatment Access**

26B-4-501 Definitions.

As used in this part:

- (1) "Controlled substance" means the same as that term is defined in Title 58, Chapter 37, Utah Controlled Substances Act.
- (2) "Critical access hospital" means a critical access hospital that meets the criteria of 42 U.S.C. Sec. 1395i-4(c)(2) (1998).
- (3) "Designated facility" means:
 - (a) a freestanding urgent care center;
 - (b) a general acute hospital; or
 - (c) a critical access hospital.
- (4) "Dispense" means the same as that term is defined in Section 58-17b-102.
- (5) "Division" means the Division of Professional Licensing created in Section 58-1-103.
- (6) "Emergency contraception" means the use of a substance, approved by the 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 Section 59-12-801.
- (8) "General acute hospital" means the same as that term is defined in Section 26B-2-201.

- (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- and community-based services, a hospice or home health care agency, or another facility that provides or contracts to provide health care services, which facility is licensed under Chapter 2, Part 2, Health Care Facility Licensing and Inspection.
- (10) "Health care provider" means:
 - (a) a physician, as defined in Section 58-67-102;
 - (b) an advanced practice registered nurse, as defined in Section 58-31b-102;
 - (c) a physician assistant, as defined in Section 58-70a-102; or
 - (d) an individual licensed to engage in the practice of dentistry, as defined in Section 58-69-102.
- (11) "Increased risk" means risk exceeding the risk typically experienced by an individual who is not using, and is not likely to use, an opiate.
- (12) "Opiate" means the same as that term is defined in Section 58-37-2.
- (13) "Opiate antagonist" means naloxone hydrochloride or any similarly acting drug that is not a controlled substance and that is approved by the federal Food and Drug Administration for the diagnosis or treatment of an opiate-related drug overdose.
- (14) "Opiate-related drug overdose event" means an acute condition, including a decreased level of consciousness or respiratory depression resulting from the consumption or use of a controlled substance, or another substance with which a controlled substance was combined, and that a person would reasonably believe to require medical assistance.
- (15) "Overdose outreach provider" means:
 - (a) a law enforcement agency;
 - (b) a fire department;
 - (c) an emergency medical service provider, as defined in Section 26B-4-101;
 - (d) emergency medical service personnel, as defined in Section 26B-4-101;
 - (e) an organization providing treatment or recovery services for drug or alcohol use;
 - (f) an organization providing support services for an individual, or a family of an individual, with a substance use disorder;
 - (g) an organization providing substance use or mental health services under contract with a local substance abuse authority, as defined in Section 26B-5-101, or a local mental health authority, as defined in Section 26B-5-101;
 - (h) an organization providing services to the homeless;
 - (i) a local health department;
 - (j) an individual licensed to practice pharmacy under Title 58, Chapter 17b, Pharmacy Practice Act; or
 - (k) an individual.
- (16) "Patient counseling" means the same as that term is defined in Section 58-17b-102.
- (17) "Pharmacist" means the same as that term is defined in Section 58-17b-102.
- (18) "Pharmacy intern" means the same as that term is defined in Section 58-17b-102.
- (19) "Physician" means the same as that term is defined in Section 58-67-102.
- (20) "Practitioner" means:
 - (a) a physician; or
 - (b) any other person who is permitted by law to prescribe emergency contraception.
- (21) "Prescribe" means the same as that term is defined in Section 58-17b-102.
- (22)
 - (a) "Self-administered hormonal contraceptive" means a self-administered hormonal contraceptive that is approved by the United States Food and Drug Administration to prevent pregnancy.

- (b) "Self-administered hormonal contraceptive" includes an oral hormonal contraceptive, a hormonal vaginal ring, and a hormonal contraceptive patch.
- (c) "Self-administered hormonal contraceptive" does not include any drug intended to induce an abortion, as that term is defined in Section 76-7-301.
- (23) "Sexual assault" means any criminal conduct described in Title 76, Chapter 5, Part 4, Sexual Offenses, that may result in a pregnancy.
- (24) "Victim of sexual assault" means any person who presents to receive, or receives, medical care in consequence of being subjected to sexual assault.

Renumbered and Amended by Chapter 307, 2023 General Session

26B-4-502 Emergency contraception services for a victim of sexual assault.

- (1) Except as provided in Subsection (2), a designated facility shall provide the following services to a victim of sexual assault:
 - (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;
 - (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;
 - (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.
- (2) A freestanding urgent care center is exempt from the requirements of Subsection (1) if:
 - (a) there is a general acute hospital or a critical access hospital within 30 miles of the 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
 - (b)
 - (i)
 - (A) orally inform the victim of sexual assault that the victim may obtain emergency contraception at the facility where the practitioner is located; and

- (B) provide emergency contraception to the victim of sexual assault, if she requests emergency contraception; or
 - (ii) inform the victim of sexual assault of the nearest location where she may obtain emergency contraception.
- (5)
- (a) The department may make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to enforce the provisions of this section.
 - (b) The department shall, in an expeditious manner, investigate any complaint received by the department regarding the failure of a health care facility to comply with a requirement of this section.
 - (c) If the department finds a violation of this section or any rules adopted under this section, the department may take one or more of the actions described in Section 26B-2-208.

Renumbered and Amended by Chapter 307, 2023 General Session

26B-4-503 Voluntary participation.

Sections 26B-4-504 through 26B-4-507 do not create a duty or standard of care for a person to prescribe or dispense a self-administered hormonal contraceptive.

Renumbered and Amended by Chapter 307, 2023 General Session

26B-4-504 Authorization to dispense self-administered hormonal contraceptives.

Notwithstanding Title 58, Chapter 17b, Pharmacy Practice Act, a person licensed under Title 58, Chapter 17b, Pharmacy Practice Act, to dispense a self-administered hormonal contraceptive may dispense the self-administered hormonal contraceptive:

- (1) to a patient who is 18 years old or older;
- (2) pursuant to a standing prescription drug order made in accordance with Section 26B-4-505;
- (3) without any other prescription drug order from a person licensed to prescribe a self-administered hormonal contraceptive; and
- (4) in accordance with the dispensing guidelines in Section 26B-4-506.

Renumbered and Amended by Chapter 307, 2023 General Session

26B-4-505 Standing prescription drug orders for a self-administered hormonal contraceptive.

A physician who is licensed to prescribe a self-administered hormonal contraceptive, including a physician acting in the physician's capacity as an employee of the department, or a medical director of a local health department, may issue a standing prescription drug order authorizing the dispensing of the self-administered hormonal contraceptive under Section 26B-4-504 in accordance with a protocol that:

- (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 hormonal contraceptive to make and retain a record of each person to whom the self-administered hormonal contraceptive is dispensed, including:
 - (a) the name of the person;

- (b) the drug dispensed; and
- (c) other relevant information; and
- (4) is approved by the department by administrative rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

Renumbered and Amended by Chapter 307, 2023 General Session

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 Section 26B-4-504:
 - (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;
 - (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 the patient has consulted with a primary care or women's health care practitioner during the preceding 24 months; and
 - (d) shall provide the patient with:
 - (i) written information regarding:
 - (A) the importance of seeing the patient's primary care practitioner or women's health care practitioner to obtain recommended tests and screening; and
 - (B) the effectiveness and availability of long-acting reversible contraceptives as an alternative to self-administered hormonal contraceptives; and
 - (ii) a copy of the record of the encounter with the patient that includes:
 - (A) the patient's completed self-assessment tool; and
 - (B) a description of the contraceptives dispensed, or the basis for not dispensing a contraceptive.
- (2) If a pharmacist dispenses a self-administered hormonal contraceptive to a patient, the pharmacist shall, at a minimum, provide patient counseling to the patient regarding:
 - (a) the appropriate administration and storage of the self-administered hormonal contraceptive;
 - (b) potential side effects and risks of the self-administered hormonal contraceptive;
 - (c) the need for backup contraception;
 - (d) when to seek emergency medical attention; and
 - (e) the risk of contracting a sexually transmitted infection or disease, and ways to reduce the risk of contraction.
- (3) The division, in collaboration with the Board of Pharmacy and the Physicians Licensing Board, shall make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, establishing the self-screening risk assessment questionnaire described in Subsection (1)(a).

Renumbered and Amended by Chapter 307, 2023 General Session

26B-4-507 Limited civil liability.

A physician who issues a standing prescription drug order in accordance with Section 26B-4-505 is not liable for any civil damages for acts or omissions resulting from the dispensing of a self-administered hormonal contraceptive under Sections 26B-4-504 through 26B-4-506.

Renumbered and Amended by Chapter 307, 2023 General Session

26B-4-508 Voluntary participation.

Sections 26B-4-509 through 26B-4-514 do not create a duty or standard of care for a person to prescribe or administer an opiate antagonist.

Renumbered and Amended by Chapter 307, 2023 General Session

26B-4-509 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 26B-4-512:
 - (A) a person described in Subsections 26B-4-512(1)(a)(i)(A) through (1)(a)(i)(F); or
 - (B) an organization, defined by department rule made under Subsection 26B-4-512(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 26B-4-510(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 26B-4-512(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:
 - (A) furnishing the opiate antagonist to an individual described in Subsection (2)(a)(i) or (ii), as provided in Section 26B-4-511; or

- (B) administering to an individual experiencing an opiate-related drug overdose event;
 - (b) without a prescriber-patient relationship; and
 - (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
 - (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.

Renumbered and Amended by Chapter 307, 2023 General Session

26B-4-510 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 26B-4-512, 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:
 - (i) an individual who is at increased risk of experiencing an opiate-related drug overdose event;
 - (ii) a family member of, friend of, or other person, including a person described in Subsections 26B-4-512(1)(a)(i)(A) through (1)(a)(i)(F), that is in a position to assist an individual who is at increased risk of experiencing an opiate-related drug overdose event; or
 - (iii) an overdose outreach provider for:
 - (A) furnishing to an individual who is at increased risk of experiencing an opiate-related drug overdose event, or to a family member of, friend of, or other individual who is in a position to assist an individual who is at increased risk of experiencing an opiate-related drug overdose event, as provided in Section 26B-4-511; or
 - (B) administering to an individual experiencing an opiate-related drug overdose event;
 - (b) requires the physician to specify the persons, by professional license number, authorized to dispense the opiate antagonist;
 - (c) requires the physician to review at least annually the dispensing practices of those authorized by the physician to dispense the opiate antagonist;
 - (d) requires those authorized by the physician to dispense the opiate antagonist to make and retain a record of each person to whom the opiate antagonist is dispensed, which shall include:
 - (i) the name of the person;
 - (ii) the drug dispensed; and
 - (iii) other relevant information; and

- (e) is approved by the Division of Professional Licensing within the Department of Commerce by administrative rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

Renumbered and Amended by Chapter 307, 2023 General Session

26B-4-511 Overdose outreach providers.

Notwithstanding Sections 58-1-501, 58-17b-501, and 58-17b-502:

- (1) an overdose outreach provider may:
 - (a) obtain an opiate antagonist dispensed on prescription by:
 - (i) a health care provider, in accordance with Subsections 26B-4-509(2) and (3); or
 - (ii) a pharmacist or pharmacy intern, as otherwise authorized by Title 58, Chapter 17b, Pharmacy Practice Act;
 - (b) store the opiate antagonist; and
 - (c) furnish the opiate antagonist:
 - (i)
 - (A) to an individual who is at increased risk of experiencing an opiate-related drug overdose event; or
 - (B) to a family member, friend, overdose outreach provider, or other individual who is in a position to assist an individual who is at increased risk of experiencing an opiate-related drug overdose event; and
 - (ii) without liability for any civil damages for acts or omissions made as a result of furnishing the opiate antagonist in good faith; and
- (2) when furnishing an opiate antagonist under Subsection (1), an overdose outreach provider:
 - (a) shall also furnish to the recipient of the opiate antagonist:
 - (i) the written instruction under Subsection 26B-4-504(3) received by the overdose outreach provider from the health care provider at the time the opiate antagonist was dispensed to the overdose outreach provider; or
 - (ii) if the opiate antagonist was dispensed to the overdose outreach provider by a pharmacist or pharmacy intern, any written patient counseling under Section 58-17b-613 received by the overdose outreach provider at the time of dispensing; and
 - (b) may provide additional instruction on how to recognize and respond appropriately to an opiate-related drug overdose event.

Renumbered and Amended by Chapter 307, 2023 General Session

26B-4-512 Opiate Overdose Outreach Pilot Program -- Grants -- Annual reporting by grantees -- Rulemaking -- Annual reporting by department.

- (1) As used in this section:
 - (a) "Persons that are in a position to assist an individual who is at increased risk of experiencing an opiate-related drug overdose event":
 - (i) means the following organizations:
 - (A) a law enforcement agency;
 - (B) the department or a local health department, as defined in Section 26A-1-102;
 - (C) an organization that provides drug or alcohol treatment services;
 - (D) an organization that provides services to the homeless;
 - (E) an organization that provides training on the proper administration of an opiate antagonist in response to an opiate-related drug overdose event;

- (F) a school; or
- (G) except as provided in Subsection (1)(a)(ii), any other organization, as defined by department rule made under Subsection (7)(e), that is in a position to assist an individual who is at increased risk of experiencing an opiate-related drug overdose event; and
- (ii) does not mean:
 - (A) a person licensed under Title 58, Chapter 17b, Pharmacy Practice Act;
 - (B) a health care facility; or
 - (C) an individual.
- (b) "School" means:
 - (i) a public school:
 - (A) for elementary or secondary education, including a charter school; or
 - (B) for other purposes;
 - (ii) a private school:
 - (A) for elementary or secondary education; or
 - (B) accredited for other purposes, including higher education or specialty training; or
 - (iii) an institution within the state system of higher education, as described in Section 53B-1-102.
- (2) There is created within the department the "Opiate Overdose Outreach Pilot Program."
- (3) The department may use funds appropriated for the program to:
 - (a) provide grants under Subsection (4);
 - (b) promote public awareness of the signs, symptoms, and risks of opioid misuse and overdose;
 - (c) increase the availability of educational materials and other resources designed to assist individuals at increased risk of opioid overdose, their families, and others in a position to help prevent or respond to an overdose event;
 - (d) increase public awareness of, access to, and use of opiate antagonist;
 - (e) update the department's Utah Clinical Guidelines on Prescribing Opioids and promote its use by prescribers and dispensers of opioids;
 - (f) develop a directory of substance misuse treatment programs and promote its dissemination to and use by opioid prescribers, dispensers, and others in a position to assist individuals at increased risk of opioid overdose;
 - (g) coordinate a multi-agency coalition to address opioid misuse and overdose; and
 - (h) maintain department data collection efforts designed to guide the development of opioid overdose interventions and track their effectiveness.
- (4) No later than September 1, 2016, and with available funding, the department shall grant funds through the program to persons that are in a position to assist an individual who is at increased risk of experiencing an opiate-related drug overdose event.
- (5) Funds granted by the program:
 - (a) may be used by a grantee to:
 - (i) pay for the purchase by the grantee of an opiate antagonist; or
 - (ii) pay for the grantee's cost of providing training on the proper administration of an opiate antagonist in response to an opiate-related drug overdose event; and
 - (b) may not be used:
 - (i) to pay for costs associated with the storage or dispensing of an opiate antagonist; or
 - (ii) for any other purposes.
- (6) Grantees shall report annually to the department on the use of granted funds in accordance with department rules made under Subsection (7)(d).
- (7) No later than July 1, 2016, the department shall, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, make rules specifying:

- (a) how to apply for a grant from the program;
- (b) the criteria used by the department to determine whether a grant request is 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:
 - (i) the amount of opiate antagonist purchased and dispensed by the grantee during the reporting period;
 - (ii) the number of individuals to whom the opiate antagonist was dispensed by the grantee;
 - (iii) the number of lives known to have been saved during the reporting period as a result of opiate antagonist dispensed by the grantee; and
 - (iv) the manner in which the grantee shall record, preserve, and make available for audit by the department the information described in Subsections (7)(d)(i) through (7)(d)(iii); and
- (e) as required by Subsection (1)(a)(i)(G), any other organization that is in a position to assist an individual who is at increased risk of experiencing an opiate-related drug overdose event.

Renumbered and Amended by Chapter 307, 2023 General Session

26B-4-513 Coprescription guidelines.

- (1) As used in this section:
 - (a) "Controlled substance prescriber" means the same as that term is defined in Section 58-37-6.5.
 - (b) "Coprescribe" means to issue a prescription for an opiate antagonist with a prescription for an opiate.
- (2) The department shall, in consultation with the Physicians Licensing Board created in Section 58-67-201, the Osteopathic Physician and Surgeon's Licensing Board created in Section 58-68-201, and the Division of Professional Licensing created in Section 58-1-103, establish by rule, made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, scientifically based guidelines for controlled substance prescribers to coprescribe an opiate antagonist to a patient.

Renumbered and Amended by Chapter 307, 2023 General Session

26B-4-514 Opiate abuse prevention pamphlet.

- (1) As funding is available, the department shall produce and distribute, in conjunction with the Office of Substance Use and Mental Health, a pamphlet about opiates that includes information regarding:
 - (a) the risk of dependency and addiction;
 - (b) methods for proper storage and disposal;
 - (c) alternative options for pain management;
 - (d) the benefits of and ways to obtain naloxone; and
 - (e) resources if the patient believes that the patient has a substance use disorder.
- (2) The pamphlet described in Subsection (1) shall be:

- (a) evaluated periodically for effectiveness at conveying necessary information and revised accordingly;
- (b) written in simple and understandable language; and
- (c) available in English and other languages that the department determines to be appropriate and necessary.

Renumbered and Amended by Chapter 307, 2023 General Session

26B-4-515 Sexual assault hotline service -- Emergency contraception access.

- (1) As used in this section, "sexual assault hotline service" means a telephone hotline, online chat hotline, or similar method of communication that provides information or counseling services for a victim of sexual assault.
- (2) A person who operates a sexual assault hotline service available to a resident of this state shall create and maintain a policy that encourages the sexual assault hotline service to provide, when applicable, a victim of sexual assault with information on how to access:
 - (a) free emergency contraception;
 - (b) law enforcement; and
 - (c) medical and mental health services.
- (3) The department shall provide information about how a victim of sexual assault may access free emergency contraception and other medical and mental health services to:
 - (a) victims of sexual assault;
 - (b) sexual assault hotline services that are available to residents of this state; and
 - (c) other providers who provide sexual assault support services to victims of sexual assault in this state.
- (4) The department may adopt rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to carry out the provisions of Subsection (3).

Enacted by Chapter 158, 2023 General Session

**Part 6
Adult Autism Treatment Program**

26B-4-601 Definitions.

As used in this part:

- (1) "Adult Autism Treatment Account" means the Adult Autism Treatment Account created in Section 26B-1-322.
- (2) "Advisory committee" means the Adult Autism Treatment Program Advisory Committee created in Section 26B-1-424.
- (3) "Applied behavior analysis" means the same as that term is defined in Section 31A-22-642.
- (4) "Autism spectrum disorder" means the same as that term is defined in Section 31A-22-642.
- (5) "Program" means the Adult Autism Treatment Program created in Section 26B-4-602.
- (6) "Qualified individual" means an individual who:
 - (a) is at least 22 years old;
 - (b) is a resident of the state;
 - (c) has been diagnosed by a qualified professional as having:
 - (i) an autism spectrum disorder; or

- (ii) another neurodevelopmental disorder requiring significant supports through treatment using applied behavior analysis; and
- (d) needs significant supports for a condition described in Subsection (6)(c), as demonstrated by formal assessments of the individual's:
 - (i) cognitive ability;
 - (ii) adaptive ability;
 - (iii) behavior; and
 - (iv) communication ability.
- (7) "Qualified provider" means a provider that is qualified under Section 26B-4-603 to provide services for the program.

Renumbered and Amended by Chapter 307, 2023 General Session

26B-4-602 Adult Autism Treatment Program -- Creation -- Requirements -- Reporting.

- (1) There is created within the department the Adult Autism Treatment Program.
- (2)
 - (a) The program shall be administered by the department in collaboration with the advisory committee.
 - (b) The program shall be funded only with money from the Adult Autism Treatment Account.
- (3)
 - (a) An individual may apply for a grant from the program by submitting to a qualified provider the information specified by the department under Subsection 26B-4-604(5).
 - (b) As funding permits, the department shall award a grant from the program on behalf of an applicant in accordance with criteria established by the department, in collaboration with the advisory committee, by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
 - (c) A grant shall:
 - (i) be for a specific amount;
 - (ii) cover a specific period, not to exceed five years; and
 - (iii) be disbursed incrementally, if appropriate.
 - (d) The department shall transmit a grant awarded on behalf of an applicant to a qualified provider designated by the applicant.
- (4) A qualified provider that receives a grant for the treatment of a qualified individual shall:
 - (a) use the grant only for treatment of the qualified individual;
 - (b) submit any reports that are required by the department; and
 - (c) notify the department within seven days if:
 - (i) the qualified individual:
 - (A) has not received treatment from the qualified provider for 10 consecutive days;
 - (B) is no longer receiving treatment from the qualified provider; or
 - (C) is no longer a qualified individual; or
 - (ii) the qualified provider is no longer a qualified provider.
- (5) A qualified provider that receives a grant for the treatment of a qualified individual shall refund any amount to the department on a prorated basis for each day that:
 - (a) the qualified provider is no longer a qualified provider;
 - (b) the individual is no longer a qualified individual; or
 - (c) the qualified provider does not provide services to a qualified individual.

Renumbered and Amended by Chapter 307, 2023 General Session

26B-4-603 Provider qualifications.

The department shall designate a provider as a qualified provider if the provider:

- (1) is able to treat a qualified individual's condition through:
 - (a) one or more evidence-based treatments, including applied behavior analysis;
 - (b) individualized, client-centered treatment;
 - (c) any method that engages the qualified individual's family members in the treatment process; and
 - (d) measured development of the qualified individual's pre-vocational, vocational, and daily-living skills; and
- (2) provides treatment to a qualified individual through:
 - (a) a behavior analyst licensed under Title 58, Chapter 61, Part 7, Behavior Analyst Licensing Act; or
 - (b) a psychologist who is licensed under Title 58, Chapter 61, Psychologist Licensing Act.

Renumbered and Amended by Chapter 307, 2023 General Session

26B-4-604 Department rulemaking.

The department, in collaboration with the advisory committee, shall make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to:

- (1) specify assessment tools and outcomes that a qualified provider may use to determine the types of supports that a qualified individual needs;
- (2) define evidence-based treatments that a qualified individual may pay for with grant funding;
- (3) establish criteria for awarding a grant under this part;
- (4) specify the information that an individual shall submit to demonstrate that the individual is a qualified individual;
- (5) specify the information a provider shall submit to demonstrate that the provider is a qualified provider; and
- (6) specify the content and timing of reports required from a qualified provider, including a report on actual and projected treatment outcomes for a qualified individual.

Renumbered and Amended by Chapter 307, 2023 General Session

**Part 7
Health Care Workforce**

26B-4-701 Definitions.

As used in this part:

- (1) "Accredited clinical education program" means a clinical education program for a health care profession that is accredited by the Accreditation Council on Graduate Medical Education.
- (2) "Accredited clinical training program" means a clinical training program that is accredited by an entity recognized within medical education circles as an accrediting body for medical education, advanced practice nursing education, physician assistance education, doctor of pharmacy education, dental education, or registered nursing education.
- (3) "Centers for Medicare and Medicaid Services" means the Centers for Medicare and Medicaid Services within the United States Department of Health and Human Services.

- (4) "Health care professionals in training" means medical students and residents, advance practice nursing students, physician assistant students, doctor of pharmacy students, dental students, and registered nursing students.
- (5) "Hospital" means a general acute hospital, as defined in Section 26B-2-201.
- (6) "Physician" means a person:
 - (a) licensed as a physician under Title 58, Chapter 67, Utah Medical Practice Act; or
 - (b) licensed as a physician under Title 58, Chapter 68, Utah Osteopathic Medical Practice Act.
- (7) "Rural county" means a county with a population of less than 50,000, as determined by:
 - (a) the most recent official census or census estimate of the United States Bureau of the Census; or
 - (b) the most recent population estimate for the county from the Utah Population Committee, if a population figure for the county is not available under Subsection (7)(a).
- (8) "Rural hospital" means a hospital located within a rural county.
- (9) "UMEC" means the Utah Medical Education Council created in Section 26B-4-706.

Renumbered and Amended by Chapter 307, 2023 General Session

26B-4-702 Creation of Utah Health Care Workforce Financial Assistance Program -- Duties of department.

- (1) As used in this section:
 - (a) "Eligible professional" means a geriatric professional or a health care professional who is eligible to participate in the program.
 - (b) "Geriatric professional" means a person who:
 - (i) is a licensed:
 - (A) health care professional;
 - (B) social worker;
 - (C) occupational therapist;
 - (D) pharmacist;
 - (E) physical therapist; or
 - (F) psychologist; and
 - (ii) is determined by the department to have adequate advanced training in geriatrics to prepare the person to provide specialized geriatric care within the scope of the person's profession.
 - (c) "Health care professional" means:
 - (i) a licensed:
 - (A) physician;
 - (B) physician assistant;
 - (C) nurse;
 - (D) dentist; or
 - (E) mental health therapist; or
 - (ii) another licensed health care professional designated by the department by rule.
 - (d) "Program" means the Utah Health Care Workforce Financial Assistance Program created in this section.
 - (e) "Underserved area" means an area designated by the department as underserved by health care professionals, based upon the results of a needs assessment developed by the department in consultation with the Utah Health Care Workforce Financial Assistance Program Advisory Committee created under Section 26B-1-419.
- (2) There is created within the department the Utah Health Care Workforce Financial Assistance Program to provide, within funding appropriated by the Legislature for the following purposes:

- (a) professional education scholarships and loan repayment assistance to health care professionals who locate or continue to practice in underserved areas; and
 - (b) loan repayment assistance to geriatric professionals who locate or continue to practice in underserved areas.
- (3) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the department shall make rules governing the administration of the program, including rules that address:
- (a) application procedures;
 - (b) eligibility criteria;
 - (c) selection criteria;
 - (d) service conditions, which at a minimum shall include professional service in an underserved area for a minimum period of time by any person receiving a scholarship or loan repayment assistance;
 - (e) penalties for failure to comply with service conditions or other terms of a scholarship or loan repayment contract;
 - (f) criteria for modifying or waiving service conditions or penalties in case of extreme hardship or other good cause; and
 - (g) administration of contracts entered into before the effective date of this act, between the department and scholarship or loan repayment recipients, as authorized by law.
- (4) The department may provide education loan repayment assistance to an eligible professional if the eligible professional:
- (a) agrees to practice in an underserved area for the duration of the eligible professional's participation in the program; and
 - (b) submits a written commitment from the health care facility employing the eligible professional that the health care facility will provide education loan repayment assistance to the eligible professional in an amount equal to 20% of the total award amount provided to the eligible professional.
- (5) The department shall seek and consider the recommendations of the Utah Health Care Workforce Financial Assistance Program Advisory Committee created under Section 26B-1-419 as it develops and modifies rules to administer the program.
- (6) Funding for the program:
- (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 26B-1-419.
- (7) Refunds for loan repayment assistance, penalties for breach of contract, and other payments to the program are dedicated credits to the program.
- (8) The department shall prepare an annual report on the revenues, expenditures, and outcomes of the program.

Renumbered and Amended by Chapter 307, 2023 General Session

26B-4-703 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).

- (2) The department may enter into an education loan repayment assistance contract with a physician if:
 - (a) the physician:
 - (i) locates or continues to practice in a rural county; and
 - (ii) has a written commitment from a rural hospital that the hospital will provide education loan repayment assistance to the physician;
 - (b) the assistance provided by the program does not exceed the assistance provided by the rural hospital; and
 - (c) the physician is otherwise eligible for assistance under administrative rules adopted under Subsection (6).
- (3) Funding for the program:
 - (a) shall be a line item within an appropriations act;
 - (b) may be used to pay for the per diem and travel expenses of the Rural Physician Loan Repayment Program Advisory Committee under Subsection 26B-1-423(5); and
 - (c) may be used to pay for department expenses incurred in the administration of the program:
 - (i) including administrative support provided to the Rural Physician Loan Repayment Program Advisory Committee created under Subsection 26B-1-423(7); and
 - (ii) in an amount not exceeding 10% of funding for the program.
- (4) Refunds of loan repayment assistance, penalties for breach of contract, and other payments to the program are dedicated credits to the program.
- (5) The department shall prepare an annual report of the program's revenues, expenditures, and outcomes.
- (6)
 - (a) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the department shall make rules governing the administration of the program, including rules that address:
 - (i) application procedures;
 - (ii) eligibility criteria;
 - (iii) verification of the amount provided by a rural hospital to a physician for repayment of the physician's education loans;
 - (iv) service conditions, which at a minimum shall include professional service by the physician in the rural hospital providing loan repayment assistance to the physician;
 - (v) selection criteria and assistance amounts;
 - (vi) penalties for failure to comply with service conditions or other terms of a loan repayment assistance contract; and
 - (vii) criteria for modifying or waiving service conditions or penalties in the case of extreme hardship or for other good cause.
 - (b) The department shall seek and consider the recommendations of the Rural Physician Loan Repayment Program Advisory Committee created in Section 26B-1-423 as it develops and modifies rules to administer the program.

Renumbered and Amended by Chapter 307, 2023 General Session

26B-4-704 Scope of telehealth practice -- Enforcement.

- (1) As used in this section:
 - (a) "Asynchronous store and forward transfer" means the transmission of a patient's health care information from an originating site to a provider at a distant site.
 - (b) "Distant site" means the physical location of a provider delivering telemedicine services.
 - (c) "Originating site" means the physical location of a patient receiving telemedicine services.

- (d) "Patient" means an individual seeking telemedicine services.
 - (e)
 - (i) "Patient-generated medical history" means medical data about a patient that the patient creates, records, or gathers.
 - (ii) "Patient-generated medical history" does not include a patient's medical record that a healthcare professional creates and the patient personally delivers to a different healthcare professional.
 - (f) "Provider" means an individual who is:
 - (i) licensed under Chapter 2, Part 2, Health Care Facility Licensing and Inspection;
 - (ii) licensed under Title 58, Occupations and Professions, to provide health care; or
 - (iii) licensed under Chapter 2, Part 1, Human Services Programs and Facilities.
 - (g) "Synchronous interaction" means real-time communication through interactive technology that enables a provider at a distant site and a patient at an originating site to interact simultaneously through two-way audio and video transmission.
 - (h) "Telehealth services" means the transmission of health-related services or information through the use of electronic communication or information technology.
 - (i) "Telemedicine services" means telehealth services:
 - (i) including:
 - (A) clinical care;
 - (B) health education;
 - (C) health administration;
 - (D) home health;
 - (E) facilitation of self-managed care and caregiver support; or
 - (F) remote patient monitoring occurring incidentally to general supervision; and
 - (ii) provided by a provider to a patient through a method of communication that:
 - (A) uses asynchronous store and forward transfer or synchronous interaction; and
 - (B) meets industry security and privacy standards, including compliance with the federal Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191, 110 Stat. 1936, as amended, and the federal Health Information Technology for Economic and Clinical Health Act, Pub. L. No. 111-5, 123 Stat. 226, 467, as amended.
- (2) A provider offering telehealth services shall:
- (a) at all times:
 - (i) act within the scope of the provider's license under Title 58, Occupations and Professions, in accordance with the provisions of this section and all other applicable laws and rules; and
 - (ii) be held to the same standards of practice as those applicable in traditional health 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:
 - (i) obtaining from the patient or another provider the patient's relevant clinical history; 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
- (g) if the patient has a designated health care provider who is not the telemedicine 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;
 - (ii) collect from the patient the contact information of the patient's designated health 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 26B-3-126, 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.
- (3) Subsection (2)(g) does not apply to prescriptions for eyeglasses or contacts.
- (4) A provider offering telemedicine services may not diagnose a patient, provide treatment, or prescribe a prescription drug based solely on one of the following:
 - (a) an online questionnaire;
 - (b) an email message; or
 - (c) a patient-generated medical history.
- (5) A provider may not offer telehealth services if:
 - (a) the provider is not in compliance with applicable laws, rules, and regulations regarding the provider's licensed practice; or
 - (b) the provider's license under Title 58, Occupations and Professions, is not active and in good standing.
- (6)
 - (a) The Division of Professional Licensing created in Section 58-1-103 is authorized to enforce the provisions of this section as it relates to providers licensed under Title 58, Occupations and Professions.
 - (b) The department is authorized to enforce the provisions of:
 - (i) this section as it relates to providers licensed under this title; and
 - (ii) this section as it relates to providers licensed under Chapter 2, Part 1, Human Services Programs and Facilities.

Amended by Chapter 277, 2023 General Session

Renumbered and Amended by Chapter 307, 2023 General Session

26B-4-705 Utah Health Workforce Information Center.

- (1) As used in this section:
 - (a) "Council" means the Utah Health Workforce Advisory Council created in Section 26B-1-425.
 - (b) "Health sector" means any place of employment where the primary function is the delivery of health care services.
 - (c)
 - (i) "Health workforce" means the individuals, collectively and by profession, who deliver health care services or assist in the delivery of health care services.

- (ii) "Health workforce" includes any health care professional who does not work in the health sector and any non-health care professional who works in the health sector.
- (2) There is created within the department the Utah Health Workforce Information Center.
- (3) The information center shall:
 - (a) under the guidance of the council, work with the Department of Commerce to collect data described in Section 58-1-112;
 - (b) analyze data from any available source regarding Utah's health workforce including data collected by the Department of Commerce under Section 58-1-112;
 - (c) send a report to the council regarding any analysis of health workforce data;
 - (d) conduct research on Utah's health workforce as directed by the council;
 - (e) notwithstanding the provisions of Subsection 35A-4-312(3), receive information obtained by the Department of Workforce Services under the provisions of Section 35A-4-312 for purposes consistent with the information center's duties, including identifying changes in Utah's health workforce numbers, types, and geographic distribution;
 - (f) project the demand for individuals to enter health care professions, including the nursing profession in accordance with Section 53B-26-202;
 - (g) subject to Section 26B-8-406, share data with any appropriate person as determined by the information center; and
 - (h) conduct research and provide analysis for any state agency as approved by the executive director or the executive director's designee.
- (4) Notwithstanding any other provision of state law, the information center is 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 (3) or 26B-1-425(7); and
 - (b) the information center's access to the data will not:
 - (i) violate any federal statute or federal regulation; or
 - (ii) violate a condition a state agency must follow:
 - (A) to participate in a federal program; or
 - (B) to receive federal funds.

Renumbered and Amended by Chapter 307, 2023 General Session

26B-4-706 Utah Medical Education Council.

- (1)
 - (a) There is created the Utah Medical Education Council, which is a subcommittee of the Utah Health Workforce Advisory Council.
 - (b) The membership of UMEC shall consist of the following appointed by the governor:
 - (i) the dean of the school of medicine at the University of Utah;
 - (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 an accredited clinical education program;
 - (iv) an individual from the health care insurance industry; and
 - (v)
 - (A) three members of the general public who are not employed by or affiliated with any institution that offers, sponsors, or finances health care or medical education; and
 - (B) if the number of individuals appointed under Subsection (1)(b)(iii) is more than two, the governor may appoint an additional member of the public under this Subsection (1)(b)(v) for each individual the governor appoints under Subsection (1)(b)(iii) beyond two.

- (2) Except as provided in Subsections (1)(b)(i) and (ii), no two UMEC members may be employed by or affiliated with the same:
 - (a) institution of higher education;
 - (b) state agency outside of higher education; or
 - (c) private entity.
- (3) The dean of the school of medicine at the University of Utah:
 - (a) shall chair UMEC;
 - (b) may not be counted in determining the existence of a quorum; and
 - (c) may only cast a vote on a matter before the council if the vote of the other council members results in a tied vote.
- (4) UMEC shall annually elect a vice chair from UMEC's members.
- (5)
 - (a) Consistent with Subsection (6)(b), a majority of the members constitute a quorum.
 - (b) The action of a majority of a quorum is the action of UMEC.
- (6)
 - (a) Except as provided in Subsection (6)(b), members are appointed to four-year terms of office.
 - (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 UMEC 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.
- (7) A member may not receive compensation or benefits for the member's service, but 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.
- (8) The council shall provide staff for UMEC.

Amended by Chapter 139, 2023 General Session

Renumbered and Amended by Chapter 307, 2023 General Session

26B-4-707 Medical Education Program.

- (1) There is created a Medical Education Program to be administered by UMEC in cooperation with the Division of Finance.
- (2) The program shall be funded from money received for graduate medical education from:
 - (a) the federal Centers for Medicare and Medicaid Services or other federal agency;
 - (b) state appropriations; and
 - (c) donation or private contributions.
- (3) All funding for this program shall be nonlapsing.
- (4) Program money may only be expended if:
 - (a) approved by UMEC; and
 - (b) used for graduate medical education in accordance with Subsection 26B-4-708(4).

Renumbered and Amended by Chapter 307, 2023 General Session

26B-4-708 Duties of UMEC.

UMECE shall:

- (1) seek private and public contributions for the program;
- (2) determine the method for reimbursing institutions that sponsor health care professionals in training;
- (3) determine the number and type of positions for health care professionals in training for which program money may be used;
- (4) distribute program money for graduate medical education in a manner that:
 - (a) prepares postgraduate medical residents, as defined by the accreditation council on graduate medical education, for inpatient, outpatient, hospital, community, and geographically diverse settings;
 - (b) encourages the coordination of interdisciplinary clinical training among health care professionals in training;
 - (c) promotes stable funding for the clinical training of health care professionals in training; and
 - (d) only funds accredited clinical training programs; and
- (5) advise on the implementation of the program.

Renumbered and Amended by Chapter 307, 2023 General Session

26B-4-709 Powers of UMEC.

The UMEC may:

- (1) appoint advisory committees of broad representation on interdisciplinary clinical education, workforce mix planning and projections, funding mechanisms, and other topics as is necessary;
- (2) use federal money for necessary administrative expenses to carry out UMEC's duties and powers as permitted by federal law;
- (3) distribute program money in accordance with Subsection 26B-4-708(4); and
- (4) as is necessary to carry out UMEC's duties under Section 26B-4-708, adopt rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

Renumbered and Amended by Chapter 307, 2023 General Session

26B-4-710 Rural residency training program.

- (1) As used in this section:
 - (a) "Physician" means:
 - (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
 - (ii) an individual licensed to practice dentistry under Title 58, Chapter 69, Dentist and 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.
- (2) Subject to appropriations from the Legislature, UMEC shall establish a pilot program to place physicians into rural residency training programs.

Renumbered and Amended by Chapter 307, 2023 General Session

26B-4-711 Residency grant program.

- (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.
 - (c) "Residency program" means a program that provides training for graduates of a 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.
- (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;
 - (c)
 - (i) provide proof that the residency program is accredited by the Accreditation 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;
 - (e) agree to implement selection processes for a residency position that treat applicants from D.O. programs and applicants from M.D. programs equally;
 - (f) agree to provide information identified by UMEC that relates to post-residency employment outcomes for individuals who work in grant funded residency positions; and
 - (g) provide any other information related to the grant application UMEC deems necessary.
- (4) UMEC shall prioritize awarding grants to new or existing residency programs that will:
- (a) address a workforce shortage, occurring in Utah, for a specialty; or
 - (b) serve an underserved population, including a rural population.
- (5) Before November 1, 2023, and each November 1 thereafter, UMEC shall provide a written report to the Higher Education Appropriations Subcommittee describing:
- (a) which sponsoring institutions received a grant;
 - (b) the number of residency positions created; and
 - (c) for each residency position created:
 - (i) the type of specialty;
 - (ii) where the residency position provides care; and
 - (iii) an estimated date of when a grant funded residency position will no longer need grant funding.

Renumbered and Amended by Chapter 307, 2023 General Session

26B-4-712 Forensic psychiatrist fellowship grant.

- (1) As used in this section, "forensic psychiatry" means the provision of services by an individual who:
- (a) is a licensed physician;
 - (b) is board certified for a psychiatry specialization recognized by the American Board of Medical Specialists or the American Osteopathic Association's Bureau of Osteopathic Specialists; and
 - (c) uses scientific and clinical expertise in legal contexts involving the mental health of 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:

- (a) demonstrate how the applicant is best suited for developing a forensic psychiatry fellowship program, including:
 - (i) a description of resources that would be available to the program; and
 - (ii) any resources or staff that need to be acquired for the program;
- (b) identify what needs to occur for the proposed residency program to become accredited by the Accreditation Council for Graduate Medical Education;
- (c) provide an estimate of how many individuals would be trained in the program at any one time;
- (d) provide any information related to the grant application UMEC deems necessary for awarding the grant; and
- (e) if awarded the grant, agree to:
 - (i) enter into a contract with the Department of Corrections that the applicant will provide for the provision of forensic psychiatry services to an individual:
 - (A) who needs psychiatric services; and
 - (B) is under the Department of Corrections' jurisdiction;
 - (ii) ensure that any individual hired to provide forensic psychiatry services will comply with all relevant:
 - (A) national licensing requirements; and
 - (B) state licensing requirements under Title 58, Occupations and Professions.

Renumbered and Amended by Chapter 307, 2023 General Session

Part 8

Uniform Emergency Volunteer Health Practitioners Act

26B-4-801 Definitions.

As used in this part:

- (1) "Disaster relief organization" means an entity that:
 - (a) provides emergency or disaster relief services that include health or veterinary services provided by volunteer health practitioners;
 - (b) is designated or recognized as a provider of the services described in Subsection (1)(a) under a disaster response and recovery plan adopted by:
 - (i) an agency of the federal government;
 - (ii) the department; or
 - (iii) a local health department; and
 - (c) regularly plans and conducts its activities in coordination with:
 - (i) an agency of the federal government;
 - (ii) the department; or
 - (iii) a local health department.
- (2) "Emergency" means:
 - (a) a state of emergency declared by:
 - (i) the president of the United States;
 - (ii) the governor in accordance with Title 53, Chapter 2a, Part 2, Disaster Response and Recovery Act; and
 - (iii) the chief executive officer of a political subdivision in accordance with Title 53, Chapter 2a, Part 2, Disaster Response and Recovery Act, for a local emergency; or
 - (b) a public health emergency declared by:

- (i) the executive director through a public health order in accordance with this title; or
- (ii) a local health department for a location under the local health department's jurisdiction.
- (3) "Emergency Management Assistance Compact" means the interstate compact approved by Congress by Public L. No. 104-321, 110 Stat. 3877 and adopted by Utah in Title 53, Chapter 2a, Part 4, Emergency Management Assistance Compact.
- (4) "Entity" means a person other than an individual.
- (5) "Health facility" means an entity licensed under the laws of this or another state to provide health or veterinary services.
- (6) "Health practitioner" means an individual licensed under Utah law or another state to provide health or veterinary services.
- (7) "Health services" means the provision of treatment, care, advice, guidance, other services, or supplies related to the health or death of individuals or human populations, to the extent necessary to respond to an emergency, including:
 - (a) the following, concerning the physical or mental condition or functional status of an individual or affecting the structure or function of the body:
 - (i) preventive, diagnostic, therapeutic, rehabilitative, maintenance, or palliative care; or
 - (ii) counseling, assessment, procedures, or other services;
 - (b) selling or dispensing a drug, a device, equipment, or another item to an individual in accordance with a prescription; and
 - (c) funeral, cremation, cemetery, or other mortuary services.
- (8) "Host entity":
 - (a) means an entity operating in Utah that:
 - (i) uses volunteer health practitioners to respond to an emergency; and
 - (ii) is responsible during an emergency, for actually delivering health services to individuals or human populations, or veterinary services to animals or animal populations; 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.
- (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.
- (10) "Local emergency" means the same as that term is defined in Section 53-2a-203.
- (11) "Local health department" means the same as that term is defined in Section 26A-1-102.
- (12) "Public health emergency" means the same as that term is defined in Section 26B-7-301.
- (13) "Scope of practice" means the extent of the authorization to provide health or veterinary services granted to a health practitioner by a license issued to the practitioner in the state in which the principal part of the practitioner's services are rendered, including any conditions imposed by the licensing authority.
- (14) "State" means:
 - (a) a state of the United States;
 - (b) the District of Columbia;
 - (c) Puerto Rico;
 - (d) the United States Virgin Islands; or
 - (e) any territory or insular possession subject to the jurisdiction of the United States.
- (15) "Veterinary services" shall have the meaning provided for in Subsection 58-28-102(11).
- (16)

- (a) "Volunteer health practitioner" means a health practitioner who provides health or veterinary services, whether or not the practitioner receives compensation for those services.
- (b) "Volunteer health practitioner" does not include a practitioner who receives compensation under a preexisting employment relationship with a host entity or affiliate that requires the practitioner to provide health services in Utah, unless the practitioner is:
 - (i) not a Utah resident; and
 - (ii) employed by a disaster relief organization providing services in Utah during an emergency.

Renumbered and Amended by Chapter 307, 2023 General Session

26B-4-802 Applicability to volunteer health practitioners.

This part applies to volunteer health practitioners who:

- (1) are registered with a registration system that complies with Section 26B-4-804; and
- (2) provide health or veterinary services in Utah for a host entity during an emergency.

Renumbered and Amended by Chapter 307, 2023 General Session

26B-4-803 Regulation of services during emergency.

- (1) During an emergency, the department or a local health department may limit, restrict, or otherwise regulate:
 - (a) the duration of practice by volunteer health practitioners;
 - (b) the geographical areas in which volunteer health practitioners may practice;
 - (c) the types of volunteer health practitioners who may practice; and
 - (d) any other matters necessary to coordinate effectively the provision of health or veterinary services during the emergency.
- (2) An order issued under Subsection (1) 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 an adjudication within the meaning of Title 63G, Chapter 4, Administrative Procedures Act.
- (3) A host entity that uses volunteer health practitioners to provide health or veterinary services in Utah shall:
 - (a) to the extent practicable and in order to provide for the efficient and effective use of volunteer health practitioners, consult and coordinate its activities with:
 - (i) the department;
 - (ii) local health departments; or
 - (iii) the Department of Agriculture and Food; and
 - (b) comply with all state and federal laws relating to the management of emergency health or veterinary services.

Renumbered and Amended by Chapter 307, 2023 General Session

26B-4-804 Volunteer health practitioner registration systems.

- (1) To qualify as a volunteer health practitioner registration system, the registration system shall:
 - (a) accept applications for the registration of volunteer health practitioners before or during an emergency;
 - (b) include information about the licensure and good standing of health practitioners that is accessible by authorized persons;

- (c) be capable of confirming the accuracy of information concerning whether a health practitioner is licensed and in good standing before health services or veterinary services are provided under this part; and
 - (d) meet one of the following conditions:
 - (i) be an emergency system for advance registration of volunteer health practitioners established by a state and funded through the United States Department of Health and Human Services under Section 319I of the Public Health Services Act, 42 U.S.C. Sec. 247d-7b, as amended;
 - (ii) be a local unit consisting of trained and equipped emergency response, public health, and medical personnel formed under Section 2801 of the Public Health Services Act, 42 U.S.C. Sec. 300hh as amended;
 - (iii) be operated by a:
 - (A) disaster relief organization;
 - (B) licensing board;
 - (C) national or regional association of licensing boards or health practitioners;
 - (D) health facility that provides comprehensive inpatient and outpatient healthcare services, including tertiary care; or
 - (E) governmental entity; or
 - (iv) be designated by the department as a registration system for purposes of this part.
- (2)
- (a) Subject to Subsection (2)(b), during an emergency, the department, a person authorized to act on behalf of the department, 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.

Renumbered and Amended by Chapter 307, 2023 General Session

26B-4-805 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 26B-4-804 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 part as if the practitioner were licensed in Utah; and
 - (b) is exempt from:
 - (i) licensure in Utah; or
 - (ii) operating under modified scope of practice provisions in accordance with Subsections 58-1-307(4) and (5).
- (2) A volunteer health practitioner qualified under Subsection (1) is not entitled to the protections of this part if the practitioner is licensed in more than one state and any license of the practitioner:

- (a) is suspended, revoked, or subject to an agency order limiting or restricting practice privileges;
or
- (b) has been voluntarily terminated under threat of sanction.

Renumbered and Amended by Chapter 307, 2023 General Session

26B-4-806 No effect on credentialing and privileging.

- (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 part 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.

Renumbered and Amended by Chapter 307, 2023 General Session

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 part 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 part.
 - (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 Procedures Act.
- (4) A host entity may restrict the health or veterinary services that a volunteer health practitioner may provide under this part.
- (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 part, Title 58, Chapter 1, Division of Professional Licensing Act, or that a similarly licensed practitioner in Utah would not be permitted to provide the services.
 - (b) A volunteer health practitioner has reason to know of a limitation, modification, or restriction, or that a similarly licensed practitioner in Utah would not be permitted to provide a service, if:
 - (i) the volunteer health practitioner knows the limitation, modification, or restriction exists or that a similarly licensed practitioner in Utah would not be permitted to provide the 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 part 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.
- (7) In determining whether or not to impose administrative sanctions under Subsection (6), the Division of Professional Licensing Act or other disciplinary authority shall consider the circumstances in which the conduct took place, including:
- (a) any exigent circumstances; and
 - (b) the volunteer health practitioner's scope of practice, education, training, experience, and specialized skill.

Renumbered and Amended by Chapter 307, 2023 General Session

26B-4-808 Relation to other laws.

- (1)
- (a) This part does not limit rights, privileges, or immunities provided to volunteer health practitioners by laws other than this part.
 - (b) Except as otherwise provided in Subsection (2), this part 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.

Renumbered and Amended by Chapter 307, 2023 General Session

26B-4-809 Regulatory authority.

- (1) The 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 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 part and make the emergency response systems in the various states reasonably compatible.

Renumbered and Amended by Chapter 307, 2023 General Session

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.

Renumbered and Amended by Chapter 307, 2023 General Session

26B-4-811 Workers' compensation coverage.

- (1) For purposes of this section, "injury" means a physical or mental injury or disease for which an employee of Utah who is injured or contracts the disease in the course of the employee's employment would be entitled to benefits under Title 34A, Chapter 2, Workers' Compensation Act.
- (2) A volunteer health practitioner is considered a state employee for purposes of receiving workers' compensation medical benefits under Title 34A, Chapter 2, Workers' Compensation Act, and Chapter 3, Utah Occupational Disease Act.
- (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.

Renumbered and Amended by Chapter 307, 2023 General Session

26B-4-812 Uniformity of application and construction.

In applying and construing 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.

Renumbered and Amended by Chapter 307, 2023 General Session

Chapter 5 Health Care - Substance Use and Mental Health

Part 1 General Provisions

26B-5-101 Chapter definitions.

As used in this chapter:

- (1) "Criminal risk factors" means a person's characteristics and behaviors that:
 - (a) affect the person's risk of engaging in criminal behavior; and
 - (b) are diminished when addressed by effective treatment, supervision, and other support resources, resulting in reduced risk of criminal behavior.
- (2) "Director" means the director appointed under Section 26B-5-103.
- (3) "Division" means the Division of Integrated Healthcare created in Section 26B-1-202.
- (4) "Local mental health authority" means a county legislative body.
- (5) "Local substance abuse authority" means a county legislative body.
- (6) "Mental health crisis" means:
 - (a) a mental health condition that manifests in an individual by symptoms of sufficient severity that a prudent layperson who possesses an average knowledge of mental health issues could reasonably expect the absence of immediate attention or intervention to result in:
 - (i) serious danger to the individual's health or well-being; or
 - (ii) a danger to the health or well-being of others; or
 - (b) a mental health condition that, in the opinion of a mental health therapist or the therapist's designee, requires direct professional observation or intervention.
- (7) "Mental health crisis response training" means community-based training that educates laypersons and professionals on the warning signs of a mental health crisis and how to respond.
- (8) "Mental health crisis services" means an array of services provided to an individual who experiences a mental health crisis, which may include:
 - (a) direct mental health services;
 - (b) on-site intervention provided by a mobile crisis outreach team;
 - (c) the provision of safety and care plans;
 - (d) prolonged mental health services for up to 90 days after the day on which an individual experiences a mental health crisis;
 - (e) referrals to other community resources;
 - (f) local mental health crisis lines; and
 - (g) the statewide mental health crisis line.
- (9) "Mental health therapist" means the same as that term is defined in Section 58-60-102.
- (10) "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.
- (11) "Office" means the Office of Substance Use and Mental Health created in Section 26B-5-102.
- (12)
 - (a) "Public funds" means federal money received from the department, and state money appropriated by the Legislature to the department, a county governing body, or a local

substance abuse authority, or a local mental health authority for the purposes of providing substance abuse or mental health programs or services.

- (b) "Public funds" include federal and state money that has been transferred by a local substance abuse authority or a local mental health authority to a private provider under 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. The money maintains the nature of "public funds" while in the possession of the private entity that has an annual or otherwise ongoing contract with a local substance abuse authority or a local mental health authority to provide comprehensive substance use or mental health programs or services for the local substance abuse authority or local mental health authority.
- (c) Public funds received for the provision of services under substance use or mental health service plans may not be used for any other purpose except those authorized in the contract between the local mental health or substance abuse authority and provider for the provision of plan services.
- (13) "Severe mental disorder" means schizophrenia, major depression, bipolar disorders, delusional disorders, psychotic disorders, and other mental disorders as defined by the division.
- (14) "Stabilization services" means in-home services provided to a child with, or who is at risk for, complex emotional and behavioral needs, including teaching the child's parent or guardian skills to improve family functioning.
- (15) "Statewide mental health crisis line" means the same as that term is defined in Section 26B-5-610.
- (16) "System of care" means a broad, flexible array of services and supports that:
 - (a) serve a child with or who is at risk for complex emotional and behavioral needs;
 - (b) are community based;
 - (c) are informed about trauma;
 - (d) build meaningful partnerships with families and children;
 - (e) integrate service planning, service coordination, and management across state and local entities;
 - (f) include individualized case planning;
 - (g) provide management and policy infrastructure that supports a coordinated network of interdepartmental service providers, contractors, and service providers who are outside of the department; and
 - (h) are guided by the type and variety of services needed by a child with or who is at risk for complex emotional and behavioral needs and by the child's family.

Amended by Chapter 308, 2023 General Session

26B-5-102 Division of Integrated Healthcare -- Office of Substance Use and Mental Health -- Creation -- Responsibilities.

- (1)
 - (a) The Division of Integrated Healthcare shall exercise responsibility over the policymaking functions, regulatory and enforcement powers, rights, duties, and responsibilities outlined in state law that were previously vested in the Division of Substance Abuse and Mental Health within the department, under the administration and general supervision of the executive director.
 - (b) The division is the substance abuse authority and the mental health authority for this state.
 - (c) There is created the Office of Substance Use and Mental Health within the division.

- (d) The office shall exercise the responsibilities, powers, rights, duties, and responsibilities assigned to the office by the executive director.
- (2) The division shall:
 - (a)
 - (i) educate the general public regarding the nature and consequences of substance use by promoting school and community-based prevention programs;
 - (ii) render support and assistance to public schools through approved school-based substance abuse education programs aimed at prevention of substance use;
 - (iii) promote or establish programs for the prevention of substance use within the community setting through community-based prevention programs;
 - (iv) cooperate with and assist treatment centers, recovery residences, and other organizations that provide services to individuals recovering from a substance use disorder, by identifying and disseminating information about effective practices and programs;
 - (v) promote integrated programs that address an individual's substance use, mental health, and physical health;
 - (vi) establish and promote an evidence-based continuum of screening, assessment, prevention, treatment, and recovery support services in the community for individuals with a substance use disorder or mental illness;
 - (vii) evaluate the effectiveness of programs described in this Subsection (2);
 - (viii) consider the impact of the programs described in this Subsection (2) on:
 - (A) emergency department utilization;
 - (B) jail and prison populations;
 - (C) the homeless population; and
 - (D) the child welfare system; and
 - (ix) promote or establish programs for education and certification of instructors to educate individuals convicted of driving under the influence of alcohol or drugs or driving with any measurable controlled substance in the body;
 - (b)
 - (i) collect and disseminate information pertaining to mental health;
 - (ii) provide direction over the state hospital including approval of the state hospital's budget, administrative policy, and coordination of services with local service plans;
 - (iii) make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to educate families concerning mental illness and promote family involvement, when appropriate, and with patient consent, in the treatment program of a family member; and
 - (iv) 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 26B-5-313;
 - (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 use 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 use 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 use and mental health services;
- (vi) monitor and evaluate programs provided by local substance abuse authorities and local mental health authorities;
- (vii) examine expenditures of local, state, and federal funds;
- (viii) monitor the expenditure of public funds by:
 - (A) local substance abuse authorities;
 - (B) local mental health authorities; and
 - (C) in counties where they exist, 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 use 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 use 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 use 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 money;
- (d) ensure that the requirements of this part are met and applied uniformly by local substance abuse authorities and local mental health authorities across the state;
- (e) require each local substance abuse authority and each local mental health authority, in accordance with Subsections 17-43-201(5)(b) and 17-43-301(6)(a)(ii), to submit a plan to the division on or before May 15 of each year;
- (f) conduct an annual program audit and review of each local substance abuse authority and each local substance abuse authority's contract provider, and each local mental health authority and each local mental health authority's contract provider, including:
 - (i) a review and determination regarding whether:

- (A) public funds allocated to the local substance abuse authority or the local mental health authorities are consistent with services rendered by the authority or the authority's contract provider, and with outcomes reported by the authority's contract provider; and
- (B) each local substance abuse authority and each local mental health authority is exercising sufficient oversight and control over public funds allocated for substance use disorder and mental health programs and services; and
- (ii) items determined by the division to be necessary and appropriate;
- (g) define "prevention" by rule as required under Title 32B, Chapter 2, Part 4, Alcoholic Beverage and Substance Abuse Enforcement and Treatment Restricted Account Act;
- (h)
 - (i) train and certify an adult as a peer support specialist, qualified to provide peer supports services to an individual with:
 - (A) a substance use disorder;
 - (B) a mental health disorder; or
 - (C) a substance use disorder and a mental health disorder;
 - (ii) certify a person to carry out, as needed, the division's duty to train and certify an adult as a peer support specialist;
 - (iii) make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, that:
 - (A) establish training and certification requirements for a peer support specialist;
 - (B) specify the types of services a peer support specialist is qualified to provide;
 - (C) specify the type of supervision under which a peer support specialist is required to operate; and
 - (D) specify continuing education and other requirements for maintaining or renewing certification as a peer support specialist; and
 - (iv) make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, that:
 - (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, Part 1, Human Services 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);
- (l) 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 in accordance with the metrics and requirements described in Section 63M-7-102;
- (m) at the division's discretion, use the data described in Subsection (2)(l) 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)(l) 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 use 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 use 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 use disorder; and
 - (iii) providing referrals to pregnant women, pregnant minors, or parents of a newborn child in need of substance use treatment services to a facility that has the capacity to provide the treatment services.
- (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 operation of a firearm safety and suicide prevention program, in consultation with the Bureau 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:
 - (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 includes:
 - (A) information on safe handling, storage, and use of firearms in a home environment;
 - (B) information about at-risk individuals and individuals who are legally prohibited 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;
 - (iii) produce a firearm safety packet that includes the firearm safety brochure and the 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 shall make the firearm safety packet available free of charge:
 - (i) health care providers, including emergency rooms;
 - (ii) mobile crisis outreach teams;
 - (iii) mental health practitioners;
 - (iv) other public health suicide prevention organizations;
 - (v) entities that teach firearm safety courses;
 - (vi) school districts for use in the seminar, described in Section 53G-9-702, for 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 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 resident;
 - (d) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, making rules that establish procedures for:
 - (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
 - (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 use 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;

- (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.

Amended by Chapter 177, 2023 General Session

Renumbered and Amended by Chapter 308, 2023 General Session

26B-5-103 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 use and mental health.

Renumbered and Amended by Chapter 308, 2023 General Session

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 26B-5-108. 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.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-5-105 Employment first emphasis on the provision of services.

- (1) As used in this section, "recipient" means an individual who is:
 - (a) undergoing treatment for a substance use problem; or
 - (b) suffers from a mental illness.
- (2) When providing services to a recipient, the division shall, within funds appropriated by the Legislature and in accordance with the requirements of federal and state law and memorandums of understanding between the division and other state entities that provide services to a recipient, give priority to providing services that assist an eligible recipient in obtaining and retaining meaningful and gainful employment that enables the recipient to earn sufficient income to:
 - (a) purchase goods and services;
 - (b) establish self-sufficiency; and
 - (c) exercise economic control of the recipient's life.
- (3) The division shall develop a written plan to implement the policy described in Subsection (2) that includes:
 - (a) assessing the strengths and needs of a recipient;
 - (b) customizing strength-based approaches to obtaining employment;
 - (c) expecting, encouraging, providing, and rewarding:
 - (i) integrated employment in the workplace at competitive wages and benefits; and
 - (ii) self-employment;
 - (d) developing partnerships with potential employers;
 - (e) maximizing appropriate employment training opportunities;
 - (f) coordinating services with other government agencies and community resources;
 - (g) to the extent possible, eliminating practices and policies that interfere with the policy described in Subsection (2); and
 - (h) arranging sub-minimum wage work or volunteer work for an eligible recipient when employment at market rates cannot be obtained.
- (4) The division shall, on an annual basis:
 - (a) set goals to implement the policy described in Subsection (2) and the plan described in Subsection (3);
 - (b) determine whether the goals for the previous year have been met; and
 - (c) modify the plan described in Subsection (3) as needed.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-5-106 Authority to assess fees.

The division may, with the approval of the Legislature and the executive director, establish fee schedules and assess fees for services rendered by the division.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-5-107 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 use 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.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-5-108 Contracts for substance use 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 use 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 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 allocated under Section 26B-5-107, 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.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-5-109 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.

Renumbered and Amended by Chapter 308, 2023 General Session

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 26B-5-611(8)(b).
- (4) An employer may apply for a grant of up to \$2,500 under the program.

Renumbered and Amended by Chapter 308, 2023 General Session

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.

Renumbered and Amended by Chapter 308, 2023 General Session

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.
- (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.
- (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).

Renumbered and Amended by Chapter 308, 2023 General Session

26B-5-112.5 Mobile Crisis Outreach Team Grant Program.

- (1) As used in this section, "commission" means the Behavioral Health Crisis Response Commission established in Section 63C-18-202.
- (2) The commission shall provide recommendations and the division shall award grants for the development of up to five mobile crisis outreach teams.
- (3) A mobile crisis outreach team that is awarded a grant under Subsection (2) shall provide mental health crisis services 24 hours per day, seven days per week, and every day of the year.
- (4) The division shall prioritize the award of a grant described in Subsection (2) to entities based on:
 - (a) the outstanding need for crisis outreach services within the area the proposed mobile crisis outreach team will serve; and
 - (b) the capacity for implementation of the proposed mobile crisis outreach team in accordance with the division's established standards and requirements for mobile crisis outreach teams.
- (5)
 - (a) In consultation with the commission, 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 (2).
 - (b)
 - (i) The rules created under Subsection (5)(a) shall implement a funding structure for a mobile crisis outreach team developed using a grant awarded under this section.
 - (ii) The funding structure described in Subsection (5)(b)(i) shall provide for tiers and phases of shared funding coverage between the state and counties.

Enacted by Chapter 270, 2023 General Session

26B-5-113 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.

Renumbered and Amended by Chapter 308, 2023 General Session

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 experiencing a mental health crisis.
 - (b) "Commission" means the Behavioral Health Crisis Response Commission established in Section 63C-18-202.

- (c) "Project" means a behavioral health receiving center project described in Subsection (2) or (3)
 - (a).
- (2) 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 develop and implement a behavioral health receiving center.
- (3)
 - (a) Before July 1, 2023, the division shall issue a request for proposals in accordance with this section to award a grant to one county of the third class, as classified in Section 17-50- 501, to develop and implement a behavioral health receiving center.
 - (b) Subject to appropriations by the Legislature, the division shall award grants under this Subsection (3) before December 31, 2023.
 - (c) The commission shall provide recommendations to the division regarding the development and implementation of a behavioral health receiving center.
- (4) The purpose of a project is to:
 - (a) increase access to mental health crisis services for individuals in the state who are 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.
- (5) An application for a grant under this section shall:
 - (a) identify the population to which the behavioral health receiving center will provide 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 (5)(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;
 - (ii) how the proposed project will ensure that consideration is given to the capacity of the behavioral health receiving center;
 - (iii) how the proposed project will ensure timely and effective provision of mental 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 proposed project;
 - (vii) the sustainability of the proposed project; and
 - (viii) the methods the proposed project will use to:
 - (A) protect the privacy of each individual who receives mental health crisis services from the behavioral health receiving center;
 - (B) collect nonidentifying data relating to the proposed project; and
 - (C) provide transparency on the costs and operation of the proposed project; and
 - (e) provide other information requested by the division to ensure that the proposed project satisfies the criteria described in Subsection (7).
- (6) A recipient of a grant under this section shall enroll as a Medicaid provider and meet minimum standards of care for behavioral health receiving centers established by the division.
- (7) In evaluating an application for the grant, the division shall consider:
 - (a) the extent to which the proposed project will fulfill the purposes described in Subsection (4);

- (b) the extent to which the population described in Subsection (5)(a) is likely to benefit from the proposed project;
 - (c) the cost of the proposed project;
 - (d) the extent to which any existing or planned contracts or partnerships between the applicant and other individuals or entities to develop and implement the project, or additional funding sources available to the applicant for the proposed project, are likely to benefit the proposed project; and
 - (e) the viability and innovation of the proposed project.
- (8) Before June 30, 2023, the division shall report to the Health and Human Services Interim Committee regarding:
- (a) data gathered in relation to each project described in Subsection (2);
 - (b) knowledge gained relating to the provision of mental health crisis services in a behavioral health receiving center;
 - (c) recommendations for the future use of mental health crisis services in behavioral health receiving centers;
 - (d) obstacles encountered in the provision of mental health crisis services in a behavioral health receiving center; and
 - (e) recommendations for appropriate Medicaid reimbursement for rural behavioral health receiving centers.
- (9)
- (a) In consultation with the commission, the division shall make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, for the application and award of a grant under this section.
 - (b)
 - (i) The rules created under Subsection (9)(a) shall:
 - (A) implement a funding structure for a behavioral health receiving center developed using a grant awarded under this section;
 - (B) include implementation standards and minimum program requirements for a behavioral health receiving center developed using a grant awarded under this section, including minimum guidelines and standards of care, and minimum staffing requirements; and
 - (C) require a behavioral health receiving center developed using a grant awarded under this section to operate 24 hours per day, seven days per week, and every day of the year.
 - (ii) The funding structure described in Subsection (9)(b)(i)(A) shall provide for tiers and phases of shared funding coverage between the state and counties.
- (10) Before June 30, 2024, the division shall report to the Health and Human Services Interim Committee regarding:
- (a) grants awarded under Subsection (3)(a); and
 - (b) the details of each project described in Subsection (3)(a).
- (11) Before June 30, 2026, the division shall provide a report to the Health and Human Services Interim Committee that includes:
- (a) data gathered in relation to each project described in Subsection (3)(a); and
 - (b) an update on the items described in Subsections (8)(b) through (d).

Amended by Chapter 270, 2023 General Session
Renumbered and Amended by Chapter 308, 2023 General Session

26B-5-115 Safety Net Initiative.

- (1) As used in this section, "individuals in underserved communities" means individuals living in culturally isolated communities in the state who may lack access to public 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.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-5-116 Suicide technical assistance program.

- (1) As used in this section, "technical assistance" means training for the prevention of suicide.
- (2)
 - (a) Before July 1, 2021, and each subsequent July 1, the division shall solicit applications from health care organizations to receive technical assistance provided by the division.
 - (b) The division shall approve at least one but not more than six applications each year.
 - (c) The division shall determine which applicants receive the technical assistance 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 prevention services;
 - (b) identify how the health care organization plans to implement the skills and knowledge gained from the technical assistance;
 - (c) identify the health care organization's current resources used for the prevention of suicide;
 - (d) explain how the population described in Subsection (3)(a) will benefit from the health care organization receiving technical assistance;
 - (e) provide details regarding:
 - (i) how the health care organization will provide timely and effective suicide prevention services;
 - (ii) any existing or planned contracts or partnerships between the health care organization and other persons that are related to suicide prevention;
 - (iii) the methods the health care organization will use to:
 - (A) protect the privacy of each individual to whom the health care organization provides suicide prevention services; and
 - (B) collect non-identifying data; and
 - (f) provide other information requested by the division for the division to evaluate the application.
- (4) In evaluating an application for technical assistance, the division shall consider:
 - (a) the extent to which providing technical assistance to the health care organization will fulfill the purpose of preventing suicides in the state;
 - (b) the extent to which the population described in Subsection (3)(a) is likely to benefit from the health care organization receiving the technical assistance;
 - (c) the cost of providing the technical assistance to the health care organization; and
 - (d) the extent to which any of the following are likely to benefit the health care organization's ability to assist in preventing suicides in the state:

- (i) existing or planned contracts or partnerships between the applicant and other persons to develop and implement other initiatives; or
 - (ii) additional funding sources available to the applicant for suicide prevention services.
- (5) Before June 30, 2022, and each subsequent June 30, the division shall submit a written report to the Health and Human Services Interim Committee regarding each health care organization the division provided technical assistance to in the preceding year under this section.
- (6) Before June 30, 2024, the division shall submit a written report to the Health and Human Services Interim Committee regarding:
- (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.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-5-117 Early childhood mental health support grant program.

- (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;
 - (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;
 - (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
 - (f) the sustainability of the proposed project.
- (5) In evaluating a project proposal for a grant under this section, the division shall consider:
- (a) the extent to which the proposed project will fulfill the purpose described in Subsection (3);
 - (b) the extent to which child care providers that will be served by the proposed project are likely to benefit from the proposed project;
 - (c) the cost of the proposed project; and
 - (d) the viability of the proposed project.
- (6) Before June 30, 2024, the division shall report to the Health and Human Services Interim Committee regarding:
- (a) any knowledge gained from providing the education and training regarding early childhood mental health support to child care providers;

- (b) data gathered in relation to each project;
- (c) recommendations for the future use of the education and training provided to child care providers; and
- (d) obstacles encountered in providing the education and training to child care providers.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-5-118 Collaborative care grant program.

(1) As used in this section:

- (a) "Applicant" means a small primary health care practice that applies for a grant under this section.
- (b) "Care manager" means an individual who plans, directs, and coordinates health care services for a patient.
- (c) "Collaborative care model" means a formal collaborative arrangement between a primary care physician, a mental health professional, and a care manager, to provide integrated physical and behavioral health services.
- (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.
- (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.
- (i) "Small primary health care practice" means a medical practice of primary health care physicians that:
 - (i) includes 10 or fewer primary care physicians; or
 - (ii) is primarily based in a county of the third through sixth class, as classified in Section 17-50-501.

(2)

- (a) Before July 1, 2022, the division shall solicit applications from small primary health care practices for a grant to support or implement a program to provide integrated 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;
 - (ii) identify and formalize contractual relationships with mental health professionals and case managers to implement a program; or
 - (iii) purchase or upgrade software and other resources necessary to support or implement a program.
- (c) The division shall approve at least one but not more than six applications each year.
- (d) The division shall determine which applicants receive a grant under this section before December 31, 2022.

(3) An application for a grant under this section shall:

- (a) identify the population to whom the applicant will provide services under a program;

- (b) identify the small primary health care practice's current resources that are used to provide integrated physical and behavioral health services;
 - (c) explain how the population described in Subsection (3)(a) will benefit from the program;
 - (d) provide details regarding:
 - (i) how the applicant will provide timely and effective services under the program;
 - (ii) any existing or planned contracts or partnerships between the applicant and other persons that are related to a collaborative care model;
 - (iii) the methods the applicant will use to:
 - (A) protect the privacy of each individual to whom the applicant provides services under the program; and
 - (B) collect non-identifying data; and
 - (e) provide other information requested by the division for the division to evaluate the application.
- (4) In evaluating an application for a grant under this section, the division shall consider:
- (a) the extent to which providing the grant to the applicant will fulfill the purpose of providing increased integrated physical and behavioral health services; and
 - (b) the extent to which the population described in Subsection (3)(a) is likely to benefit from the applicant receiving the grant.
- (5) Before July 1, 2023, the division shall submit a written report to the Health and Human Services Interim Committee regarding each applicant the division provided a grant to in the preceding year under this section.
- (6) Before July 1, 2024, the division shall submit a written report to the Health and Human Services Interim Committee regarding:
- (a) data gathered and knowledge gained in relation to providing grants to an applicant; and
 - (b) recommendations for how the state can better implement integrated physical and behavioral health services.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-5-119 Forms.

The division shall furnish the clerks of the court with forms, blanks, warrants, and certificates, to enable judges, with regularity and facility, to comply with the provisions of this chapter.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-5-120 Virtual crisis outreach team grant program.

- (1) As used in this section:
- (a) "Certified peer support specialist" means the same as that term is defined in Section 26B-5-610.
 - (b) "Commission" means the Behavioral Health Crisis Response Commission established in Section 63C-18-202.
 - (c) "Committee" means the Health and Human Services Interim Committee.
 - (d) "Mobile crisis outreach team" means the same as that term is defined in Section 26B-5-609.
 - (e) "Virtual crisis outreach program" means a program that provides the following real-time services 24 hours per day, seven days per week, and every day of the year:
 - (i) crisis support, by a qualified mental or behavioral health professional, to law enforcement officers; and
 - (ii) peer support services, by a certified peer support specialist, to individuals experiencing behavioral health crises.

- (2) In consultation with the commission and in accordance with the requirements of this section, the division shall award a grant for the development of a virtual crisis outreach program that primarily serves counties of the third, fourth, fifth, or sixth class.
- (3) The division shall prioritize the award of the grant described in Subsection (2) based on the extent to which providing the grant to the applicant will increase the provision of crisis support and peer support services in areas:
 - (a) with frequent mental or behavioral health provider shortages; and
 - (b) where only one mobile crisis outreach team is available to serve multiple counties of the third, fourth, fifth, or sixth class.
- (4) When not providing crisis support or peer support services to law enforcement or individuals in a county of the third, fourth, fifth, or sixth class, the virtual crisis outreach program developed using a grant under this section shall provide support services as needed to mobile crisis outreach teams in counties of the first or second class.
- (5) In consultation with the commission, the division may make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, for the application and award of the grant described in Subsection (2).
- (6) Before June 30, 2024, the division shall submit a written report to the committee regarding the virtual crisis outreach program developed using the grant awarded under this section.
- (7) Before June 30, 2026, the division shall submit a written report to the committee regarding:
 - (a) data gathered in relation to the rural virtual crisis outreach team developed using the grant awarded under this section;
 - (b) knowledge gained relating to the provision of virtual crisis outreach services;
 - (c) recommendations for the future use of virtual crisis outreach services; and
 - (d) obstacles encountered in the provision of virtual crisis outreach services.

Enacted by Chapter 270, 2023 General Session

Part 2

Substance Use Disorder Intervention, Prevention, and Education

26B-5-201 Definitions.

As used in this part:

- (1) "Juvenile substance use offender" means any minor who has committed a drug or alcohol related offense under the jurisdiction of the juvenile court in accordance with Section 78A-6-103.
- (2) "Local substance abuse authority" means a county legislative body designated to provide substance abuse services in accordance with Section 17-43-201.
- (3) "Minor" means the same as that term is defined in Section 80-1-102.
- (4) "Teen substance use school" means any school established by the local substance abuse authority, in cooperation with the Board of Juvenile Court Judges, that provides an educational, interpersonal, skill-building experience for juvenile substance abuse offenders and their parents or legal guardians.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-5-202 Teen substance use schools -- Establishment.

The division or a local substance abuse authority, in cooperation with the Board of Juvenile Court Judges, may establish teen substance use schools in the districts of the juvenile court.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-5-203 Court order to attend substance use school -- Assessments.

- (1) In addition to any other disposition ordered by the juvenile court under Section 80-6-701, the court may order:
 - (a) a minor and the minor's parent or legal guardian to attend a teen substance use school; and
 - (b) payment of an assessment in addition to any other fine imposed.
- (2) All assessments collected shall be forwarded to the county treasurer of the county where the minor resides, to be used exclusively for the operation of a teen substance use program.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-5-204 Commitment of minor to secure drug or alcohol facility or program -- Procedures -- Review.

- (1) As used in this section:
 - (a) "Approved treatment facility or program" means a public or private secure, inpatient facility or program that is licensed or operated by the department 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 18 years old 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 use; 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 clinical standpoint, as the proposed treatment facility or program.
- (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 criteria described in Subsection (6) continue to exist.

- (8) A minor committed under this section shall be released from the facility or program upon the request of his parent or legal guardian.
- (9) Commitment of a minor under this section terminates when the minor reaches the age of 18 years old.
- (10) Nothing in this section requires a program or facility to accept any person for 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.
- (12) The child shall be released from commitment unless the report of the neutral fact finder is submitted to the juvenile court within 72 hours of commitment and approved by the court.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-5-205 Alcohol training and education seminar.

- (1) As used in this section:
 - (a) "Instructor" means a person that directly provides the instruction during an alcohol training and education seminar for a seminar provider.
 - (b) "Licensee" means a person who is:
 - (i)
 - (A) a new or renewing licensee under Title 32B, Alcoholic Beverage Control Act; and
 - (B) engaged in the retail sale of an alcoholic product for consumption on the premises of the licensee; or
 - (ii) a business that is:
 - (A) a new or renewing licensee licensed by a city, town, or county; and
 - (B) engaged in the retail sale of beer for consumption off the premises of the licensee.
 - (c) "Licensee staff" means a retail manager, retail staff, an off-premise retail manager, or off-premise retail staff.
 - (d) "Off-premise beer retailer" is as defined in Section 32B-1-102.
 - (e) "Off-premise retail manager" means the same as that term is defined in Section 32B-1-701.
 - (f) "Off-premise retail staff" means the same as that term is defined in Section 32B-1-701.
 - (g) "Retail manager" means the same as that term is defined in Section 32B-1-701.
 - (h) "Retail staff" means the same as that term is defined in Section 32B-1-701.
 - (i) "Seminar provider" means a person other than the division who provides an alcohol training and education seminar meeting the requirements of this section.
- (2)
 - (a) This section applies to licensee staff.
 - (b) An individual who does not have a valid record that the individual has completed an alcohol training and education seminar shall:
 - (i) complete an alcohol training and education seminar before the day on which the individual begins work as licensee staff of a licensee; and
 - (ii) pay a fee to the seminar provider that is equal to or greater than the amount established under Subsection (4)(h).
 - (c) An individual shall have a valid record that the individual completed an alcohol training and education seminar within the time period provided in this Subsection (2) to act as licensee staff.

- (d) A record that licensee staff has completed an alcohol training and education seminar is valid for three years after the day on which the record is issued.
- (e) 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)
 - (i) 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.
 - (ii) In developing the requirements by rule the division shall consider whether to require:
 - (A) authentication that the an individual accurately identifies the individual as taking the online course or test;
 - (B) measures to ensure that an individual taking the online course or test is focused on training material throughout the entire training period;
 - (C) measures to track the actual time an individual taking the online course or test is actively engaged online;
 - (D) 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;
 - (E) a test to meet quality standards, including randomization of test questions and maximum time limits to take a test;
 - (F) 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;
 - (G) measures for the division to audit online courses or tests;
 - (H) measures to allow an individual taking an online course or test to provide an evaluation of the online course or test;
 - (I) a seminar provider to track the Internet protocol address or similar electronic location of an individual who takes an online course or test;
 - (J) an individual who takes an online course or test to use an e-signature; or
 - (K) a seminar provider to invalidate a certificate if the seminar provider learns that the certificate does not accurately reflect the individual who took the online course or test.
- (3)
 - (a) A licensee may not permit an individual who is not in compliance with Subsection (2) to:
 - (i) serve or supervise the serving of an alcoholic product to a customer for consumption on the premises of the licensee;
 - (ii) engage in any activity that would constitute managing operations at the premises of a licensee that engages in the retail sale of an alcoholic product for consumption on the premises of the licensee;

- (iii) directly supervise the sale of beer to a customer for consumption off the premises of an off-premise beer retailer; or
 - (iv) sell beer to a customer for consumption off the premises of an off-premise beer retailer.
- (b) A licensee that violates Subsection (3)(a) is subject to Section 32B-1-702.
- (4) The division shall:
 - (a)
 - (i) provide alcohol training and education seminars; or
 - (ii) certify one or more seminar providers;
 - (b) establish the curriculum for an alcohol training and education seminar that includes the following subjects:
 - (i)
 - (A) alcohol as a drug; and
 - (B) alcohol's effect on the body and behavior;
 - (ii) recognizing the problem drinker or signs of intoxication;
 - (iii) an overview of state alcohol laws related to responsible beverage sale or service, as determined in consultation with the Department of Alcoholic Beverage Services;
 - (iv) dealing with the problem customer, including ways to terminate sale or service; and
 - (v) for those supervising or engaging in the retail sale of an alcoholic product for consumption on the premises of a licensee, alternative means of transportation to get the customer safely home;
 - (c) recertify each seminar provider every three years;
 - (d) monitor compliance with the curriculum described in Subsection (4)(b);
 - (e) maintain for at least five years a record of every person who has completed an alcohol training and education seminar;
 - (f) provide the information described in Subsection (4)(e) on request to:
 - (i) the Department of Alcoholic Beverage Services;
 - (ii) law enforcement; or
 - (iii) a person licensed by the state or a local government to sell an alcoholic product;
 - (g) provide the Department of Alcoholic Beverage Services on request a list of any seminar provider certified by the division; and
 - (h) establish a fee amount for each person attending an alcohol training and education seminar that is sufficient to offset the division's cost of administering this section.
- (5) The division shall by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act:
 - (a) establish criteria for certifying and recertifying a seminar provider; and
 - (b) establish guidelines for the manner in which an instructor provides an alcohol education and training seminar.
- (6) A seminar provider shall:
 - (a) obtain recertification by the division every three years;
 - (b) ensure that an instructor used by the seminar provider:
 - (i) follows the curriculum established under this section; and
 - (ii) conducts an alcohol training and education seminar in accordance with the guidelines established by rule;
 - (c) ensure that any information provided by the seminar provider or instructor of a seminar provider is consistent with:
 - (i) the curriculum established under this section; and
 - (ii) this section;

- (d) provide the division with the names of all persons who complete an alcohol training and education seminar provided by the seminar provider;
 - (e)
 - (i) collect a fee for each person attending an alcohol training and education seminar in accordance with Subsection (2); and
 - (ii) forward to the division the portion of the fee that is equal to the amount described in Subsection (4)(h); and
 - (f) issue a record to an individual that completes an alcohol training and education seminar provided by the seminar provider.
- (7)
- (a) If after a hearing conducted in accordance with Title 63G, Chapter 4, Administrative Procedures Act, the division finds that a seminar provider violates this section or that an instructor of the seminar provider violates this section, the division may:
 - (i) suspend the certification of the seminar provider for a period not to exceed 90 days after the day on which the suspension begins;
 - (ii) revoke the certification of the seminar provider;
 - (iii) require the seminar provider to take corrective action regarding an instructor; or
 - (iv) prohibit the seminar provider from using an instructor until such time that the seminar provider establishes to the satisfaction of the division that the instructor is in compliance with Subsection (6)(b).
 - (b) The division may certify a seminar provider whose certification is revoked:
 - (i) no sooner than 90 days after the day on which the certification is revoked; and
 - (ii) if the seminar provider establishes to the satisfaction of the division that the seminar provider will comply with this section.

Renumbered and Amended by Chapter 308, 2023 General Session
Amended by Chapter 371, 2023 General Session

26B-5-207 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.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-5-208 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).
- (2) The fee assessed shall be collected by the court or an entity appointed by the court.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-5-209 Assessments for DUI -- Use of money for rehabilitation programs, including victim impact panels -- Rulemaking power granted.

- (1)
- (a) Assessments imposed under Section 26B-5-208 may, pursuant to court 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 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.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-5-210 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.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-5-211 Administration of opioid litigation proceeds -- Requirements for governmental entities receiving opioid funds -- Reporting.

- (1) As used in this section:
- (a) "Office" means the Office of Substance Use and Mental Health within the department.
 - (b) "Opioid funds" means money received by the state or a political subdivision of the state as a result of any judgment, settlement, or compromise of claims pertaining to alleged violations of law related to the manufacture, marketing, distribution, or sale of opioids.
 - (c) "Restricted account" means the Opioid Litigation Proceeds Restricted Account created in Section 51-9-801.
- (2) Opioid funds may not be used to:
- (a) reimburse expenditures that were incurred before the opioid funds were received by the governmental entity; or

- (b) supplant or take the place of any funds that would otherwise have been expended for that purpose.
- (3) The office shall serve as the reporting entity to receive, compile, and submit any reports related to opioid funds that are required by law, contract, or other agreement.
- (4) The requirement described in Subsection (5) applies to:
 - (a) a recipient of opioid funds from the restricted account, in any year that opioid funds are received; and
 - (b) a political subdivision that received opioid funds.
- (5) A person described in Subsection (4) shall provide an annual report to the office, in a form and by a date established by the office, that includes:
 - (a) an accounting of all opioid funds that were received by the person in the year;
 - (b) the number of individuals served through programs funded by the opioid funds, including the individuals' age, gender, and other demographic factors reported in a de-identified manner;
 - (c) the measures that were used to determine whether the program funded by the opioid funds achieved the intended outcomes; and
 - (d) if applicable, any information required to be submitted to the reporting entity under applicable law, contract, or other agreement.
- (6) Beginning October 1, 2023, and on or before October 1 of each year thereafter, the office shall provide a written report that includes:
 - (a) the opening and closing balance of the restricted account for the previous fiscal year;
 - (b) the name of and amount received by each recipient of funds from the restricted account;
 - (c) a description of the intended use of each award, including the specific program, service, or resource funded, population served, and measures that the recipient used or will use to assess the impact of the award;
 - (d) a description of any finding or concern as to whether all opioid funds disbursed from the restricted account violated the prohibitions in Subsection (2) and, if applicable, complied with the requirements of a settlement agreement; and
 - (e) the performance indicators and progress toward improving outcomes and reducing mortality and other harms related to substance use disorders.
- (7) The office shall provide the information that is received, compiled, and submitted under this section:
 - (a) to the Health and Human Services Interim Committee;
 - (b) to the Social Services Appropriations Subcommittee;
 - (c) if required under the terms of a settlement agreement under which opioid funds are received, to the administrator of the settlement agreement in accordance with the terms of the settlement agreement; and
 - (d) in a publicly accessible location on the department's website.
- (8) The office may make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to implement this section.

Enacted by Chapter 319, 2023 General Session

Part 3

Utah State Hospital and Other Mental Health Facilities

26B-5-301 Definitions.

As used in this part, Part 4, Commitment of Persons Under Age 18, and Part 5, Essential Treatment and Intervention:

- (1) "Adult" means an individual 18 years old or older.
- (2) "Approved treatment facility or program" means a mental health or substance use treatment provider that meets the goals and measurements described in Subsection 26B-5-102(2)(j).
- (3) "Assisted outpatient treatment" means involuntary outpatient mental health treatment ordered under Section 26B-5-351.
- (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.
- (5) "Attorney-in-fact" means an adult properly appointed under this part to make mental health treatment decisions for a declarant under a declaration for mental health treatment.
- (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.
- (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.
- (8) "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.
- (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.
- (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.
- (11) "Harmful sexual conduct" means the following conduct upon an individual without the individual's consent, including the nonconsensual circumstances described in Subsections 76-5-406(2)(a) through (l):
 - (a) sexual intercourse;
 - (b) penetration, however slight, of the genital or anal opening of the individual;
 - (c) any sexual act involving the genitals or anus of the actor or the individual and the mouth or anus of either individual, regardless of the gender of either participant; or
 - (d) any sexual act causing substantial emotional injury or bodily pain.
- (12) "Informed waiver" means the patient was informed of a right and, after being informed of that right and the patient's right to waive the right, expressly communicated his or her intention to waive that right.
- (13) "Incapable" means that, in the opinion of the court in a guardianship proceeding under Title 75, Utah Uniform Probate Code, or in the opinion of two physicians, a person's ability to receive and evaluate information effectively or communicate decisions is impaired to such an extent that the person currently lacks the capacity to make mental health treatment decisions.
- (14) "Institution" means a hospital or a health facility licensed under Section 26B-2-206.

- (15) "Local substance abuse authority" means the same as that term is defined in Section 26B-5-101 and described in Section 17-43-201.
- (16) "Mental health facility" means the Utah State Hospital or other facility that provides mental health services under contract with the division, a local mental health authority, a person that contracts with a local mental health authority, or a person that provides acute inpatient psychiatric services to a patient.
- (17) "Mental health officer" means an individual who is designated by a local mental health authority as qualified by training and experience in the recognition and identification of mental illness, to:
 - (a) apply for and provide certification for a temporary commitment; or
 - (b) assist in the arrangement of transportation to a designated mental health facility.
- (18) "Mental illness" means:
 - (a) a psychiatric disorder that substantially impairs an individual's mental, emotional, behavioral, or related functioning; or
 - (b) the same as that term is defined in:
 - (i) the current edition of the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association; or
 - (ii) the current edition of the International Statistical Classification of Diseases and Related Health Problems.
- (19) "Mental health treatment" means convulsive treatment, treatment with psychoactive medication, or admission to and retention in a facility for a period not to exceed 17 days.
- (20) "Patient" means an individual who is:
 - (a) under commitment to the custody or to the treatment services of a local mental health authority; or
 - (b) undergoing essential treatment and intervention.
- (21) "Physician" means an individual who is:
 - (a) licensed as a physician under Title 58, Chapter 67, Utah Medical Practice Act; or
 - (b) licensed as a physician under Title 58, Chapter 68, Utah Osteopathic Medical Practice Act.
- (22) "Serious bodily injury" means bodily injury that involves a substantial risk of death, unconsciousness, extreme physical pain, protracted and obvious disfigurement, or 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 26B-5-302.
- (24) "Substantial danger" means that due to mental illness, an individual is at serious risk of:
 - (a) suicide;
 - (b) serious bodily self-injury;
 - (c) serious bodily injury because the individual is incapable of providing the basic necessities of life, including food, clothing, or shelter;
 - (d) causing or attempting to cause serious bodily injury to another individual;
 - (e) engaging in harmful sexual conduct; or
 - (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
 - (ii) causes a substantial deterioration of the individual's previous ability to function independently.
- (25) "Treatment" means psychotherapy, medication, including the administration of psychotropic medication, or other medical treatments that are generally accepted medical or psychosocial interventions for the purpose of restoring the patient to an optimal level of functioning in the least restrictive environment.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-5-302 Utah State Hospital.

The Utah State Hospital is established and located in Provo, in Utah county.

Renumbered and Amended by Chapter 308, 2023 General Session

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.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-5-304 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.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-5-305 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, 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.
- (4) If the superintendent is qualified to be the clinical director, the superintendent may assume the duties of the clinical director.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-5-306 Objectives of state hospital and other facilities -- 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.
- (2) Only the following persons may be admitted to the state hospital:
 - (a) persons 18 years old 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 old who meet the criteria necessary for commitment under 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 condition under Title 77, Chapter 16a, Commitment and Treatment of Individuals with a Mental Condition;
 - (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 26B-5-372, giving priority to those persons with severe mental disorders.

Amended by Chapter 184, 2023 General Session

Renumbered and Amended by Chapter 308, 2023 General Session

26B-5-307 Additional powers of director -- Reports and records of division.

- (1) In addition to specific authority granted by other provisions of this part, the director has authority to prescribe the form of applications, records, reports, and medical certificates 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.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-5-308 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.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-5-309 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.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-5-310 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 rights under Utah law.

- (6) Notwithstanding Section 53B-17-303, an individual committed under this chapter has the right to determine the final disposition of that individual's body after death.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-5-311 Habeas corpus.

Any individual detained pursuant to this part is entitled to the writ of habeas corpus upon proper petition by themselves or a friend, to the court in the county in which the individual is detained.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-5-312 Confidentiality of information and records -- Exceptions -- Penalty.

- (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.
- (2) A person who knowingly or intentionally discloses any information not authorized by this section is guilty of a class B misdemeanor.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-5-313 Declaration for mental health treatment.

- (1) An adult who is not incapable may make a declaration of preferences or instructions regarding the adult's 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 26B-5-314(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.

- (5)
 - (a) An attorney-in-fact does not have authority to make mental health treatment 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 the attorney-in-fact, 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.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-5-314 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 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 this part; or
 - (b) in cases of emergency endangering life or health.
- (3) A declaration does not limit any authority provided in this part, 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.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-5-315 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 voluntarily make this declaration for mental health treatment, to be followed if it is determined by a court or by two physicians that my ability to receive and evaluate information effectively or to communicate my decisions is impaired to such an extent that I lack the capacity to refuse or consent to mental health treatment. "Mental health treatment" means convulsive treatment, treatment with psychoactive medication, and admission to and retention in a mental health facility for a period up to 17 days.

I understand that I may become incapable of giving or withholding informed consent for mental health treatment due to the symptoms of a diagnosed mental disorder. These symptoms may include:

PSYCHOACTIVE MEDICATIONS

If I become incapable of giving or withholding informed consent for mental health treatment, my wishes regarding psychoactive medications are as follows:

_____ I consent to the administration of the following medications:

_____ 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:

CONVULSIVE TREATMENT

If I become incapable of giving or withholding informed consent for mental health treatment, my wishes regarding convulsive treatment are as follows:

_____ I consent to the administration of convulsive treatment of the following type:
_____, the number 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 treatment, my wishes regarding admission to and retention in a mental health facility are as follows:

_____ I consent to being admitted to the following mental health facilities:

I may be retained in the facility for a period of time:

_____ determined by my attending physician.

_____ approved by _____

_____ no longer than _____

This 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:

NAME _____

ADDRESS _____

TELEPHONE # _____

to act as my attorney-in-fact to make decisions regarding my mental health treatment if I become incapable of giving or withholding informed consent for that treatment.

If the person named above refuses or is unable to act on my behalf, or if I revoke that person's authority to act as my attorney-in-fact, I authorize the following person to act as my alternative attorney-in-fact:

NAME _____

ADDRESS _____

TELEPHONE # _____

My attorney-in-fact is authorized to make decisions which are consistent with the wishes I have expressed in this declaration. If my wishes are not expressed, my attorney-in-fact is to act in good faith according to what he or she believes to be in my best interest.

(Signature of Declarant/Date)

AFFIRMATION OF WITNESSES

We affirm that the declarant is personally known to us, that the declarant signed or acknowledged the declarant's signature on this declaration for mental health treatment in our presence, that the declarant appears to be of sound mind and does not appear to be under duress, fraud, or undue influence. Neither of us is the person appointed as attorney-in-fact by this document, the attending physician, an employee of the attending physician, an employee of the Office of Substance Abuse and Mental Health within the Department of Health and Human Services, an employee of a local mental health authority, or an employee of any organization that contracts with a local mental health authority.

Witnessed By:

(Signature of Witness/Date)	(Printed Name of Witness)
(Signature of Witness/Date)	(Printed Name of Witness)

ACCEPTANCE OF APPOINTMENT AS ATTORNEY-IN-FACT

I accept this appointment and agree to serve as attorney-in-fact to make decisions about mental health treatment for the declarant. I understand that I have a duty to act consistently with the desires of the declarant as expressed in the declaration. I understand that this document gives me authority to make decisions about mental health treatment only while the declarant is incapable as determined by a court or two physicians. I understand that the declarant may revoke this appointment, or the declaration, in whole or in part, at any time and in any manner, when the declarant is not incapable.

(Signature of Attorney-in-fact/Date)	(Printed name)
(Signature of Alternate Attorney-in-fact/Date)	(Printed name)

**NOTICE TO PERSON MAKING A
DECLARATION FOR MENTAL HEALTH TREATMENT**

This is an important legal document. It is a declaration that allows, or disallows, mental health treatment. Before signing this document, you should know that:

- (1) this document allows you to make decisions in advance about three types of mental health treatment: psychoactive medication, convulsive therapy, and short-term (up to 17 days) admission to a mental health facility;
- (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. Otherwise, you will be considered capable to give or withhold consent for treatment;
- (3) you may also appoint a person as your attorney-in-fact to make these treatment decisions for you if you become incapable. The person you appoint has a duty to act consistently with your desires as stated in this document or, if not stated, to make decisions in accordance with what that person believes, in good faith, to be in your best interest. For the appointment to be effective, the person you appoint must accept the appointment in writing. The person also has the right to withdraw from acting as your attorney-in-fact at any time;
- (4) this document will continue in effect for a period of three years unless you become incapable of participating in mental health treatment decisions. If this occurs, the directive will continue in effect until you are no longer incapable;
- (5) you have the right to revoke this document in whole or in part, or the appointment of an attorney-in-fact, at any time you have not been determined to be incapable. **YOU MAY NOT REVOKE THE DECLARATION OR APPOINTMENT WHEN YOU ARE CONSIDERED**

- INCAPABLE BY A COURT OR TWO PHYSICIANS. A revocation is effective when it is 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.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-5-316 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, spouse, parents, child or children who are of sufficient financial ability to do so, or by the 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 26B, Chapter 9, Recovery Services and Administration of Child Support.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-5-317 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 26B-5-316.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-5-318 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.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-5-319 Receipt of gift and personal property related to the transfer of persons from other institutions.

- (1) The division may take and hold by gift, devise, or bequest real and personal property required for the use of the state hospital. With the approval of the governor the 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 26B-1-202(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.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-5-320 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.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-5-321 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.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-5-322 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 Individuals with a Mental Condition, who escapes or leaves the state hospital without proper legal authority is guilty of a class A misdemeanor.

Amended by Chapter 184, 2023 General Session

Renumbered and Amended by Chapter 308, 2023 General Session

26B-5-323 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.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-5-324 Local mental health authority -- Supervision and treatment of persons with a mental illness.

- (1) Each local mental health authority has responsibility for supervision and treatment of persons with a mental illness who have been committed to its custody under the provisions 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 26B-5-303, shall enforce Sections 26B-5-320 through 26B-5-323 and Section 26B-5-342 to the extent they pertain to the state hospital.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-5-325 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.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-5-326 Allocation of state hospital beds -- Formula.

- (1) As used in this section:
 - (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 26B-5-306(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 permits; and
 - (ii) on July 1, 2011, and every three years after July 1, 2011, according to the state's population.
 - (c) All population figures utilized shall reflect the most recent available population estimates from the Utah Population Committee.
- (3) The formula established under Subsection (2) shall provide for allocation of beds based on:
 - (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.
- (6) The board shall periodically review and make changes in the formula established under Subsection (2) as necessary to accurately reflect changes in population.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-5-327 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.
- (2) On July 1, 1996, 72 pediatric beds shall be allocated to local mental health authorities under this section. The division shall review and adjust the number of pediatric beds as necessary every three years according to the state's population of persons under 18 years old. 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 18 years old 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.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-5-330 Involuntary commitment -- Procedures.

- (1) An adult may not be involuntarily committed to the custody of a local mental health authority except under the following provisions:
 - (a) emergency procedures for temporary commitment upon medical or designated examiner certification, as provided in Subsection 26B-5-331(1)(a);
 - (b) emergency procedures for temporary commitment without endorsement of medical or designated examiner certification, as provided in Subsection 26B-5-331(1)(b); or
 - (c) commitment on court order, as provided in Section 26B-5-332.

- (2) A person under 18 years old may be committed to the physical custody of a local mental health authority only in accordance with the provisions of Part 4, Commitment of Persons Under Age 18.

Renumbered and Amended by Chapter 308, 2023 General Session

Superseded 7/1/2024

26B-5-331 Temporary commitment -- Requirements and procedures -- Rights.

- (1) An adult shall be temporarily, involuntarily committed to a local mental health authority upon:
- (a) a written application that:
 - (i) is completed by a responsible individual who has reason to know, stating a belief 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 lead to the individual's belief; and
 - (ii) includes a certification by a licensed physician, licensed physician assistant, licensed nurse practitioner, or designated examiner stating that the physician, physician assistant, nurse practitioner, or designated examiner has examined the adult within a three-day period immediately preceding the certification, and that the physician, physician assistant, nurse practitioner, or designated examiner is of the opinion that, due to mental illness, the adult poses a substantial danger to self or others; or
 - (b) a peace officer or a mental health officer:
 - (i) observing an adult's conduct that gives the peace officer or mental health officer probable cause to believe that:
 - (A) the adult has a mental illness; and
 - (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:
 - (A) is on a form prescribed by the division;
 - (B) states the peace officer's or mental health officer's belief that the adult poses a substantial danger to self or others;
 - (C) states the specific nature of the danger;
 - (D) provides a summary of the observations upon which the statement of danger is based; and
 - (E) provides a statement of the facts that called the adult to the peace officer's or 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 26B-5-332, an application for involuntary commitment is commenced, which may be accompanied by an order of detention described in Subsection 26B-5-332(4);
 - (ii) the patient makes a voluntary application for admission; or
 - (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;
 - (B) additional time is necessary for evaluation and treatment of the patient's mental illness;
 - and
 - (C) there is no appropriate less-restrictive alternative to commitment to evaluate and 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, Sundays, and legal holidays.
 - (c) Subsection (3)(a)(iii) applies to an adult patient.
- (4) Upon a written application described in Subsection (1)(a) or the observation and 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 for public safety; and
 - (b) transported for temporary commitment to a facility designated by the local mental health authority, by means of:
 - (i) an ambulance, if the adult meets any of the criteria described in Section 26B-4-119;
 - (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 26B-4-101.
 - (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 into protective custody or transport an individual, the officer shall document in the officer's 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 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.
 - (7)
 - (a) Title 63G, Chapter 7, Governmental Immunity Act of Utah, applies to this section.
 - (b) This section does not create a special duty of care.

Renumbered and Amended by Chapter 308, 2023 General Session

Effective 7/1/2024

26B-5-331 Temporary commitment -- Requirements and procedures -- Rights.

- (1) An adult shall be temporarily, involuntarily committed to a local mental health authority upon:
- (a) a written application that:
 - (i) is completed by a responsible individual who has reason to know, stating a belief 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 lead to the individual's belief; and
 - (ii) includes a certification by a licensed physician, licensed physician assistant, licensed nurse practitioner, or designated examiner stating that the physician, physician assistant, nurse practitioner, or designated examiner has examined the adult within a three-day period immediately preceding the certification, and that the physician, physician assistant, nurse practitioner, or designated examiner is of the opinion that, due to mental illness, the adult poses a substantial danger to self or others; or
 - (b) a peace officer or a mental health officer:
 - (i) observing an adult's conduct that gives the peace officer or mental health officer probable cause to believe that:
 - (A) the adult has a mental illness; and
 - (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:
 - (A) is on a form prescribed by the division;
 - (B) states the peace officer's or mental health officer's belief that the adult poses a substantial danger to self or others;
 - (C) states the specific nature of the danger;
 - (D) provides a summary of the observations upon which the statement of danger is based; and
 - (E) provides a statement of the facts that called the adult to the peace officer's or 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 26B-5-332, an application for involuntary commitment is commenced, which may be accompanied by an order of detention described in Subsection 26B-5-332(4);
 - (ii) the patient makes a voluntary application for admission; or
 - (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;
 - (B) additional time is necessary for evaluation and treatment of the patient's mental illness; and

- (C) there is no appropriate less-restrictive alternative to commitment to evaluate and 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, Sundays, and legal holidays.
- (c) Subsection (3)(a)(iii) applies to an adult patient.
- (4) Upon a written application described in Subsection (1)(a) or the observation and 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 for public safety; and
 - (b) transported for temporary commitment to a facility designated by the local mental health authority, by means of:
 - (i) an ambulance, if the adult meets any of the criteria described in Section 26B-4-119;
 - (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 53-2d-101.
- (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 into protective custody or transport an individual, the officer shall document in the officer's 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 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.
- (7)
 - (a) Title 63G, Chapter 7, Governmental Immunity Act of Utah, applies to this section.
 - (b) This section does not create a special duty of care.

Renumbered and Amended by Chapter 308, 2023 General Session
Amended by Chapter 310, 2023 General Session

26B-5-332 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 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 proposed patient's:
 - (i) name;
 - (ii) date of birth; and
 - (iii) social security number;
 - (b)
 - (i) a certificate of a licensed physician or a designated examiner stating that within the seven-day period immediately preceding the certification, the physician or designated examiner examined the proposed patient and is of the opinion that the proposed patient has 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
 - (c) a statement whether the proposed patient has previously been under an assisted 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 26B-5-334, 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 4, Commitment of Persons Under Age 18.
- (7)
- (a) The court may, in the 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 or examination, the court shall appoint two designated examiners:
- (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
 - (c) one of whom may be designated by the proposed patient or the proposed patient's counsel, if that designated examiner is reasonably available.
- (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:
 - (i) conduct the examinations separately;
 - (ii) conduct the examinations at the home of the proposed patient, at a hospital or other medical facility, or at any other suitable place, including through telehealth, that is not 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;
 - (D) that any information volunteered could form part of the basis for the proposed patient's involuntary commitment;
 - (E) that findings resulting from the examination will be made available to the court; 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 26B-5-360, 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.
- (11) 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.
- (12) If the local mental health authority, the local mental health authority's designee, or a medical examiner determines before the court hearing that the conditions justifying the findings leading to a commitment hearing no longer exist, the local mental health authority, the local mental health authority's designee, or the medical examiner shall immediately report 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);
 - (b) has agreed to voluntary commitment, as described in Section 26B-5-360;
 - (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 26B-5-351.
- (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.
 - (c) The court shall conduct the hearing 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 mental health of the proposed patient, while preserving the due process rights of the proposed patient.
 - (d) The court shall consider any relevant historical and material information that is offered, subject to the rules of evidence, including reliable hearsay under Utah Rules of Evidence, Rule 1102.
 - (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:
 - (A) the detention order;
 - (B) admission notes;
 - (C) the diagnosis;
 - (D) any doctors' orders;
 - (E) progress notes;
 - (F) nursing notes;
 - (G) medication records pertaining to the current commitment; and
 - (H) whether the proposed patient has previously been civilly committed or under an 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; and
 - (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 26B-5-351.
 - (ii) The court may order the proposed patient to receive assisted outpatient treatment in accordance with Section 26B-5-351 if, at the hearing, the court finds the proposed patient meets the criteria for assisted outpatient treatment under Section 26B-5-351.
 - (iii) If the court determines that neither the criteria for commitment under Subsection (16)(a) nor the criteria for assisted outpatient treatment under Section 26B-5-351 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 shall appoint three impartial designated examiners previously unrelated to the case to conduct an additional examination of the patient.

- (c) Except as provided in Subsection (18)(b), the court shall, in all other respects, conduct the new hearing in the manner otherwise permitted.
- (19) The county in which the proposed patient resides or is found shall pay the costs of all proceedings under this section.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-5-333 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 26B-5-332(16), the conditions justifying commitment under that Subsection shall be considered to continue to exist for purposes of continued treatment under Subsection 26B-5-332(17) or conditional release under Section 26B-5-337 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) 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 26B-5-351(14), the individual may be involuntarily committed to the custody of a local mental health authority under Subsection 26B-5-332(16) for purposes of continued treatment under Subsection 26B-5-332(17) or conditional release under Section 26B-5-337, 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.

Renumbered and Amended by Chapter 308, 2023 General Session

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.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-5-335 Notice of commitment.

Whenever a patient has been temporarily, involuntarily committed to a local mental health authority under Section 26B-5-331 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.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-5-336 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.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-5-337 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
 - (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:
 - (i) state the reasons for the order;
 - (ii) authorize any peace officer to take the patient into physical custody and transport 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 26B-5-332(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 26B-5-332, with the exception of Subsection 26B-5-332(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 26B-5-336, from discharging a patient from commitment or from placing a patient in an environment that is less restrictive than that ordered by the court.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-5-338 Reexamination of court order for commitment -- Procedures -- Costs.

- (1) Any patient committed pursuant to Section 26B-5-332 is entitled to a reexamination of the order for commitment on the patient's own petition, or on that of the legal guardian, parent, spouse, relative, or friend, to the 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 26B-5-332, 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 court in the county where the proceedings are held, to the county legislative body that those proceedings were held and the costs incurred.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-5-339 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.

- (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;
 - (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.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-5-340 Mental health commissioners.

The court may appoint a mental health commissioner to assist in conducting commitment proceedings in accordance with Section 78A-5-107.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-5-341 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 26B-5-332.
 - (b) A local mental health authority's inability to locate a committed individual may not be the basis for the individual's release, unless the court orders the release of the individual 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 26B-5-405, 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 26B-5-336 and 26B-5-337.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-5-342 Attempt to commit person contrary to requirements -- Penalty.

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.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-5-350 Assisted outpatient treatment services.

- (1) The local mental health authority or 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.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-5-351 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 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 proposed patient's:
 - (i) name;
 - (ii) date of birth; and
 - (iii) social security number; and
 - (b)
 - (i) a certificate of a licensed physician or a designated examiner stating that within the seven-day period immediately preceding the certification, the physician or designated examiner examined the proposed patient and is of the opinion that the proposed patient has 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.
- (2)
 - (a) Subject to Subsection (2)(b), before issuing a judicial order, the court may require the applicant to consult with the appropriate local mental health authority, and the court may direct a mental health professional from that local mental health authority to interview the applicant and the proposed patient to determine the existing facts and report them to the court.
 - (b) The consultation described in Subsection (2)(a):
 - (i) may take place at or before the hearing; and
 - (ii) is required if the local mental health authority appears at the hearing.
- (3) If the proposed patient refuses to submit to an interview described in Subsection (2)(a) or an examination described in Subsection (8), the court may issue an order, directed to a mental health officer or peace officer, to immediately place the proposed patient into the custody of a local mental health authority or in a temporary emergency facility, as provided in Section 26B-5-334, to be detained for the purpose of examination.
- (4) Notice of commencement of proceedings for assisted outpatient treatment, setting forth the allegations of the application and any reported facts, together with a copy of any official order of detention, shall:
 - (a) be provided by the court to a proposed patient before, or upon, placement into 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;
 - (b) be maintained at the proposed patient's place of detention, if any;
 - (c) be provided by the court 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 its designee, and any other person whom the proposed patient or the court shall designate; and

- (d) advise that a hearing may be held within the time provided by law.
- (5) The court may, in its discretion, transfer the case to any other 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:
 - (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
 - (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:
 - (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;
 - (ii) of the nature and reasons for the examination;
 - (iii) that the examination was ordered by the court;
 - (iv) that any information volunteered could form part of the basis for the proposed patient to be ordered to receive assisted outpatient treatment; and
 - (v) that findings resulting from the examination will be made available to the court; and
 - (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 mental health of the proposed patient.
 - (d) The court shall consider all relevant historical and material information that is offered, subject to the rules of evidence, including reliable hearsay under Rule 1102, Utah 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;
 - (B) admission notes, if any;
 - (C) the diagnosis, if any;
 - (D) doctor's orders, if any;
 - (E) progress notes, if any;
 - (F) nursing notes, if any; and
 - (G) medication records, if any.
 - (ii) The information described in Subsection (13)(e)(i) shall also be provided to the proposed patient's counsel:
 - (A) at the time of the hearing; and
 - (B) at any time prior to the hearing, upon request.
- (14) The court shall order a proposed patient to assisted outpatient treatment if, upon completion of the hearing and consideration of the information presented, the court finds by clear and convincing evidence that:
- (a) the proposed patient has a mental illness;
 - (b) there is no appropriate less-restrictive alternative to a court order for assisted 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.
- (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(g), for purposes of the patient's mental health treatment.
- (16) In the absence of the findings described in Subsection (14), the court, after the hearing, shall dismiss the proceedings.

(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.
- (b) At a review hearing, the court may extend the duration of an assisted outpatient treatment order by up to 12 months, if:
 - (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.
- (20) As provided in Section 31A-22-651, a health insurance provider may not deny an insured the benefits of the insured's policy solely because the health care that the insured receives is provided under a court order for assisted outpatient treatment.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-5-360 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.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-5-361 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 26B-5-360, 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 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.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-5-362 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.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-5-363 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 the Interstate Compact on Mental Health in Section 26B-5-365.
- (2) This section does not prevent commitment of persons who are traveling through or temporarily residing in this state.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-5-364 Persons eligible for care or treatment by federal agency -- Continuing jurisdiction of state courts.

- (1) If an individual committed pursuant to Section 26B-5-332 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.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-5-365 Interstate Compact on Mental Health -- Compact provisions.

The Interstate Compact on Mental Health is hereby enacted and entered into with all other jurisdictions that legally join in the compact, which is, in form, substantially as follows:

INTERSTATE COMPACT ON MENTAL HEALTH

The contracting states solemnly agree that:

Article I

The proper and expeditious treatment of the mentally ill can be facilitated by cooperative action, to the benefit of the patients, their families, and society as a whole. Further, the party states find that the necessity of and desirability of furnishing that care and treatment bears no primary relation to the residence or citizenship of the patient but that the controlling factors of community safety and humanitarianism require that facilities and services be made available for all who are in need of them. Consequently, it is the purpose of this compact and of the party states to provide the necessary legal and constitutional basis for commitment or other appropriate care and treatment of the mentally ill under a system that recognizes the paramount importance of patient welfare and to establish the responsibilities of the party states.

The appropriate authority in this state for making determinations under this compact is the director of the division or his designee.

Article II

As used in this compact:

- (1) "After-care" means care, treatment, and services provided to a patient on convalescent status or conditional release.
- (2) "Institution" means any hospital, program, or facility maintained by a party state or political subdivision for the care and treatment of persons with a mental illness.
- (3) "Mental illness" means a psychiatric disorder as defined by the current Diagnostic and Statistical Manual of Mental Disorders, that substantially impairs a person's mental, 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.

Article III

(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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-5-366 Interstate compact on mental health -- 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 this part.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-5-367 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.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-5-370 Establishment of the Utah Forensic Mental Health Facility.

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.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-5-371 Utah Forensic Mental Health Facility -- Design and operation -- Security.

(1) The forensic mental health facility is a secure treatment facility.

(2)

(a) The forensic mental health facility accommodates the following populations:

- (i) prison inmates displaying mental illness necessitating treatment in a secure mental health facility;
- (ii) criminally adjudicated persons found guilty with a mental illness or guilty with a mental condition at the time of the offense undergoing evaluation for a mental condition under Title 77, Chapter 16a, Commitment and Treatment of Individuals with a Mental Condition;
- (iii) criminally adjudicated persons undergoing evaluation for competency or found guilty with a mental condition or guilty with a mental condition at the time of the offense under Title 77, Chapter 16a, Commitment and Treatment of Individuals with a Mental Condition, 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 this part, 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 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:
- (a) own and operate the forensic mental health facility;
 - (b) provide and supervise administrative and clinical staff; and
 - (c) provide security staff who are trained as psychiatric technicians.
- (4) Pursuant to Subsection 26B-5-303(3) the executive director shall designate individuals to perform security functions for the state hospital.

Amended by Chapter 184, 2023 General Session

Renumbered and Amended by Chapter 308, 2023 General Session

26B-5-372 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 26B-5-306(2).
- (2) If the director denies the admission of an inmate as requested by the clinical director within the Department of Corrections, the Board of Pardons and Parole shall determine whether the inmate will be admitted to the state hospital. The Board of Pardons and Parole 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 26B-5-306(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;
 - (c) whether the person continues to meet the requirements of Subsection 26B-5-306(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
 - (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.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-5-380 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.
- (2) When the department is ordered by a court to conduct a competency evaluation, the department shall designate a forensic evaluator, selected under Subsection (4), to evaluate the defendant in the defendant's current custody or status.
- (3) When the department is ordered by the juvenile court to conduct a juvenile competency evaluation under Section 80-6-402, the department shall:
 - (a) designate an examiner selected pursuant to Subsection (4) to evaluate the minor; 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.

Renumbered and Amended by Chapter 308, 2023 General Session

Part 4
Commitment of Persons Under Age 18

26B-5-401 Definitions.

In addition to the definitions in Section 26B-5-301, as used in this part:

- (1) "Child" means a person under 18 years old.
- (2) "Commit" and "commitment" mean the transfer of physical custody in accordance with the requirements of this part.
- (3) "Legal custody" means:
 - (a) the right to determine where and with whom the child shall live;
 - (b) the right to participate in all treatment decisions and to consent or withhold consent for treatment in which a constitutionally protected liberty or privacy interest may be affected, including antipsychotic medication, electroshock therapy, and psychosurgery; and
 - (c) the right to authorize surgery or other extraordinary medical care.
- (4) "Physical custody" means:
 - (a) placement of a child in any residential or inpatient setting;
 - (b) the right to physical custody of a child;
 - (c) the right and duty to protect the child; and
 - (d) the duty to provide, or insure that the child is provided with, adequate food, clothing, shelter, and ordinary medical care.
- (5) "Residential" means any out-of-home placement made by a local mental health authority, but does not include out-of-home respite care.
- (6) "Respite care" means temporary, periodic relief provided to parents or guardians from the daily care of children with serious emotional disorders for the limited time periods designated by the division.

Renumbered and Amended by Chapter 308, 2023 General Session

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.

Renumbered and Amended by Chapter 308, 2023 General Session

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; and
 - (b) may not profit, financially or otherwise, from the commitment or physical placement of the child in that setting.
- (4) Upon determination by a fact finder that the following circumstances clearly exist, the fact finder may order that the child be committed to the physical custody of a local mental health authority:
- (a) the child has a mental illness;
 - (b) the child demonstrates a reasonable fear of the risk of substantial danger to self or others;
 - (c) the child will benefit from care and treatment by the local mental health authority; and
 - (d) there is no appropriate less-restrictive alternative.
- (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.
 - (b) The child, the child's parent or legal guardian, the petitioner, and a representative 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.
 - (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:
 - (i) the petition for commitment;
 - (ii) the admission notes;
 - (iii) the child's diagnosis;
 - (iv) physicians' orders;
 - (v) progress notes;
 - (vi) nursing notes; and
 - (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 26B-5-331 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 and Youth 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 and Youth 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 and Youth 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;
 - (ii) admission notes;
 - (iii) diagnosis;
 - (iv) physicians' orders;
 - (v) progress notes;
 - (vi) nursing notes; and
 - (vii) medication records.

- (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 26B-5-405. 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 26B-5-704, 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.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-5-404 Invasive treatment -- Due process proceedings.

- (1) For purposes of this section, "invasive treatment" means treatment in which a constitutionally protected liberty or privacy interest may be affected, including antipsychotic 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.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-5-405 Commitment proceedings in juvenile court -- Criteria -- Custody.

- (1)
 - (a) Subject to Subsection (1)(b), a commitment proceeding for a child may be commenced by filing a written application with the juvenile court of the county in which the child resides or is found, in accordance with the procedures described in Section 26B-5-332.
 - (b) A commitment proceeding under this section may be commenced only after a commitment proceeding under Section 26B-5-403 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;
 - (b) the child demonstrates a risk of harm to the child or others;
 - (c) the child is experiencing significant impairment in the child's ability to perform socially;
 - (d) the child will benefit from the proposed care and treatment; and
 - (e) there is no appropriate less restrictive alternative.
- (3) The juvenile court may not commit a child under Subsection (1) directly to the 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.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-5-406 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.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-5-407 Confidentiality of information and records -- Exceptions -- Penalty.

- (1) Notwithstanding the provisions of Title 63G, Chapter 2, Government Records Access and Management Act, all certificates, applications, records, and reports made for the purpose of this part 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 as follows:
 - (a) the individual identified consents after reaching 18 years old;
 - (b) the child's parent or legal guardian consents;
 - (c) disclosure is necessary to carry out any of the provisions of this part; or

(d) 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.

(2) A person who violates any provision of this section is guilty of a class B misdemeanor.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-5-408 Mechanical restraints -- Clinical record.

Mechanical restraints may not be applied to a child unless it is determined, by the local mental health authority or its designee in conjunction with the child's current treating mental health professional, that they are required by the needs of that child. Every use of a mechanical restraint and the reasons for that use shall be made a part of the child's clinical record, under the signature of the local mental health authority, its designee, and the child's current treating mental health professional.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-5-409 Habeas corpus.

Any child committed in accordance with Section 26B-5-403 is entitled to a writ of habeas corpus upon proper petition by himself or next of friend to the court in the district in which he is detained.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-5-410 Restrictions and limitations -- Civil rights and privileges.

(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 26B-5-403 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.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-5-411 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.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-5-412 Responsibilities of the division.

- (1) The division shall ensure that the requirements of this part are met and applied uniformly by local mental health authorities across the state.
- (2) Because the division must, under Section 26B-5-102, contract with, review, approve, and oversee local mental health authority plans, and withhold funds from local mental health authorities and public and private providers for contract noncompliance or misuse of public funds, the division shall:
 - (a) require each local mental health authority to submit its plan to the division by May 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.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-5-413 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;
- (2) 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:
 - (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 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

- (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.

Renumbered and Amended by Chapter 308, 2023 General Session

Part 5

Essential Treatment and Intervention

26B-5-501 Definitions.

In addition to the definitions in Section 26B-5-301, as used in this part:

- (1) "Emergency, life saving treatment" means treatment that is:
 - (a) provided at a licensed health care facility or licensed human services program;
 - (b) provided by a licensed health care professional;
 - (c) necessary to save the life of the patient; and
 - (d) required due to the patient's:
 - (i) use of an illegal substance; or
 - (ii) excessive use or misuse of a prescribed medication.
- (2) "Essential treatment examiner" means:
 - (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; 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 substance use disorder.
- (3) "Relative" means an adult who is a spouse, parent, stepparent, grandparent, child, or sibling of an individual.
- (4) "Serious harm" means the individual, due to substance use disorder, is at serious risk of:
 - (a) drug overdose;
 - (b) suicide;
 - (c) serious bodily self-injury;
 - (d) serious bodily injury because the individual is incapable of providing the basic necessities of life, including food, clothing, or shelter; or
 - (e) causing or attempting to cause serious bodily injury to another individual.

- (5) "Substance use disorder" means the same as that term is defined in the current edition of the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-5-502 Statement of legislative intent.

To address the serious public health crisis of substance use disorder related deaths and life-threatening opioid addiction, and to allow and enable caring relatives to seek essential treatment and intervention, as may be necessary, on behalf of a sufferer of a substance use disorder, the Legislature enacts the Essential Treatment and Intervention Act.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-5-503 Petition for essential treatment -- Contents -- Commitment to pay.

- (1) A relative seeking essential treatment and intervention for a sufferer of a substance use disorder may file a petition with the court of the county in which the sufferer of the substance use disorder resides or is found.
- (2) The petition shall include:
- (a) the respondent's:
 - (i) legal name;
 - (ii) date of birth, if known;
 - (iii) social security number, if known; and
 - (iv) residence and current location, if known;
 - (b) the petitioner's relationship to the respondent;
 - (c) the name and residence of the respondent's legal guardian, if any and if known;
 - (d) a statement that the respondent:
 - (i) is suffering from a substance use disorder; and
 - (ii) if not treated for the substance use disorder presents a serious harm to self or others;
 - (e) the factual basis for the statement described in Subsection (2)(d); and
 - (f) at least one specified local substance abuse authority or approved treatment facility or program where the respondent may receive essential treatment.
- (3) Any petition filed under this section:
- (a) may be accompanied by proof of health insurance to provide for the respondent's essential treatment;
 - (b) shall be accompanied by a binding commitment to pay, signed by the petitioner or another individual, obligating the petitioner or other individual to pay all treatment costs beyond those covered by the respondent's health insurance policy for court-ordered essential treatment for the respondent; and
 - (c) may be accompanied by documentation of emergency, life saving treatment provided to the respondent.
- (4) Nothing in this section alters the contractual relationship between a health insurer and an insured individual.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-5-504 Criteria for essential treatment and intervention.

A court shall order an individual to undergo essential treatment for a substance use disorder when the court determines by clear and convincing evidence that the individual:

- (1) suffers from a substance use disorder;
- (2) can reasonably benefit from the essential treatment;
- (3) is unlikely to substantially benefit from a less-restrictive alternative treatment; and
- (4) presents a serious harm to self or others.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-5-505 Proceeding for essential treatment -- Duties of court -- Disposition.

- (1) A court shall review the assertions contained in the verified petition described in Section 26B-5-503.
- (2) If the court determines that the assertions, if true, are sufficient to order the respondent to undergo essential treatment, the court shall:
 - (a) set an expedited date for a time-sensitive hearing to determine whether the court should order the respondent to undergo essential treatment for a substance use disorder;
 - (b) provide notice of:
 - (i) the contents of the petition, including all assertions made;
 - (ii) a copy of any order for detention or examination;
 - (iii) the date of the hearing;
 - (iv) the purpose of the hearing;
 - (v) the right of the respondent to be represented by legal counsel; and
 - (vi) the right of the respondent to request a preliminary hearing before submitting to an order for examination;
 - (c) provide notice to:
 - (i) the respondent;
 - (ii) the respondent's guardian, if any; and
 - (iii) the petitioner; and
 - (d) subject to the right described in Subsection (2)(b)(vi), order the respondent to be examined before the hearing date:
 - (i) by two essential treatment examiners; or
 - (ii) by one essential treatment examiner, if documentation before the court demonstrates that the respondent received emergency, life saving treatment:
 - (A) within 30 days before the day on which the petition for essential treatment and intervention was filed; or
 - (B) during the pendency of the petition for essential treatment and intervention.
- (3) An essential treatment examiner shall examine the respondent to determine:
 - (a) whether the respondent meets each of the criteria described in Section 26B-5-504;
 - (b) the severity of the respondent's substance use disorder, if any;
 - (c) what forms of treatment would substantially benefit the respondent, if the examiner determines that the respondent has a substance use disorder; and
 - (d) the appropriate duration for essential treatment, if essential treatment is recommended.
- (4) An essential treatment examiner shall certify the examiner's findings to the court within 24 hours after completion of the examination.
- (5) The court may, based upon the findings of an essential treatment examiner, terminate the proceedings and dismiss the petition.
- (6) The parties may, at any time, make a binding stipulation to an essential treatment plan and submit that plan to the court for court order.

- (7) At the hearing, the petitioner and the respondent may testify and may cross-examine witnesses.
- (8) If, upon completion of the hearing, the court finds that the criteria in Section 26B-5-504 are met, the court shall order essential treatment for an initial period that:
 - (a) does not exceed 360 days, subject to periodic review as provided in Section 26B-5-507; and
 - (b)
 - (i) is recommended by an essential treatment examiner; or
 - (ii) is otherwise agreed to at the hearing.
- (9) The court shall designate the facility for the essential treatment, as:
 - (a) described in the petition;
 - (b) recommended by an essential treatment examiner; or
 - (c) agreed to at the hearing.
- (10) The court shall issue an order that includes the court's findings and the reasons for the court's determination.
- (11) The court may order the petitioner to be the respondent's personal representative, as described in 45 C.F.R. Sec. 164.502(g), for purposes of the respondent's essential treatment.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-5-506 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 the evidence meets the clear and convincing standard, as described in Section 26B-5-504, for a court to order essential treatment and intervention.
- (2) When a respondent fails to comply with a court order issued under Subsection 26B-5-505(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.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-5-507 Periodic review -- Discharge.

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.

Renumbered and Amended by Chapter 308, 2023 General Session

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:
 - (a) an essential treatment examiner has examined the respondent and certified that the respondent meets the criteria described in Section 26B-5-504; 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.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-5-509 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;
 - (ii) date of birth, if known;
 - (iii) social security number, if known; and
 - (iv) residence and current location, if known;
 - (b) the petitioner's relationship to the respondent;
 - (c) the name and residence of the respondent's legal guardian, if any and if known;

- (d) a statement that the respondent:
 - (i) is suffering from a substance use disorder; and
 - (ii) has received, within the last 72 hours, emergency, life saving treatment;
 - (e) the factual basis for the statement described in Subsection (2)(d); and
 - (f) the name of any other individual, if any, who may be designated as the respondent's personal representative.
- (3) A court shall grant a petition for designation as a personal representative, ex parte, if it appears from the petition for designation as a court-designated personal representative that:
- (a) the respondent is suffering from a substance use disorder;
 - (b) the respondent received emergency, life saving treatment within 10 days before the day on which the petition for designation as a personal representative is filed;
 - (c) the petitioner is a relative of the respondent; and
 - (d) no other individual is otherwise designated as the respondent's personal representative.
- (4) When a court grants, ex parte, a petition for designation as a personal representative, the court:
- (a) shall provide notice to the respondent;
 - (b) shall order the petitioner to be the respondent's personal representative for 10 days after the day on which the court designates the petitioner as the respondent's personal representative; and
 - (c) may extend the duration of the order:
 - (i) for good cause shown, after the respondent has been notified and given a proper and sufficient opportunity to respond; or
 - (ii) if the respondent consents to an extension.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-5-510 Confidentiality.

- (1) The purpose of this part is to provide a process for essential treatment and intervention to save lives, preserve families, and reduce substance use disorder, including opioid addiction.
- (2) An essential treatment petition and any other document filed in connection with the petition for essential treatment is confidential and protected.
- (3) A hearing on an essential treatment petition is closed to the public, and only the following individuals and their legal counsel may be admitted to the hearing:
 - (a) parties to the petition;
 - (b) the essential treatment examiners who completed the court-ordered examination under Subsection 26B-5-505(3);
 - (c) individuals who have been asked to give testimony; and
 - (d) individuals to whom notice of the hearing is required to be given under Subsection 26B-5-505(2)(c).
- (4) Testimony, medical evaluations, the petition, and other documents directly related to the adjudication of the petition and presented to the court in the interest of the respondent may not be construed or applied as an admission of guilt to a criminal offense.
- (5) A court may, if applicable, enforce a previously existing warrant for a respondent or a warrant for a charge that is unrelated to the essential treatment petition filed under this part.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-5-511 Essential treatment for substance use disorder -- Rights of patient.

All applicable rights guaranteed to a patient by Sections 26B-5-310 and 26B-5-311 shall be guaranteed to an individual who is ordered to undergo essential treatment for a substance use disorder.

Renumbered and Amended by Chapter 308, 2023 General Session

Part 6

Mental Health Intervention and Treatment Programs

26B-5-601 Definitions.

As used in this part:

- (1) "211" means the abbreviated dialing code assigned by the Federal Communications Commission for consumer access to community information and referral services.
- (2) "ACT team personnel" means a licensed psychiatrist or mental health therapist, or another individual, as determined by the division, who is part of an ACT team.
- (3) "Approved 211 service provider" means a public or nonprofit agency or organization designated by the department to provide 211 services.
- (4)
 - (a) "Assertive community treatment" means mental health services and on-site intervention that a person renders to an individual with a mental illness.
 - (b) "Assertive community treatment" includes the provision of assessment and treatment plans, rehabilitation, support services, and referrals to other community resources.
- (5) "Assertive community treatment team" or "ACT team" means a mobile team of medical and mental health professionals that provides assertive community outreach treatment and, based on the individual circumstances of each case, coordinates with other medical providers and appropriate community resources.
- (6) "Mental health therapist" means the same as that term is defined in Section 58-60-102.
- (7) "Mental illness" means the same as that term is defined in Section 26B-5-301.
- (8) "Psychiatrist" means an individual who:
 - (a) is licensed as a physician under Title 58, Chapter 67, Utah Medical Practice Act, or Title 58, Chapter 68, Utah Osteopathic Medical Practice Act; and
 - (b) 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.
- (9)
 - (a) "Utah 211" means an information and referral system that:
 - (i) maintains a database of:
 - (A) providers of health and human services; and
 - (B) volunteer opportunities and coordinators throughout the state;
 - (ii) assists individuals, families, and communities at no cost in identifying, understanding, and accessing the providers of health and human services; and
 - (iii) works collaboratively with state agencies, local governments, community-based organizations, not-for-profit organizations, organizations active in disaster relief, and faith-based organizations.
 - (b) "Utah 211" does not mean service provided by 911 and first responders.

Renumbered and Amended by Chapter 308, 2023 General Session

Amended by Chapter 308, 2023 General Session, (Coordination Clause)

26B-5-602 Designated approved 211 service provider -- Department responsibilities.

- (1) The department shall designate an approved 211 service provider to provide information to Utah citizens about health and human services available in the citizen's community.
- (2) Only a service provider approved by the department may provide 211 telephone services in this state.
- (3) The department shall approve a 211 service provider after considering the following:
 - (a) the ability of the proposed 211 service provider to meet the national 211 standards recommended by the Alliance of Information and Referral Systems;
 - (b) the financial stability of the proposed 211 service provider;
 - (c) the community support for the proposed 211 service provider;
 - (d) the relationship between the proposed 211 service provider and other information and referral services; and
 - (e) other criteria as the department considers appropriate.
- (4) The department shall coordinate with the approved 211 service provider and other state and local agencies to ensure the joint development and maintenance of a statewide information database for use by the approved 211 service provider.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-5-603 Utah 211 created -- Responsibilities.

- (1) The designated 211 service provider described in Section 26B-5-601 shall be known as Utah 211.
- (2) Utah 211 shall, as appropriations allow:
 - (a) by 2014:
 - (i) provide the services described in this Subsection (2) 24 hours a day, seven days a week;
 - (ii) abide by the key standards for 211 programs, as specified in the Standards for Professional Information and Referral Requirements for Alliance of Information Systems Accreditation and Operating 211 systems; and
 - (iii) be a point of entry for disaster-related information and referral;
 - (b) track types of calls received and referrals made;
 - (c) develop, coordinate, and implement a statewide information and referral system that integrates existing community-based structures with state and local agencies;
 - (d) provide information relating to:
 - (i) health and human services; and
 - (ii) volunteer opportunities;
 - (e) create an online, searchable database to provide information to the public about the health and human services provided by public or private entities throughout the state, and ensure that:
 - (i) the material on the searchable database is indexed:
 - (A) geographically to inform an individual about the health and human services provided in the area where the individual lives; and
 - (B) by type of service provided; and
 - (ii) the searchable database contains links to the Internet sites of any local provider of health and human services, if possible, and include:
 - (A) the name, address, and phone number of organizations providing health and human services in a county; and

- (B) a description of the type of services provided;
- (f) be responsible, in collaboration with state agencies, for raising community awareness about available health and human services; and
- (g) host meetings on a quarterly basis until calendar year 2014, and on a biannual basis beginning in 2014, to seek input and guidance from state agencies, local governments, community-based organizations, not-for-profit organizations, and faith-based organizations.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-5-604 Other state agencies and local governments.

- (1) A state agency or local government institution that provides health and human services, or a public or private entity receiving state-appropriated funds to provide health and human services, shall provide Utah 211 with information, in a form determined by Utah 211, about the services the agency or entity provides for inclusion in the statewide information and referral system.
- (2) A state agency or local government institution that provides health and human services may not establish a new public telephone line or hotline, other than an emergency first responder hotline, to provide information or referrals unless the agency or institution first:
 - (a) consults with Utah 211 about using the existing 211 to provide access to the information or referrals; and
 - (b) assesses whether a new line or the existing 211 program would be more cost effective.
- (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.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-5-605 Immunity from liability.

- (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.
- (2) Utah 211, its employees, directors, officers, and information specialists shall be liable to any person in a civil action for an injury or loss resulting from willful or wanton misconduct.

Renumbered and Amended by Chapter 308, 2023 General Session

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
- (b) guidelines for:
 - (i) required training and experience of ACT team personnel; and
 - (ii) the coordination of assertive community treatment and other community resources.
- (2)
 - (a) The division shall:
 - (i) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, make rules that establish standards that an applicant is required to meet to qualify for the certifications described in Subsection (1); and
 - (ii) create a long-term, statewide ACT team plan that:
 - (A) identifies current and future statewide assertive community treatment needs, objectives, and priorities;
 - (B) identifies barriers to establishing an ACT team in areas where an ACT team does not currently exist;
 - (C) identifies the equipment, facilities, personnel training, and other resources necessary to provide assertive community treatment in areas where an ACT team does not currently exist; and
 - (D) identifies the gaps in housing needs for individuals served by ACT teams and how to ensure individuals served by ACT teams can secure and maintain housing.
 - (b) The division may delegate the ACT team plan requirement described in Subsection (2)(a)(ii) to a contractor with whom the division contracts to provide assertive community outreach treatment.
 - (c) The division shall report to the Health and Human Services Interim Committee before June 30, 2024, regarding:
 - (i) the long-term, statewide ACT team plan described in Subsection (2)(a)(ii);
 - (ii) the number of individuals in each local area who meet the criteria for serious mental illness and could benefit from ACT team services;
 - (iii) knowledge gained relating to the provision of care through ACT teams;
 - (iv) recommendations for further development of ACT teams; and
 - (v) obstacles that exist for further development of ACT teams throughout the state.

Amended by Chapter 282, 2023 General Session

Renumbered and Amended by Chapter 308, 2023 General Session

26B-5-607 Grants for development of an ACT team.

- (1) The division shall award grants for the development of one or more ACT teams to provide assertive community treatment to individuals in the state.
- (2) The division shall prioritize the award of a grant described in Subsection (1) to entities, based on:
 - (a) the number of individuals the proposed ACT team will serve;
 - (b) the ability of the entity to provide housing to individuals served under the program;
 - (c) the ability of the entity to provide evidence of probable future program sustainability; and
 - (d) the percentage of matching funds the entity will provide to develop the proposed ACT team.
- (3)
 - (a) An entity does not need to have resources already in place to be awarded a grant described in Subsection (1).
 - (b) An entity may submit an application for and be awarded more than one grant pursuant to the prioritization described in Subsection (2).

- (c) An ACT team developed using a grant awarded under this section shall:
 - (i) coordinate with local homeless councils and criminal justice coordinating councils to align the ACT team's services with existing services and strategic plans; and
 - (ii) work with an individual served under the program to secure and maintain housing and provide wraparound services, including:
 - (A) clinical support;
 - (B) case management;
 - (C) peer support;
 - (D) employment support; and
 - (E) other services identified in the long-term, statewide ACT team plan described in Section 26B-5-606.
- (4) 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).
- (5) Before June 30, 2024, and before June 30 of each subsequent fiscal year in which a grant is awarded under Subsection (1), the division shall report to the Health and Human Services Interim Committee regarding:
 - (a) data gathered in relation to each awarded grant;
 - (b) knowledge gained relating to the provision of medical and mental health services by ACT teams;
 - (c) recommendations for the future use of ACT teams to provide medical and mental health services;
 - (d) Medicaid reimbursement for services provided by ACT teams; and
 - (e) aggregated data about the patients who have received services from an ACT team, including:
 - (i) the number of ACT team patients who have a severe mental illness;
 - (ii) the number of ACT team patients who have a co-occurring substance use disorder;
 - (iii) the number of ACT team patients who are experiencing homelessness or facing housing insecurity; and
 - (iv) the number of ACT team patients who, after the most recent report was made, have experienced:
 - (A) an acute psychiatric hospitalization;
 - (B) an arrest, incarceration, probation, or parole; or
 - (C) a transition from homelessness or housing insecurity to supported housing or housing.

Amended by Chapter 282, 2023 General Session

Renumbered and Amended by Chapter 308, 2023 General Session

26B-5-608 Housing assistance program for individuals discharged from the Utah State Hospital and receiving assertive community treatment.

- (1)
 - (a) The division shall, within funds appropriated by the Legislature for this purpose, implement and manage the operation of a housing assistance program in consultation with the Utah State Hospital, established in Section 26B-5-302, and one or more housing authorities, associations of governments, or nonprofit entities.
 - (b) The housing assistance program shall provide the housing assistance described 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.
 - (c) The housing assistance provided under the housing assistance program may include:

- (i) subsidizing rent payments for housing;
 - (ii) subsidizing the provision of temporary or transitional housing; or
 - (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
 - (e) recommendations regarding improvements or changes to the housing assistance program described in Subsection (1).

Renumbered and Amended by Chapter 308, 2023 General Session

26B-5-609 Department and division duties -- MCOT license creation.

- (1) As used in this section:
- (a) "Commission" means the Behavioral Health Crisis Response Commission created in Section 63C-18-202.
 - (b) "Emergency medical service personnel" means the same as that term is defined in Section 26B-4-101.
 - (c) "Emergency medical services" means the same as that term is defined in Section 26B-4-101.
 - (d) "MCOT certification" means the certification created in this part for MCOT personnel and mental health crisis outreach services.
 - (e) "MCOT personnel" means a licensed mental health therapist or other mental health professional, as determined by the division, who is a part of a mobile crisis outreach team.
 - (f) "Mental health crisis" means a mental health condition that manifests itself by symptoms of sufficient severity that a prudent layperson who possesses an average knowledge of mental health issues could reasonably expect the absence of immediate attention or intervention to result in:
 - (i) serious jeopardy to the individual's health or well-being; or
 - (ii) a danger to others.
 - (g)
 - (i) "Mental health crisis services" means mental health services and on-site intervention that a person renders to an individual suffering from a mental health crisis.
 - (ii) "Mental health crisis services" includes the provision of safety and care plans, stabilization services offered for a minimum of 60 days, and referrals to other community resources.
 - (h) "Mental health therapist" means the same as that term is defined in Section 58-60-102.
 - (i) "Mobile crisis outreach team" or "MCOT" means a mobile team of medical and mental health professionals that provides mental health crisis services and, based on the individual circumstances of each case, coordinates with local law enforcement, emergency medical service personnel, and other appropriate state or local resources.

- (2) To promote the availability of comprehensive mental health crisis services throughout the state, the division shall make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, that create a certificate for MCOT personnel and MCOTs, including:
 - (a) the standards the division establishes under Subsection (3); and
 - (b) guidelines for:
 - (i) credit for training and experience; and
 - (ii) the coordination of:
 - (A) emergency medical services and mental health crisis services;
 - (B) law enforcement, emergency medical service personnel, and mobile crisis outreach teams; and
 - (C) temporary commitment in accordance with Section 26B-5-331.
- (3)
 - (a) With recommendations from the commission, the division shall:
 - (i) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, make rules that establish standards that an applicant is required to meet to qualify for the MCOT certification described in Subsection (2); and
 - (ii) create a statewide MCOT plan that:
 - (A) identifies statewide mental health crisis services needs, objectives, and priorities; and
 - (B) identifies the equipment, facilities, personnel training, and other resources necessary to provide mental health crisis services.
 - (b) The division may delegate the MCOT plan requirement described in Subsection (3)(a)(ii) to a contractor with which the division contracts to provide mental health crisis services.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-5-610 Contracts for statewide mental health crisis line and statewide warm line -- Crisis worker and certified peer support specialist qualification or certification -- Operational standards.

- (1) As used in this section:
 - (a) "Certified peer support specialist" means an individual who:
 - (i) meets the standards of qualification or certification that the division sets, in accordance with Subsection (3); and
 - (ii) staffs the statewide warm line under the supervision of at least one mental health therapist.
 - (b) "Commission" means the Behavioral Health Crisis Response Commission created in Section 63C-18-202.
 - (c) "Crisis worker" means an individual who:
 - (i) meets the standards of qualification or certification that the division sets, in accordance with Subsection (3); and
 - (ii) staffs the statewide mental health crisis line, the statewide warm line, or a local mental health crisis line under the supervision of at least one mental health therapist.
 - (d) "Local mental health crisis line" means a phone number or other response system that is:
 - (i) accessible within a particular geographic area of the state; and
 - (ii) intended to allow an individual to contact and interact with a qualified mental or behavioral health professional.
 - (e) "Mental health crisis" means the same as that term is defined in Section 26B-5-609.
 - (f) "Mental health therapist" means the same as that term is defined in Section 58-60-102.

- (g) "Statewide mental health crisis line" means a statewide phone number or other response system that allows an individual to contact and interact with a qualified mental or behavioral health professional 24 hours per day, 365 days per year.
 - (h) "Statewide warm line" means a statewide phone number or other response system that allows an individual to contact and interact with a qualified mental or behavioral health professional or a certified peer support specialist.
- (2)
- (a) The division shall enter into a new contract or modify an existing contract to manage and operate, in accordance with this part, the statewide mental health crisis line and the statewide warm line.
 - (b) Through the contracts described in Subsection (2)(a) and in consultation with the commission, the division shall set standards of care and practice for:
 - (i) the mental health therapists and crisis workers who staff the statewide mental health crisis line; and
 - (ii) the mental health therapists, crisis workers, and certified peer support specialists who staff the statewide warm line.
- (3)
- (a) The division shall establish training and minimum standards for the qualification or certification of:
 - (i) crisis workers who staff the statewide mental health crisis line, the statewide warm line, and local mental health crisis lines; and
 - (ii) certified peer support specialists who staff the statewide warm line.
 - (b) The division may make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, necessary to establish the training and minimum standards described in Subsection (3)(a).
- (4) In consultation with the commission, the division shall ensure that:
- (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:
 - (i) mental health therapists; or
 - (ii) crisis workers;
 - (b) a sufficient amount of staff is available to ensure that when an individual calls the 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 described in Subsection (4)(a) answers the call without the caller first:
 - (i) waiting on hold; or
 - (ii) being screened by an individual other than a mental health therapist or crisis worker;
 - (c) the statewide mental health crisis line has capacity to accept all calls that local mental health crisis lines route to the statewide mental health crisis line;
 - (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 (5):
 - (i) mental health therapists;
 - (ii) crisis workers; or
 - (iii) certified peer support specialists;
 - (e) when an individual calls the statewide mental health crisis line, the individual's call may be transferred to the statewide warm line if the individual is not experiencing a mental health crisis; and
 - (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 health crisis.

- (5) The division shall make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to establish the hours and days of operation for the statewide warm line.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-5-611 Suicide prevention -- Reporting requirements.

- (1) As used in this section:
- (a) "Advisory Council" means the Utah Substance Use and Mental Health Advisory Council created in Section 63M-7-301.
 - (b) "Bureau" means the Bureau of Criminal Identification created in Section 53-10-201 within the Department of Public Safety.
 - (c) "Coalition" means the Statewide Suicide Prevention Coalition created under Subsection (3).
 - (d) "Coordinator" means the state suicide prevention coordinator appointed under Subsection (2).
 - (e) "Fund" means the Governor's Suicide Prevention Fund created in Section 26B-1-325.
 - (f) "Intervention" means an effort to prevent a person from attempting suicide.
 - (g) "Legal intervention" means an incident in which an individual is shot by another individual who has legal authority to use deadly force.
 - (h) "Postvention" means intervention after a suicide attempt or a suicide death to reduce risk and promote healing.
 - (i) "Shooter" means an individual who uses a gun in an act that results in the death of the actor or another individual, whether the act was a suicide, homicide, legal intervention, act of self-defense, or accident.
- (2) The division shall appoint a state suicide prevention coordinator to administer a state suicide prevention program composed of suicide prevention, intervention, and postvention programs, services, and efforts.
- (3) The coordinator shall:
- (a) establish a Statewide Suicide Prevention Coalition with membership from public and private organizations and Utah citizens; and
 - (b) appoint a chair and co-chair from among the membership of the coalition to lead the coalition.
- (4) The state suicide prevention program may include the following components:
- (a) delivery of resources, tools, and training to community-based coalitions;
 - (b) evidence-based suicide risk assessment tools and training;
 - (c) town hall meetings for building community-based suicide prevention strategies;
 - (d) suicide prevention gatekeeper training;
 - (e) training to identify warning signs and to manage an at-risk individual's crisis;
 - (f) evidence-based intervention training;
 - (g) intervention skills training;
 - (h) postvention training; or
 - (i) a public education campaign to improve public awareness about warning signs of suicide and suicide prevention resources.
- (5) The coordinator shall coordinate with the following to gather statistics, among other duties:
- (a) local mental health and substance abuse authorities;
 - (b) the State Board of Education, including the public education suicide prevention coordinator described in Section 53G-9-702;
 - (c) applicable divisions and offices within the department;
 - (d) health care providers, including emergency rooms;
 - (e) federal agencies, including the Federal Bureau of Investigation;
 - (f) other unbiased sources; and

- (g) other public health suicide prevention efforts.
- (6) The coordinator shall provide a written report to the Health and Human Services Interim Committee, at or before the October meeting every year, on:
 - (a) implementation of the state suicide prevention program, as described in Subsections (2) and (4);
 - (b) data measuring the effectiveness of each component of the state suicide prevention program;
 - (c) funds appropriated for each component of the state suicide prevention program; and
 - (d) five-year trends of suicides in Utah, including subgroups of youths and adults and other subgroups identified by the state suicide prevention coordinator.
- (7) The coordinator shall, in consultation with the bureau, implement and manage the operation of the firearm safety program described in Subsection 26B-5-102(3).
- (8) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the division shall make rules:
 - (a) governing the implementation of the state suicide prevention program, consistent with this section; and
 - (b) in conjunction with the bureau, defining the criteria for employers to apply for grants under the Suicide Prevention Education Program described in Section 26B-5-110, which shall include:
 - (i) attendance at the suicide prevention education course described in Subsection 26B-5-102(3); and
 - (ii) distribution of the firearm safety brochures or packets created in Subsection 26B-5-102(3), but does not require the distribution of a cable-style gun lock with a firearm if the firearm already has a trigger lock or comparable safety mechanism.
- (9) 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 and Youth 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.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-5-612 Integrated behavioral health care grant program.

- (1) As used in this section:
 - (a) "Integrated behavioral health care services" means coordinated physical and behavioral health care services for one patient.
 - (b) "Local mental health authority" means a local mental health authority described in Section 17-43-301.
 - (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 accordance with this section to award a grant to a local mental health authority for development or expansion of a project to provide effective delivery of integrated behavioral health care services.
- (3) To be considered for a grant award under Subsection (2), a local mental health authority shall submit an application to the department that:
 - (a) explains the benefits of integrated behavioral health care services to a patient who is receiving mental health or substance use disorder treatment;

- (b) describes the local mental health authority's operational plan for delivery of integrated behavioral health care services under the proposed project and any data or evidence-based practices supporting the likely success of the operational plan;
- (c) includes:
 - (i) the number of patients to be served by the local mental health authority's proposed project; and
 - (ii) the cost of the local mental health authority's proposed project; and
- (d) provides details regarding:
 - (i) any plan to use funding sources in addition to the grant award under this section for the local mental health authority's proposed project;
 - (ii) any existing or planned contracts or partnerships between the local mental health authority and other individuals or entities to develop or implement the local mental health authority's proposed project; and
 - (iii) the sustainability and reliability of the local mental health authority's proposed project.
- (4) In evaluating a local mental health authority's application under Subsection (3) to determine the grant award under Subsection (2), the department shall consider:
 - (a) how the local mental health authority's proposed project will ensure effective provision of integrated behavioral health care services;
 - (b) the cost of the local mental health authority's proposed project;
 - (c) the extent to which any existing or planned contracts or partnerships or additional funding sources described in the local mental health authority's application are likely to benefit the proposed project; and
 - (d) the sustainability and reliability of the local mental health authority's proposed project.
- (5) Before July 1, 2025, the department shall report to the Health and Human Services Interim Committee regarding:
 - (a) any knowledge gained or obstacles encountered in providing integrated behavioral health care services under each project;
 - (b) data gathered in relation to each project; and
 - (c) recommendations for expanding a project statewide.

Renumbered and Amended by Chapter 308, 2023 General Session

Chapter 6 Long Term Services and Supports, Aging, and Disabilities

Part 1 Aging and Adult Services

26B-6-101 Chapter definitions.

As used in this chapter:

- (1) "Adult" or "high risk adult" means a person 18 years old or older who experiences a condition:
 - (a) that places the person at a high risk of being unable to care for themselves:
 - (i) as determined by assessment; and
 - (ii) due to the onset of a physical or cognitive impairment or frailty; and
 - (b) for which the person is not eligible to receive services under:

- (i) Part 4, Division of Services for People with Disabilities; or
- (ii) Chapter 5, Health Care - Substance Use and Mental Health.
- (2) "Aging" and "aged" means a person 60 years old or older.
- (3) "Area agency" means an area agency that provides services to the aged, high risk adults, or both within a planning and service area.
- (4) "Area agency on aging" means a public or private nonprofit agency or office designated by the division to:
 - (a) operate within a planning and service area of the state; and
 - (b) develop and implement a broad range of services for the aged in the area described in Subsection (4)(a).
- (5) "Area agency on high risk adults" means a public or private nonprofit agency or office designated by the division to:
 - (a) operate within a planning and service area of the state; and
 - (b) develop and implement services for high risk adults in the area described in Subsection (5)(a).
- (6) "Board" means the Board of Aging and Adult Services created in Section 26B-1-426.
- (7) "Director" means the director of the division.
- (8) "Division" means the Division of Aging and Adult Services within the department.
- (9) "Personal care attendant" means a person who:
 - (a) is selected by:
 - (i) an aged person;
 - (ii) an agent of an aged person;
 - (iii) a high risk adult; or
 - (iv) an agent of a high risk adult; and
 - (b) provides personal services to the:
 - (i) aged person described in Subsection (9)(a)(i); or
 - (ii) high risk adult described in Subsection (9)(a)(iii).
- (10) "Personal services" means nonmedical care and support, including assisting a person with:
 - (a) meal preparation;
 - (b) eating;
 - (c) bathing;
 - (d) dressing;
 - (e) personal hygiene; or
 - (f) daily living activities.
- (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 services for the aged or high risk adults.
- (12)
 - (a) "Public funds" means state or federal funds that are disbursed by:
 - (i) the department;
 - (ii) the division;
 - (iii) an area agency; or
 - (iv) an area agency on aging.
 - (b) "Public funds" includes:
 - (i) Medicaid funds; and
 - (ii) Medicaid waiver funds.

Amended by Chapter 308, 2023 General Session

26B-6-102 Division created.

There is created a Division of Aging and Adult Services within the department, under the administration and general supervision of the executive director.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-6-103 Director of division -- Appointment -- Qualifications.

- (1) The director of the division shall be appointed by the executive director with the concurrence of the board.
- (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 the aging and adult populations.
- (3) The director is the administrative head of the division.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-6-104 Authority of division.

- (1) The division is the sole state agency, as defined by the Older Americans Act of 1965, 42 U.S.C. 3001 et seq., to:
 - (a) serve as an effective and visible advocate for the aging and adult population of this state;
 - (b) develop and administer a state plan under the policy direction of the board; and
 - (c) take primary responsibility for state activities relating to provisions of the Older Americans Act of 1965, as amended.
- (2)
 - (a) The division has authority to designate:
 - (i) planning and service areas for the state; and
 - (ii) an area agency on aging within each planning and service area to design and implement a comprehensive and coordinated system of services and programs for the aged within appropriations from the Legislature.
 - (b) Designation as an area agency on aging may be withdrawn:
 - (i) upon request of the area agency on aging; or
 - (ii) upon noncompliance with the provisions of the:
 - (A) Older Americans Act of 1965, 42 U.S.C. Sec. 3001 et seq.;
 - (B) federal regulations enacted under the Older Americans Act of 1965, 42 U.S.C. Sec. 3001 et seq.;
 - (C) provisions of this chapter; or
 - (D) rules, policies, or procedures established by the division.
- (3)
 - (a) The division has the authority to designate:
 - (i) planning and service areas for the state; and
 - (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:

- (i) the area agency on aging that operates within the same geographic area if that agency requests, before July 1, 1998, to expand that agency's current contract with the 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
 - (II) without reducing geographical coverage in any service area; or
 - (ii) a public or private nonprofit agency or office if the area agency on aging that operates within the same geographic area has not made a request in accordance with Subsection (3)(b)(i).
- (c)
 - (i) Area agencies on high risk adults shall be in operation before July 1, 1999.
 - (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:
 - (A) state law;
 - (B) federal law; or
 - (C) rules, policies, or procedures established by the division.
- (4)
 - (a) The division may, by following the procedures and requirements of Title 63J, Chapter 5, Federal Funds Procedures Act:
 - (i) seek federal grants, loans, or participation in federal programs; and
 - (ii) receive and distribute state and federal funds for the division's programs and 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 26B-6-107.
- (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.
- (6) In accordance with the rules of the division and Title 63G, Chapter 6a, Utah Procurement Code, the division may contract with:
 - (a) the governing body of an area agency to provide a comprehensive program of services; or
 - (b) public and private entities for special services.
- (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.
- (8) The division has authority to prepare and submit reports regarding the operation and administration of the division to the department, the Legislature, and the governor, as requested.
- (9) The division shall:
 - (a) implement and enforce policies established by the board governing all aspects of 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:
 - (i) the division;
 - (ii) area agencies; and
 - (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:
 - (i) compliance with division policies; and
 - (ii) a statewide comprehensive program;
- (f) in order to further programs for aging and adult persons and prevent duplication of services, promote and establish cooperative relationships with:
 - (i) state and federal agencies;
 - (ii) social and health agencies;
 - (iii) education and research organizations; and
 - (iv) other related groups;
- (g) advocate for the aging and adult populations;
- (h) promote and conduct research on the problems and needs of aging and adult persons;
- (i) submit recommendations for changes in policies, programs, and funding to the:
 - (i) governor; and
 - (ii) Legislature; and
- (j)
 - (i) accept contributions to and administer the funds contained in the Out and About Homebound Transportation Assistance Fund created in Section 26B-1-323; and
 - (ii) make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to facilitate the administration of the Out and About Homebound Transportation Assistance Fund in accordance with Section 26B-1-323.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-6-105 Powers and duties of area agencies -- Registration as a limited purpose entity.

- (1) An area agency that provides services to an aged person, or a high risk adult shall within the area agency's respective jurisdiction:
 - (a) advocate by monitoring, evaluating, and providing input on all policies, programs, hearings, and levies that affect a person described in this Subsection (1);
 - (b) design and implement a comprehensive and coordinated system of services within a designated planning and service area;
 - (c) conduct periodic reviews and evaluations of needs and services;
 - (d) prepare and submit to the division plans for funding and service delivery for services within the designated planning and service area;
 - (e) establish, either directly or by contract, programs licensed under Chapter 2, Part 1, Human Services Programs and Facilities;
 - (f)
 - (i) appoint an area director;
 - (ii) prescribe the area director's duties; and
 - (iii) provide adequate and qualified staff to carry out the area plan described in Subsection (1)
 - (d);
 - (g) establish rules not contrary to policies of the board and rules of the division, regulating local services and facilities;
 - (h) operate other services and programs funded by sources other than those administered by the division;
 - (i) establish mechanisms to provide direct citizen input, including an area agency advisory council with a majority of members who are eligible for services from the area agency;

- (j) establish fee schedules; and
- (k) comply with the requirements and procedures of:
 - (i) Title 11, Chapter 13, Interlocal Cooperation Act; and
 - (ii) Title 51, Chapter 2a, Accounting Reports from Political Subdivisions, Interlocal Organizations, and Other Local Entities Act.
- (2) Before disbursing any public funds, an area agency shall require that all entities receiving any public funds agree in writing that:
 - (a) the division may examine the entity's program and financial records; and
 - (b) the auditor of the local area agency may examine and audit the entity's program and financial records, if requested by the local area agency.
- (3) An area agency on aging 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 26B-6-107.
- (4)
 - (a) For the purpose of providing services pursuant to this part, a local area agency may receive:
 - (i) property;
 - (ii) grants;
 - (iii) gifts;
 - (iv) supplies;
 - (v) materials;
 - (vi) any benefit derived from the items described in Subsections (4)(a)(i) through (v); and
 - (vii) contributions.
 - (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.
- (5)
 - (a) Area agencies shall award all public funds in compliance with:
 - (i) the requirements of Title 63G, Chapter 6a, Utah Procurement Code; or
 - (ii) a county procurement ordinance that requires procurement procedures similar to those described in Subsection (5)(a)(i).
 - (b)
 - (i) If all initial bids on a project are rejected, the area agency shall publish a new invitation to bid.
 - (ii) If no satisfactory bid is received by the area agency described in Subsection (5)(b)(i), when the bids received from the second invitation are opened the area agency may execute a contract without requiring competitive bidding.
 - (c)
 - (i) An area agency need not comply with the procurement provisions of this section when it disburses public funds to another governmental entity.
 - (ii) For purposes of this Subsection (5)(c), "governmental entity" means any political subdivision or institution of higher education of the state.
 - (d)
 - (i) Contracts awarded by an area agency shall be for a:
 - (A) fixed amount; and
 - (B) limited period.
 - (ii) The contracts described in Subsection (5)(d)(i) may be modified due to changes in available funding for the same contract purpose without competition.
- (6) Local area agencies shall comply with:
 - (a) applicable state and federal:

- (i) statutes;
 - (ii) policies; and
 - (iii) audit requirements; and
- (b) directives resulting from an audit described in Subsection (6)(a)(iii).
- (7)
- (a) Each area agency shall register and maintain the area agency's registration as a limited purpose entity, in accordance with Section 67-1a-15.
 - (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.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-6-106 Contracts for services.

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 enter into a contract with the division for services to be furnished by that area agency for an agreed compensation to be paid by the division.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-6-107 Disbursal of public funds -- Background check of a personal care attendant.

- (1) As used in this section, "office" means Office of Licensing within the department.
- (2) Public funds may not be disbursed to a personal care attendant as payment for personal services rendered to an aged person or high risk adult unless the office approves the personal care attendant to have direct access and provide services to children or vulnerable adults pursuant to Section 26B-2-120.
- (3) For purposes of Subsection (2), the office shall conduct a background check of a personal care attendant:
 - (a) who desires to receive public funds as payment for the personal services described in Subsection (2); and
 - (b) using the same procedures established for a background check of an applicant for a license under Section 26B-2-120.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-6-108 Matching requirements for state and federal Older American funds.

- (1) Except as provided in Subsection (2), a local area agency on aging that receives state or federal Older Americans Act Supportive Services, Older Americans Act Congregate Meals, or Older Americans Act Home Delivered Meals related funds from the division to provide programs and services under this chapter shall match those funds in an amount at least equal to:
 - (a) 15% of service dollars; and
 - (b) 25% of administrative dollars.
- (2) A local area agency on aging is not required to match cash-in-lieu funds related to the Home Delivered Meals program or congregate meals.
- (3) A local area agency on aging may include services, property, or other in-kind contributions to meet the administrative dollars match but may only use cash to meet the service dollars match.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-6-109 Eligibility criteria.

Eligibility for services provided by the division directly or through contractual arrangements shall be determined by criteria established by the division and approved by the board.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-6-110 Agency responsible to investigate and provide services.

- (1) 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 26B-6-205.

Renumbered and Amended by Chapter 308, 2023 General Session

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 26B-6-105 and 26B-6-106. 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.
- (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 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.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-6-112 Allocation of funds to acquire facilities.

- (1)

- (a) The board may make grants to local area agencies on aging to acquire facilities to provide community-based services for aged persons. Grants under this section shall be made solely from appropriations made to the division for implementation of this section.
 - (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:
- (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;
 - (c) the availability of private and local funds to assist in acquisition, alteration, renovation, or improvement of the facility; and
 - (d) the extent and level of support for acquisition of the facility from local government officials, private citizens, interest groups, and others.
- (4) Grants to local area agencies on aging and any local nonprofit or governmental agency that owns or operates a facility and receives grant money from the area agency under this section are subject to the oversight and control by the division described in Subsection 26B-6-104(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.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-6-113 Allocation of funds to local area agencies -- Formulas.

- (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.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-6-114 Adjudicative proceedings.

Adjudicative proceedings held by, or relating to, the division or the board shall comply with the procedures and requirements of Title 63G, Chapter 4, Administrative Procedures Act.

Renumbered and Amended by Chapter 308, 2023 General Session

Part 2
Abuse, Neglect, or Exploitation of a Vulnerable Adult

26B-6-201 Definitions.

As used in this part:

- (1) "Abandonment" means any knowing or intentional action or failure to act, including desertion, by a person acting as a caretaker for a vulnerable adult that leaves the vulnerable adult without the means or ability to obtain necessary food, clothing, shelter, or medical or other health care.
- (2) "Abuse" means:
 - (a) knowingly or intentionally:
 - (i) attempting to cause harm;
 - (ii) causing harm; or
 - (iii) placing another in fear of harm;
 - (b) unreasonable or inappropriate use of physical restraint, medication, or isolation that causes or is likely to cause harm to a vulnerable adult;
 - (c) emotional or psychological abuse;
 - (d) a sexual offense as described in Title 76, Chapter 5, Offenses Against the Individual; or
 - (e) deprivation of life sustaining treatment, or medical or mental health treatment, except:
 - (i) as provided in Title 75, Chapter 2a, Advance Health Care Directive Act; or
 - (ii) when informed consent, as defined in Section 76-5-111, has been obtained.
- (3) "Adult" means an individual who is 18 years old or older.
- (4) "Adult protection case file" means a record, stored in any format, contained in a case file maintained by Adult Protective Services.
- (5) "Adult Protective Services" means the unit within the division responsible to investigate abuse, neglect, and exploitation of vulnerable adults and provide appropriate protective services.
- (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 26B-6-210.
- (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.
- (13) "Emergency" means a circumstance in which a vulnerable adult is at an immediate risk of death, serious physical injury, or serious physical, emotional, or financial 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, coercing, or harassing.
- (c) "Emotional or psychological abuse" does not include verbal or non-verbal conduct by a vulnerable adult who lacks the capacity to intentionally or knowingly:
- (i) engage in the conduct; or
 - (ii) cause mental anguish, emotional distress, fear, humiliation, degradation, agitation, or confusion.
- (16) "Exploitation" means an offense described in Section 76-5-111.3, 76-5-111.4, or 76-5b-202.
- (17) "Harm" means pain, mental anguish, emotional distress, hurt, physical or psychological damage, physical injury, serious physical injury, suffering, or distress inflicted knowingly or intentionally.
- (18) "Inconclusive" means a finding by the division that there is not a reasonable basis to conclude that abuse, neglect, or exploitation occurred.
- (19) "Intimidation" means communication through verbal or nonverbal conduct which threatens deprivation of money, food, clothing, medicine, shelter, social interaction, 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
 - (iii) making false or misleading statements to the vulnerable adult in order to induce the vulnerable adult to refuse to receive communication from visitors or other family members.

- (b) "Isolation" does not include an act:
 - (i) intended in good faith to protect the physical or mental welfare of the vulnerable adult; or
 - (ii) performed pursuant to the treatment plan or instructions of a physician or other professional advisor of the vulnerable adult.
- (21) "Lacks capacity to consent" is as defined in Section 76-5-111.4.
- (22)
 - (a) "Neglect" means:
 - (i)
 - (A) failure of a caretaker to provide necessary care, including nutrition, clothing, shelter, supervision, personal care, or dental, medical, or other health care for a vulnerable adult, unless the vulnerable adult is able to provide or obtain the necessary care without assistance; or
 - (B) failure of a caretaker to provide protection from health and safety hazards or 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;
 - (iv) knowing or intentional failure by a caretaker to carry out a prescribed treatment plan that causes or is likely to cause harm to the vulnerable adult;
 - (v) self-neglect by the vulnerable adult; or
 - (vi) abandonment by a caretaker.
 - (b) "Neglect" does not include conduct, or failure to take action, that is permitted or excused under Title 75, Chapter 2a, Advance Health Care Directive Act.
- (23) "Physical injury" includes the damage and conditions described in Section 76-5-111.
- (24) "Protected person" means a vulnerable adult for whom the court has ordered protective services.
- (25) "Protective services" means services to protect a vulnerable adult from abuse, 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.
- (28) "Supported" means a finding by the division that there is a reasonable basis to conclude that abuse, neglect, or exploitation occurred.
- (29) "Undue influence" occurs when a person:
 - (a) uses influence to take advantage of a vulnerable adult's mental or physical impairment; or
 - (b) uses the person's role, relationship, or power:
 - (i) to exploit, or knowingly assist or cause another to exploit, the trust, dependency, or fear of a vulnerable adult; or
 - (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 or physical impairment which substantially affects that person's ability to:
 - (a) provide personal protection;
 - (b) provide necessities such as food, shelter, clothing, or mental or other health care;

- (c) obtain services necessary for health, safety, or welfare;
 - (d) carry out the activities of daily living;
 - (e) manage the adult's own financial resources; or
 - (f) comprehend the nature and consequences of remaining in a situation of abuse, neglect, or exploitation.
- (31) "Without merit" means a finding that abuse, neglect, or exploitation did not occur.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-6-202 Purpose of Adult Protective Services Program.

- Subject to the rules made by the division under Section 26B-6-110, Adult Protective Services:
- (1) shall investigate or cause to be investigated reports of alleged abuse, neglect, or exploitation of vulnerable adults;
 - (2) shall, where appropriate, provide short-term, limited protective services with the permission of the affected vulnerable adult or the guardian or conservator of the vulnerable adult;
 - (3) shall, subject to Section 26B-6-217, provide emergency protective services; and
 - (4) may make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, and develop procedures and policies relating to:
 - (a) reporting and investigating incidents of abuse, neglect, or exploitation; and
 - (b) providing protective services to the extent that funds are appropriated by the Legislature for this purpose.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-6-203 Powers and duties of Adult Protective Services.

- In addition to all other powers and duties that Adult Protective Services is given under this part, Adult Protective Services:
- (1) shall maintain an intake system for receiving and screening reports;
 - (2) shall investigate referrals that meet the intake criteria;
 - (3) shall conduct assessments of vulnerability and functional capacity as it relates to an allegation of abuse, neglect, or exploitation of an adult who is the subject of a report;
 - (4) shall perform assessments based on protective needs and risks for a vulnerable adult who is the subject of a report;
 - (5) may address any protective needs by making recommendations to and coordinating with the vulnerable adult or by making referrals to community resources;
 - (6) may provide short-term, limited services to a vulnerable adult when family or community resources are not available to provide for the protective needs of the vulnerable adult;
 - (7) shall have access to facilities licensed by, or contracted with, the department for the purpose of conducting investigations;
 - (8) shall be given access to, or provided with, written statements, documents, exhibits, and other items related to an investigation, including private, controlled, or protected medical or financial records of a vulnerable adult who is the subject of an investigation if:
 - (a) for a vulnerable adult who has the capacity to consent, the vulnerable adult signs a release of information; or
 - (b) an administrative subpoena is issued by Adult Protective Services:
 - (i) for a vulnerable adult who has limited capacity to consent;
 - (ii) for a vulnerable adult whose legal guardian refuses to consent;

- (iii) to a custodian of records or other items for a vulnerable adult, if the custodian refuses to allow access to the records or items without a subpoena; or
- (iv) when the records or other items sought are reasonably necessary for Adult Protective Services to:
 - (A) investigate the alleged abuse, neglect, or exploitation of a vulnerable adult; or
 - (B) protect the vulnerable adult who may be the victim of abuse, neglect, or exploitation;
- (9) may initiate proceedings in a court of competent jurisdiction to seek relief necessary to carry out the provisions of this chapter;
- (10) shall, subject to Section 26B-6-217, provide emergency protective services;
- (11) may require all persons, including family members of a vulnerable adult and any caretaker, to cooperate with Adult Protective Services in carrying out its duties under this chapter, including the provision of statements, documents, exhibits, and other items that assist Adult Protective Services in conducting investigations and providing protective services;
- (12) may require all officials, agencies, departments, and political subdivisions of the state to assist and cooperate within their jurisdictional power with the court, the division, and Adult Protective Services in furthering the purposes of this chapter;
- (13) may conduct studies and compile data regarding abuse, neglect, and exploitation; and
- (14) may issue reports and recommendations.

Renumbered and Amended by Chapter 308, 2023 General Session
Amended by Chapter 318, 2023 General Session

26B-6-204 Cooperation by caretaker.

A caretaker, facility, or other institution shall, regardless of the confidentiality standards of the caretaker, facility, or institution:

- (1) report abuse, neglect, or exploitation of a vulnerable adult in accordance with this chapter;
- (2) cooperate with any Adult Protective Services investigation;
- (3) provide Adult Protective Services with access to records or documents relating to the vulnerable adult who is the subject of an investigation; or
- (4) provide evidence in any judicial or administrative proceeding relating to a vulnerable adult who is the subject of an investigation.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-6-205 Reporting requirements -- Investigation -- Exceptions -- Immunity -- Penalties -- Nonmedical healing.

- (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 provide protection to the vulnerable adult.

- (3) When a report under Subsection (1), or a subsequent investigation by Adult Protective Services, indicates that a criminal offense may have occurred against a vulnerable adult:
 - (a) Adult Protective Services shall notify the nearest local law enforcement agency regarding the potential offense; and
 - (b) the law enforcement agency shall initiate an investigation in cooperation with Adult 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:
 - (i) excuse a physician from reporting suspected abuse, neglect, or exploitation of a 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 26B-2-238, 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
 - (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.

Renumbered and Amended by Chapter 308, 2023 General Session

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).

Renumbered and Amended by Chapter 308, 2023 General Session

26B-6-207 Peace officer's authority to transport -- Notification.

- (1) A peace officer may remove and transport, or cause to have transported, a vulnerable adult to an appropriate medical or shelter facility, if:
 - (a) the officer has probable cause to believe that:
 - (i) by reason of abuse, neglect, or exploitation there exist exigent circumstances; and
 - (ii) the vulnerable adult will suffer serious physical injury or death if not immediately placed in a safe environment;
 - (b) the vulnerable adult refuses to consent or lacks capacity to consent; and
 - (c) there is not time to notify interested parties or to apply for a warrant or other court order.
- (2) A peace officer described in Subsection (1) shall, within four hours after a vulnerable adult is transported to an appropriate medical or shelter facility:
 - (a) notify Adult Protective Services intake; and
 - (b) request that Adult Protective Services or the division file a petition with the court for an emergency protective order.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-6-208 Enforcement by division -- Duty of county or district attorney.

- (1) It is the duty of the county or district attorney, as appropriate under Sections 17-18a-202 and 17-18a-203, to:
 - (a) assist and represent the division;
 - (b) initiate legal proceedings to protect vulnerable adults; and
 - (c) take appropriate action to prosecute the alleged offenders.
- (2) If the county or district attorney fails to act upon the request of the division to provide legal assistance within five business days after the day on which the request is made:
 - (a) the division may request the attorney general to act; and
 - (b) the attorney general may, in the attorney general's discretion, assume the responsibilities and carry the action forward in place of the county or district attorney.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-6-209 Requests for records.

- (1) Requests for records maintained by Adult Protective Services shall be made in writing to Adult Protective Services.
- (2) Classification and disclosure of records shall be made in accordance with Title 63G, Chapter 2, Government Records Access and Management Act.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-6-210 Statewide database -- Restricted use and access.

- (1) The division shall maintain a database for reports of vulnerable adult abuse, neglect, or exploitation made pursuant to this part.
- (2) The database shall include:

- (a) the names and identifying data of the alleged abused, neglected, or exploited vulnerable adult and the alleged perpetrator;
 - (b) information regarding whether or not the allegation of abuse, neglect, or exploitation was found to be:
 - (i) supported;
 - (ii) inconclusive;
 - (iii) without merit; or
 - (iv) for reports for which the finding is made before May 5, 2008:
 - (A) substantiated; or
 - (B) unsubstantiated; and
 - (c) any other information that may be helpful in furthering the purposes of this part, as determined by the division.
- (3) Information obtained from the database may be used only:
- (a) for statistical summaries compiled by the department that do not include names or other identifying data;
 - (b) where identification of an individual as a perpetrator may be relevant in a determination regarding whether to grant or deny a license, privilege, or approval made by:
 - (i) the department;
 - (ii) the Division of Professional Licensing;
 - (iii) the Division of Licensing and Background Checks within the department;
 - (iv) the Bureau of Emergency Medical Services and Preparedness, within the department, or a designee of the Bureau of Emergency Medical Services and Preparedness;
 - (v) any government agency specifically authorized by statute to access or use the information in the database; or
 - (vi) an agency of another state that performs a similar function to an agency described in Subsections (3)(b)(i) through (iv); or
 - (c) as otherwise specifically provided by law.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-6-211 Notice of supported finding -- Procedure for challenging finding -- Limitations.

- (1)
- (a) Except as provided in Subsection (1)(b), within 15 days after the day on which the division makes a supported finding that a person committed abuse, neglect, or exploitation of a vulnerable adult, the division shall serve the person with a notice of agency action, in accordance with Subsections (2) and (3).
 - (b) The division may serve the notice described in Subsection (1)(a) within a reasonable time after the 15 day period described in Subsection (1)(a) if:
 - (i) the delay is necessary in order to:
 - (A) avoid impeding an ongoing criminal investigation or proceeding; or
 - (B) protect the safety of a person; and
 - (ii) the notice is provided before the supported finding is used as a basis to deny the person a license or otherwise adversely impact the person.
- (2) The division shall cause the notice described in Subsection (1)(a) to be served by personal service or certified mail.
- (3) The notice described in Subsection (1)(a) shall:
- (a) indicate that the division has conducted an investigation regarding alleged abuse, neglect, or exploitation of a vulnerable adult by the alleged perpetrator;

- (b) indicate that, as a result of the investigation described in Subsection (3)(a), the division made a supported finding that the alleged perpetrator committed abuse, neglect, or exploitation of a vulnerable adult;
 - (c) include a summary of the facts that are the basis for the supported finding;
 - (d) indicate that the supported finding may result in disqualifying the person from:
 - (i) being licensed, certified, approved, or employed by a government agency;
 - (ii) being employed by a service provider, person, or other entity that contracts with, or is licensed by, a government agency; or
 - (iii) qualifying as a volunteer for an entity described in Subsection (3)(d)(i) or (ii);
 - (e) indicate that, as a result of the supported finding, the alleged perpetrator's identifying information is listed in the database;
 - (f) indicate that the alleged perpetrator may request a copy of the report of the alleged abuse, neglect, or exploitation; and
 - (g) inform the alleged perpetrator of:
 - (i) the right described in Subsection (4)(a); and
 - (ii) the consequences of failing to exercise the right described in Subsection (4)(a) in a timely manner.
- (4)
- (a) The alleged perpetrator has the right, within 30 days after the day on which the notice described in Subsection (1)(a) is served, to challenge the supported finding by filing a request for an informal adjudicative proceeding, under Title 63G, Chapter 4, Administrative Procedures Act.
 - (b) If the alleged perpetrator fails to file a request for an informal adjudicative proceeding within the time described in Subsection (4)(a), the supported finding will become final and will not be subject to challenge or appeal.
- (5) At the hearing described in Subsection (4)(a), the division has the burden of proving, by a preponderance of the evidence, that the alleged perpetrator committed abuse, neglect, or exploitation of a vulnerable adult.
- (6) Notwithstanding any provision of this section, an alleged perpetrator described in this section may not challenge a supported finding if a court of competent jurisdiction entered a finding in a proceeding to which the alleged perpetrator was a party, that the alleged perpetrator committed the abuse, neglect, or exploitation of a vulnerable adult, upon which the supported finding is based.
- (7) A person who was listed in the database as a perpetrator before May 5, 2008, and who did not have an opportunity to challenge the division's finding that resulted in the listing, may at any time:
- (a) request that the division reconsider the division's finding; or
 - (b) request an informal adjudicative proceeding, under Title 63G, Chapter 4, Administrative Procedures Act, to challenge the finding.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-6-212 Access to information in database.

The database and the adult protection case file:

- (1) shall be made available to law enforcement agencies, the attorney general's office, city attorneys, the Division of Professional Licensing, and county or district attorney's offices;
- (2) shall be released as required under Subsection 63G-2-202(4)(c); and
- (3) may be made available, at the discretion of the division, to:

- (a) subjects of a report as follows:
 - (i) a vulnerable adult named in a report as a victim of abuse, neglect, or exploitation, or that adult's attorney or legal guardian; and
 - (ii) a person identified in a report as having abused, neglected, or exploited a vulnerable adult, or that person's attorney; and
- (b) persons involved in an evaluation or assessment of the vulnerable adult as follows:
 - (i) an employee or contractor of the department who is responsible for the evaluation or assessment of an adult protection case file;
 - (ii) a multidisciplinary team approved by the division to assist Adult Protective Services in the evaluation, assessment, and disposition of a vulnerable adult case;
 - (iii) an authorized person or agency providing services to, or responsible for, the care, treatment, assessment, or supervision of a vulnerable adult named in the report as a victim, when in the opinion of the division, that information will assist in the protection of, or provide other benefits to, the victim;
 - (iv) a licensing authority for a facility, program, or person providing care to a victim named in a report; and
 - (v) legally authorized protection and advocacy agencies when they represent a victim or have been requested by the division to assist on a case, including:
 - (A) the Office of Public Guardian, created in Section 26B-6-302; and
 - (B) the Long-Term Care Ombudsman Program, created in Section 26B-2-303.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-6-213 Private right of action -- Estate asset -- Attorney fees.

- (1) A vulnerable adult who suffers harm or financial loss as a result of exploitation has a private right of action against the perpetrator.
- (2) Upon the death of a vulnerable adult, any cause of action under this section shall constitute an asset of the estate of the vulnerable adult.
- (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.

Renumbered and Amended by Chapter 308, 2023 General Session

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 26B-6-217.

Renumbered and Amended by Chapter 308, 2023 General Session

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 26B-6-214;
- (2) the vulnerable adult to be protected is eligible for those services from another governmental agency; or
- (3) the court appoints a guardian or conservator and orders that the costs be paid from the vulnerable adult's estate.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-6-216 Venue for protective services proceedings.

Venue for all proceedings related to protective services and emergency protective services under this part is in the county where the vulnerable adult resides or is present.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-6-217 Emergency protective services -- Forcible entry.

- (1) Adult Protective Services shall, immediately upon court order, provide emergency protective services to a court-designated vulnerable adult.
- (2) A court may, without notice, order emergency protective services immediately upon receipt of a petition for emergency protective services when a court finds that:
 - (a) the subject of the petition is a vulnerable adult;
 - (b)
 - (i) the vulnerable adult does not have a court-appointed guardian or conservator; or
 - (ii) the guardian or conservator is not effectively performing the guardian's or conservator's duties;
 - (c) an emergency exists; and
 - (d) the welfare, safety, or best interests of the vulnerable adult requires emergency protective services.
- (3) An emergency protective services order shall specifically designate the services that are approved and the facts that support the provision of those services.
- (4) Services authorized in an emergency protective services order may include hospitalization, nursing, custodial care, or a change in residence.
- (5) An emergency protective services order expires five business days after the day on which the court issues the order unless an appropriate party petitions for temporary guardianship pursuant to Section 75-5-310 or the division files a new petition for an emergency services order.
- (6) If a petition for guardianship or an additional emergency protective services petition is filed within five business days after the day on which the court issues the original emergency

protective services order, a court may extend the duration of the original order an additional 15 business days after the day on which the subsequent petition is filed to allow for a court hearing on the petition.

- (7) To implement an emergency protective services order, a court may authorize forcible entry by a peace officer into the premises where the vulnerable adult may be found.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-6-218 Petition for injunctive relief when caretaker refuses to allow protective services.

- (1) When a vulnerable adult is in need of protective services and the caretaker refuses to allow the provision of those services, the division may petition the court for injunctive relief prohibiting the caretaker from interfering with the provision of protective services.
- (2) The division's petition under Subsection (1) shall allege facts sufficient to show that the vulnerable adult is in need of protective services, that the vulnerable adult either consents or lacks capacity to consent to those services, and that the caretaker refuses to allow the provision of those services.
- (3) The court may, on appropriate findings and conclusions in accordance with Rule 65A, Utah Rules of Civil Procedure, issue an order enjoining the caretaker from interfering with the provision of protective services.
- (4) The petition under Subsection (1) may be joined with a petition under Section 26B-6-217.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-6-219 Medical cannabis use by a vulnerable adult or guardian.

A peace officer or an employee or agent of the division may not solicit or provide, and a court may not order, emergency services for a vulnerable adult based solely on:

- (1) the vulnerable adult's possession or use of cannabis in accordance with Chapter 4, Part 2, Cannabinoid Research and Medical Cannabis; or
- (2) the guardian of the vulnerable adult assisting with the use of or possessing cannabis in accordance with Chapter 4, Part 2, Cannabinoid Research and Medical Cannabis.

Renumbered and Amended by Chapter 308, 2023 General Session

**Part 3
Office of Public Guardian**

26B-6-301 Definitions.

As used in this part:

- (1) "Conservator" is as defined in Section 75-1-201.
- (2) "Court" is as defined in Section 75-1-201.
- (3) "Estate" is as defined in Section 75-1-201.
- (4) "Guardian" is as defined in Section 75-1-201.
- (5) "Incapacitated" means a person who has been determined by a court, pursuant to Section 75-5-303, to be incapacitated, as defined in Section 75-1-201, after the office has 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 26B-6-305.

- (6) "Office" means the Office of Public Guardian.
- (7) "Property" is as defined in Section 75-1-201.
- (8) "Ward" means an incapacitated person for whom the office has been appointed as guardian or conservator.

Renumbered and Amended by Chapter 308, 2023 General Session

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 part.
- (2) The office is under the administrative and general supervision of the executive director.

Renumbered and Amended by Chapter 308, 2023 General Session

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.
- (3) The director is the administrative head of the office.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-6-304 Powers and duties of the office.

- (1) The office shall:
 - (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
 - (B) standards set by the National Guardianship Association for guardians and conservators; and
 - (iii) serve as a guardian, conservator, or both for a ward upon appointment by a court when no other person is able and willing to do so and the office petitioned for or agreed in advance to the appointment;
 - (b) possess and exercise all the powers and duties specifically given to the office by virtue of being appointed as guardian or conservator of a ward, including the power to access a ward's records;
 - (c) review and monitor the personal and, if appropriate, financial status of each ward for whom the office has been appointed to serve as guardian or conservator;
 - (d) train and monitor each employee and volunteer, and monitor each contract provider to whom the office has delegated a responsibility for a ward;
 - (e) retain all court-delegated powers and duties for a ward;
 - (f) report on the personal and financial status of a ward as required by a court in accordance with Title 75, Chapter 5, Protection of Persons Under Disability and Their Property;
 - (g) handle a ward's funds in accordance with the department's trust account system;
 - (h) request that the department's audit plan, established pursuant to Section 631-5-401, include the requirement of an annual audit of all funds and property held by the office on behalf of wards;

- (i) maintain accurate records concerning each ward, the ward's property, and office services provided to the ward;
 - (j) make reasonable and continuous efforts to find a family member, friend, or other person to serve as a ward's guardian or conservator;
 - (k) after termination as guardian or conservator, distribute a ward's property in accordance with Title 75, Chapter 5, Protection of Persons Under Disability and Their Property; and
 - (l) submit recommendations for changes in state law and funding to the governor and the Legislature and report to the governor and Legislature, upon request.
- (2) The office may:
- (a) petition a court pursuant to Title 75, Chapter 5, Protection of Persons Under Disability and Their Property, to be appointed an incapacitated person's guardian, conservator, or both after conducting a prepetition assessment under Section 26B-6-305;
 - (b) develop and operate a statewide program to recruit, train, supervise, and monitor volunteers to assist the office in providing guardian and conservator services;
 - (c) delegate one or more responsibilities for a ward to an employee, volunteer, or contract provider, except as provided in Subsection 26B-6-305(1);
 - (d) solicit and receive private donations to provide guardian and conservator services under this part; and
 - (e) adopt rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to:
 - (i) effectuate policy; and
 - (ii) carry out the office's role as guardian and conservator of wards as provided in this chapter.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-6-305 Prepetition assessment and plan.

- (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 guardianship 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.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-6-306 Office volunteers.

- (1) A person who desires to be an office volunteer shall:

- (a) possess demonstrated personal characteristics of honesty, integrity, compassion, and concern for incapacitated persons; and
 - (b) upon request, submit information for a background check pursuant to Section 26B-1-211.
- (2) An office volunteer may not receive compensation or benefits, but may be reimbursed by the office for expenses actually and reasonably incurred, consistent with Title 67, Chapter 20, Volunteer Government Workers Act.
- (3) An office volunteer is immune from civil liability pursuant to Title 63G, Chapter 8, Immunity for Persons Performing Voluntary Services Act.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-6-307 Contract for services.

- (1) In accordance with Title 63G, Chapter 6a, Utah Procurement Code, the office may contract with one or more providers to perform guardian and conservator duties.
- (2) The office shall review and monitor the services provided by a contract provider to a ward for whom the office has been appointed guardian or conservator.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-6-308 Court, legal, and other costs.

- (1) The office may not be appointed as the guardian or conservator of a person unless the office petitioned for or agreed in advance to the appointment.
- (2) Except as provided in Subsection (4), the court shall order the ward or the ward's estate to pay for the cost of services rendered under this chapter, including court costs and reasonable attorney fees.
- (3) If the office recovers attorney fees under Subsection (2), the office shall transmit those fees to the attorneys who represented the ward or the office in connection with the ward's case.
- (4) If a ward is indigent, the office shall provide guardian and conservator services free of charge and shall make reasonable efforts to secure pro bono legal services for the ward.
- (5) Under no circumstances may court costs or attorney fees be assessed to the office.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-6-309 Duty of the county attorney or district attorney.

- (1) The attorney general shall advise the office on legal matters and represent the office in legal proceedings.
- (2) Upon the request of the attorney general, a county attorney may represent the office in connection with the filing of a petition for appointment as guardian or conservator of an incapacitated person and with routine, subsequent appearances.

Renumbered and Amended by Chapter 308, 2023 General Session

Part 4
Division of Services for People with Disabilities

26B-6-401 Definitions.

As used in this part:

- (1) "Approved provider" means a person approved by the division to provide home-based services.
- (2) "Board" means the Utah State Developmental Center Board created under Section 26B-1-429.
- (3)
 - (a) "Brain injury" means an acquired injury to the brain that is neurological in nature, including a cerebral vascular accident.
 - (b) "Brain injury" does not include a deteriorating disease.
- (4) "Designated intellectual disability professional" means:
 - (a) a psychologist licensed under Title 58, Chapter 61, Psychologist Licensing Act, who:
 - (i)
 - (A) has at least one year of specialized training in working with persons with an intellectual disability; or
 - (B) has at least one year of clinical experience with persons with an intellectual disability; and
 - (ii) is designated by the division as specially qualified, by training and experience, in the treatment of an intellectual disability; or
 - (b) a clinical social worker, certified social worker, marriage and family therapist, or professional counselor, licensed under Title 58, Chapter 60, Mental Health Professional Practice Act, who:
 - (i) has at least two years of clinical experience with persons with an intellectual disability; and
 - (ii) is designated by the division as specially qualified, by training and experience, in the treatment of an intellectual disability.
- (5) "Deteriorating disease" includes:
 - (a) multiple sclerosis;
 - (b) muscular dystrophy;
 - (c) Huntington's chorea;
 - (d) Alzheimer's disease;
 - (e) ataxia; or
 - (f) cancer.
- (6) "Developmental center" means the Utah State Developmental Center, established in accordance with Part 5, Utah State Developmental Center.
- (7) "Director" means the director of the Division of Services for People with Disabilities.
- (8) "Direct service worker" means a person who provides services to a person with a disability:
 - (a) when the services are rendered in:
 - (i) the physical presence of the person with a disability; or
 - (ii) a location where the person rendering the services has access to the physical presence of the person with a disability; and
 - (b)
 - (i) under a contract with the division;
 - (ii) under a grant agreement with the division; or
 - (iii) as an employee of the division.
- (9)
 - (a) "Disability" means a severe, chronic disability that:
 - (i) is attributable to:
 - (A) an intellectual disability;
 - (B) a condition that qualifies a person as a person with a related condition, as defined in 42 C.F.R. Sec. 435.1010;
 - (C) a physical disability; or
 - (D) a brain injury;
 - (ii) is likely to continue indefinitely;

- (iii)
 - (A) for a condition described in Subsection (9)(a)(i)(A), (B), or (C), results in a substantial functional limitation in three or more of the following areas of major life activity:
 - (I) self-care;
 - (II) receptive and expressive language;
 - (III) learning;
 - (IV) mobility;
 - (V) self-direction;
 - (VI) capacity for independent living; or
 - (VII) economic self-sufficiency; or
 - (B) for a condition described in Subsection (9)(a)(i)(D), results in a substantial limitation in three or more of the following areas:
 - (I) memory or cognition;
 - (II) activities of daily life;
 - (III) judgment and self-protection;
 - (IV) control of emotions;
 - (V) communication;
 - (VI) physical health; or
 - (VII) employment; and
 - (iv) requires a combination or sequence of special interdisciplinary or generic care, treatment, or other services that:
 - (A) may continue throughout life; and
 - (B) must be individually planned and coordinated.
- (b) "Disability" does not include a condition due solely to:
 - (i) mental illness;
 - (ii) personality disorder;
 - (iii) deafness or being hard of hearing;
 - (iv) visual impairment;
 - (v) learning disability;
 - (vi) behavior disorder;
 - (vii) substance abuse; or
 - (viii) the aging process.
- (10) "Division" means the Division of Services for People with Disabilities.
- (11) "Eligible to receive division services" or "eligibility" means qualification, based on criteria established by the division, to receive services that are administered by the division.
- (12) "Endorsed program" means a facility or program that:
 - (a) is operated:
 - (i) by the division; or
 - (ii) under contract with the division; or
 - (b) provides services to a person committed to the division under Part 6, Admission to an Intermediate Care Facility for People with an Intellectual Disability.
- (13) "Licensed physician" means:
 - (a) an individual licensed to practice medicine under:
 - (i) Title 58, Chapter 67, Utah Medical Practice Act; or
 - (ii) Title 58, Chapter 68, Utah Osteopathic Medical Practice Act; or
 - (b) a medical officer of the United States Government while in this state in the performance of official duties.

- (14) "Limited support services" means services that are administered by the division to individuals with a disability:
 - (a) under a waiver authorized under 42 U.S.C. Sec. 1396n(c) by the Centers for Medicare and Medicaid Services that permits the division to limit services to an individual who is eligible to receive division services; and
 - (b) through a program that:
 - (i) was not operated by the division on or before January 1, 2020; and
 - (ii)
 - (A) limits the kinds of services that an individual may receive; or
 - (B) sets a maximum total dollar amount for program services provided to each individual.
- (15) "Physical disability" means a medically determinable physical impairment that has resulted in the functional loss of two or more of a person's limbs.
- (16) "Public funds" means state or federal funds that are disbursed by the division.
- (17) "Resident" means an individual under observation, care, or treatment in an intermediate care facility for people with an intellectual disability.
- (18) "Sustainability fund" means the Utah State Developmental Center Long-Term Sustainability Fund created in Section 26B-1-331.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-6-402 Division of Services for People with Disabilities -- Creation -- Authority -- Direction -- Provision of services.

- (1) There is created within the department the Division of Services for People with Disabilities, under the administrative direction of the executive director of the department.
- (2) In accordance with this part, the division has the responsibility to plan and deliver an appropriate array of services and supports to persons with disabilities and 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:
 - (i) severity of the disability;
 - (ii) urgency of the need for services;
 - (iii) ability of a parent or guardian to provide the individual with appropriate care and supervision; and
 - (iv) length of time during which the individual has not received services from the division.
 - (b) Funds from Subsection (4)(a) that are not spent by the division at the end of the 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:
 - (a) has the functions, powers, duties, rights, and responsibilities described in Section 26B-6-403; 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:
 - (i) best meet individual needs; and
 - (ii) promote:
 - (A) independence;
 - (B) productivity; and
 - (C) integration in community life.
- (7)
 - (a) Appropriations to the division are nonlapsing.
 - (b) After an individual stops receiving services under this section, the division shall 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 the funds were allocated under a program established under Section 26B-3-108 to transition individuals with intellectual disabilities from an intermediate care facility.
 - (c) Except as provided in Subsection (7)(b), if an individual receiving services under 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 services as described in Subsection (4)(a).
 - (d) Funds unexpended by the division at the end of the fiscal year may be used only for one-time expenditures unless otherwise authorized by the Legislature.
 - (e) A one-time expenditure under this section:
 - (i) is not an entitlement;
 - (ii) may be withdrawn at any time; and
 - (iii) may provide short-term, limited services, including:
 - (A) respite care;
 - (B) service brokering;
 - (C) family skill building and preservation classes;
 - (D) after school group services; and
 - (E) other professional services.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-6-403 Responsibility and authority of division.

- (1) For purposes of this section "administer" means to:
 - (a) plan;
 - (b) develop;
 - (c) manage;
 - (d) monitor; and
 - (e) conduct certification reviews.
- (2) The division has the authority and responsibility to:
 - (a) administer an array of services and supports for persons with disabilities and their families throughout the state;
 - (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 Subsection (2)(a);

- (c) consistent with Section 26B-6-506, supervise the programs and facilities of the Developmental Center;
 - (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:
 - (i) outreach;
 - (ii) information and referral;
 - (iii) prevention;
 - (iv) technical assistance; and
 - (v) public awareness;
 - (e) supervise the programs and facilities operated by, or under contract with, the division;
 - (f) cooperate with other state, governmental, and private agencies that provide services to a person with a disability;
 - (g) subject to Subsection (3), ensure that a person with a disability is not deprived of that person's constitutionally protected rights without due process procedures designed to 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:
 - (i) the developmental center; and
 - (ii) facilities within the community;
 - (h) determine whether to approve providers;
 - (i) monitor and sanction approved providers, as specified in the providers' contract;
 - (j) subject to Section 26B-6-410, receive and disburse public funds;
 - (k) review financial actions of a provider who is a representative payee appointed by the Social Security Administration;
 - (l) establish standards and rules for the administration and operation of programs conducted by, or under contract with, the division;
 - (m) approve and monitor division programs to insure compliance with the board's rules and standards;
 - (n) establish standards and rules necessary to fulfill the division's responsibilities under Part 5, Utah State Developmental Center, and Part 6, Admission to an Intermediate Care Facility for People with an Intellectual Disability, with regard to an intermediate care facility for people with an intellectual disability;
 - (o) assess and collect equitable fees for a person who receives services provided under this chapter;
 - (p) maintain records of, and account for, the funds described in Subsection (2)(o);
 - (q) establish and apply rules to determine whether to approve, deny, or defer the division's services to a person who is:
 - (i) applying to receive the services; or
 - (ii) currently receiving the services;
 - (r) in accordance with state law, establish rules:
 - (i) relating to an intermediate care facility for people with an intellectual disability that is an endorsed program; and
 - (ii) governing the admission, transfer, and discharge of a person with a disability;
 - (s) manage funds for a person residing in a facility operated by the division:
 - (i) upon request of a parent or guardian of the person; or
 - (ii) under administrative or court order; and
 - (t) fulfill the responsibilities described in Section 26B-1-430.
- (3) The due process procedures described in Subsection (2)(g):

- (a) shall include initial and periodic reviews to determine the constitutional appropriateness of the placement; and
- (b) with regard to facilities in the community, do not require commitment to the division.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-6-404 Director -- Qualifications -- Responsibilities.

- (1) The director of the division 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 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.

Renumbered and Amended by Chapter 308, 2023 General Session

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 part; and
 - (b) Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
- (2) The division shall:
 - (a) establish program policy for the division, the developmental center, and programs and facilities operated by or under contract with the division;
 - (b) establish rules for the assessment and collection of fees for programs within the 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 26B-6-411;
 - (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;
 - (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 out; and
 - (h) annually report to the executive director.
- (3) The executive director shall mediate any differences which arise between the policies of the division and those of any other policy board or division in the department.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-6-406 Powers of other state agencies -- Severability.

Nothing in this part shall be construed to supersede or limit the authority granted by law to any other state agency. If any provision of this part, or the application of any provision to the person or circumstance, is held invalid, the remainder of this part shall not be affected.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-6-407 Program for provision of supported employment services.

- (1) There is established a program for the provision of supported employment services to be administered by the division.
- (2) The division shall make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, as necessary for the implementation and administration of the program described in this section.
- (3) In accordance with Subsection (4), within funds appropriated by the Legislature for the program described in this section, the division shall provide supported employment services to a person with a disability who:
 - (a) is eligible to receive services from the division;
 - (b) has applied for, and is waiting to, receive services from the division;
 - (c) is not receiving other ongoing services from the division;
 - (d) is not able to receive sufficient supported employment services from other sources;
 - (e) the division determines would substantially benefit from the provision of supported employment services; and
 - (f) does not require the provision of other ongoing services from the division in order to substantially benefit from the provision of supported employment services.
- (4)
 - (a) The division shall provide supported employment services under this section outside of the prioritization criteria established by the division for the receipt of other services from the division.
 - (b) The division shall establish criteria to determine the priority, between persons eligible for services under this section, for receiving services under this section.
- (5) It is the intent of the Legislature that the services provided under the program described in this section:
 - (a) shall be provided separately from the Medicaid program described in Title XIX of the Social Security Act;
 - (b) may not be supported with Medicaid funds;
 - (c) may not be provided as part of a Medicaid waiver;
 - (d) do not constitute an entitlement of any kind; and
 - (e) may be withdrawn from a person at any time.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-6-408 Pilot Program for the Provision of Family Preservation Services.

- (1) There is established a pilot program for the provision of family preservation services to a person with a disability and that person's family, beginning on July 1, 2007, and ending on July 1, 2009.
- (2) The family preservation services described in Subsection (1) may include:
 - (a) family skill building classes;
 - (b) respite hours for class attendance; or
 - (c) professional intervention.

- (3) The division shall make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, as necessary for the implementation and administration of this section.
- (4) In accordance with Subsection (5), within funds appropriated by the Legislature for the pilot program described in this section, the division shall provide family preservation 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;
 - (d) is not able to receive sufficient family preservation services from other sources;
 - (e) is determined by the division to be a person who would substantially benefit from the provision of family preservation services; and
 - (f) does not require the provision of other ongoing services from the division in order to substantially benefit from the provision of family preservation services.
- (5)
 - (a) The division shall provide family preservation services under this section outside of the prioritization criteria established by the division for the receipt of other services from the division.
 - (b) The division shall establish criteria to determine the priority, between persons 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 described in this section:
 - (a) shall be provided separately from the Medicaid program described in Title XIX of the Social Security Act;
 - (b) may not be supported with Medicaid funds;
 - (c) may not be provided as part of a Medicaid waiver;
 - (d) do not constitute an entitlement of any kind; and
 - (e) may be withdrawn from a person at any time.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-6-409 Employment first emphasis on the provision of services.

- (1) When providing services to a person with a disability under this chapter, the 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 in obtaining and retaining meaningful and gainful employment that enables the person to:
 - (a) purchase goods and services;
 - (b) establish self-sufficiency; and
 - (c) exercise economic control of the person's life.
- (2) The division shall develop a written plan to implement the policy described in Subsection (1) that includes:
 - (a) assessing the strengths and needs of a person with a disability;
 - (b) customizing strength-based approaches to obtaining employment;
 - (c) expecting, encouraging, providing, and rewarding:
 - (i) integrated employment in the workplace at competitive wages and benefits; and
 - (ii) self-employment;
 - (d) developing partnerships with potential employers;
 - (e) maximizing appropriate employment training opportunities;
 - (f) coordinating services with other government agencies and community resources;

- (g) to the extent possible, eliminating practices and policies that interfere with the policy described in Subsection (1); and
 - (h) arranging sub-minimum wage work or volunteer work when employment at market rates cannot be obtained.
- (3) The division shall, on an annual basis:
- (a) set goals to implement the policy described in Subsection (1) and the plan described in Subsection (2);
 - (b) determine whether the goals for the previous year have been met; and
 - (c) modify the plan described in Subsection (2) as needed.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-6-410 Disbursal of public funds -- Background check of a direct service worker.

- (1) For purposes of this section, "office" means the same as that term is defined in Section 26B-2-101.
- (2) Public funds may not be disbursed to pay a direct service worker for personal services rendered to a person unless the office approves the direct service worker to have direct access and provide services to a child or a vulnerable adult pursuant to Section 26B-2-120.
- (3) For purposes of Subsection (2), the office shall conduct a background check of a direct service worker:
- (a) before public funds are disbursed to pay the direct service worker for the personal services described in Subsection (2); and
 - (b) using the same procedures established for a background check of an applicant for a license under Section 26B-2-120.
- (4) A child who is in the legal custody of the department or any of the department's 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 under Section 26B-2-120.
- (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 26B-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.

Renumbered and Amended by Chapter 308, 2023 General Session
Amended by Chapter 344, 2023 General Session

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 Chapter 9, Part 1, Office of Recovery Services, until the person reaches 18 years old.

- (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 26B-6-412, 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 guardian for the support or maintenance of that person, it shall be repaid upon demand.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-6-412 Discretionary trust for an individual with a disability -- Impact on state services.

- (1) For purposes of this section:
 - (a) "Discretionary trust for an individual with a disability" means a trust:
 - (i) that is established for the benefit of an individual who, at the time the trust is created, is under 65 years old and has a disability, as defined in 42 U.S.C. Sec. 1382c;
 - (ii) under which the trustee has discretionary power to determine distributions;
 - (iii) under which the individual may not control or demand payments unless an abuse of the trustee's duties or discretion is shown;
 - (iv) that contains the assets of the individual and is established for the benefit of the individual by the individual, a court, or a parent, grandparent, or legal guardian of the individual;
 - (v) that is irrevocable, except that the trust document may provide that the trust be terminated if the individual no longer has a disability, as defined in 42 U.S.C. Sec. 1382c;
 - (vi) that is invalid as to any portion funded by property that is or may be subject to a lien by the state; and
 - (vii) that provides that, upon the death of the individual, the state will receive all amounts remaining in the trust, up to an amount equal to the total medical assistance paid on behalf of the individual.
 - (b) "Medical assistance" means the same as that term is defined in Section 26B-3-101.
- (2) A state agency providing services or support to an individual with a disability may:
 - (a) waive application of Subsection (1)(a)(v) with respect to that individual if the state agency determines that application of the criteria would place an undue hardship upon that individual; and
 - (b) define, by rule, what constitutes "undue hardship" for purposes of this section.
- (3) A discretionary trust for an individual with a disability is not liable for reimbursement or payment to the state or any state agency, for financial aid or services provided to that individual except:
 - (a) to the extent that the trust property has been distributed directly to or is otherwise under the control of the beneficiary with a disability; or
 - (b) as provided in Subsection (1)(a)(vi).
- (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 disability shall not be considered trust property that is distributed to or under the control of the beneficiary.

- (5) The benefits that an individual with a disability is otherwise legally entitled to may 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.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-6-413 Scope of home based services -- Purpose -- 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.
- (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 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 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:
 - (i) shall require the family to account for the use of that financial assistance; and
 - (ii) shall tell the person with a disability or the person's parent or guardian how long the direct financial assistance is intended to provide services and supports before additional direct financial assistance is issued.
 - (e) Except for eligibility determination services directly connected to the provision of direct financial assistance, service coordination is not provided under this part by the division unless the person with a disability or the person's parent or guardian uses the direct financial assistance to purchase such services.
- (3) The following principles shall be used as the basis for supporting families who care for family members with disabilities:
 - (a) all children, regardless of disability, should reside in a family-like environment;
 - (b) families should receive the support they need to care for their children at home;
 - (c) services should:
 - (i) focus on the person with a disability;
 - (ii) take into consideration the family of the person described in Subsection (3)(c)(i);
 - (iii) be sensitive to the unique needs, preferences, and strengths of individual families; and
 - (iv) complement and reinforce existing sources of help and support that are available to each family.
- (4) Except as provided in Subsection (5), after June 30, 1996, the division may not provide residential services to persons with disabilities who are under 11 years old.

- (5) The prohibition of Subsection (4) does not include residential services that are provided:
- (a) for persons in the custody of the Division of Child and Family Services;
 - (b) under a plan for home-based services, including respite and temporary residential care or services provided by a professional parent under contract with the division; or
 - (c) after a written finding by the director that out-of-home residential placement is the most appropriate way to meet the needs of the person with disabilities and his family.

Renumbered and Amended by Chapter 308, 2023 General Session

Part 5

Utah State Developmental Center

26B-6-501 Definitions.

The definitions in Section 26B-6-401 apply to this part.

Enacted by Chapter 308, 2023 General Session

26B-6-502 Utah State Developmental Center.

- (1) The intermediate care facility for people with an intellectual disability located in American Fork City, Utah County, shall be known as the "Utah State Developmental Center."
- (2) Within appropriations authorized by the Legislature, the role and function of the developmental center is to:
- (a) provide care, services, and treatment to persons described in Subsection (3); and
 - (b) provide the following services and support to persons with disabilities who do not reside at the developmental center:
 - (i) psychiatric testing;
 - (ii) specialized medical treatment and evaluation;
 - (iii) specialized dental treatment and evaluation;
 - (iv) family and client special intervention;
 - (v) crisis management;
 - (vi) occupational, physical, speech, and audiology services; and
 - (vii) professional services, such as education, evaluation, and consultation, for families, public organizations, providers of community and family support services, and courts.
- (3) Except as provided in Subsection (6), within appropriations authorized by the Legislature, and notwithstanding the provisions of Part 6, Admission to an Intermediate Care Facility for People with an Intellectual Disability, only the following persons may be residents of, be admitted to, or receive care, services, or treatment at the developmental center:
- (a) persons with an intellectual disability;
 - (b) persons who receive services and supports under Subsection (2)(b); and
 - (c) persons who require at least one of the following services from the developmental center:
 - (i) continuous medical care;
 - (ii) intervention for conduct that is dangerous to self or others; or
 - (iii) temporary residential assessment and evaluation.
- (4)
- (a) Except as provided in Subsection (6), the division shall, in the division's discretion:

- (i) place residents from the developmental center into appropriate less restrictive placements; and
 - (ii) determine each year the number to be placed based upon the individual assessed 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 6, Admission to an Intermediate Care Facility for People with an Intellectual Disability, a person who is under 18 years old 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 center rather than a private intermediate care facility for people with an intellectual disability; 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 guardian 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).

Renumbered and Amended by Chapter 308, 2023 General Session

26B-6-503 Developmental center within division.

The programs and facilities of the developmental center are within the division, and under the policy direction of the division.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-6-504 Operation, maintenance, and repair of developmental center buildings and grounds.

- (1) The division shall operate, maintain, and repair the buildings, grounds, and physical properties of the developmental center. However, the roads and driveways on the grounds of the developmental center shall be maintained by the Department of Transportation.
- (2) The division has authority to make improvements to the buildings, grounds, and physical properties of the developmental center, as it deems necessary for the care and safety of the residents.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-6-505 State Board of Education -- Education of children at developmental center.

- (1) The State Board of Education is responsible for the education of school-aged children at the developmental center.
- (2) In order to fulfill its responsibility under Subsection (1), the State Board of Education shall, where feasible, contract with local school districts or other appropriate agencies to provide educational and related administrative services.
- (3) Medical, residential, and other services that are not the responsibility of the State Board of Education or other state agencies are the responsibility of the division.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-6-506 Powers and duties of division.

- The powers and duties of the division, with respect to the developmental center are as follows:
- (1) to establish rules, not inconsistent with law, for the government of the developmental center;

- (2) to establish rules governing the admission and discharge of persons with an 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 6, 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 26B-6-502(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.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-6-507 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
 - (b) a lease with a term of less than five years that may be unilaterally renewed by the lessee.
- (2)
 - (a) Notwithstanding Section 65A-4-1, any sale, long-term lease, or other disposition of real property, water rights, or water shares associated with the developmental center shall be conducted as provided in this Subsection (2).
 - (b) The board shall:
 - (i) approve the sale, long-term lease, or other disposition of real property, water rights, or water shares associated with the developmental center;
 - (ii) secure the approval of the Legislature before offering the real property, water rights, or water shares for sale, long-term lease, or other disposition; and
 - (iii) if the Legislature's approval is secured, as described in Subsection (2)(b)(ii), direct the Division of Facilities Construction and Management to convey, lease, or dispose of the real property, water rights, or water shares associated with the developmental center according to the board's determination.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-6-508 Superintendent -- Qualifications.

The superintendent of the developmental center, appointed in accordance with Subsection 26B-6-404(4), shall have a bachelor's degree from an accredited university or college, be experienced in administration, and be knowledgeable in developmental disabilities and intellectual disability.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-6-509 Powers and duties of superintendent.

The chief administrative officer of the developmental center is the superintendent, and has the following powers and duties:

- (1) to manage the developmental center and administer the division's rules governing the developmental center;
- (2) to hire, control, and remove all employees, and to fix their compensation according to state law; and
- (3) with the approval of the division, to make any expenditures necessary in the performance of his duties.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-6-510 Dental services reporting.

The superintendent of the developmental center shall provide to the Health and Human Services Interim Committee an annual report that contains:

- (1) a statewide assessment of resources that provide dental services for individuals with intellectual disabilities;
- (2) an accounting of the funds appropriated to provide specialized dental treatment and evaluation under Subsection 26B-6-502(2)(b)(iii), including the number of individuals served and the services provided; and
- (3) the progress toward the establishment of a financially independent dental clinic that:
 - (a) has a full-time dentist who has specialized training to treat an individual with an intellectual disability; and
 - (b) has the facility, equipment, and staff necessary to legally and safely perform dental procedures and examinations and to administer general anesthesia.

Renumbered and Amended by Chapter 308, 2023 General Session

Part 6

Admission to an Intermediate Care Facility for People with an Intellectual Disability

26B-6-601 Definitions.

The definitions in Section 26B-6-401 apply to this part.

Enacted by Chapter 308, 2023 General Session

26B-6-602 Division responsibility.

The division is responsible:

- (1) for the supervision, care, and treatment of persons with an intellectual disability in this state who are committed to the division's jurisdiction under the provisions of this part; and
- (2) to evaluate and determine the most appropriate, least restrictive setting for an individual with an intellectual disability.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-6-603 Residency requirements -- Transportation of person to another state.

- (1) A person with an intellectual disability who has a parent or guardian residing in this state may be admitted to an intermediate care facility for people with an intellectual disability in accordance with the provisions of this part.
- (2) If a person with an intellectual disability enters Utah from another state, the 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.

Renumbered and Amended by Chapter 308, 2023 General Session

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 26B-6-607; or
 - (b) involuntary commitment in accordance with Section 26B-6-608.
- (2) A proceeding for involuntary commitment under Subsection (1)(a) may be commenced by filing a written petition with the juvenile court under Section 26B-6-608.
- (3)
 - (a) A juvenile court has jurisdiction over the proceeding under Subsection (2) as described in Subsection 78A-6-103(2)(a)(vi).
 - (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.

Amended by Chapter 115, 2023 General Session

Amended by Chapter 308, 2023 General Session

26B-6-605 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 26B-6-608; or
 - (b) temporary emergency commitment in accordance with Section 26B-6-607.

- (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 five days before the day on which the individual is released.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-6-606 Involuntary commitment.

An individual may not be involuntarily committed to an intermediate care facility for people with an intellectual disability except in accordance with Sections 26B-6-607 and 26B-6-608.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-6-607 Temporary emergency commitment -- Observation and evaluation.

- (1) The director of the division or his designee may temporarily commit an individual to the division and therefore, as a matter of course, to an intermediate care facility for people with an intellectual disability for observation and evaluation upon:
 - (a) written application by a responsible person who has reason to know that the individual is in need of commitment, stating:
 - (i) a belief that the individual has an intellectual disability and is likely to cause serious injury to self or others if not immediately committed;
 - (ii) personal knowledge of the individual's condition; and
 - (iii) the circumstances supporting that belief; or
 - (b) certification by a licensed physician or designated intellectual disability professional stating that the physician or designated intellectual disability professional:
 - (i) has examined the individual within a three-day period immediately preceding the certification; and
 - (ii) is of the opinion that the individual has an intellectual disability, and that because of the individual's intellectual disability is likely to injure self or others if not immediately committed.
- (2) If the individual in need of commitment is not placed in the custody of the director or the director's designee by the person submitting the application, the director's or the director's designee may certify, either in writing or orally that the individual is in need of immediate commitment to prevent injury to self or others.
- (3) Upon receipt of the application required by Subsection (1)(a) and the certifications 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 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 26B-6-608.
 - (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 26B-6-608.
- (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.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-6-608 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 old 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;
 - (ii) is under oath; and
 - (iii) sets forth the facts on which the statement is based.
- (2) Before issuing a detention order, the court may require the petitioner to consult with personnel at the division or at an intermediate care facility for people with an intellectual disability and may direct a designated intellectual disability professional to interview the petitioner and the individual to be committed, to determine the existing facts, and to report 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 26B-6-607, 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.
- (6)
 - (a) Immediately after commencement of proceedings for involuntary commitment, the court shall give notice of commencement of the proceedings to:
 - (i) the individual to be committed;
 - (ii) the applicant;
 - (iii) any legal guardian of the individual;
 - (iv) adult members of the individual's immediate family;
 - (v) legal counsel of the individual to be committed, if any;
 - (vi) the division; and
 - (vii) any other person to whom the individual requests, or the court designates, notice 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.
- (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
 - (c) state that a hearing will be held within the time provided by law, and give the time 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;
 - (ii) at the home of the individual to be committed, a hospital, an intermediate care facility for people with an intellectual disability, or any other suitable place not likely to have a harmful effect on the individual; and
 - (iii) within a reasonable period of time after appointment of the examiners by the 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;
 - (iii) exclude from the hearing all persons not necessary to conduct the proceedings; and
 - (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 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 any further support services available and required to meet the resident's needs.

Renumbered and Amended by Chapter 308, 2023 General Session

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.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-6-610 Petition for reexamination.

- (1) A resident committed under Section 26B-6-608, 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 26B-6-608.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-6-611 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.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-6-612 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.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-6-613 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 26B-6-608(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 treatment with medication if it determines that:
- (a) the proposed treatment is in the medical best interest of the resident, taking into account the possible side effects as well as the potential benefits of the medication; and
 - (b) the proposed treatment is in accordance with prevailing standards of accepted medical practice.
- (3) In making the determination described in Subsection (2), the committee shall consider the resident's general history and present condition, the specific need for medication and its possible side effects, and any previous reaction to the same or comparable medication.
- (4) Any authorization of involuntary treatment under this section shall be periodically reviewed in accordance with rules promulgated by the division.

Renumbered and Amended by Chapter 308, 2023 General Session

Part 7 Disability Ombudsman

26B-6-701 Definitions.

In addition to the definitions in Section 26B-6-401, as used in this part:

- (1) "Complainant" means a person who initiates a complaint.
- (2) "Complaint" means a complaint initiated with the ombudsman identifying a person who has violated the rights and privileges of an individual with a disability.
- (3) "Ombudsman" means the ombudsman appointed in Section 26B-6-702.
- (4) "Rights and privileges of an individual with a disability" means the rights and privileges of an individual with a disability described in Subsections 26B-6-802(1) through (3).

Renumbered and Amended by Chapter 308, 2023 General Session

26B-6-702 Disability ombudsman -- Purpose -- Appointment -- Qualifications -- Staff.

- (1) There is created within the department the position of disability ombudsman for the purpose of promoting, advocating, and ensuring the rights and privileges of an individual with a disability are upheld.
- (2) The director shall appoint an ombudsman who has:
 - (a) recognized executive and administrative capacity; and
 - (b) experience in laws and policies regarding individuals with a disability.

- (3) The ombudsman may hire staff as necessary to carry out the duties of the ombudsman under this part.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-6-703 Powers and duties of ombudsman.

The ombudsman shall:

- (1) develop and maintain expertise in laws and policies governing the rights and privileges of an individual with a disability;
- (2) provide training and information to private citizens, civic groups, governmental entities, and other interested parties across the state regarding:
 - (a) the role and duties of the ombudsman;
 - (b) the rights and privileges of an individual with a disability; and
 - (c) services available in the state to an individual with a disability;
- (3) develop a website to provide the information described in Subsection (2) in a form that is easily accessible;
- (4) receive, process, and investigate complaints in accordance with this part;
- (5) review periodically the procedures of state entities that serve individuals with a disability;
- (6) cooperate and coordinate with governmental entities and other organizations in the community in exercising the duties under this section, including the long-term care ombudsman program, created in Section 26B-2-303, and the child protection ombudsman, appointed under Section 80-2-1104, when there is overlap between the responsibilities of the ombudsman and the long-term care ombudsman program or the child protection ombudsman;
- (7) as appropriate, make recommendations to the division regarding rules to be made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, that the ombudsman considers necessary to carry out the ombudsman's duties under this part;
- (8) submit annually, by July 1, to the Health and Human Services Interim Committee, a report describing:
 - (a) the work of the ombudsman; and
 - (b) any recommendations for statutory changes to improve the effectiveness of the ombudsman in performing the duties under this section; and
- (9) perform other duties required by law.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-6-704 Investigation of complaints -- Procedures -- Rulemaking.

- (1) Except as provided in Subsection (3), the ombudsman shall, upon receipt of a complaint, investigate the complaint.
- (2) An ombudsman's investigation of a complaint may include:
 - (a) a referral to a governmental entity or other services;
 - (b) the collection of facts, information, or documentation;
 - (c) holding an investigatory hearing; or
 - (d) an inspection of the premises of the person named in the complaint.
- (3)
 - (a) The ombudsman may decline to investigate a complaint.
 - (b) If the ombudsman declines to investigate a complaint, the ombudsman shall notify the complainant and the division of the declination.

- (4) The division shall make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, that govern the ombudsman's process for:
 - (a) receiving and processing complaints; and
 - (b) conducting an investigation in accordance with this section.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-6-705 Confidentiality of materials relating to complaints or investigations -- Rulemaking.

- (1) The division shall establish procedures by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to ensure that a record maintained by the ombudsman is disclosed only at the discretion of and under the authority of the ombudsman.
- (2) The identity of a complainant or a party named in the complaint may not be disclosed by the ombudsman unless:
 - (a) the complainant or a legal representative of the complainant consents to the disclosure;
 - (b) disclosure is ordered by a court of competent jurisdiction; or
 - (c) the disclosure is approved by the ombudsman and is made, as part of an investigation involving the complainant, to an agency or entity in the community that:
 - (i) has statutory responsibility for the complainant, over the action alleged in the complaint, or another party named in the complaint;
 - (ii) is able to assist the ombudsman to achieve resolution of the complaint; or
 - (iii) is able to provide expertise that would benefit the complainant.
- (3) Neither the ombudsman nor the ombudsman's designee may be required to testify in court with respect to confidential matters, except as the court finds necessary to enforce this part.

Renumbered and Amended by Chapter 308, 2023 General Session

Part 8
Rights and Privileges of Minors and Individuals with a Disability

26B-6-801 Definitions.

As used in this part:

- (1) "Disability" has the same meaning as defined in 42 U.S.C. Sec. 12102 of the Americans With Disabilities Act of 1990, as may be amended in the future, and 28 C.F.R. Sec. 36.104 of the Code of Federal Regulations, as may be amended in the future.
- (2) "Informed consent" means consent that is voluntary and based on an understanding by the person to be sterilized of the nature and consequences of sterilization, the reasonably foreseeable risks and benefits of sterilization, and the available alternative methods of contraception.
- (3) "Institutionalized" means residing in the Utah State Developmental Center, the Utah State Hospital, a residential facility for persons with a disability as defined in Sections 10-9a-103 and 17-27a-103, a group home for persons with a disability, a nursing home, or a foster care home or facility.
- (4)
 - (a) "Service animal" includes any dog that:

- (i) is trained, or is in training, to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability; and
- (ii) performs work or tasks, or is in training to perform work or tasks, that are directly related to the individual's disability, including:
 - (A) assisting an individual who is blind or has low vision with navigation or other tasks;
 - (B) alerting an individual who is deaf or hard of hearing to the presence of people or sounds;
 - (C) providing non-violent protection or rescue work;
 - (D) pulling a wheelchair;
 - (E) assisting an individual during a seizure;
 - (F) alerting an individual to the presence of an allergen;
 - (G) retrieving an item for the individual;
 - (H) providing physical support and assistance with balance and stability; or
 - (I) helping an individual with a psychiatric or neurological disability by preventing or interrupting impulsive or destructive behaviors.
- (b) "Service animal" does not include:
 - (i) an animal other than a dog, whether wild or domestic, trained or untrained; or
 - (ii) an animal used solely to provide:
 - (A) a crime deterrent;
 - (B) emotional support;
 - (C) well-being;
 - (D) comfort; or
 - (E) companionship.
- (5) "Sterilization" means any medical procedure, treatment, or operation rendering an individual permanently incapable of procreation.
- (6) "Support animal" means an animal, other than a service animal, that qualifies as a reasonable accommodation under federal law for an individual with a disability.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-6-802 Rights and privileges of an individual with a disability.

- (1) An individual with a disability has the same rights and privileges in the use of highways, streets, sidewalks, walkways, public buildings, public facilities, and other public areas as an individual who is not an individual with a disability.
- (2) An individual with a disability has equal rights to accommodations, advantages, and facilities offered by common carriers, including air carriers, railroad carriers, motor buses, motor vehicles, water carriers, and all other modes of public conveyance in this state.
- (3) An individual with a disability has equal rights to accommodations, advantages, and facilities offered by hotels, motels, lodges, and all other places of public accommodation 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 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 26B-6-803.

Renumbered and Amended by Chapter 308, 2023 General Session

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 animal, unless the service animal is a danger or nuisance to others as interpreted under the Americans with Disabilities Act of 1990, 42 U.S.C. Sec. 12102:
 - (i) in any of the places specified in Section 26B-6-802; 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, as defined in Section 10-8-65:
 - (a) in any of the places specified in Section 26B-6-802; 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 26B-6-802.
- (4) Nothing in this section prohibits the exclusion, as permitted under federal law, of a service animal or a support animal from a place described in Section 26B-6-802.

Renumbered and Amended by Chapter 308, 2023 General Session

Amended by Chapter 419, 2023 General Session

26B-6-804 Policy of state to employ individuals with a disability.

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.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-6-805 Interference with rights provided in this part -- Misrepresentation of rights under this part.

- (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).

Renumbered and Amended by Chapter 308, 2023 General Session

26B-6-806 Sterilization of persons 18 years old or older.

- (1) It is lawful for a physician to sterilize a person who is 18 years old 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 old 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 26B-6-811, 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 old or older and who is not capable of giving informed consent unless a petition has been filed in accordance with Section 26B-6-811 and an order authorizing sterilization has been entered by a court of competent jurisdiction.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-6-807 Sterilization of persons under 18 years old.

It is unlawful for a physician to sterilize a person who is under 18 years old 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 the person is institutionalized; or
- (2) a petition has been filed in accordance with Section 26B-6-811, and an order authorizing sterilization has been entered by a court of competent jurisdiction.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-6-808 Emergency -- Medical necessity.

If an emergency situation exists that prevents compliance with Section 26B-6-806 or 26B-6-807 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. That certified statement shall become a permanent part of the sterilized person's medical record.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-6-809 Persons who may give informed consent.

For purposes of this part, the following persons may give informed consent to sterilization:

- (1) a person who is the subject of sterilization, if the person is capable of giving informed consent;
and
- (2) a person appointed by the court to give informed consent on behalf of a subject of sterilization who is incapable of giving informed consent.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-6-810 Declaration of capacity to give informed consent -- Hearing.

- (1) A person who desires sterilization but whose capacity to give informed consent is questioned by any interested party may file a petition for declaration of capacity to give informed consent.
- (2) If, after hearing all the relevant evidence, the court finds by a preponderance of the evidence that the person is capable of giving informed consent, the court shall enter an order declaring that the person has the capacity to give informed consent.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-6-811 Petition for order authorizing sterilization.

- (1) A petition for an order authorizing sterilization may be filed by a person who desires sterilization, or by the person's parent, spouse, guardian, custodian, or other interested party.
- (2) The court shall adjudicate the petition for sterilization in accordance with Section 26B-6-812.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-6-812 Factors to be considered by court -- Evaluations -- Interview -- Findings of fact.

- (1) If the court finds that the subject of sterilization is not capable of giving informed consent, the court shall consider, but not by way of limitation, the following factors concerning that person:
 - (a) the nature and degree of the person's mental impairment, and the likelihood that the condition is permanent;
 - (b) the level of the person's understanding regarding the concepts of reproduction and contraception, and whether the person's ability to understand those concepts is likely to improve;
 - (c) the person's capability for procreation or reproduction, with a rebuttable presumption that the ability to procreate and reproduce exists in a person of normal physical development;
 - (d) the potentially injurious physical and psychological effects from sterilization, pregnancy, childbirth, and parenthood;
 - (e) the alternative methods of birth control presently available including, but not limited to, drugs, intrauterine devices, education and training, and the feasibility of one or more of those methods as an alternative to sterilization;
 - (f) the likelihood that the person will engage in sexual activity or could be sexually abused or exploited;
 - (g) the method of sterilization that is medically advisable, and least intrusive and destructive of the person's rights to bodily and psychological integrity;
 - (h) the advisability of postponing sterilization until a later date; and

- (i) the likelihood that the person 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 the person's 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 the person 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.
- (5) If the court grants a petition for sterilization, the court shall make appropriate findings of fact in support of its order.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-6-813 Advanced hearing.

On motion by the person seeking sterilization or by any other party to the proceeding, the court may advance hearing on the petition.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-6-814 Notice of hearing -- Service.

- (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.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-6-815 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.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-6-816 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.
- (3) A transcript shall be made of the hearing and shall be made a permanent part of the record.
- (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.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-6-817 Appeal to Supreme Court -- Stay.

- (1) Any party to a proceeding under this chapter may file a notice of appeal from any adverse decision with the Supreme Court in accordance with Rule 73, Utah Rules of Civil Procedure.
- (2) The pendency of an appeal in the Supreme Court shall stay the proceedings until the appeal is finally determined.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-6-818 Treatment for therapeutic reasons unaffected.

Nothing in this chapter shall be construed to prevent the medical or surgical treatment, for sound therapeutic reasons, of any person by a physician or surgeon licensed by this state, which treatment may incidentally involve destruction of reproductive functions.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-6-819 Immunity.

- (1) A physician, assistant, or any other person acting pursuant to an order authorizing sterilization, as provided in this part, is not civilly or criminally liable for participation in or assistance to sterilization.
- (2) This section does not apply to negligent acts committed in the performance of sterilization.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-6-820 Unauthorized sterilization -- Criminal penalty.

Except as authorized by this part, any person who intentionally performs, encourages, assists in, or otherwise promotes the performance of a sterilization procedure for the purpose of destroying the power to procreate the human species, with knowledge that the provisions of this part have not been met, is guilty of a third degree felony.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-6-821 Annual "White Cane Safety Day" proclaimed.

Each year the governor shall take notice of October 15 as White Cane Safety Day.

Renumbered and Amended by Chapter 308, 2023 General Session

**Chapter 7
Public Health and Prevention**

**Part 1
Health Promotion and Risk Reduction**

26B-7-101 Definitions.

As used in this part:

- (1) "Down syndrome" means a genetic condition associated with an extra chromosome 21, in whole or in part, or an effective trisomy for chromosome 21.
- (2) "Maternal and child health services" means:
 - (a) the provision of educational, preventative, diagnostic, and treatment services, including medical care, hospitalization, and other institutional care and aftercare, appliances, and facilitating services directed toward reducing infant mortality and improving the health of mothers and children provided, however, that nothing in this Subsection (2) shall be construed to allow any agency of the state to interfere with the rights of the parent of an unmarried minor in decisions about the providing of health information or services;
 - (b) the development, strengthening, and improvement of standards and techniques relating to the services and care;
 - (c) the training of personnel engaged in the provision, development, strengthening, or improvement of the services and care; and
 - (d) necessary administrative services connected with Subsections (2)(a), (b), and (c).
- (3) "Minor" means a person under 18 years old.
- (4) "Services to children with disabilities" means:
 - (a) the early location of children with a disability, provided that any program of prenatal diagnosis for the purpose of detecting the possible disease or disabilities of an unborn child will not be used for screening, but rather will be utilized only when there are medical or genetic indications that warrant diagnosis;
 - (b) the provision for children described in Subsection (4)(a), of preventive, diagnosis, and treatment services, including medical care, hospitalization, and other institutional care and aftercare, appliances, and facilitating services directed toward the diagnosis of the condition of those children or toward the restoration of the children to maximum physical and mental health;
 - (c) the development, strengthening, and improvement of standards and techniques relating to services and care described in this Subsection (4);
 - (d) the training of personnel engaged in the provision, development, strengthening, or improvement of services and care described in this Subsection (4); and
 - (e) necessary administrative services connected with Subsections (4)(a), (b), and (c).

Amended by Chapter 308, 2023 General Session

26B-7-102 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.

Renumbered and Amended by Chapter 308, 2023 General Session

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.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-7-104 Child literacy -- Distribution of information kits.

- (1) The Legislature recognizes that effective child literacy programs can have a 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.

Renumbered and Amended by Chapter 308, 2023 General Session

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 pregnant women and women who may become pregnant regarding:
 - (a) the incidence of CMV;
 - (b) the transmission of CMV to pregnant women and women who may become pregnant;
 - (c) birth defects caused by congenital CMV;
 - (d) methods of diagnosing congenital CMV; and
 - (e) available preventative measures.
- (3) The department shall provide the information described in Subsection (2) to:
 - (a) child care programs licensed under Chapter 2, Part 4, Child Care Licensing, and their employees;

- (b) a person described in Subsection 26B-2-405(1)(a)(iii) and Subsections 26B-2-405(2)(a), (b), (c), (e), and (f);
 - (c) a person serving as a school nurse under Section 53G-9-204;
 - (d) a person offering health education in a school district;
 - (e) health care providers offering care to pregnant women and infants; and
 - (f) religious, ecclesiastical, or denominational organizations offering children's programs as a part of worship services.
- (4) If a newborn infant fails the newborn hearing screening test(s) under Subsection 26B-4-319(1), a medical practitioner shall:
- (a) test the newborn infant for CMV before the newborn is 21 days old, unless a parent of the newborn infant objects; and
 - (b) provide to the parents of the newborn infant information regarding:
 - (i) birth defects caused by congenital CMV; and
 - (ii) available methods of treatment.
- (5) The department shall provide to the family and the medical practitioner, if known, information regarding the testing requirements under Subsection (4) when providing results indicating that an infant has failed the newborn hearing screening test(s) under Subsection 26B-4-319(1).
- (6) The department may make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, as necessary to administer the provisions of this section.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-7-106 Down syndrome diagnosis -- Information and support.

- (1) The department shall provide contact information for state and national Down syndrome organizations that are nonprofit and that provide information and support services for parents, including first-call programs and information hotlines specific to Down syndrome, resource centers or clearinghouses, and other education and support programs for Down syndrome.
- (2) The department shall:
- (a) post the information described in Subsection (1) on the department's website; and
 - (b) create an informational support sheet with the information described in Subsection (1) and the web address described in Subsection (2)(a).
- (3) A Down syndrome organization may request that the department include the organization's informational material and contact information on the website. The department may add the information to the website, if the information meets the description under 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.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-7-107 Lead exposure public education and testing.

- (1) The department shall establish a child blood lead epidemiology and surveillance 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.
- (2) The department may recommend consideration of screening and testing during 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.
 - (b) The department may work with the following organizations to share the information described in Subsection (1):
 - (i) a child care program licensed under Chapter 2, Part 4, Child Care Licensing, and the employees of the child care program;
 - (ii) a health care facility licensed under Chapter 2, Part 2, Health Care Facility Licensing and Inspection;
 - (iii) a person providing child care under a program that is described in Subsection 26B-2-405(2);
 - (iv) an individual offering health education in a school district, including a school nurse under Section 53G-9-204;
 - (v) a health care provider offering care to pregnant women and infants;
 - (vi) a religious, ecclesiastical, or denominational organization offering children's programs as a part of worship services;
 - (vii) an organization that advocates for public education, testing, and screening of 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.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-7-108 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.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-7-109 Director of community health nursing appointed by executive director.

The executive director shall appoint a director of community health nursing 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.

Renumbered and Amended by Chapter 308, 2023 General Session

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 26B-1-202, 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.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-7-111 Local health emergency assistance program.

- (1) As used in this section:
 - (a) "Local health department" means the same as that term is defined in Section 26A-1-102.
 - (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.
 - (c) "Program" means the local health emergency assistance program that the department is required to establish under this section.
 - (d) "Program fund" means money that the Legislature appropriates to the department for use in the program and other money otherwise made available for use in the program.
- (2) The department shall establish, to the extent of funds appropriated by the Legislature or otherwise made available to the program fund, a local health emergency assistance program.
- (3) Under the program, the department shall:
 - (a) provide a method for a local health department to seek reimbursement from the program fund for local health department expenses incurred in responding to a local health emergency;
 - (b) require matching funds from any local health department seeking reimbursement 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.
- (c) Any interest earned on money in the program fund shall be deposited to the General Fund.

Renumbered and Amended by Chapter 308, 2023 General Session

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 request that the United States Department of Health and Human Services waive the requirement of the department to comply with requirements found in 42 C.F.R. Sec. 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.
 - (ii) The department shall give preference to entities described in Subsection (4)(a)(i) that:
 - (A) expand availability of prenatal and postnatal care in low-income and under-served 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).
 - (c) If grant funds are not exhausted under Subsections (4)(a) and (b), or if no entity qualifies for grant funding under the criteria described in Subsection (4)(a) or (b), the department shall give third priority for grant funds to public entities that provide family 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).

Renumbered and Amended by Chapter 308, 2023 General Session

26B-7-113 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.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-7-114 Office of Health Equity -- Duties.

(1) As used in this section:

- (a) "Multicultural or minority health issue" means a health issue, including a mental and oral health issue, of particular interest to cultural, ethnic, racial, or other subpopulations, including:
 - (i) disparities in:
 - (A) disease incidence, prevalence, morbidity, mortality, treatment, and treatment response; and
 - (B) access to care; and
 - (ii) cultural competency in the delivery of health care.
- (b) "Office" means the Office of Health Equity created in this section.

(2) There is created within the department the Office of Health Equity.

(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:
 - (i) the department;
 - (ii) local health departments;
 - (iii) local mental health authorities;
 - (iv) public schools;
 - (v) community-based organizations; and
 - (vi) other organizations within the state;
- (b) assist in the development and implementation of one or more programs to address a multicultural or minority health issue;
- (c) promote the dissemination and use of information on a multicultural or minority health issue by minority populations, health care providers, and others;
- (d) seek federal funding and other resources to accomplish the office's mission;
- (e) provide technical assistance to organizations within the state seeking funding to study or address a multicultural or minority health issue;
- (f) develop and increase the capacity of the office to:

- (i) ensure the delivery of qualified timely culturally appropriate translation services across department programs; and
- (ii) provide, when appropriate, linguistically competent translation and communication services for limited English proficiency individuals;
- (g) provide staff assistance to any advisory committee created by the department to study a multicultural or minority health issue; and
- (h) annually report to the Legislature on its activities and accomplishments.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-7-115 Utah Registry of Autism and Developmental Disabilities.

- (1) As used in this section, "URADD" means the Utah Registry of Autism and Developmental Disabilities.
- (2) The department may enter into an agreement with:
 - (a) the University of Utah or another person for the operation of URADD; and
 - (b) a person to conduct a public education campaign to:
 - (i) improve public awareness of the early warning signs of autism spectrum disorders and developmental disabilities; and
 - (ii) promote the early identification of autism spectrum disorders and developmental disabilities.
- (3) URADD shall consist of a database that collects information on people in the state who have an autism spectrum disorder or a developmental disability.
- (4) The purpose of URADD is to assist health care providers to:
 - (a) determine the risk factors and causes of autism spectrum disorders and developmental disabilities;
 - (b) plan for and develop resources, therapies, methods of diagnoses, and other services for people with an autism spectrum disorder or a developmental disability;
 - (c) facilitate measuring and tracking of treatment outcomes;
 - (d) gather statistics relating to autism spectrum disorders and developmental disabilities; and
 - (e) improve coordination and cooperation between agencies and other programs that provide services to people with an autism spectrum disorder or a developmental disability.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-7-116 Radon awareness campaign.

The department shall, in consultation with the Division of Waste Management and Radiation Control, develop a statewide electronic awareness campaign to educate the public regarding:

- (1) the existence and prevalence of radon gas in buildings and structures;
- (2) the health risks associated with radon gas;
- (3) options for radon gas testing; and
- (4) options for radon gas remediation.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-7-117 Syringe exchange and education.

- (1) The following may operate a syringe exchange program in the state to prevent the transmission of disease and reduce morbidity and mortality among individuals who inject drugs, and those individuals' contacts:
 - (a) a government entity, including:

- (i) the department;
 - (ii) a local health department; or
 - (iii) a local substance abuse authority, as defined in Section 26B-5-101;
 - (b) a nongovernment entity, including:
 - (i) a nonprofit organization; or
 - (ii) a for-profit organization; or
 - (c) any other entity that complies with Subsections (2) and (4).
- (2) An entity operating a syringe exchange program in the state shall:
- (a) facilitate the exchange of an individual's used syringe for one or more new syringes in sealed sterile packages;
 - (b) ensure that a recipient of a new syringe is given verbal and written instruction on:
 - (i) methods for preventing the transmission of blood-borne diseases, including hepatitis C and human immunodeficiency virus; and
 - (ii) options for obtaining:
 - (A) services for the treatment of a substance use disorder;
 - (B) testing for a blood-borne disease; and
 - (C) an opiate antagonist; and
 - (c) report annually to the department the following information about the program's activities:
 - (i) the number of individuals who have exchanged syringes;
 - (ii) the number of used syringes exchanged for new syringes; and
 - (iii) the number of new syringes provided in exchange for used syringes.
- (3) No later than October 1, 2017, and every two years thereafter, the department shall report to the Legislature's Health and Human Services Interim Committee on:
- (a) the activities and outcomes of syringe programs operating in the state, including:
 - (i) the number of individuals who have exchanged syringes;
 - (ii) the number of used syringes exchanged for new syringes;
 - (iii) the number of new syringes provided in exchange for used syringes;
 - (iv) the impact of the programs on blood-borne infection rates; and
 - (v) the impact of the programs on the number of individuals receiving treatment for a substance use disorder;
 - (b) the potential for additional reductions in the number of syringes contaminated with blood-borne disease if the programs receive additional funding;
 - (c) the potential for additional reductions in state and local government spending if the programs receive additional funding;
 - (d) whether the programs promote illicit use of drugs; and
 - (e) whether the programs should be continued, continued with modifications, or terminated.
- (4) The department shall make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, specifying how and when an entity operating a syringe exchange program shall make the report required by Subsection (2)(c).

Renumbered and Amended by Chapter 308, 2023 General Session

26B-7-118 Online public health education module for vaccine-preventable diseases.

- (1) As used in this section:
- (a) "Health care provider" means the same as that term is defined in Section 78B-3-403.
 - (b) "Nonimmune" means that a child or an individual:

- (i) has not received each vaccine required in Section 53G-9-305 and has not developed a natural immunity through previous illness to a vaccine-preventable disease, as documented by a health care provider;
 - (ii) cannot receive each vaccine required in Section 53G-9-305; or
 - (iii) is otherwise known to not be immune to a vaccine-preventable disease.
- (c) "Vaccine-preventable disease" means an infectious disease that can be prevented by a vaccination required in Section 53G-9-305.
- (2) The department shall develop an online education module regarding vaccine-preventable diseases:
- (a) to assist a parent of a nonimmune child to:
 - (i) recognize the symptoms of vaccine-preventable diseases;
 - (ii) respond in the case of an outbreak of a vaccine-preventable disease;
 - (iii) protect children who contract a vaccine-preventable disease; and
 - (iv) prevent the spread of vaccine-preventable diseases;
 - (b) that contains only the following:
 - (i) information about vaccine-preventable diseases necessary to achieve the goals stated in Subsection (2)(a), including the best practices to prevent the spread of vaccine-preventable diseases;
 - (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 diseases and the availability of low-cost vaccines;
 - (c) that includes interactive questions or activities; and
 - (d) that is expected to take an average user 20 minutes or less to complete, based on user testing.
- (3) In developing the online education module described in Subsection (2), the department shall consult with individuals interested in vaccination or vaccine-preventable diseases, including:
- (a) representatives from organizations of health care professionals; and
 - (b) parents of nonimmune children.
- (4) The department shall make the online education module described in Subsection (2) publicly available to parents through:
- (a) a link on the department's website;
 - (b) county health departments, as that term is defined in Section 26A-1-102;
 - (c) local health departments, as that term is defined in Section 26A-1-102;
 - (d) local education agencies, as that term is defined in Section 53E-1-102; and
 - (e) other public health programs or organizations.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-7-119 Hepatitis C Outreach Pilot Program.

- (1) As used in this section, "Hepatitis C outreach organization" means a private nonprofit organization that:
- (a) has an established relationship with individuals who are at risk of acquiring acute Hepatitis C;
 - (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 treatment;
 - (c) has the infrastructure necessary for conducting Hepatitis C assessment, testing, and diagnosis, including clinical staff with the training and ability to provide:
 - (i) specimen collection for Hepatitis C testing;

- (ii) clinical assessments;
 - (iii) consultation regarding blood-borne diseases; and
 - (iv) case management services for patient support during Hepatitis C treatment; or
- (d) has a partnership with a health care facility that can provide clinical follow-up and medical treatment following Hepatitis C rapid antibody testing and confirmatory testing.
- (2) There is created within the department the Hepatitis C Outreach Pilot Program.
- (3) Before September 1, 2020, the department shall, as funding permits, make grants to Hepatitis C outreach organizations in accordance with criteria established by the department under Subsection (4).
- (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;
 - (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.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-7-120 Invisible condition alert program education and outreach.

- (1) As used in this section:
- (a) "Health care professional" means the same as that term is defined in Section 53-3-207.
 - (b) "Invisible condition" means the same as that term is defined in Section 53-3-207.
 - (c) "Invisible condition alert program" means the same as that term is defined in Section 53-27-101.
- (2) In coordination with the Department of Public Safety as described in Section 53-27-102, the department shall develop:
- (a) informational materials that describe the availability of the invisible condition alert program, including information on how an individual with an invisible condition may participate in the program; and
 - (b) educational materials for health care professionals regarding the invisible condition alert program.
- (3) The materials described in Subsection (2) shall be made available to health care professionals in accordance with Section 58-1-604.

Enacted by Chapter 456, 2023 General Session

26B-7-121 Sickle cell disease.

In collaboration with the Medicaid program as defined in Section 26B-3-101, the Drug Utilization Review Board created in Section 26B-3-302, the Health Data Committee created in Section 26B-1-413, the Office of Health Disparities Reduction created in Section 26B-7-114, and others within the department, the Division of Population Health created in Section 26B-1-204 shall:

- (1) review and develop recommendations for improving the surveillance, screening, diagnosis, and treatment of sickle cell disease among residents of the state; and

- (2) report the recommendations to the Health and Human Services Interim Committee before July 1, 2024.

Enacted by Chapter 465, 2023 General Session

Part 2

Detection and Management of Chronic and Communicable Diseases and Public Health Emergencies

26B-7-201 Definitions.

As used in this part:

- (1) "Ambulatory surgical center" means the same as that term is defined in Section 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 a human, or from an infected human 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 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 26B-2-201.
- (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, fungus, protozoan, or helminth that is capable of producing infection or infectious disease.
- (13) "Infectious disease" means a disease of man or animals resulting from an infection.
- (14) "Isolation" means the separation, for the period of communicability, of infected individuals or animals from others, in such places and under such conditions as to prevent the direct or indirect conveyance of the infectious agent from those infected to those who are susceptible or who may spread the agent to others.
- (15) "Order of constraint" means the same as that term is defined in Section 26B-7-301.
- (16) "Quarantine" means the restriction of the activities of well individuals or animals who have been exposed to a communicable disease during its period of communicability to prevent disease transmission.
- (17) "School" means a public, private, or parochial nursery school, licensed or unlicensed day care center, child care facility, family care home, Head Start program, kindergarten, elementary, or secondary school through grade 12.
- (18) "Sexually transmitted disease" means those diseases transmitted through sexual intercourse or any other sexual contact.
- (19) "Specialty hospital" is as defined in Section 26B-2-201.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-7-202 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:
 - (i) medically accurate information about sexually transmitted diseases that may cause infertility and sterility if left untreated, including descriptions of:
 - (A) the probable side effects resulting from an untreated sexually transmitted disease, including infertility and sterility;
 - (B) medically accepted treatment for sexually transmitted diseases;
 - (C) the medical risks commonly associated with the medical treatment of sexually transmitted diseases; and
 - (D) suggested screening by a private physician or physician assistant; and
 - (ii) information about:
 - (A) public services and agencies available to assist individuals with obtaining treatment for the sexually transmitted disease;
 - (B) medical assistance benefits that may be available to the individual with the sexually transmitted disease; and
 - (C) abstinence before marriage and fidelity after marriage being the surest prevention of sexually transmitted disease.
 - (b) The information required by Subsection (2)(a):

- (i) shall be distributed by the department and by local health departments free of charge;
- (ii) shall be relevant to the geographic location in which the information is distributed 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.
 - (b) A county governing body may at any time terminate by majority vote an order of constraint issued by the relevant local health department as described in this section in response to a declared public health emergency.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-7-203 Reporting AIDS and HIV infection -- Anonymous testing.

- (1) Because of the nature and consequences of Acquired Immunodeficiency 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 Sections 26B-7-201 through 26B-7-223, 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;
 - (iii) how many HIV positive individuals provide verifiable information for partner notification; and
 - (iv) how many cases in which partner notification is carried through.
- (b) If the information maintained under Subsection (4)(a) indicates anonymous testing is not resulting in partner notification, the department shall phase out the anonymous testing program allowed by this Subsection (4).

Renumbered and Amended by Chapter 308, 2023 General Session

26B-7-204 Involuntary examination, treatment, isolation, and quarantine.

- (1) The following individuals or groups of individuals are subject to examination, 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 court to order involuntary examination, treatment, quarantine, or isolation in accordance with Part 3, Treatment, Isolation, and Quarantine Procedures for Communicable Diseases.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-7-205 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.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-7-206 Duty to report individual suspected of having communicable disease.

The following shall report to the department or the local health department regarding any individual suffering from or suspected of having a disease that is communicable, as required by department rule:

- (1) health care providers as defined in Section 78B-3-403;
- (2) facilities licensed under Chapter 2, Part 2, Health Care Facility Licensing and Inspection;
- (3) health care facilities operated by the federal government;
- (4) mental health facilities;

- (5) care facilities licensed by the department;
- (6) nursing homes and other care facilities;
- (7) dispensaries, clinics, or laboratories that diagnose, test, or otherwise care for individuals who are suffering from a disease suspected of being communicable;
- (8) individuals who have knowledge of others who have a communicable disease;
- (9) individuals in charge of schools having responsibility for any individuals who have a disease suspected of being communicable; and
- (10) child care programs, as defined in Section 26B-2-401.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-7-207 Designation of communicable diseases by department -- Establishment of rules for detection, reporting, investigation, prevention, and control.

The department may designate those diseases which are communicable, of concern to the public health, and reportable; and establish rules for the detection, reporting, investigation, prevention, and control of communicable diseases, epidemic infections, and other health hazards that affect the public health.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-7-208 Tuberculosis -- Duty of department to investigate, control, and monitor.

- (1) The department shall conduct or oversee the investigation, control, and monitoring of suspected or confirmed tuberculosis infection and disease within the state. Local health departments shall investigate, control, and monitor suspected or confirmed tuberculosis infection and disease within their respective jurisdictions.
- (2) A health care provider who treats an individual with suspected or confirmed tuberculosis shall treat the individual according to guidelines established by the department.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-7-209 Tuberculosis -- Testing of high risk individuals.

Individuals at high risk for tuberculosis shall be tested as required by department rule, which:

- (1) shall establish criteria to identify individuals who are at high risk for tuberculosis; and
- (2) may establish who is responsible for the costs of the testing.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-7-210 Rabies or other animal disease -- Investigation and order of quarantine.

- (1) As used in this section, "quarantine" means strict confinement upon the private premises of the owners, under restraint by leash, closed cage or paddock of all animals specified by the order.
- (2)
 - (a) Whenever rabies or any other animal disease dangerous to the health of human beings is reported, the department shall investigate to determine whether such disease exists, and the probable area of the state in which man or beast is thereby endangered.
 - (b) If the department finds that such disease exists, a quarantine may be declared against all animals designated in the quarantine order and within the area specified in the order.

- (c) If the quarantine is for the purpose of preventing the spread of rabies or hydrophobia, the order shall contain a warning to the owners of dogs within the quarantined area to confine or muzzle all dogs to prevent biting.
 - (d) Any dog not muzzled found running at large in a quarantined area or any dog known to have been removed from or escaped from such area, may be killed by any person without liability therefor.
- (3) Following the order of quarantine the department shall make a thorough investigation as to the extent of the disease, the probable number of persons and beasts exposed, and the area involved.
- (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.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-7-211 Rabies or other animal disease -- Possession of animal in violation of part a misdemeanor.

Any person in possession of any animal being held in violation of Sections 26B-7-201 through 26B-7-223 is guilty of a class C misdemeanor.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-7-212 Sexually transmitted infections 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.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-7-213 Sexually transmitted infections -- 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.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-7-214 Sexually transmitted infections -- 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.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-7-215 Sexually transmitted infections -- 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.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-7-216 Serological testing of pregnant or recently delivered women.

- (1) As used in this section, a "standard serological test" means a test for syphilis approved by the department and made at an approved laboratory.
- (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.
 - (b) The blood sample shall be submitted to an approved laboratory for a standard serological test for syphilis.
 - (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.
- (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.
- (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.
- (5) The laboratory shall transmit a detailed report of the standard serological test, showing the result thereof to the physician or physician assistant.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-7-217 Information regarding communicable or reportable diseases confidentiality -- Exceptions.

- (1)
 - (a) Information collected under Sections 26B-7-201 through 26B-7-223 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 Sections 26B-7-201 through 26B-7-223 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 Sections 26B-7-201 through 26B-7-223 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, the individual's 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 18 years old, the information may be released to the Division of Child and Family Services within the department in accordance with Section 80-2-602, 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 26B-7-221 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 26B-7-222(4) if the state agency agrees to act in accordance with the requirements in this part.
- (3) The provisions of Subsection (2)(h) do not create a duty to warn third parties, but is intended only to aid health care providers in their treatment and containment of infectious disease.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-7-218 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 Sections 26B-7-201 through 26B-7-223 or obtained as a result of an investigation conducted pursuant to Sections 26B-7-201 through 26B-7-223, without the written consent of the individual who is identified in the information or, if that individual is deceased, the consent of the individual's 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 26B-7-217(2)(e); or
 - (b) individuals or groups of individuals subject to examination, treatment, isolation, and quarantine actions under Part 3, Treatment, Isolation, and Quarantine Procedures for Communicable Diseases.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-7-219 Violation -- Penalty.

- (1) Any individual or entity entitled to receive confidential information from the department or a local health department under Sections 26B-7-201 through 26B-7-223, other than the individual identified in that information, who violates Sections 26B-7-201 through 26B-7-223 by releasing or making public confidential information, or by otherwise breaching the confidentiality requirements of Sections 26B-7-201 through 26B-7-223, is guilty of a class B misdemeanor.
- (2) Sections 26B-7-201 through 26B-7-223 do 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 Sections

26B-7-201 through 26B-7-223, if that individual or entity has obtained the information from a source other than the department or a local health department.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-7-220 Exclusions from confidentiality requirements.

- (1) The provisions of Sections 26B-7-201 through 26B-7-223 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 and Youth Services within the 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 and Youth Services within the 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 Sections 26B-7-201 through 26B-7-223 limits the right of the individual identified in the information described in Subsection 26B-7-217(1) to disclose that information.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-7-221 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 United States Centers for Disease Control and Prevention pursuant to the Centers for Medicare and Medicaid Services rules for infection reporting.
 - (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.
 - (b) The department's report under this section shall:
 - (i) include the following health care associated infections as required by the Center for Medicare and Medicaid Services and protocols adopted by the National Healthcare Safety Network in the Centers for Disease Control and Prevention:
 - (A) central line associated bloodstream infections;
 - (B) catheter associated urinary tract infections;
 - (C) surgical site infections from procedures on the colon or an abdominal hysterectomy;
 - (D) methicillin-resistant staphylococcus aureus bacteremia;
 - (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 Centers for Disease Control and Prevention;
 - (ii) include data on the rate of health care associated infections:
 - (A) for the infection types described in Subsection (2)(b)(i); and
 - (B) by health care facility or hospital;
 - (iii) include data on how the rate of health care associated infections in ambulatory surgical facilities, general acute hospitals, and specialty hospitals compares with the rates in other states;
 - (iv) in compiling the report described in Subsection (2)(a), use analytical methodologies that meet accepted standards of validity and reliability;
 - (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;
 - (vi) decide whether information supplied by a facility or hospital under Subsection (1) is appropriate to include in the report;
 - (vii) adjust comparisons among facilities and hospitals for patient case mix and other 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 department shall:
- (a) disclose to each ambulatory surgical facility, general acute hospital, and specialty 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
 - (b) give the facility or hospital 30 days to suggest corrections or add explanatory 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.
- (6) This section does not limit the department's authority to investigate and collect data regarding infections and communicable diseases under other provisions of state or federal law.

Renumbered and Amended by Chapter 308, 2023 General Session

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:

- (a) "Care facility" means a facility described in Subsections 26B-7-206(2) through (6).

- (b) "COVID-19" means the same as that term is defined in Section 78B-4-517.
- (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.
 - (b) The department:
 - (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;
 - (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.
 - (c)
 - (i) The protocols described in Subsection (2)(b)(i) shall:
 - (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.
- (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.
- (4)
 - (a) The department shall publish deidentified information regarding comorbidities and other risk factors for COVID-19 in a manner that is accessible to the public.
 - (b) The department may work with a state agency as defined in Section 67-27-102, to perform the analysis or publish the information described in Subsection (4)(a).

Renumbered and Amended by Chapter 308, 2023 General Session

**26B-7-223 Department support for local education agency test to stay programs --
Department guidance for local education agencies.**

- (1) As used in this section:
 - (a) "Case threshold" means the same as that term is defined in Section 53G-9-210.
 - (b) "COVID-19" means the same as that term is defined in Section 53G-9-210.
 - (c) "Local education agency" or "LEA" means the same as that term is defined in Section 53G-9-210.
 - (d) "Test to stay program" means the same as that term is defined in Section 53G-9-210.
- (2) At the request of an LEA, the department shall provide support for the LEA's test to stay program if a school in the LEA reaches the case threshold, including by providing:
 - (a) COVID-19 testing supplies;
 - (b) a mobile testing unit; and
 - (c) other support requested by the LEA related to the LEA's test to stay program.

- (3) The department shall ensure that guidance the department provides to LEAs related to test to stay programs complies with Section 53G-9-210, including the determination of whether a school meets a case threshold described in Subsection 53G-9-210(3).
- (4) Subsection (2) regarding the requirement to support an LEA's test to stay program does not apply after February 2, 2022, unless the test to stay requirement is triggered under Subsection 53G-9-210(2)(c).

Renumbered and Amended by Chapter 308, 2023 General Session

26B-7-224 Study on violent incidents and fatalities involving substance abuse -- Report.

- (1) As used in this section:
 - (a) "Drug overdose event" means an acute condition, including a decreased level of consciousness or respiratory depression resulting from the consumption or use of a controlled substance, or another substance with which a controlled substance or alcohol was combined, that results in an individual requiring medical assistance.
 - (b) "Substance abuse" means the misuse or excessive use of alcohol or other drugs or substances.
 - (c) "Violent incident" means:
 - (i) aggravated assault as described in Section 76-5-103;
 - (ii) child abuse as described in Sections 76-5-109, 76-5-109.2, 76-5-109.3, and 76-5-114;
 - (iii) an offense described in Title 76, Chapter 5, Part 2, Criminal Homicide;
 - (iv) an offense described in Title 76, Chapter 5, Part 4, Sexual Offenses;
 - (v) a burglary offense described in Sections 76-6-202 , 76-6-203, 76-6-204, and 76-6-204.5;
 - (vi) an offense described in Title 76, Chapter 6, Part 3, Robbery;
 - (vii) a domestic violence offense, as defined in Section 77-36-1; and
 - (viii) any other violent offense, as determined by the department.
- (2) In 2021 and continuing every other year, the department shall provide a report before October 1 to the Health and Human Services Interim Committee regarding the number of:
 - (a) violent incidents and fatalities that occurred in the state during the preceding calendar year that, at the time of occurrence, involved substance abuse;
 - (b) drug overdose events in the state during the preceding calendar year; and
 - (c) recommendations for legislation, if any, to prevent the occurrence of the events described in Subsections (2)(a) and (b).
- (3) The department may contract with another state agency, private entity, or research institution to assist the department with the report described in Subsection (2).

Amended by Chapter 111, 2023 General Session

Renumbered and Amended by Chapter 308, 2023 General Session

Renumbered 7/1/2024

26B-7-225 Statewide stroke registry.

- (1) The department shall establish and supervise a statewide stroke registry to:
 - (a) analyze information on the incidence, severity, causes, outcomes, and rehabilitation of stroke;
 - (b) promote optimal care for stroke patients;
 - (c) alleviate unnecessary death and disability from stroke;
 - (d) encourage the efficient and effective continuum of patient care, including prevention, prehospital care, hospital care, and rehabilitative care; and
 - (e) minimize the overall cost of stroke.

- (2) The department shall utilize the registry established under Subsection (1) to assess:
 - (a) the effectiveness of the data collected by the registry; and
 - (b) the impact of the statewide stroke registry on the provision of stroke care.
- (3)
 - (a) The department shall make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to establish:
 - (i) the data elements that general acute hospitals shall report to the registry; and
 - (ii) the time frame and format for reporting.
 - (b) The data elements described in Subsection (3)(a)(i) shall include consensus metrics consistent with data elements used in nationally recognized data set platforms for stroke care.
 - (c) The department shall permit a general acute hospital to submit data required under this section through an electronic exchange of clinical health information that meets the standards established by the department under Section 26B-8-411.
- (4) A general acute hospital shall submit stroke data in accordance with rules established under Subsection (3).
- (5) Data collected under this section shall be subject to Chapter 8, Part 4, Health Statistics.
- (6) No person may be held civilly liable for providing data to the department in accordance with this section.

Renumbered and Amended by Chapter 308, 2023 General Session

Renumbered 7/1/2024

26B-7-226 Statewide cardiac registry.

- (1) The department shall establish and supervise a statewide cardiac registry to:
 - (a) analyze information on the incidence, severity, causes, outcomes, and rehabilitation of cardiac diseases;
 - (b) promote optimal care for cardiac patients;
 - (c) alleviate unnecessary death and disability from cardiac diseases;
 - (d) encourage the efficient and effective continuum of patient care, including prevention, prehospital care, hospital care, and rehabilitative care; and
 - (e) minimize the overall cost of cardiac care.
- (2) The department shall utilize the registry established under Subsection (1) to assess:
 - (a) the effectiveness of the data collected by the registry; and
 - (b) the impact of the statewide cardiac registry on the provision of cardiac care.
- (3)
 - (a) The department shall make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to establish:
 - (i) the data elements that general acute hospitals shall report to the registry; and
 - (ii) the time frame and format for reporting.
 - (b) The data elements described in Subsection (3)(a)(i) shall include consensus metrics consistent with data elements used in nationally recognized data set platforms for cardiac care.
 - (c) The department shall permit a general acute hospital to submit data required under this section through an electronic exchange of clinical health information that meets the standards established by the department under Section 26B-8-411.
- (4) A general acute hospital shall submit cardiac data in accordance with rules established under Subsection (3).
- (5) Data collected under this section shall be subject to Chapter 8, Part 4, Health Statistics.

- (6) No person may be held civilly liable for providing data to the department in accordance with this section.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-7-227 Chronic disease control -- Establishing a prevention program -- Detection, monitoring, and community education.

- (1) As used in this section, "chronic disease" means an impairment or deviation from the normal functioning of the human body having one or more of the following characteristics:
 - (a) is permanent;
 - (b) leaves residual disability;
 - (c) is caused by nonreversible pathological alterations;
 - (d) requires special patient education and instruction for rehabilitation; or
 - (e) may require a long period of supervision, observation and care.
- (2) The department shall establish and operate reasonable programs to prevent, delay, and detect the onset of chronic diseases including cancer, diabetes, cardiovascular and pulmonary diseases, genetic diseases, and such other chronic diseases as the department determines are important in promoting, protecting, and maintaining the public's health.
- (3)
 - (a) The department shall develop and maintain a system for detecting and monitoring chronic diseases within the state and shall investigate and determine the epidemiology of those conditions which contributed to preventable and premature sickness, or both, and to death and disability.
 - (b) The department shall consider the disease known as "lupus" a chronic disease subject to the detection and monitoring provisions of Subsection (3)(a).
- (4) The department shall establish programs of community and professional education relevant to the detection, prevention, and control of chronic diseases.

Renumbered and Amended by Chapter 308, 2023 General Session

Part 3

Treatment, Isolation, and Quarantine Procedures for Communicable Diseases

26B-7-301 Definitions.

As used in this part:

- (1) "Bioterrorism" means:
 - (a) the intentional use of any microorganism, virus, infectious substance, or biological product to cause death, disease, or other biological malfunction in a human, an animal, a plant, or another living organism in order to influence, intimidate, or coerce the conduct of government or a civilian population; and
 - (b) includes anthrax, botulism, small pox, plague, tularemia, and viral hemorrhagic fevers.
- (2) "Diagnostic information" means a clinical facility's record of individuals who present for treatment, including the reason for the visit, chief complaint, presenting diagnosis, final diagnosis, and any pertinent lab results.
- (3) "Epidemic or pandemic disease":

- (a) means the occurrence in a community or region of cases of an illness clearly in excess of normal expectancy; and
 - (b) includes diseases designated by the department which have the potential to cause 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
 - (c) was not known or foreseen and could not have been known or foreseen at the time the public health emergency expired.
- (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-4-101;
 - (c) firefighters; and
 - (d) public health personnel having jurisdiction over the location where an individual subject to restriction is found.
- (6) "Health care provider" means the same as that term is defined in Section 78B-3-403.
- (7) "Legislative emergency response committee" means the same as that term is defined in Section 53-2a-203.
- (8)
- (a) "Order of constraint" means an order, rule, or regulation issued in response to a declared public health emergency under this part, that:
 - (i) applies to all or substantially all:
 - (A) individuals or a certain group of individuals; or
 - (B) public places or certain types of public places; and
 - (ii) for the protection of the public health and in response to the declared public health emergency:
 - (A) establishes, maintains, or enforces isolation or quarantine;
 - (B) establishes, maintains, or enforces a stay-at-home order;
 - (C) exercises physical control over property or individuals;
 - (D) requires an individual to perform a certain action or engage in certain behavior; or
 - (E) closes theaters, schools, or other public places or prohibits gatherings of people to protect the public health.
 - (b) "Order of constraint" includes a stay-at-home order.
- (9) "Order of restriction" means an order issued by a department or a district court which requires an individual or group of individuals who are subject to restriction to submit to an examination, treatment, isolation, or quarantine.
- (10) "Public health emergency" means an occurrence or imminent credible threat of an illness or health condition, caused by bioterrorism, epidemic or pandemic disease, or novel and highly fatal infectious agent or biological toxin, that poses a substantial risk of a significant number of human fatalities or incidents of permanent or long-term disability. Such illness or health condition includes an illness or health condition resulting from a natural disaster.
- (11) "Public health official" means:
- (a) the executive director or the executive director's authorized representative; or
 - (b) the executive director of a local health department or the executive director's authorized representative.

- (12) "Reportable emergency illness and health condition" includes the diseases, conditions, or syndromes designated by the department.
- (13) "Stay-at-home order" means an order of constraint that:
- (a) restricts movement of the general population to suppress or mitigate an epidemic or pandemic disease by directing individuals within a defined geographic area to remain in their respective residences; and
 - (b) may include exceptions for certain essential tasks.
- (14) "Subject to restriction" as applied to an individual, or a group of individuals, means the individual or group of individuals is:
- (a) 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 to prevent spread of the disease;
 - (b) 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) in a condition or suspected condition which, if the individual is exposed to others, poses a threat to public health, or is in a condition which if treatment is not completed the individual will pose a threat to public health; or
 - (d) 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.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-7-302 Executive director -- Power to order abatement of public health hazard.

If the executive director finds that a condition of filth, sanitation, or other health hazard exists which creates a clear present hazard to the public health and which requires immediate action to protect human health or safety, the executive director with the concurrence of the governor may order persons causing or contributing to the condition to reduce, discontinue, or ameliorate it to the extent that the public health hazard is eliminated.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-7-303 Applicability -- Administrative procedures.

- (1) Sections 26B-7-304 through 26B-7-315 apply to involuntary examination, treatment, isolation, and quarantine actions applied to individuals or groups of individuals by the department or a local health department.
- (2) The provisions of Sections 26B-7-304 through 26B-7-315 supersede the provisions of Title 63G, Chapter 4, Administrative Procedures Act.
- (3) The department may adopt rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, as necessary to administer the provisions of Sections 26B-7-304 through 26B-7-315.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-7-304 Order of restriction.

- (1) Subject to Subsection (5), the department or a local health department 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 26B-1-202 or Subsection 26A-1-114(1)(b) upon compliance with the requirements of Sections 26B-7-304 through 26B-7-314; and
 - (b) issue a verbal order of restriction for an individual or group of individuals pursuant to Subsection (2)(c).
- (2)
- (a) A department or local health 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:
 - (i) observation;
 - (ii) information that the department or local health department determines is credible and reliable information; and
 - (iii) knowledge of current public health risks based on medically accepted guidelines as may be established by the department by administrative rule.
 - (b) An order of restriction issued by the department or a local health department 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
 - (iv) contain notice of an individual's rights as required in Section 26B-7-307.
 - (c)
 - (i) 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:
 - (A) the transmission of a communicable or possibly communicable disease that poses a threat to public health;
 - (B) the transmission of an infectious agent or possibly infectious agent that poses a threat to public health;
 - (C) the exposure or possible exposure of a chemical or biological agent that poses a 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 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 or local health 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 26B-7-307.
- (3) Pending issuance of a written order of restriction under Section 26B-7-307, or judicial review of an order of restriction under Section 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 or local health department 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 or local health department 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 under this section issued in response to a declared public health emergency.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-7-305 Consent to order of restriction -- Periodic review.

- (1)
 - (a) The department or a local health department shall either seek judicial review of an order of restriction under Sections 26B-7-309 through 26B-7-311, or obtain the consent of an individual subject to an order of restriction.
 - (b) If the department or a local health department obtains consent, the consent shall be in writing and shall inform the individual or group of individuals:
 - (i) of the terms and duration of the order of restriction;
 - (ii) of the importance of complying with the order of restriction to protect the public's 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 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 or local health department 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 26B-7-306.
- (2)
 - (a) The department or local health department 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 or local health department determines that the conditions justifying the order of restriction for either a group or an individual no longer exist, the department or local health department shall immediately discharge the individual or group from the order of restriction.
 - (ii) If the department or local health department determines that the conditions justifying the order of restriction continue to exist, the department or local health department shall send to the individual a written notice of:
 - (A) the department or local health department's findings, the expected duration of the order of restriction, and the reason for the decision; and

- (B) the individual's right to a judicial review of the order of restriction by the court if requested by the individual.
- (iii) Upon request for judicial review by an individual, the department or local health department shall:
 - (A) file a petition with the court within five business days after the individual's request for a judicial review; and
 - (B) proceed under Sections 26B-7-309 through 26B-7-311.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-7-306 Involuntary order of restriction -- Notice -- Effect of order during judicial review.

- (1) If the department or local health department cannot obtain consent to the order of restriction from an individual, or if an individual withdraws consent to an order under Subsection 26B-7-305(1)(b)(iv)(B), the department or local health department 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
 - (b) file a petition for a judicial review of the order of restriction under Section 26B-7-309 in 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 26B-7-305(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 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.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-7-307 Contents of notice of order of restriction -- Rights of individuals.

- (1) A written order of restriction issued by a department or local health department shall include the following information:
 - (a) the identity of the individual or a description of the group of individuals subject to the order of restriction;
 - (b) the identity or location of any premises that may be subject to restriction;
 - (c) the date and time for which the restriction begins and the expected duration of the restriction;
 - (d) the suspected communicable disease, infectious, chemical or biological agent, or other condition that poses a threat to public health;
 - (e) the requirements for termination of the order of restriction, such as necessary laboratory reports, the expiration of an incubation period, or the completion of treatment for the communicable disease;
 - (f) any conditions on the restriction, such as limitation of visitors or requirements for medical monitoring;
 - (g) the medical or scientific information upon which the restriction is based;
 - (h) a statement advising of the right to a judicial review of the order of restriction by the court; and

- (i) pursuant to Subsection (2), the rights of each individual subject to restriction.
- (2) An individual subject to restriction has the following rights:
 - (a) the right to be represented by legal counsel in any judicial review of the order of restriction in accordance with Subsection 26B-7-309(3);
 - (b) the right to be provided with prior notice of the date, time, and location of any hearing concerning the order of restriction;
 - (c) the right to participate in any hearing, in a manner established by the court based on precautions necessary to prevent additional exposure to communicable or possibly communicable diseases or to protect the public health;
 - (d) the right to respond and present evidence and arguments on the individual's own behalf in any hearing;
 - (e) the right to cross examine witnesses; and
 - (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).

Renumbered and Amended by Chapter 308, 2023 General Session

26B-7-308 Medical records -- Privacy protections.

- (1)
 - (a) Health care providers as defined in Section 78B-3-403, health care facilities licensed under Chapter 2, Part 2, Health Care Facility Licensing and Inspection, 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 the results of any relevant diagnostic testing of the individual.

- (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 encouraged to provide copies of medical records or other records necessary to carry out the purpose of Sections 26B-7-304 through 26B-7-314 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 Sections 26B-7-304 through 26B-7-314, 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.
- (3) Medical records held by a court related to orders of restriction under Sections 26B-7-304 through 26B-7-314 shall be sealed by the court at the conclusion of the case.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-7-309 Judicial review -- Required notice -- Representation by counsel -- Conduct of proceedings.

- (1) The provisions of this section and Sections 26B-7-310 through 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 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 26B-7-310 through 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 court designates.
 - (b) The notice described in Subsection (2)(a) shall advise these persons that a hearing may be held within the time provided by this part.
 - (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 court.
 - (d) 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 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 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 court may, in its discretion, receive the testimony of any other individual.
 - (c) The 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 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 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 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 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 court shall receive all relevant and material evidence which is offered, subject to Utah Rules of Evidence.
 - (8) The court may order law enforcement to assist the petitioner in locating the individuals subject to restriction and enforcing the order of restriction.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-7-310 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 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 Sections 26B-7-304 through 26B-7-314.
 - (ii) The Office of the Attorney General shall represent the department when the petitioner is the department in any proceedings under Sections 26B-7-304 through 26B-7-314.
- (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
 - (iv) the personal knowledge of the individual's or group of individuals' condition or the circumstances that lead to that belief; and

- (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 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 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;
 - (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;
 - (b) that despite the exercise of reasonable diligence, the diagnostic studies have not been completed;
 - (c) whether the individual or group of individuals have agreed to voluntarily comply with necessary examination, treatment, quarantine, or isolation; and
 - (d) whether the petitioner believes the individual or group of individuals will comply without court proceedings.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-7-311 Court determination for an order of restriction after examination period.

- (1) The 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 26B-7-310, unless the petitioner informs the court prior to this hearing that the individual or group of individuals:
 - (a) are not subject to restriction; or
 - (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 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 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 to the individual's or group of individual's counsel at the time of the hearing, and at any time prior to the hearing upon request of counsel.
- (6)
- (a) The 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 is adequate and appropriate to the individual's or group of individuals' conditions and needs; 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.
- (8)
- (a) The order of restriction may not exceed six months without benefit of a court review hearing.
 - (b)
 - (i) The court review hearing shall be held prior to the expiration of the order of restriction issued under Subsection (7).
 - (ii) At the review hearing the court may issue an order of restriction for up to an indeterminate period, if the court enters a written finding in the record determining by clear and convincing evidence that the required conditions in Subsection (6) will continue for an indeterminate period.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-7-312 Periodic review of individuals under court order.

- (1)
 - (a) At least two weeks prior to the expiration of the designated period of any court order still in effect, the petitioner shall inform the court that issued the order that the order is about to expire.
 - (b) The petitioner shall immediately reexamine the reasons upon which the court's order was based.
 - (c) If the petitioner determines that the conditions justifying that order no longer exist, the petitioner shall discharge the individual from involuntary quarantine, isolation, or treatment and report its action to the court for a termination of the order.
 - (d) If the conditions justifying the order still exist, the court shall schedule a hearing prior to the expiration of the court's order and proceed under Sections 26B-7-309 through 26B-7-311.
- (2)
 - (a) The petitioner responsible for the care of an individual under a court order of involuntary quarantine, isolation, or treatment for an indeterminate period shall at six-month intervals reexamine the reasons upon which the order of indeterminate duration was based.
 - (b) If the petitioner determines that the conditions justifying that the court's order no longer exist, the petitioner shall discharge the individual from involuntary quarantine, isolation, or treatment and immediately report its action to the court for a termination of the order.
 - (c) If the petitioner determines that the conditions justifying the involuntary quarantine, isolation, or treatment continue to exist, the petitioner shall send a written report of those findings to the court.
 - (d) The petitioner shall notify the individual and his counsel of record in writing that the involuntary quarantine, isolation, or treatment will be continued, the reasons for that decision, and that the individual has the right to a review hearing by making a request to the court.
 - (e) Upon receiving the request for a review, the court shall immediately set a hearing date and proceed under Sections 26B-7-309 through 26B-7-311.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-7-313 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 or local health department, or pursuant to a court order, shall be conducted by the county sheriff where the individual is located.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-7-314 Examination, quarantine, isolation, and treatment costs.

If a local health department obtains approval from the department, the costs that the local health department would otherwise have to bear for examination, quarantine, isolation, and treatment ordered under the provisions of Sections 26B-7-304 through 26B-7-314 shall be paid by the department to the extent that the individual is unable to pay and that other sources and insurance do not pay.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-7-315 Severability.

With respect to Sections 26B-7-304 through 26B-7-314, if a provision or the application of a provision to any person or circumstance is found to be unconstitutional, the provision that is found to be unconstitutional is severable and the balance of any sections not found to be unconstitutional remain effective, notwithstanding those sections found to be unconstitutional.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-7-316 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 substantial risk of a significant number of human fatalities or incidences of permanent or long-term disability.
 - (b) A health care provider shall immediately submit the report required by Subsection (1)(a) within 24 hours of concluding that a report is required under Subsection (1)(a).
- (2)
 - (a) A report required by this section shall be submitted electronically, verbally, or in writing to the department or appropriate local health department.
 - (b) A report submitted pursuant to Subsection (1) shall include, if known:
 - (i) diagnostic information on the specific illness or health condition that is the subject 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 work address and phone number;
 - (iii) the name, address, and phone number of the health care provider; and
 - (iv) the name, address, and phone number of the reporting individual.
- (3) The department may impose a sanction against a health care provider for failure to make a report required by this section only if the department can show by clear and convincing evidence that a health care provider willfully failed to file a report.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-7-317 Authorization to report -- Declaration of a public health emergency -- Termination of a public health emergency -- Order of constraint.

- (1) A health care provider is authorized to report to the department any case of a reportable emergency illness or health condition in any person when:
 - (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 judgment that a person likely harbors a reportable emergency illness or health condition.
- (2) A report pursuant to this section shall include, if known:
 - (a) the name of the facility submitting the report;
 - (b) a patient identifier that allows linkage with the patient's record for follow-up investigation if needed;

- (c) the date and time of visit;
- (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;
- (g) diagnostic information and, if available, diagnostic codes assigned to the visit; and
- (h) whether the patient was admitted to the hospital.

- (3)
- (a) Subject to Subsections (3)(b) and (4), if the department determines that a public health emergency exists, the department may, with the concurrence of the governor and the executive director or in the absence of the executive director, the executive director's 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 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:
 - (A) shall provide the notice required by Subsection (3)(b)(i) using the best available 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.
 - (c) The department may not mandate reporting under this subsection for more than 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 time period designated in the joint resolution.
 - (ii) If the Legislature extends a public health emergency as described in Subsection (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:
 - (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 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 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 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 this title, the department or a local health department shall 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 26B-7-316(3) for failure to make a report under this section.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-7-318 Pharmacy reporting requirements.

- (1) Notwithstanding the provisions of Subsection 26B-7-316(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 26B-7-316 or 26B-7-317 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.
 - (b) If a pharmacy is part of a health care facility subject to the reporting requirements of Sections 26B-7-316 through 26B-7-324, the pharmacist in charge shall make the report under this section on behalf of the health care facility.
- (4)

- (a) The report required by this section shall be submitted in accordance with Subsection 26B-7-316(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.
- (5) A pharmacist is subject to the penalties under Subsection 26B-7-316(3) for failing to make a report required by this section.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-7-319 Medical laboratory reporting requirements.

- (1) Notwithstanding the provisions of Subsection 26B-7-316(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 26B-7-316(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 26B-7-316(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 Sections 26B-7-316 through 26B-7-324, 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 26B-7-316(2).
- (5) The director of a medical laboratory is subject to the penalties of Subsection 26B-7-316(3) for failing to make a report required by this section.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-7-320 Exemptions from liability.

- (1) A health care provider may not be discharged, suspended, disciplined, or harassed for making a report under Sections 26B-7-316 through 26B-7-323.
- (2) A health care provider may not incur any civil or criminal liability as a result of making any report under Sections 26B-7-316 through 26B-7-323 so long as the report is made in good faith.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-7-321 Investigation of suspected bioterrorism and diseases -- Termination of orders of constraint.

- (1) Subject to Subsection (6), the department shall:
 - (a) ascertain the existence of cases of an illness or condition caused by the factors described in Subsections 26B-7-316(1) and 26B-7-317(1);
 - (b) investigate all such cases for sources of infection or exposure;
 - (c) ensure that any cases, suspected cases, and exposed persons are subject to proper control measures; and
 - (d) define the distribution of the suspected illness or health condition.

- (2)
 - (a) Acting on information received from the reports required by Sections 26B-7-316 through 26B-7-320, or other reliable information, the department shall identify all individuals thought to have been exposed to an illness or condition described in Subsection 26B-7-316(1).
 - (b) The department may request information from a health care provider concerning an individual's identifying information as described in Subsection 26B-7-316(2)(b) when:
 - (i) the department is investigating a potential illness or condition described in Subsection 26B-7-316(1) and the health care provider has not submitted a report to the department with the information requested; or
 - (ii) the department has received a report from a pharmacist under Section 26B-7-318, a medical laboratory under Section 26B-7-319, or another health care provider under Subsection 26B-7-317(1) and the department believes that further investigation is necessary to protect the public health.
 - (c) A health care provider shall submit the information requested under this section to the department within 24 hours after receiving a request from the department.
- (3) The department shall counsel and interview identified individuals as appropriate to:
 - (a) assist in the positive identification of other cases and exposed individuals;
 - (b) develop information relating to the source and spread of the illness or condition; 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 26B-7-316(1).
- (5) The department shall destroy personally identifying health information about an individual collected by the department as a result of a report under Sections 26B-7-316 through 26B-7-322 upon the earlier of:
 - (a) the department's determination that the information is no longer necessary to carry out an investigation under Sections 26B-7-316 through 26B-7-324; 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.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-7-322 Enforcement.

The department may enforce the provisions of Sections 26B-7-316 through 26B-7-324 in accordance with existing enforcement laws and regulations.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-7-323 Information sharing with public safety authorities.

- (1) As used in this section, "public safety authority" means a local, state, or federal law enforcement authority including the Division of Emergency Management, emergency medical services personnel, and firefighters.
- (2) Notwithstanding the provisions of Title 63G, Chapter 2, Government Records Access and Management Act:
 - (a) whenever a public safety authority suspects a case of a reportable illness or condition under the provisions of Sections 26B-7-316 through 26B-7-324, it shall immediately notify the department;
 - (b) whenever the department learns of a case of a reportable illness or condition under this part that the department reasonably believes has the potential to be caused by one of the factors listed in Subsection 26B-7-316(1), the department shall immediately notify the appropriate public safety authority; and
 - (c) sharing of information reportable under Sections 26B-7-316 through 26B-7-324 between persons authorized by Sections 26B-7-316 through 26B-7-324 shall be limited to information necessary for the treatment, control, investigation, and prevention of a public health emergency.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-7-324 Applicability of confidentiality provisions.

The provisions of Sections 26B-7-217 and 26B-7-218 apply to information collected under Sections 26B-7-316 through 26B-7-323 except to the extent that application of a provision in Section 26B-7-217 or 26B-7-218 is inconsistent with Sections 26B-7-316 through 26B-7-323.

Enacted by Chapter 308, 2023 General Session

Part 4
General Sanitation and Food Safety

26B-7-401 Definitions.

As used in this part:

- (1) "Agricultural tourism activity" means the same as that term is defined in Section 78B-4-512.
- (2) "Agritourism" means the same as that term is defined in Section 78B-4-512.
- (3) "Agritourism food establishment" means a non-commercial kitchen facility where food is handled, stored, or prepared to be offered for sale on a farm in connection with an agricultural tourism activity.
- (4) "Agritourism food establishment permit" means a permit issued by a local health department to the operator for the purpose of operating an agritourism food establishment.
- (5) "Back country food service establishment" means a federal or state licensed back country guiding or outfitting business that:
 - (a) provides food services; and
 - (b) meets department recognized federal or state food service safety regulations for food handlers.
- (6) "Certified food safety manager" means a manager of a food service establishment who:
 - (a) passes successfully a department-approved examination;

- (b) successfully completes, every three years, renewal requirements established by department rule consistent with original certification requirements; and
 - (c) submits to the appropriate local health department the documentation required by Section 26B-7-412.
- (7) "Farm" means a working farm, ranch, or other commercial agricultural, aquacultural, horticultural, or forestry operation.
- (8) "Food" means:
- (a) a raw, cooked, or processed edible substance, ice, nonalcoholic beverage, or ingredient used or intended for use or for sale, in whole or in part, for human consumption; or
 - (b) chewing gum.
- (9) "Food service establishment" means any place or area within a business or organization where potentially hazardous foods, as defined by the department under Section 26B-7-410, are prepared and intended for individual portion service and consumption by the general public, whether the consumption is on or off the premises, and whether or not a fee is charged for the food.
- (10)
- (a) "Microenterprise home kitchen" means a non-commercial kitchen facility located in a private home and operated by a resident of the home where ready-to-eat food is handled, stored, prepared, or offered for sale.
 - (b) "Microenterprise home kitchen" does not include:
 - (i) a catering operation;
 - (ii) a cottage food operation;
 - (iii) a food truck;
 - (iv) an agritourism food establishment;
 - (v) a bed and breakfast; or
 - (vi) a residence-based group care facility.
- (11) "Microenterprise home kitchen permit" means a permit issued by a local health department to the operator for the purpose of operating a microenterprise home kitchen.
- (12) "Ready-to-eat" means:
- (a) raw animal food that is cooked;
 - (b) raw fruits and vegetables that are washed;
 - (c) fruits and vegetables that are cooked for hot holding;
 - (d) a time or temperature control food that is cooked to the temperature and time required for the specific food in accordance with rules made by the department in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act; or
 - (e) a bakery item for which further cooking is not required for food safety.
- (13) "Time or temperature control food" means food that requires time or temperature controls for safety to limit pathogenic microorganism growth or toxin formation.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-7-402 Minimum rules of sanitation established by department.

The department shall establish and enforce, or provide for the enforcement of minimum rules of sanitation necessary to protect the public health. Such rules shall include, but not be limited to, rules necessary for the design, construction, operation, maintenance, or expansion of:

- (1) restaurants and all places where food or drink is handled, sold or served to the public;
- (2) public swimming pools;
- (3) public baths including saunas, spas, massage parlors, and suntan parlors;

- (4) public bathing beaches;
- (5) schools which are publicly or privately owned or operated;
- (6) recreational resorts, camps, and vehicle parks;
- (7) amusement parks and all other centers and places used for public gatherings;
- (8) mobile home parks and highway rest stops;
- (9) construction or labor camps;
- (10) jails, prisons and other places of incarceration or confinement;
- (11) hotels and motels;
- (12) lodging houses and boarding houses;
- (13) service stations;
- (14) barbershops and beauty shops, including a facility in which one or more individuals are engaged in:
 - (a) any of the practices licensed under Title 58, Chapter 11a, Cosmetology and Associated Professions Licensing Act; or
 - (b) styling hair in accordance with the exemption from licensure described in Section 58-11a-304(13);
- (15) physician and dentist offices;
- (16) public buildings and grounds;
- (17) public conveyances and terminals; and
- (18) commercial tanning facilities.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-7-403 Department to advise regarding the plumbing code.

- (1) The department shall advise the Division of Professional Licensing and the Uniform Building Code Commission with respect to the adoption of a state construction code under Section 15A-1-204, including providing recommendations as to:
 - (a) a specific edition of a plumbing code issued by a nationally recognized code authority; and
 - (b) any amendments to a nationally recognized code.
- (2) The department may enforce the plumbing code adopted under Section 15A-1-204.
- (3) Section 58-56-9 does not apply to health inspectors acting under this section.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-7-404 Rules for wastewater disposal systems.

The department shall establish rules necessary to protect the public health for the design, and construction, operation and maintenance of individual wastewater disposal systems.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-7-405 Rules for controlling vector-borne diseases and pests.

- (1) As used in this section:
 - (a) "Pest" means a noxious, destructive, or troublesome organism whether plant or animal, when found in and around places of human occupancy, habitation, or use which threatens the public health or well-being of the people within the state.
 - (b) "Vector" means any organism, such as insects or rodents, that transmits a pathogen that can affect public health.

- (2) The department shall adopt rules to provide for the protection of the public health by controlling or preventing the spread of vector-borne diseases and infections and to control or reduce pests by the elimination of insanitary conditions which may include but not be limited to breeding areas, shelter, harborage or sources of food associated with such diseases or pests.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-7-406 Periodic evaluation of local health sanitation programs -- Minimum statewide enforcement standards -- Technical assistance.

- (1) The department shall periodically evaluate the sanitation programs of local health departments to determine the levels of sanitation being maintained throughout the state.
- (2)
 - (a) The department shall ensure that each local health department's enforcement of the minimum rules of sanitation adopted under Section 26B-7-402 for restaurants and other places where food or drink is handled meets or exceeds minimum statewide enforcement standards established by the department by administrative rule.
 - (b) Administrative rules adopted under Subsection (2)(a) shall include at least:
 - (i) the minimum number of periodic on-site inspections that shall be conducted by each local health department;
 - (ii) criteria for conducting additional inspections; and
 - (iii) standardized methods to be used by local health departments to assess compliance with the minimum rules of sanitation adopted under Section 26B-7-402.
 - (c) The department shall help local health departments comply with the minimum statewide enforcement standards adopted under this Subsection (2) by providing technical assistance.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-7-407 Regulation of tanning facilities.

- (1) For purposes of this section:
 - (a) "Minor" means an individual who is younger than 18 years old.
 - (b) "Phototherapy device" means equipment that emits ultraviolet radiation used by a health care professional in the treatment of disease.
 - (c)
 - (i) "Tanning device" means equipment to which a tanning facility provides access that emits electromagnetic radiation with wavelengths in the air between 200 and 400 nanometers used for tanning of the skin, including:
 - (A) a sunlamp; and
 - (B) a tanning booth or bed.
 - (ii) "Tanning device" does not include a phototherapy device.
 - (d) "Tanning facility" means a commercial location, place, area, structure, or business that provides access to a tanning device.
- (2) A tanning facility shall:
 - (a) annually obtain a permit to do business as a tanning facility from the local health department with jurisdiction over the location in which the facility is located; and
 - (b) in accordance with Subsection (3) post a warning sign in a conspicuous location that is readily visible to a person about to use a tanning device.
- (3) The posted warning and written consent required by Subsections (2) and (5) shall be developed by the department through administrative rules and shall include:

- (a) that there are health risks associated with the use of a tanning device;
- (b) that the facility may not allow a minor to use a tanning device unless the minor:
 - (i) has a written order from a physician; or
 - (ii) at each time of use is accompanied at the tanning facility by a parent or legal guardian who provides written consent authorizing the minor to use the tanning device.
- (4) It is unlawful for any operator of a tanning facility to allow a minor to use a tanning device unless:
 - (a) the minor has a written order from a physician as defined in Section 58-67-102, to use a tanning device as a medical treatment; or
 - (b)
 - (i) the minor's parent or legal guardian appears in person at the tanning facility each time that the minor uses a tanning device, except that the minor's parent or legal 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) 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 device; and
 - (b) a statement that:
 - (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.
 - (b) If a person misrepresents to a tanning facility that the person is 18 years old or older, the person is guilty of an infraction.
- (8) This section supersedes any ordinance enacted by the governing body of a political subdivision that:
 - (a) imposes restrictions on access to a tanning device by a person younger than 18 years old that is not essentially identical to the provisions of this section; or
 - (b) that require the posting of warning signs at the tanning facility that are not essentially identical to the provisions of this section.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-7-408 Procurement and use of a blood product is a service and not a sale -- Blood donation by a minor.

- (1) As used in this section:
 - (a) "Blood" means human blood.
 - (b) "Blood product" includes:
 - (i) whole blood;
 - (ii) blood plasma;
 - (iii) a blood derivative;
 - (iv) blood platelets; and
 - (v) blood clotting agents.
- (2) The following are considered to be the rendition of a service by each participant and are not considered to be a sale:
 - (a) the procurement, processing, distribution, or use of a blood product for the purpose of injecting or transfusing the blood product into the human body; and
 - (b) the process of injecting or transfusing a blood product.
- (3) A minor who is at least 16 years old may donate blood to a voluntary, noncompensatory blood donation program if a parent or legal guardian of the minor consents to the donation.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-7-409 Scientific standards for methamphetamine decontamination -- Public education concerning methamphetamine contamination.

- (1) The department shall make rules adopting scientifically-based standards for methamphetamine decontamination.
- (2) A local health department, as defined in Title 26A, Local Health Authorities, shall follow rules made by the department under Subsection (1) in administering Title 19, Chapter 6, Part 9, Illegal Drug Operations Site Reporting and Decontamination Act.
- (3) The department shall conduct a public education campaign to inform the public about potential health risks of methamphetamine contamination.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-7-410 Food service establishment requirements -- Enforcement -- Right of appeal -- Rulemaking -- Enforcement by local health departments.

- (1) Each food service establishment in the state shall be managed by at least one full-time certified food safety manager at each establishment site, who need not be present 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.
 - (ii) Notwithstanding the provisions of Section 63G-4-402, an appeal of a local health department decision shall be conducted as an original, independent proceeding, and not as a review of the proceedings conducted by the local health department.
 - (iii) The court shall give no deference to the findings or conclusions of the local health department.
- (5)
 - (a) The department shall establish by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act:
 - (i) a definition of "potentially hazardous foods" for purposes of this section and Section 26B-7-401; and
 - (ii) any provisions necessary to implement this section.
 - (b) The local health department with jurisdiction over the geographic area in which a food service establishment is located shall enforce the provisions of this section.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-7-411 Exemptions to food service establishment requirements.

- (1) The following are not subject to the provisions of Section 26B-7-410:
 - (a) special events sponsored by municipal or nonprofit civic organizations, including food booths at school sporting events and little league athletic events and church functions;
 - (b) temporary event food services approved by a local health department;
 - (c) vendors and other food service establishments that serve only commercially prepackaged foods and beverages as defined by the department by rule;
 - (d) private homes not used as a commercial food service establishment;
 - (e) health care facilities licensed under Chapter 2, Part 2, Health Care Facility Licensing and Inspection;
 - (f) bed and breakfast establishments at which the only meal served is a continental breakfast as defined by the department by rule;
 - (g) residential child care providers;
 - (h) child care providers and programs licensed under Chapter 2, Part 4, Child Care Licensing;
 - (i) back country food service establishments;
 - (j) an event that is sponsored by a charitable organization, if, at the event, the organization:
 - (i) provides food to a disadvantaged group free of charge; and
 - (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.
- (3) The department may establish additional requirements, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, for charitable organizations providing food for free under Subsection (1)(j).

Renumbered and Amended by Chapter 308, 2023 General Session

26B-7-412 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.
- (4) A determination of a local health department made pursuant to Subsection (3) may be appealed by a certified food safety manager in the same manner provided for in Subsection 26B-7-410(4).
- (5) No person may use the title "certified food safety manager," or any other similar title, unless the person has satisfied the requirements of this section.
- (6) A local health department:
 - (a) may not charge a fee to accept or process the documentation described in Subsections (1) and (2);
 - (b) shall accept photocopies or electronic copies of the documentation described in Subsections (1) and (2); and
 - (c) shall allow an individual to submit the documentation described in Subsections (1) and (2) by mail, email, or in person.
- (7) Certified food safety managers shall:
 - (a) establish and monitor compliance with practices and procedures in the food service establishments where they are employed to maintain compliance with department and local health department food safety rules; and
 - (b) perform such other duties that may be necessary to ensure food safety in the food service establishments where they are employed.
- (8)
 - (a) The department shall establish by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act:
 - (i) statewide, uniform standards for certified food safety managers;

- (ii) criteria for food safety certification examinations; and
- (iii) any provisions necessary to implement this section.
- (b) The department shall approve food safety certification examinations in accordance with this section.
- (c) The local health department with jurisdiction over the geographic area in which a food service establishment is located shall enforce the provisions of this section.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-7-413 Requirements for food handlers -- Training program and testing requirements for permit -- Rulemaking -- Exceptions.

- (1) As used in this section:
 - (a) "Approved food handler training program" means a training program described by this section and approved by the department.
 - (b) "Food handler" means a person who works with unpackaged food, food equipment or utensils, or food-contact surfaces for a food service establishment.
 - (c) "Food handler permit" means a permit issued by a local health department to allow a person to work as a food handler.
 - (d) "Instructor" means an individual who is qualified to instruct an approved food handler program on behalf of a provider.
 - (e) "Provider" means a person or entity that provides an approved food handler training program.
- (2) A person may not work as a food handler for a food service establishment unless the person:
 - (a) successfully completes an approved food handler training program within 14 days after the day on which the person begins employment that includes food handler services; and
 - (b) obtains a food handler permit within 30 days after the day on which the person begins employment that includes food handler services.
- (3) An approved food handler training program shall include:
 - (a) at least 75 minutes of training time;
 - (b) an exam, which requires a passing score of 75% and, except as provided in Subsection (11), consists of:
 - (i) 40 multiple-choice questions developed by the department, in consultation with local health departments; and
 - (ii) four content sections designated by rule of the department with 10 randomly selected questions for each content section; and
 - (c) upon completion, the awarding of a certificate of completion that is valid with any local health department in the state for 30 days after the day on which the certificate is issued:
 - (i) to a student who:
 - (A) completes the training; and
 - (B) passes the exam described in this Subsection (3) or an exam approved by the department in accordance with Subsection (11); and
 - (ii) which certificate of completion:
 - (A) includes student identifying information determined by department rule; and
 - (B) is delivered by mail or electronic means.
- (4)
 - (a) A person may obtain a food handler permit by:
 - (i) providing a valid certificate of completion of an approved food handler training program and an application, approved by the local health department, to a local health department; and
 - (ii) paying a food handler permit fee to the local health department.

- (b)
 - (i) A local health department may charge a food handler permit fee that is 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).
- (5) A person working as a food handler for a food service establishment shall obtain a food handler permit:
 - (a) before handling any food;
 - (b) within 30 days of initial employment with a food service establishment; and
 - (c) within seven days of the expiration of an existing food handler permit.
- (6)
 - (a) A person who holds a valid food handler permit under this section may serve as a food handler throughout the state without restriction.
 - (b) A food handler permit granted after June 30, 2013, is valid for three years from the date of issuance.
- (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:
 - (a) approve the content of an approved food handler training program required under Subsection (3);
 - (b) approve, as qualified, each provider; and
 - (c) in accordance with applicable rules made under Subsection (12), provide a means to authenticate:
 - (i) documents used in an approved food handler training program;
 - (ii) the identity of an approved instructor; and
 - (iii) an approved provider.
- (9) An approved food handler training program shall:
 - (a) provide basic instruction on the Centers for Disease Control and Prevention's top five foodborne illness risk factors, including:
 - (i) improper hot and cold holding temperatures of potentially hazardous food;
 - (ii) improper cooking temperatures of food;
 - (iii) dirty or contaminated utensils and equipment;
 - (iv) poor employee health and hygiene; and
 - (v) food from unsafe sources;
 - (b) be offered through:
 - (i) a trainer-led class;
 - (ii) the Internet; or
 - (iii) a combination of a trainer-led class and the Internet;
 - (c) maintain a system to verify a certificate of completion of an approved food handler training program issued under Subsection (3) to the department, a local health department, and a food service establishment; and
 - (d) provide to the department unrestricted access to classroom training sessions and online course materials at any time for audit purposes.
- (10)
 - (a) A provider that provides an approved food handler training program may charge a reasonable fee.
 - (b) If a person or an entity is not approved by the department to provide an approved food handler training program, the person or entity may not represent, in connection with the

person's or entity's name or business, including in advertising, that the person or entity is a provider of an approved food handler training program or otherwise represent that a program offered by the person or entity will qualify an individual to work as a food handler in the state.

(11)

- (a) Subject to the approval of the department every three years, a provider may use an exam that consists of questions that do not conform with the provisions of Subsection (3)(b), if:
- (i) the provider complies with the provisions of this Subsection (11);
 - (ii) the provider pays a fee every three years to the department, which fee shall be determined by the department and shall reflect the cost of the review of the alternative test questions; and
 - (iii) an independent instructional design and testing expert provides a written report to the department containing a positive recommendation based on the expert's analysis as described in Subsection 11(b).

(b)

- (i) A provider may request approval of a different bank of test questions other than 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:
 - (A) effectively measure the applicant's knowledge of the required learning objectives; 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;
 - (ii) an online exam; or
 - (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;
 - (ii) an individual taking the approved food handler training program is focused on 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 telephone

number, email, or other method of communication to allow an individual taking the online course or test to receive assistance;

- (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;
 - (viii) an individual who takes an online course or exam uses an electronic signature; 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 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 63G, Chapter 3, Utah Administrative Rulemaking Act, for individuals handling food at an event sponsored by a charitable organization under Subsection (14)(a).

Renumbered and Amended by Chapter 308, 2023 General Session

26B-7-414 Impoundment of adulterated food products authorized.

The department and local health departments may impound any food products found in places where food or drink is handled, sold, or served to the public that is intended for but found to be adulterated and unfit for human consumption; and, upon five days' notice and reasonable opportunity for a hearing to the interested parties, to condemn and destroy the same if deemed necessary for the protection of the public health.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-7-415 Agritourism food establishment permits -- Permit requirements -- Inspections.

- (1) As used in this section, "operator" means a person who owns, manages, or controls, or who has the duty to manage or control, the farm.
- (2)
 - (a) A farm may not operate an agritourism food establishment unless the farm obtains a permit from the local health department that has jurisdiction over the area in which the farm is located.

- (b) In accordance with Section 26A-1-121, and subject to the restrictions of this section, a local health department shall make standards and regulations relating to the permitting of an agritourism food establishment.
 - (c) In accordance with Section 26A-1-114, a local health department shall impose a fee for an agritourism food establishment permit in an amount that reimburses the local health department for the cost of regulating the agritourism food establishment.
- (3)
- (a) A local health department with jurisdiction over an area in which a farm is located may grant an agritourism food establishment permit to the farm.
 - (b) Nothing in this section prevents a local health department from revoking an agritourism food establishment permit issued by the local health department if the operation of the agritourism food establishment violates the terms of the permit or the requirements of this section.
- (4) A farm may qualify for an agritourism food establishment permit if:
- (a) poultry products that are served at the agritourism food establishment are slaughtered and processed in compliance with the Poultry Products Inspection Act, 21 U.S.C. Sec. 451 et seq., and the applicable regulations issued pursuant to that act;
 - (b) meat not described in Subsection (4)(a) that is served at the agritourism food establishment is slaughtered and processed in compliance with the Federal Meat Inspection Act, 21 U.S.C. Sec. 601 et seq., and the applicable regulations issued pursuant to that act;
 - (c) a kitchen facility used to prepare food for the agritourism food establishment meets the requirements established by the department;
 - (d) the farm operates the agritourism food establishment for no more than 14 consecutive days at a time; and
 - (e) the farm complies with the requirements of this section.
- (5) The department shall, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, make rules regarding sanitation, equipment, and maintenance requirements for agritourism food establishments.
- (6) A local health department shall:
- (a) ensure compliance with the rules described in Subsection (5) when inspecting a 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.
- (7) An agritourism food establishment shall:
- (a) take steps to avoid any potential contamination to:
 - (i) food;
 - (ii) equipment;
 - (iii) utensils; or
 - (iv) unwrapped single-service and single-use articles; and
 - (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
 - (ii) a communicable disease that is transmissible through food.
- (8) When making the rules described in Subsection (5), the department may not make rules regarding:
- (a) hand washing facilities, except to require that a hand washing station supplied with warm water, soap, and disposable hand towels is conveniently located;
 - (b) kitchen sinks, kitchen sink compartments, and dish sanitation, except to require that the kitchen sink has hot and cold water, a sanitizing agent, is fully operational, and that dishes are sanitized between each use;
 - (c) the individuals allowed access to the food preparation areas, food storage, and washing areas, except during food preparation;
 - (d) display guards, covers, or containers for display foods, except to require that any food on display that is not protected from the direct line of a consumer's mouth by an effective means is not served or sold to any subsequent consumer;
 - (e) outdoor display and sale of food, except to require that food is maintained at proper holding temperatures;
 - (f) reuse by an individual of drinking cups and tableware for multiple portions;
 - (g) utensils and equipment, except to require that utensils and equipment used in the home kitchen:
 - (i) retain their characteristic qualities under normal use conditions;
 - (ii) are properly sanitized after use; and
 - (iii) are maintained in a sanitary manner between uses;
 - (h) food contact surfaces, except to require that food contact surfaces are smooth, easily cleanable, in good repair, and properly sanitized between tasks;
 - (i) non-food contact surfaces, if those surfaces are made of materials ordinarily used in residential settings, except to require that those surfaces are kept clean from the 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;
 - (l) fixed temperature measuring devices or product mimicking sensors for the holding equipment for time or temperature controlled 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;
 - (v) submission of plans and specifications before construction or remodel of a kitchen facility;
 - (w) the number and type of time or temperature controlled food offered for sale;
 - (x) approved food sources, except those required by 9 C.F.R. Sec. 303.1;
 - (y) the use of an open air barbecue, grill, or outdoor wood-burning oven; or
 - (z) food safety certification, except any individual who is involved in the preparation, storage, or service of food in the agritourism food establishment shall hold a food handler permit as defined in Section 26B-7-413.
- (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;
 - (iv) procedures and methods for the disposal of refuse; and
 - (v) a plan for maintaining time or temperature controlled food at the appropriate temperatures for each time or temperature controlled food.
- (10) In addition to a fee charged under 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.
- (11) An agritourism food establishment permit:
- (a) is nontransferable;
 - (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 handled without requiring the operator to renew the permit.

(12) This section does not prohibit an operator from applying for a different type of food event permit from a local health department.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-7-416 Microenterprise home kitchen permits -- Fees -- Safety and health inspections -- Permit requirements.

- (1) As used in this section, "operator" means an individual who resides in the private home and who manages or controls the microenterprise home kitchen.
- (2)
 - (a) An operator may not operate a microenterprise home kitchen unless the operator obtains a permit from the local health department that has jurisdiction over the area in which the microenterprise home kitchen is located.
 - (b) In accordance with Section 26A-1-121, and subject to the restrictions of this section, the department shall make standards and regulations relating to the permitting of a microenterprise home kitchen.
 - (c) In accordance with Section 26A-1-114, a local health department shall impose a fee for a microenterprise home kitchen permit in an amount that reimburses the local health department for the cost of regulating the microenterprise home kitchen.
- (3)
 - (a) A local health department with jurisdiction over an area in which a microenterprise home kitchen is located may grant a microenterprise home kitchen permit to the operator.
 - (b) Nothing in this section prevents a local health department from revoking a microenterprise home kitchen permit issued by the local health department if the operation of the microenterprise home kitchen violates the terms of the permit or this section.
- (4) An operator may qualify for a microenterprise home kitchen permit if:
 - (a) food that is served at the microenterprise home kitchen is processed in compliance with state and federal regulations;
 - (b) a kitchen facility used to prepare food for the microenterprise home kitchen meets the requirements established by the department;
 - (c) the microenterprise home kitchen operates only during the hours approved in the microenterprise home kitchen permit; and
 - (d) the microenterprise home kitchen complies with the requirements of this section.
- (5) The department shall, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, make rules regarding sanitation, equipment, and maintenance requirements for microenterprise home kitchens.
- (6) A local health department shall:
 - (a) ensure compliance with the rules described in Subsection (5) when inspecting a microenterprise home kitchen;
 - (b) notwithstanding Section 26A-1-113, inspect a microenterprise home kitchen that requests a microenterprise home kitchen permit only:
 - (i) for an initial inspection, no more than one week before the microenterprise home kitchen is scheduled to begin operation;
 - (ii) for an unscheduled inspection, if the local health department conducts the inspection:
 - (A) within three days before or after the day on which the microenterprise home kitchen is scheduled to begin operation; or
 - (B) during operating hours of the microenterprise home kitchen; or
 - (iii) for subsequent inspections if:

- (A) the local health department provides the operator with reasonable advanced notice of the inspection; or
 - (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 contaminated food; and
 - (c) document the reason for any inspection after the initial inspection, keep a copy of that documentation on file with the microenterprise home kitchen's permit, and provide a copy of that documentation to the operator.
- (7) A microenterprise home kitchen shall:
- (a) take steps to avoid any potential contamination to:
 - (i) food;
 - (ii) equipment;
 - (iii) utensils; or
 - (iv) unwrapped single-service and single-use articles;
 - (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
 - (ii) a communicable disease that is transmissible through food; and
 - (c) comply with the following requirements:
 - (i) time or temperature control food shall be prepared, cooked, and served on the same day;
 - (ii) food that is sold or provided to a customer may not be consumed onsite at the microenterprise home kitchen operation;
 - (iii) food that is sold or provided to a customer shall be picked up by the consumer or delivered within a safe time period based on holding equipment capacity;
 - (iv) food preparation may not involve processes that require a HACCP plan, or the production, service, or sale of raw milk or raw milk products;
 - (v) molluscan shellfish may not be served or sold;
 - (vi) the operator may only sell or provide food directly to consumers and may not sell or provide food to any wholesaler or retailer; and
 - (vii) the operator shall provide the consumer with a notification that, while a permit has been issued by the local health department, the kitchen may not meet all of the requirements of a commercial retail food establishment.
- (8) When making the rules described in Subsection (5), the department may not make rules regarding:
- (a) hand washing facilities, except to require that a hand washing station supplied with warm water, soap, and disposable hand towels is conveniently located in food preparation, food dispensing, and warewashing areas;
 - (b) kitchen sinks, kitchen sink compartments, and dish sanitation, except to require that the kitchen sink has hot and cold water, a sanitizing agent, is fully operational, and that dishes are sanitized between each use;
 - (c) the individuals allowed access to the food preparation areas, food storage areas, and washing areas, except during food preparation;
 - (d) display guards, covers, or containers for display foods, except to require that ready-to-eat food is protected from contamination during storage, preparation, handling, transport, and display;
 - (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 home kitchen:
 - (i) retain their characteristic qualities under normal use conditions;
 - (ii) are properly sanitized after use; and
 - (iii) are maintained in a sanitary manner between uses;
- (g) food contact surfaces, except to require that food contact surfaces are smooth, easily cleanable, in good repair, and properly sanitized between tasks;
- (h) non-food contact surfaces, if those surfaces are made of materials ordinarily used in residential settings, except to require that those surfaces are kept clean from the accumulation of residue and debris;
- (i) clean-in-place equipment, except to require that the equipment is cleaned and sanitized between uses;
- (j) ventilation, except to require that gases, odors, steam, heat, grease, vapors, and smoke are able to escape the kitchen;
- (k) fixed temperature measuring devices or product mimicking sensors for the holding equipment for 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;
- (l) 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;
- (m) dedicated laundry facilities, except to require that linens used for the microenterprise home kitchen are stored and laundered separately from household laundry and that soiled laundry is stored to prevent contamination of food and equipment;
- (n) water, plumbing, drainage, and waste, except to require that:
 - (i) sinks be supplied with hot and cold potable water from:
 - (A) an approved public water system as defined in Section 19-4-102;
 - (B) if the local health department with jurisdiction over the microenterprise home kitchen has regulations regarding the safety of drinking water, a source that meets the local health department's regulations regarding the safety of drinking water; or
 - (C) a water source that is tested at least once per month for bacteriologic quality, and at least once in every three year period for lead and copper; and
 - (ii) food preparation and service is discontinued in the event of a disruption of potable water service;
- (o) the number of and path of access to toilet facilities, except to require that toilet facilities are equipped with proper handwashing stations;
- (p) lighting, except to require that food preparations are well lit by natural or artificial light whenever food is being prepared;
- (q) 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:

- (i) a raw time or temperature controlled food such as raw fish, raw milk, and raw 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;
 - (ii) liquid milk and milk products are obtained from sources that comply with Grade A standards specified by the Department of Agriculture and Food by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;
 - (iii) fish for sale or service are commercially and legally caught;
 - (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 according to rules governing meat and poultry as specified by the Department of Agriculture and Food by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;
- (x) the use of items produced under this section; or
- (y) the use of an open air barbeque, grill, or outdoor wood-burning oven.
- (9) An operator applying for a microenterprise home kitchen 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 microenterprise home kitchen; 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;
 - (iv) procedures and methods for the disposal of refuse; and
 - (v) a plan for maintaining time or temperature controlled food at the appropriate temperatures for each time or temperature controlled food.
- (10) In addition to a fee charged under Subsection (2), if the local health department is required to inspect the microenterprise home kitchen 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 microenterprise home kitchen 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 microenterprise home kitchen a fee for that inspection.
- (11) A microenterprise home kitchen permit:
- (a) is nontransferable;
 - (b) is renewable on an annual basis;
 - (c) is restricted to the location and hours listed on the permit;
 - (d) shall include a statement that reads: "This location is permitted under modified FDA requirements."; and
 - (e) shall provide the operator the opportunity to update the food types and products handled without requiring the operator to renew the permit.
- (12) This section does not prohibit an operator from applying for a different type of food event permit from a local health department.

Renumbered and Amended by Chapter 308, 2023 General Session

Part 5

Regulation of Smoking, Tobacco Products, and Nicotine Products

26B-7-501 Definitions.

As used in this part:

- (1) "Community location" means the same as that term is defined:
 - (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.
- (2) "Electronic cigarette" means the same as that term is defined in Section 76-10-101.
- (3) "Electronic cigarette product" means the same as that term is defined in Section 76-10-101.
- (4) "Electronic cigarette substance" means the same as that term is defined in Section 76-10-101.
- (5) "Employee" means an employee of a tobacco retailer.
- (6) "Enforcing agency" means the department, or any local health department enforcing the provisions of this part.
- (7) "General tobacco retailer" means a tobacco retailer that is not a retail tobacco specialty business.
- (8) "Local health department" means the same as that term is defined in Section 26A-1-102.
- (9) "Manufacture" includes:
 - (a) to cast, construct, or make electronic cigarettes; or
 - (b) to blend, make, process, or prepare an electronic cigarette substance.
- (10) "Manufacturer sealed electronic cigarette substance" means an electronic cigarette substance that is sold in a container that:
 - (a) is prefilled by the electronic cigarette substance manufacturer; and
 - (b) the electronic cigarette manufacturer does not intend for a consumer to open.
- (11) "Manufacturer sealed electronic cigarette product" means:
 - (a) an electronic cigarette substance or container that the electronic cigarette manufacturer does not intend for a consumer to open or refill; or
 - (b) a prefilled electronic cigarette as that term is defined in Section 76-10-101.
- (12) "Nicotine" means the same as that term is defined in Section 76-10-101.
- (13) "Nicotine product" means the same as that term is defined in Section 76-10-101.
- (14) "Non-tobacco shisha" means any product that:
 - (a) does not contain tobacco or nicotine; and
 - (b) is smoked or intended to be smoked in a hookah or water pipe.
- (15) "Owner" means a person holding a 20% ownership interest in the business that is required to obtain a permit under this part.
- (16) "Permit" means a tobacco retail permit issued under Section 26B-7-507.
- (17) "Place of public access" means any enclosed indoor place of business, commerce, banking, financial service, or other service-related activity, whether publicly or privately owned and whether operated for profit or not, to which persons not employed at the place of public access have general and regular access or which the public uses, including:
 - (a) buildings, offices, shops, elevators, or restrooms;
 - (b) means of transportation or common carrier waiting rooms;
 - (c) restaurants, cafes, or cafeterias;
 - (d) taverns as defined in Section 32B-1-102, or cabarets;
 - (e) shopping malls, retail stores, grocery stores, or arcades;
 - (f) libraries, theaters, concert halls, museums, art galleries, planetariums, historical sites, auditoriums, or arenas;
 - (g) barber shops, hair salons, or laundromats;

- (h) sports or fitness facilities;
 - (i) common areas of nursing homes, hospitals, resorts, hotels, motels, "bed and breakfast" lodging facilities, and other similar lodging facilities, including the lobbies, hallways, elevators, restaurants, cafeterias, other designated dining areas, and restrooms of any of these;
 - (j)
 - (i) any child care facility or program subject to licensure or certification under this title, including those operated in private homes, when any child cared for under that license is present; and
 - (ii) any child care, other than child care as defined in Section 26B-2-401, that is not subject to licensure or certification under this title, when any child cared for by the provider, other than the child of the provider, is present;
 - (k) public or private elementary or secondary school buildings and educational facilities or the property on which those facilities are located;
 - (l) any building owned, rented, leased, or otherwise operated by a social, fraternal, or religious organization when used solely by the organization members or the members' guests or families;
 - (m) any facility rented or leased for private functions from which the general public is excluded and arrangements for the function are under the control of the function sponsor;
 - (n) any workplace that is not a place of public access or a publicly owned building or office but has one or more employees who are not owner-operators of the business;
 - (o) any area where the proprietor or manager of the area has posted a conspicuous sign stating "no smoking", "thank you for not smoking", or similar statement; and
 - (p) a holder of a bar establishment license, as defined in Section 32B-1-102.
- (18)
- (a) "Proof of age" means:
 - (i) a valid identification card issued under Title 53, Chapter 3, Part 8, Identification Card Act;
 - (ii) a valid identification that:
 - (A) is substantially similar to an identification card issued under Title 53, Chapter 3, Part 8, Identification Card Act;
 - (B) is issued in accordance with the laws of a state other than Utah in which the identification is issued;
 - (C) includes date of birth; and
 - (D) has a picture affixed;
 - (iii) a valid driver license certificate that is issued under Title 53, Chapter 3, Uniform Driver License Act, or in accordance with the laws of the state in which the valid driver license is issued;
 - (iv) a valid United States military identification card that:
 - (A) includes date of birth; and
 - (B) has a picture affixed; or
 - (v) a valid passport.
 - (b) "Proof of age" does not include a valid driving privilege card issued in accordance with Section 53-3-207.
- (19) "Publicly owned building or office" means any enclosed indoor place or portion of a place owned, leased, or rented by any state, county, or municipal government, or by any agency supported by appropriation of, or by contracts or grants from, funds derived from the collection of federal, state, county, or municipal taxes.
- (20) "Retail tobacco specialty business" means the same as that term is defined:
- (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.

- (21) "Shisha" means any product that:
- (a) contains tobacco or nicotine; and
 - (b) is smoked or intended to be smoked in a hookah or water pipe.
- (22) "Smoking" means:
- (a) the possession of any lighted or heated tobacco product in any form;
 - (b) inhaling, exhaling, burning, or carrying any lighted or heated cigar, cigarette, pipe, or hookah that contains:
 - (i) tobacco or any plant product intended for inhalation;
 - (ii) shisha or non-tobacco shisha;
 - (iii) nicotine;
 - (iv) a natural or synthetic tobacco substitute; or
 - (v) a natural or synthetic flavored tobacco product;
 - (c) using an electronic cigarette; or
 - (d) using an oral smoking device intended to circumvent the prohibition of smoking in this part.
- (23) "Tax commission license" means a license issued by the State Tax Commission under:
- (a) Section 59-14-201 to sell a cigarette at retail;
 - (b) Section 59-14-301 to sell a tobacco product at retail; or
 - (c) Section 59-14-803 to sell an electronic cigarette product or a nicotine product.
- (24) "Tobacco product" means:
- (a) a tobacco product as defined in Section 76-10-101; or
 - (b) tobacco paraphernalia as defined in Section 76-10-101.
- (25) "Tobacco retailer" means a person that is required to obtain a tax commission license.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-7-502 Statutes on smoking considered public health laws.

Section 26B-7-503 is a public health law and shall be enforced by the department and local health departments.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-7-503 Utah Indoor Clean Air Act -- Restriction on smoking in public places and in specified places -- Exceptions -- Enforcement -- Penalties -- Local ordinances.

- (1) Except as provided in Subsections (2) and (3), smoking is prohibited in all enclosed indoor places of public access and publicly owned buildings and offices.
- (2) Subsection (1) does not apply to:
- (a) areas not commonly open to the public of owner-operated businesses having no employees other than the owner-operator;
 - (b) guest rooms in hotels, motels, "bed and breakfast" lodging facilities, and other similar lodging facilities, but smoking is prohibited under Subsection (1) in the common areas of these facilities, including dining areas and lobby areas; and
 - (c) separate enclosed smoking areas:
 - (i) located in the passenger terminals of an international airport located in the city of the first class;
 - (ii) vented directly to the outdoors; and
 - (iii) certified, by a heating, ventilation, and air conditioning engineer licensed by the state, to prevent the drift of any smoke to any nonsmoking area of the terminal.
- (3)

- (a) A person is exempt from the restrictions of Subsection (1) if the person:
 - (i) is a member of an American Indian tribe whose members are recognized as eligible for the special programs and services provided by the United States to American Indians who are members of those tribes;
 - (ii) is an American Indian who actively practices an American Indian religion, the origin and interpretation of which is from a traditional American Indian culture;
 - (iii) is smoking tobacco using the traditional pipe of an American Indian tribal religious ceremony, of which tribe the person is a member, and is smoking the pipe as part of that ceremony; and
 - (iv) the ceremony is conducted by a pipe carrier, Indian spiritual person, or medicine person recognized by the tribe of which the person is a member and the Indian community.
 - (b) This Subsection (3) takes precedence over Subsection (1).
 - (c) A religious ceremony using a traditional pipe under this section is subject to any applicable state or local law, except as provided in this section.
- (4)
- (a) An owner or the agent or employee of the owner of a place where smoking is prohibited under Subsection (1) who observes a person smoking in apparent violation of this section shall request the person to stop smoking.
 - (b) If the person fails to comply, the proprietor or the agent or employee of the proprietor shall ask the person to leave the premises.
- (5)
- (a) A first violation of Subsection (1) is subject to a civil penalty of not more than \$100.
 - (b) Any second or subsequent violation of Subsection (1) is subject to a civil penalty of not less than \$100 and not more than \$500.
- (6)
- (a) The department and local health departments shall:
 - (i) enforce this section and shall coordinate their efforts to promote the most effective enforcement of this section; and
 - (ii) impose the penalties under Subsection (5) in accordance with this Subsection (6).
 - (b) When enforcing this section, the department and the local health departments shall notify persons of alleged violations of this part, conduct hearings, and impose penalties in accordance with Title 63G, Chapter 4, Administrative Procedures Act.
 - (c) The department shall adopt rules necessary and reasonable to implement the provisions of this section.
- (7) Civil penalties collected under this section by:
- (a) a local health department shall be paid to the treasurer of the county in which the violation was committed; and
 - (b) the department shall be deposited into the General Fund.
- (8)
- (a) This section supersedes any ordinance enacted by the governing body of a political subdivision that restricts smoking in a place of public access as defined in Section 26B-7-501 and that is not essentially identical to the provisions of this section.
 - (b) This Subsection (8) does not supersede an ordinance enacted by the governing body of a political subdivision that restricts smoking in outdoor places of public access which are owned or operated by:
 - (i) a political subdivision as defined in Section 17B-1-102;
 - (ii) a state institution of higher education; or
 - (iii) a state institution of public education.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-7-504 Gathering of information related to cigarettes and tobacco products.

- (1) The department shall obtain annually publicly available information regarding cigarettes and tobacco products from other states and sources concerning:
 - (a) the presence of the following substances in detectable levels in a burned state and, if the cigarette or tobacco product is typically burned when consumed, in a burned state:
 - (i) ammonia or ammonia compounds;
 - (ii) arsenic;
 - (iii) cadmium;
 - (iv) formaldehyde; and
 - (v) lead; and
 - (b) a nicotine yield rating for the cigarette or tobacco product for which a rating has been developed.
- (2) Information obtained by the department under Subsection (1) is a public record and may be disclosed in accordance with Section 63G-2-201 and disseminated generally by the department.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-7-505 Electronic cigarette products -- Labeling -- Requirements to sell -- Advertising -- Labeling of nicotine products containing nicotine.

- (1) The department shall, in consultation with a local health department and with input from members of the public, establish by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the requirements to sell an electronic cigarette substance that is not a manufacturer sealed electronic cigarette substance regarding:
 - (a) labeling;
 - (b) nicotine content;
 - (c) packaging; and
 - (d) product quality.
- (2) On or before January 1, 2021, the department shall, in consultation with a local health department and with input from members of the public, establish by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the requirements to sell a manufacturer sealed electronic cigarette product regarding:
 - (a) labeling;
 - (b) nicotine content;
 - (c) packaging; and
 - (d) product quality.
- (3)
 - (a) A person may not sell an electronic cigarette substance unless the electronic cigarette substance complies with the requirements established by the department under Subsection (1).
 - (b) Beginning on July 1, 2021, a person may not sell a manufacturer sealed electronic cigarette product unless the manufacturer sealed electronic cigarette product complies with the requirements established by the department under Subsection (2).
- (4)

- (a) A local health department may not enact a rule or regulation regarding electronic cigarette substance labeling, nicotine content, packaging, or product quality that is not identical to the requirements established by the department under Subsections (1) and (2).
- (b) Except as provided in Subsection (4)(c), a local health department may enact a 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.
- (5) A person may not advertise an electronic cigarette product as a tobacco cessation device.
- (6) Any nicotine product shall contain the statement described in Subsection (7) if the nicotine product:
 - (a)
 - (i) is not a tobacco product as defined in 21 U.S.C. Sec. 321 and related federal regulations; or
 - (ii) is not otherwise required under federal or state law to contain a nicotine warning; and
 - (b) contains nicotine.
- (7) A statement shall appear on the exterior packaging of a nicotine product described in Subsection (6) as follows:

"This product contains nicotine."

Renumbered and Amended by Chapter 308, 2023 General Session

26B-7-506 Regulation of tobacco retailers.

The regulation of a tobacco retailer is an exercise of the police powers of the state, and through delegation, to other governmental entities.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-7-507 Permitting requirement.

- (1)
 - (a) A tobacco retailer shall hold a valid tobacco retail permit issued in accordance with this part by the local health department with jurisdiction over the physical location where the tobacco retailer operates.
 - (b) A tobacco retailer without a valid permit may not:
 - (i) place a tobacco product, an electronic cigarette product, or a nicotine product in public view;
 - (ii) display any advertisement related to a tobacco product, an electronic cigarette product, or a nicotine product that promotes the sale, distribution, or use of those products; or
 - (iii) sell, offer for sale, or offer to exchange for any form of consideration, tobacco, a tobacco product, an electronic cigarette product, or a nicotine product.
- (2) A local health department may issue a permit under this part for a tobacco retailer in the classification of:
 - (a) a general tobacco retailer; or
 - (b) a retail tobacco specialty business.
- (3) A permit under this part is:
 - (a) valid only for one physical location, including a vending machine;
 - (b) valid only at one fixed business address; and
 - (c) if multiple tobacco retailers are at the same address, separately required for each tobacco retailer.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-7-508 Permit application.

- (1) A local health department shall issue a permit for a tobacco retailer if the local health department determines that the applicant:
 - (a) accurately provided all information required under Subsection (3) and, if applicable, Subsection (4); and
 - (b) meets all requirements for a permit under this part.
- (2) An applicant for a permit shall:
 - (a) submit an application described in Subsection (3) to the local health department with jurisdiction over the area where the tobacco retailer is located; and
 - (b) pay all applicable fees described in Section 26B-7-509.
- (3) The application for a permit shall include:
 - (a) the name, address, and telephone number of each proprietor;
 - (b) the name and mailing address of each proprietor authorized to receive permit-related communication and notices;
 - (c) the business name, address, and telephone number of the single, fixed location for which a permit is sought;
 - (d) evidence that the location for which a permit is sought has a valid tax commission license;
 - (e) information regarding whether, in the past 24 months, any proprietor of the tobacco retailer has been determined to have violated, or has been a proprietor at a location that has been determined to have violated:
 - (i) a provision of this part;
 - (ii) Section 26B-7-503;
 - (iii) Title 76, Chapter 10, Part 1, Cigarettes and Tobacco and Psychotoxic Chemical Solvents;
 - (iv) Title 76, Chapter 10, Part 16, Pattern of Unlawful Activity Act;
 - (v) regulations restricting the sale and distribution of cigarettes and smokeless tobacco issued by the United States Food and Drug Administration, 21 C.F.R. Part 1140; or
 - (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
 - (f) the dates of all violations disclosed under this Subsection (3).
- (4)
 - (a) In addition to the information described in Subsection (3), an applicant for a retail tobacco specialty business permit shall include evidence showing whether the business is located within:
 - (i) 1,000 feet of a community location;
 - (ii) 600 feet of another retail tobacco specialty business; or
 - (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 part.

- (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.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-7-509 Permit term and fees.

- (1)
 - (a) The term of a permit issued to a retail tobacco specialty business is one year.
 - (b) The term of a permit issued to a general tobacco retailer is two years.
- (2)
 - (a) A local health department may not issue a permit 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
 - (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 described in Sections 26B-7-506 through 26B-7-521.
 - (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.
- (3) A permit holder may apply for a renewal of a permit no earlier than 30 days before the day on which the permit expires.
- (4) A tobacco retailer that fails to renew a permit before the permit expires may apply to reinstate the permit by submitting to the local health department:
 - (a) the information required in Subsection 26B-7-508(3) and, if applicable, Subsection 26B-7-508(4);
 - (b) the fee for the reinstatement of a permit; and
 - (c) a signed affidavit affirming that the tobacco retailer has not violated the prohibitions in Subsection 26B-7-507(1)(b) after the permit expired.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-7-510 Permit nontransferable.

- (1) A permit is nontransferable.
- (2) If the information described in Subsection 26B-7-508(3) changes, a tobacco retailer:
 - (a) may not renew the permit; and
 - (b) shall apply for a new permit no later than 15 days after the information in Subsection 26B-7-508(3) changes.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-7-511 Permit requirements for a retail tobacco specialty business.

- (1) A retail tobacco specialty business shall:
 - (a) electronically verify proof of age for any individual that enters the premises of the business in accordance with Section 26B-7-521;
 - (b) except as provided in Subsection 76-10-105.1(4), prohibit any individual from entering the business if the individual is under 21 years old; and
 - (c) prominently display at the retail tobacco specialty business a sign on the public entrance of the business that communicates:

- (i) the prohibition on the presence of an individual under 21 years old in a retail tobacco specialty business in Subsection 76-10-105.1(4); and
 - (ii) the prohibition on the sale of tobacco products and electronic cigarette products to an individual under 21 years old as described in Sections 76-10-104, 76-10-104.1, 76-10-105.1, and 76-10-114.
- (2) A retail tobacco specialty business may not:
- (a) employ an individual under 21 years old to sell a tobacco product, an electronic cigarette product, or a nicotine product; or
 - (b) permit an employee under 21 years old to sell a tobacco product, an electronic cigarette product, or a nicotine product.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-7-512 Requirements for the sale of tobacco product, electronic cigarette product, or nicotine product.

- (1) A tobacco retailer shall:
- (a) provide the customer with an itemized receipt for each sale of a tobacco product, an electronic cigarette product, or a nicotine product that separately identifies:
 - (i) the name of the tobacco product, the electronic cigarette product, or the nicotine product;
 - (ii) the amount charged for each tobacco product, electronic cigarette product, or nicotine product; and
 - (iii) the date and time of the sale; and
 - (b) maintain an itemized transaction log for each sale of a tobacco product, an electronic cigarette product, or a nicotine product that separately identifies:
 - (i) the name of the tobacco product, the electronic cigarette product, or the nicotine product;
 - (ii) the amount charged for each tobacco product, electronic cigarette product, or nicotine product; and
 - (iii) the date and time of the sale.
- (2) The itemized transaction log described in Subsection (1)(b) shall be:
- (a) maintained for at least one year after the date of each transaction in the itemized transaction log;
 - (b) made available to an enforcing agency or a peace officer at the request of the enforcing agency or the peace officer; and
 - (c) in addition to any documentation required under Section 59-1-1406 and Subsection 59-14-805(2).

Renumbered and Amended by Chapter 308, 2023 General Session

26B-7-513 Permit requirements for the sale of tobacco products and electronic cigarette products.

- (1) A tobacco retailer shall:
- (a) provide the customer with an itemized receipt for each sale of a tobacco product or an electronic cigarette product that separately identifies:
 - (i) the name of the tobacco product or the electronic cigarette product;
 - (ii) the amount charged for each tobacco product or electronic cigarette product; and
 - (iii) the time and date of the sale; and
 - (b) maintain an itemized transaction log for each sale of a tobacco product or an electronic cigarette product that separately identifies:

- (i) the name of the tobacco product or the electronic cigarette product;
 - (ii) the amount charged for each tobacco product or electronic cigarette product; and
 - (iii) the date and time of the sale.
- (2) The itemized transaction log described in Subsection (1)(b) shall be:
- (a) maintained for at least one year after the date of each transaction in the itemized transaction log; and
 - (b) made available to an enforcing agency or a peace officer at the request of the enforcing agency or the peace officer that is no less restrictive than the provisions in this part.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-7-514 Permit violation.

A person is in violation of the permit issued under this part if the person violates:

- (1) a provision of this part;
- (2) a provision of licensing laws under Section 10-8-41.6 or Section 17-50-333;
- (3) a provision of Title 76, Chapter 10, Part 1, Cigarettes and Tobacco and Psychotoxic Chemical Solvents;
- (4) a provision of Title 76, Chapter 10, Part 16, Pattern of Unlawful Activity Act;
- (5) a regulation restricting the sale and distribution of cigarettes and smokeless tobacco issued by the United States Food and Drug Administration under 21 C.F.R. Part 1140; or
- (6) 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.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-7-515 Enforcement by state and local health departments.

The department and local health departments shall enforce Sections 26B-7-506 through 26B-7-521 under the procedures of Title 63G, Chapter 4, Administrative Procedures Act, as an informal adjudicative proceeding, including:

- (1) notifying a tobacco retailer of alleged violations;
- (2) conducting hearings;
- (3) determining violations; and
- (4) imposing civil administrative penalties.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-7-516 Inspection of retail tobacco businesses.

The department or a local health department may inspect a tobacco retailer to determine whether the tobacco retailer:

- (1) continues to meet the qualifications for the permit issued under this part;
- (2) if applicable, continues to meet the requirements for a retail tobacco specialty business license issued under Section 10-8-41.6 or Section 17-50-333;
- (3) engaged in a pattern of unlawful activity under Title 76, Chapter 10, Part 16, Pattern of Unlawful Activity Act;
- (4) violated any of the regulations restricting the sale and distribution of cigarettes and smokeless tobacco issued by the United States Food and Drug Administration under 21 C.F.R. Part 1140; or
- (5) has violated any other provision of state law or local ordinance.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-7-517 Hearing -- Evidence of criminal conviction.

- (1) At a civil hearing conducted under Section 26B-7-515, evidence of the final criminal conviction of a tobacco retailer for violation of Section 76-10-114 at the same location and within the same time period as the location and time period alleged in the civil hearing for violation of this part for sale of a tobacco product, an electronic cigarette product, or a nicotine product to an individual under 21 years old is prima facie evidence of a violation of this part.
- (2) If the tobacco retailer is convicted of violating Section 76-10-114, the enforcing agency:
 - (a) shall assess an additional monetary penalty under this part for the same offense for which the conviction was obtained; and
 - (b) shall revoke or suspend a permit in accordance with Section 26B-7-518.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-7-518 Penalties.

- (1)
 - (a) If an enforcing agency determines that a person has violated the terms of a permit issued under this part, the enforcing agency may impose the penalties described in this section.
 - (b) If multiple violations are found in a single inspection by an enforcing agency or a single investigation by a law enforcement agency under Section 77-39-101, the enforcing agency shall treat the multiple violations as one single violation under Subsections (2), (3), and (4).
- (2) Except as provided in Subsections (3) and (4), if a violation is found in an investigation by a law enforcement agency under Section 77-39-101 or an inspection by an enforcing agency, the enforcing agency shall:
 - (a) on a first violation at a retail location, impose a penalty of \$1,000;
 - (b) on a second violation at the same retail location that occurs within one year of a previous violation, impose a penalty of \$1,500;
 - (c) on a third violation at the same retail location that occurs within two years after two previous violations, impose:
 - (i) a suspension of the permit for 30 consecutive business days within 60 days after the day on which the third violation occurs; or
 - (ii) a penalty of \$2,000; and
 - (d) on a fourth or subsequent violation within two years of three previous violations:
 - (i) impose a penalty of \$2,000;
 - (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
 - (b) on the second violation for the same general tobacco retailer within one year of the first violation:
 - (i) impose a fine of \$5,000; and
 - (ii) revoke the permit for the general tobacco retailer.

- (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 electronic cigarette product, or a nicotine product to an individual under 21 years old, the enforcing agency shall:
 - (a) on the first violation:
 - (i) impose a fine of \$5,000; and
 - (ii) immediately suspend the permit for 30 consecutive days; and
 - (b) on the second violation at the same retail location within two years of the first violation:
 - (i) impose a fine of \$10,000; and
 - (ii) revoke the permit for the retail tobacco specialty business.
- (5)
 - (a) Except when a transfer described in Subsection (6) occurs, a local health department may not issue a permit to:
 - (i) a tobacco retailer for whom a permit is suspended or revoked under Subsection (2) or (3); or
 - (ii) a tobacco retailer that has the same proprietor, director, corporate officer, partner, or other holder of significant interest as another tobacco retailer for whom a permit is suspended or revoked under Subsection (2), (3), or (4).
 - (b) A person whose permit:
 - (i) is suspended under this section may not apply for a new permit for any other tobacco retailer for a period of 12 months after the day on which an enforcing agency suspends the permit; and
 - (ii) is revoked under this section may not apply for a new permit for any tobacco retailer for a period of 24 months after the day on which an enforcing agency revokes the permit.
- (6) Violations of this part, 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:
 - (a) the tobacco retailer is transferred to a new proprietor; and
 - (b) the new proprietor provides documentation to the local health department that the new proprietor is acquiring the tobacco retailer in an arm's length transaction from the previous proprietor.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-7-519 Recognition of tobacco retailer training program.

- (1) In determining the amount of the monetary penalty to be imposed for a violation of this part, a hearing officer shall reduce the civil penalty by at least 50% if the hearing officer determines that:
 - (a) the tobacco retailer has implemented a documented employee training program; and
 - (b) the employees have completed that training program within 30 days after the day on which each employee commences the duties of selling a tobacco product, an electronic cigarette product, or a nicotine product.
- (2)
 - (a) For the first offense at a location, if the hearing officer determines under Subsection (1) that the tobacco retailer has not implemented a documented training program with a written curriculum for employees at that location regarding compliance with this chapter, the hearing officer may suspend all or a portion of the penalty if:
 - (i) the tobacco retailer agrees to initiate a training program for employees at that location; and
 - (ii) the training program begins within 30 days after the hearing officer makes a determination under this Subsection (2)(a).

- (b) If the hearing officer determines at a subsequent hearing that the tobacco retailer has not implemented the training program within the time period required under Subsection (2)(a)(ii), the hearing officer shall promptly impose the suspended monetary penalty, unless the tobacco retailer demonstrates good cause for an extension of time for implementation of the training program.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-7-520 Allocation of civil penalties.

Civil monetary penalties collected under Section 26B-7-518 shall be allocated as follows:

- (1) if a local health department conducts an adjudicative proceeding under Section 26B-7-515, the penalty shall be paid to the treasurer of the county in which the violation was committed, and transferred to the local health department; and
- (2) if the department conducts a civil hearing under Section 26B-7-515, the penalty shall be deposited in the state's General Fund, and may be appropriated by the Legislature to the department for use in enforcement of this part.

Renumbered and Amended by Chapter 308, 2023 General Session

26B-7-521 Verification of proof of age.

- (1) As used in this section:
 - (a) "Employee" means an employee of a retail tobacco specialty business.
 - (b) "Electronic verification program" means a technology used by a retail tobacco specialty business to confirm proof of age for an individual.
- (2) A retail tobacco specialty business shall require that an employee verify proof of age as provided in this section.
- (3) To comply with Subsection (2), an employee shall:
 - (a) request the individual present proof of age; and
 - (b) verify the validity of the proof of age electronically in accordance with Subsection (4).
- (4) A retail tobacco specialty business shall use an electronic verification program to assist the business in complying with the requirements of this section.
- (5)
 - (a) A retail tobacco specialty business may not disclose information obtained under this section except as provided under this part.
 - (b) Information obtained under this section:
 - (i) shall be kept for at least 180 days; and
 - (ii) is subject to inspection upon request by a peace officer or the representative of an enforcing agency.
- (6)
 - (a) If an employee does not verify proof of age under this section, the employee may not permit an individual to:
 - (i) except as provided in Subsection (6)(b), enter a retail tobacco specialty business; or
 - (ii) purchase a tobacco product or an electronic cigarette product.
 - (b) In accordance with Subsection 76-10-105.1(4), an individual who is under 21 years old may be permitted to enter a retail tobacco specialty business if the individual is:
 - (i) accompanied by a parent or legal guardian who provides proof of age; or
 - (ii)

- (A) present at the retail tobacco specialty business solely for the purpose of providing a commercial service to the retail tobacco specialty business, including making a commercial delivery;
 - (B) monitored by the proprietor of the retail tobacco specialty business or an employee of the retail tobacco specialty business; and
 - (C) not permitted to make any purchase or conduct any commercial transaction other than the service described in Subsection (6)(b)(ii)(A).
- (7) To determine whether the individual described in Subsection (2) is 21 years old or older, the following may request an individual described in Subsection (2) to present proof of age:
- (a) an employee;
 - (b) a peace officer; or
 - (c) a representative of an enforcing agency.

Renumbered and Amended by Chapter 308, 2023 General Session

Chapter 8

Health Data, Vital Statistics, and Utah Medical Examiner

Part 1

Vital Statistics

26B-8-101 Definitions.

As used in this part:

- (1) "Adoption document" means an adoption-related document filed with the office, a petition for adoption, a decree of adoption, an original birth certificate, or evidence submitted in support of a supplementary birth certificate.
- (2) "Biological sex at birth" means an individual's sex, as being male or female, according to distinct reproductive roles as manifested by sex and reproductive organ anatomy, chromosomal makeup, and endogenous hormone profiles.
- (3) "Certified nurse midwife" means an individual who:
 - (a) is licensed to practice as a certified nurse midwife under Title 58, Chapter 44a, Nurse Midwife Practice Act; and
 - (b) has completed an education program regarding the completion of a certificate of death developed by the department by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
- (4) "Custodial funeral service director" means a funeral service director who:
 - (a) is employed by a licensed funeral establishment; and
 - (b) has custody of a dead body.
- (5) "Dead body" means a human body or parts of a human body from the condition of which it reasonably may be concluded that death occurred.
- (6) "Decedent" means the same as a dead body.
- (7) "Dead fetus" means a product of human conception, other than those circumstances described in Subsection 76-7-301(1):
 - (a) of 20 weeks' gestation or more, calculated from the date the last normal menstrual period began to the date of delivery; and

- (b) that was not born alive.
- (8) "Declarant father" means a male who claims to be the genetic father of a child, and, along with the biological mother, signs a voluntary declaration of paternity to establish the child's paternity.
- (9) "Dispositioner" means:
 - (a) a person designated in a written instrument, under Subsection 58-9-602(1), as having the right and duty to control the disposition of the decedent, if the person voluntarily acts as the dispositioner; or
 - (b) the next of kin of the decedent, if:
 - (i)
 - (A) a person has not been designated as described in Subsection (9)(a); or
 - (B) the person described in Subsection (9)(a) is unable or unwilling to exercise the right and duty described in Subsection (9)(a); and
 - (ii) the next of kin voluntarily acts as the dispositioner.
- (10) "Fetal remains" means:
 - (a) an aborted fetus as that term is defined in Section 26B-2-232; or
 - (b) a miscarried fetus as that term is defined in Section 26B-2-233.
- (11) "File" means the submission of a completed certificate or other similar document, record, or report as provided under this part for registration by the state registrar or a local registrar.
- (12) "Funeral service director" means the same as that term is defined in Section 58-9-102.
- (13) "Health care facility" means the same as that term is defined in Section 26B-2-201.
- (14) "Health care professional" means a physician, physician assistant, nurse practitioner, or certified nurse midwife.
- (15) "Intersex individual" means an individual who:
 - (a) is born with external biological sex characteristics that are irresolvably ambiguous;
 - (b) is born with 46, XX chromosomes with virilization;
 - (c) is born with 46, XY chromosomes with undervirilization;
 - (d) has both ovarian and testicular tissue; or
 - (e) has been diagnosed by a physician, based on genetic or biochemical testing, with abnormal:
 - (i) sex chromosome structure;
 - (ii) sex steroid hormone production; or
 - (iii) sex steroid hormone action for a male or female.
- (16) "Licensed funeral establishment" means:
 - (a) if located in Utah, a funeral service establishment, as that term is defined in Section 58-9-102, that is licensed under Title 58, Chapter 9, Funeral Services Licensing Act; or
 - (b) if located in a state, district, or territory of the United States other than Utah, a funeral service establishment that complies with the licensing laws of the jurisdiction where the establishment is located.
- (17) "Live birth" means the birth of a child who shows evidence of life after the child is entirely outside of the mother.
- (18) "Local registrar" means a person appointed under Subsection 26B-8-102(3)(b).
- (19) "Nurse practitioner" means an individual who:
 - (a) is licensed to practice as an advanced practice registered nurse under Title 58, Chapter 31b, Nurse Practice Act; and
 - (b) has completed an education program regarding the completion of a certificate of death developed by the department by administrative rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
- (20) "Office" means the Office of Vital Records and Statistics within the department.

- (21) "Physician" means a person 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.
- (22) "Physician assistant" means an individual who:
 - (a) is licensed to practice as a physician assistant under Title 58, Chapter 70a, Utah Physician Assistant Act; and
 - (b) has completed an education program regarding the completion of a certificate of death developed by the department by administrative rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
- (23) "Presumed father" means the father of a child conceived or born during a marriage as defined in Section 30-1-17.2.
- (24) "Registration" or "register" means acceptance by the local or state registrar of a certificate and incorporation of the certificate into the permanent records of the state.
- (25) "State registrar" means the state registrar of vital records appointed under Section 26B-8-102.
- (26) "Vital records" means:
 - (a) registered certificates or reports of birth, death, fetal death, marriage, divorce, dissolution of marriage, or annulment;
 - (b) amendments to any of the registered certificates or reports described in Subsection (26)(a);
 - (c) an adoption document; and
 - (d) other similar documents.
- (27) "Vital statistics" means the data derived from registered certificates and reports of birth, death, fetal death, induced termination of pregnancy, marriage, divorce, dissolution of marriage, or annulment.

Amended by Chapter 306, 2023 General Session, (Coordination Clause)

Amended by Chapter 306, 2023 General Session

26B-8-102 Department duties and authority.

- (1) As used in this section:
 - (a) "Compact" means the Compact for Interstate Sharing of Putative Father Registry Information created in Section 78B-6-121.5, effective on May 10, 2016.
 - (b) "Putative father":
 - (i) means the same as that term is as defined in Section 78B-6-121.5; and
 - (ii) includes an unmarried biological father.
 - (c) "State registrar" means the state registrar of vital records appointed under Subsection (2)(e).
 - (d) "Unmarried biological father" means the same as that term is defined in Section 78B-6-103.
- (2) The department shall:
 - (a) provide offices properly equipped for the preservation of vital records made or received under this part;
 - (b) establish a statewide vital records system for the registration, collection, preservation, amendment, and certification of vital records and other similar documents required by this part and activities related to them, including the tabulation, analysis, and 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:
 - (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 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.

Renumbered and Amended by Chapter 306, 2023 General Session

26B-8-103 Content and form of certificates and reports.

- (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 part or the rules implementing this 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 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 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:
 - (i) may collect the Social Security number of a deceased individual; and
 - (ii) may not include the Social Security number of an individual on a certificate of death.
 - (b) For registering a birth, the department may not require an individual to provide additional information.
 - (c) The department may request additional information if the department provides a written statement that:
 - (i) discloses that providing the additional information is voluntary;
 - (ii) discloses how the additional information will be used and the duration of use;
 - (iii) describes how the department prevents the additional information from being used in a manner different from the disclosure given under Subsection (8)(c)(ii); and
 - (iv) includes a notice that the individual is consenting to the department's use of the additional information by providing the additional information.
 - (d)
 - (i) Beginning July 1, 2022, an individual may submit a written request to the department to de-identify the individual's additional information contained in the department's databases.
 - (ii) Upon receiving the written request, the department shall de-identify the additional information.
 - (e) The department shall de-identify additional information contained in the department's databases before the additional information is held by the department for longer than six years.

Renumbered and Amended by Chapter 306, 2023 General Session

26B-8-104 Birth certificates -- Execution and registration requirements.

- (1) As used in this section, "birthing facility" means a general acute hospital or birthing center as defined in Section 26B-2-201.
- (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 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 part on the certificate, securing the required signatures, and filing the certificate.
 - (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
 - (iv) file the completed declaration with the original birth certificate.
 - (b) If there is a presumed father, the voluntary declaration will only be valid if the presumed father also signs the voluntary declaration.
 - (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:
- (a) the mother and declarant father have signed a voluntary declaration of paternity; 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 26B-9-104.

Renumbered and Amended by Chapter 306, 2023 General Session

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 26B-8-104, or other person responsible for completing and filing the birth certificate under Section 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 (1).
- (3) The state registrar shall, as soon as practicable, supply those social security numbers to the Office of Recovery Services within the department.
- (4) The social security numbers obtained under this section may not be recorded on the child's birth certificate.
- (5) The state may not use any social security number obtained under this section for any reason other than enforcement of child support orders in accordance with the federal Family Support Act of 1988, Pub. L. No. 100-485.

Renumbered and Amended by Chapter 306, 2023 General Session

26B-8-106 Foundling certificates.

- (1) A foundling certificate shall be filed for each infant of unknown parentage found in the state. The certificate shall be prepared and filed with the local registrar of the district in which the infant was found by the person assuming custody.
- (2) The certificate shall be filed within 10 days after the infant is found and is acceptable for all purposes in lieu of a certificate of birth.

Renumbered and Amended by Chapter 306, 2023 General Session

26B-8-107 Correction of errors or omissions in vital records -- Conflicting birth and foundling certificates -- Rulemaking.

- (1) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the department may make rules:
 - (a) governing applications to correct alleged errors or omissions on any vital record;
 - (b) establishing procedures to resolve conflicting birth and foundling certificates;
 - (c) allowing for the correction and reissuance of a vital record that was originally created omitting a diacritical mark; and
 - (d) notwithstanding any other provision of law, allowing for the change of a child's name on the child's birth certificate within one year from the day the child is born.
- (2) For a birth certificate, the department may correct an error or omission under Subsection (1)(a) if:
 - (a) the error or omission is a result of a scrivener's error or a data entry error; and
 - (b) the department receives:
 - (i)
 - (A) an affidavit from the applicant attesting that there is an error on the birth certificate;
 - (B) supporting documentation from the health care facility or attending health care provider; and
 - (C) an affidavit from the health care facility or health care provider described in Subsection (2) (b)(i)(B) attesting to the accuracy of the supporting documentation; or

- (ii) documentation deemed sufficient by the state registrar to establish the facts of the error or omission.
- (3) The department may amend a birth certificate's sex designation for an intersex individual at the request of the individual or the guardian of the individual if:
 - (a) the sex designation indicating the biological sex at birth of the individual was misidentified on the original certificate due to the individual's condition; and
 - (b) the department receives:
 - (i) a correction affidavit attesting the individual is intersex;
 - (ii) chromosomal, molecular, karyotypic, DNA, or genetic testing results that confirm the individual is intersex; and
 - (iii) an affidavit from the health care facility, health care professional, or laboratory testing facility that conducted the test or analyzed the test results, attesting to the test results and accuracy.

Renumbered and Amended by Chapter 306, 2023 General Session
Amended by Chapter 493, 2023 General Session

26B-8-108 Birth certificates -- Delayed registration.

- (1) When a certificate of birth of a person born in this state has not been filed within the time provided in Subsection 26B-8-104(2), a certificate of birth may be filed in accordance with department rules and subject to this section.
- (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.
 - (b) The registrar shall abstract a summary statement of the evidence submitted in support of delayed registration onto the certificate.
- (3) When the minimum evidence required for delayed registration is not submitted or when the state registrar has reasonable cause to question the validity or adequacy of the evidence supporting the application, and the deficiencies are not corrected, the state registrar:
 - (a) may not register the certificate; and
 - (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.

Renumbered and Amended by Chapter 306, 2023 General Session

26B-8-109 Birth certificates -- Petition for issuance of delayed certificate -- Court procedure.

- (1)
 - (a) If registration of a certificate of birth under Section 26B-8-108 is denied, the person seeking registration may bring an action by a verified petition in the Utah 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.
- (4) The court shall fix a time and place for hearing the petition and shall give the state registrar 15 days' notice of the hearing. The state registrar or his authorized representative 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 26B-8-108 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 shall include the birth data to be registered, a description of the evidence presented, and the date of the court's action.
 - (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 described in Subsection (5)(a) shall be registered by the state registrar and constitutes the certificate of birth.

Renumbered and Amended by Chapter 306, 2023 General Session

26B-8-110 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.
- (2) The application for registration of a supplementary birth certificate may be made by:
- (a) the individual requesting registration under Subsection (1) if the individual is of legal age;
 - (b) a legal representative; or
 - (c) any agency authorized to receive children for placement or adoption under the laws of this or any other state.
- (3)
- (a) The state registrar shall require that an applicant submit identification and 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.

Renumbered and Amended by Chapter 306, 2023 General Session

26B-8-111 Birth certificate name or sex designation change -- Registration of court order and amendment of birth certificate.

- (1) An individual may obtain a court order in accordance with Title 42, Names, to change the name on the individual's birth certificate.
- (2)
 - (a) A court may grant a petition ordering a sex designation change on a birth certificate if the court determines by clear and convincing evidence that the individual seeking the sex designation change:
 - (i) is not involved in any kind of lawsuit;
 - (ii) is not on probation or parole;
 - (iii) is not seeking the amendment:
 - (A) to commit a crime;
 - (B) to interfere with the rights of others;
 - (C) to avoid creditors;
 - (D) to influence the sentence, fine, or conditions of imprisonment in a criminal case;
 - (E) to commit fraud on the public; or
 - (F) for any other fraudulent purpose;
 - (iv) has transitioned from the sex designation of the biological sex at birth to the sex sought in the petition;
 - (v) has outwardly expressed as the sex sought in the petition in a consistent and uniform manner for at least six months; and
 - (vi) suffers from clinically significant distress or impairment due to the current sex designation on the birth certificate.
 - (b) The court shall consider the following when making the determination described in Subsection (2)(a)(iv):
 - (i) evidence of medical history, care, or treatment related to sex transitioning; and
 - (ii) evidence that the sex sought in the petition is sincerely held and part of the individual's core identity.
- (3)
 - (a)
 - (i) When determining whether to grant a sex designation change for a child who is at least 15 years and six months old, unless the child is emancipated, the court shall appoint, notwithstanding Subsection 78A-2-703(1), a guardian ad litem for the child.
 - (ii) Notwithstanding Subsection 78A-2-703(7), the child's parent or guardian is responsible for the costs of the guardian ad litem's services unless the court determines the parent or guardian is indigent in accordance with Section 78A-2-302.
 - (b) The guardian ad litem shall provide the court relevant evidence, whether submitted by the child or other sources of evidence, regarding the following:
 - (i) whether the child is capable of making decisions with long-term consequences independently of the child's parent or guardian;
 - (ii) whether the child is mature and capable of appreciating the implications of the decision to change the sex designation on the child's birth certificate; and

- (iii) whether the child meets the other requirements of this section.
- (c) The guardian of a child described in Subsection (3)(a) shall:
 - (i) give notice of the proceeding to any known parent of the child; and
 - (ii) provide the court with a declaration of the status of any divorce or custody matter pertaining to the child, including the case name, case number, court, judge, and current status of the case.
- (d) The court shall:
 - (i) consider any objection given by a parent;
 - (ii) close the hearing on a petition for a sex designation change;
 - (iii) receive all evidence; and
 - (iv) make a determination as to whether:
 - (A) all of the requirements of Subsection (2) have been met; and
 - (B) the evidence supports a finding by clear and convincing evidence that the sex designation change is in the best interest of the child and would not create a risk of harm to the minor.
- (4)
 - (a) A court may not grant a petition for a sex designation change if:
 - (i) the birth certificate is for a child who is younger than 15 years and six months old; or
 - (ii) the child's parent or guardian with legal custody has not given permission.
 - (b) An order granting a sex designation change under this section is not effective until the individual is at least 16 years old.
- (5) A petition for a sex designation under this section may be combined with a petition under Title 42, Names.
- (6)
 - (a) Upon the receipt of a certified order granting a birth certificate amendment, any required application, and an appropriate fee, the department shall issue:
 - (i) a birth certificate that does not indicate which fields were amended unless requested by the individual; and
 - (ii) an amendment history of the birth certificate, including the fields of the birth certificate that have been amended and the date of the amendment.
 - (b) The department shall retain a record of all amendments to a birth certificate, including any amendment history issued by the department.
- (7) The provisions of this section are severable.
- (8) This section only applies to birth certificates issued by the state.

Amended by Chapter 306, 2023 General Session, (Coordination Clause)
Renumbered and Amended by Chapter 306, 2023 General Session
Repealed and Re-enacted by Chapter 493, 2023 General Session

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 26B-8-108 through 26B-8-111.
- (2) The additional fee described in Subsection (1) may be charged only for the first copy requested at any one time.
- (3) The fee shall be transmitted monthly to the state treasurer and credited to the Children's Account created in Section 80-2-501.

Renumbered and Amended by Chapter 306, 2023 General Session

26B-8-113 Fee waived for certified copy of birth certificate.

- (1) Notwithstanding Sections 26B-1-209 and 26B-6-112, the department shall waive a fee that would otherwise be charged for a certified copy of a birth certificate, if the individual whose birth is confirmed by the birth certificate is:
 - (a) the individual requesting the certified copy of the birth certificate; and
 - (b)
 - (i) homeless, as defined in Section 26B-3-207;
 - (ii) a person who is homeless, as defined in Section 35A-5-302;
 - (iii) an individual whose primary nighttime residence is a location that is not designed for or ordinarily used as a sleeping accommodation for an individual;
 - (iv) a homeless service provider as verified by the Department of Workforce Services; or
 - (v) a homeless child or youth, as defined in 42 U.S.C. Sec. 11434a.
- (2) To satisfy the requirement in Subsection (1)(b), the department shall accept written verification that the individual is homeless or a person, child, or youth who is homeless from:
 - (a) a homeless shelter;
 - (b) a permanent housing, permanent, supportive, or transitional facility, as defined in Section 35A-5-302;
 - (c) the Department of Workforce Services;
 - (d) a homeless service provider as verified by the Department of Workforce Services; or
 - (e) a local educational agency liaison for homeless children and youth designated under 42 U.S.C. Sec. 11432(g)(1)(J)(ii).

Renumbered and Amended by Chapter 306, 2023 General Session

26B-8-114 Certificate of death -- Execution and registration requirements -- Information provided to lieutenant governor.

- (1)
 - (a) A certificate of death for each death that occurs in this state shall be filed with the local registrar of the district in which the death occurs, or as otherwise directed by the state registrar, within five days after death and prior to the decedent's interment, any other disposal, or removal from the registration district where the death occurred.
 - (b) A certificate of death shall be registered if the certificate of death is completed and filed in accordance with this part.
- (2)
 - (a) If the place of death is unknown but the dead body is found in this state:
 - (i) the certificate of death shall be completed and filed in accordance with this section; and
 - (ii) the place where the dead body is found shall be shown as the place of death.
 - (b) If the date of death is unknown, the date shall be determined by approximation.
- (3)
 - (a) When death occurs in a moving conveyance in the United States and the decedent is first removed from the conveyance in this state:
 - (i) the certificate of death shall be filed with:
 - (A) the local registrar of the district where the decedent is removed; or
 - (B) a person designated by the state registrar; and
 - (ii) the place where the decedent is removed shall be considered the place of death.

- (b) When a death occurs on a moving conveyance outside the United States and the decedent is first removed from the conveyance in this state:
 - (i) the certificate of death shall be filed with:
 - (A) the local registrar of the district where the decedent is removed; or
 - (B) a person designated by the state registrar; and
 - (ii) the certificate of death shall show the actual place of death to the extent it can be determined.
- (4)
 - (a) Subject to Subsections (4)(d) and (10), a custodial funeral service director or, if a funeral service director is not retained, a dispositioner shall sign the certificate of death.
 - (b) 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:
 - (i) file the certificate of death prior to any disposition of a dead body or fetus; and
 - (ii) obtain the decedent's personal data from the next of kin or the best qualified person or source available, including the decedent's social security number, if known.
 - (c) The certificate of death may not include the decedent's social security number.
 - (d) A dispositioner may not sign a certificate of death, unless the signature is witnessed by the state registrar or a local registrar.
- (5)
 - (a) Except as provided in Section 26B-8-115, 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 Part 2, 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 Part 2, 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 court.
- (b) The order described in Subsection (9)(a) shall include a finding of fact stating the name of the decedent, the date of death, and the place of death.
- (c) A certificate of death prepared under Subsection (9)(a) shall:
 - (i) show the date of registration; and
 - (ii) identify the court and the date of the order.
- (10) It is unlawful for a disposer to charge for or accept any remuneration for:
 - (a) signing a certificate of death; or
 - (b) performing any other duty of a disposer, as described in this section.
- (11) The state registrar shall, within five business days after the day on which the state registrar or local registrar registers a certificate of death for a Utah resident, inform the lieutenant governor of:
 - (a) the decedent's name, last known residential address, date of birth, and date of death; and
 - (b) any other information requested by the lieutenant governor to assist the county clerk in identifying the decedent for the purpose of removing the decedent from the official register of voters.
- (12) The lieutenant governor shall, within one business day after the day on which the lieutenant governor receives the information described in Subsection (11), provide the information to the county clerks.

Renumbered and Amended by Chapter 306, 2023 General Session

26B-8-115 Fetal death certificate -- Filing and registration requirements.

- (1) A fetal death certificate shall be filed for each fetal death which occurs in this state. The certificate shall be filed within five days after delivery with the local registrar or as otherwise directed by the state registrar. The certificate shall be registered if it is completed and filed in accordance with this part.
- (2) When a dead fetus is delivered in an institution, the institution administrator or his designated representative shall prepare and file the fetal death certificate. The attending physician shall state in the certificate the cause of death and sign the certificate.
- (3) When a dead fetus is delivered outside an institution, the physician in attendance at or immediately after delivery shall complete, sign, and file the fetal death certificate.
- (4) When a fetal death occurs without medical attendance at or immediately after the delivery or when inquiry is required by Part 2, Utah Medical Examiner, the medical examiner shall investigate the cause of death and prepare and file the certificate of fetal death within five days after taking charge of the case.
- (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.
- (6) Final disposition of the dead fetus may not be made until the fetal death certificate has been registered.

Renumbered and Amended by Chapter 306, 2023 General Session

26B-8-116 Certificate of birth resulting in stillbirth.

- (1) As used in this section, "stillbirth" and "stillborn child" mean the same as "dead fetus" as defined in Section 26B-8-101.
- (2)
 - (a) In addition to the requirements of Section 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 26B-8-103 and 26B-8-104, 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.

Renumbered and Amended by Chapter 306, 2023 General Session

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 to substantiate the alleged facts of birth resulting in stillbirth.

Renumbered and Amended by Chapter 306, 2023 General Session

26B-8-118 Certificate of early term stillbirth.

- (1) As used in this section, "early term stillborn child" means a product of human conception, other than in the circumstances described in Subsection 76-7-301(1), that:
 - (a) is of at least 16 weeks' gestation but less than 20 weeks' gestation, calculated from the day on which the mother's last normal menstrual period began to the day of delivery; and
 - (b) is not born alive.
- (2) The state registrar shall issue a certificate of early term stillbirth to a parent of an early term stillborn child if:
 - (a) the parent requests, on a form created by the state registrar, that the state registrar register and issue a certificate of early term stillbirth for the early term stillborn child; and
 - (b) the parent files with the state registrar:
 - (i)
 - (A) a signed statement from a physician confirming the delivery of the early term stillborn child; or
 - (B) an accurate copy of the parent's medical records related to the early term stillborn child; and
 - (ii) any other record the state registrar determines, by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, is necessary for accurate recordkeeping.
- (3) The certificate of early term stillbirth described in Subsection (2) shall meet all of the format and filing requirements of Section 26B-8-103.

- (4) A person who prepares a certificate of early term stillbirth under this section shall leave blank any references to an early term stillborn child's name if the early term stillborn child's parent does not wish to provide a name for the early term stillborn child.

Renumbered and Amended by Chapter 306, 2023 General Session

26B-8-119 Petition for establishment of unregistered birth or death -- Court procedure.

- (1) A person holding a direct, tangible, and legitimate interest as described in Subsection 26B-8-125(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 court for the county where:
 - (a) the birth or death is alleged to have occurred;
 - (b) the person resides whose birth is to be established; or
 - (c) the decedent named in the petition resided at the date of death.
- (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.
- (3) The court shall set a hearing for five to 10 days after the day on which the petition 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.

Renumbered and Amended by Chapter 306, 2023 General Session

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.

- (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.

- (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;
 - (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
 - (b) possessing, transporting, and disposing of a dead body or dead fetus.
- (7) The provisions of this part shall be construed to avoid interference, to the fullest extent possible, with the ceremonies, customs, rites, or beliefs of the decedent and the decedent's next of kin for disposing of a dead body or dead fetus.

Renumbered and Amended by Chapter 306, 2023 General Session

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 defined in Section 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:
 - (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 defined in Section 26B-2-201, or a pathology laboratory operated under contract with a general acute hospital.
- (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:
 - (i) for a dead body or a dead fetus to be transported out of the state for final disposition; or
 - (ii) when disposition of the dead body or dead fetus is made by a person other than a funeral service director.
 - (b) For fetal remains that are less than 20 weeks in gestational age, a burial-transit permit shall be issued by the local registrar of the district where the health care facility that is 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
 - (d) shall redact from any public records maintained under this part any 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 Part 3, 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 dead body, dead fetus, or fetal remains, except as otherwise provided by statute or department rule.

Renumbered and Amended by Chapter 306, 2023 General Session

26B-8-122 Interments -- Duties of sexton or person in charge -- Record of interments -- Information filed with local registrar.

- (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 the interment is made by a funeral service director or by a person holding a burial-transit 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.

Renumbered and Amended by Chapter 306, 2023 General Session

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.

Renumbered and Amended by Chapter 306, 2023 General Session

26B-8-124 Local registrars authorized to issue certified copies of records.

The state registrar may authorize local registrars to issue certified copies of vital records.

Renumbered and Amended by Chapter 306, 2023 General Session

26B-8-125 Inspection of vital records.

- (1) As used in this section:
- (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 subject, who has been delegated the authority to access vital records.

- (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.
 - (c) "Immediate family member" means a spouse, child, parent, sibling, grandparent, or grandchild.
- (2)
- (a) The vital records shall be open to inspection, but only in compliance with the provisions of this part, department rules, and Sections 78B-6-141 and 78B-6-144.
 - (b) It is unlawful for any state or local officer or employee to disclose data contained in vital records contrary to this part, department rule, Section 78B-6-141, or Section 78B-6-144.
 - (c)
 - (i) An adoption document is open to inspection as provided in Section 78B-6-141 or Section 78B-6-144.
 - (ii) A birth parent may not access an adoption document under Subsection 78B-6-141(3).
 - (d) A custodian of vital records may permit inspection of a vital record or issue a certified copy of a record or a part of a record when the custodian is satisfied that the applicant has demonstrated a direct, tangible, and legitimate interest.
- (3) Except as provided in Subsection (4), a direct, tangible, and legitimate interest in a vital record is present only if:
- (a) the request is from:
 - (i) the subject;
 - (ii) an immediate family member of the subject;
 - (iii) the guardian of the subject;
 - (iv) a designated legal representative of the subject; or
 - (v) a person, including a child-placing agency as defined in Section 78B-6-103, with 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;
 - (c) the request is for official purposes of a public health authority or a state, local, or 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 26B-8-110(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 Administrative Rulemaking Act, establishing procedures and the content of forms as follows:
 - (a) for the inspection of adoption documents under Subsection 78B-6-141(4);
 - (b) for a birth parent's election to permit identifying information about the birth parent to be made available, under Section 78B-6-141;
 - (c) for the release of information by the mutual-consent, voluntary adoption registry, under Section 78B-6-144;
 - (d) for collecting fees and donations under Section 78B-6-144.5; and
 - (e) for the review and approval of a request described in Subsection (3)(d).

Renumbered and Amended by Chapter 306, 2023 General Session

26B-8-126 Records required to be kept by health care institutions -- Information filed with local registrar and department.

- (1)
 - (a) All administrators or other persons in charge of hospitals, nursing homes, or other institutions, public or private, to which persons resort for treatment of diseases, confinements, or are committed by law, shall record all the personal and statistical information about patients of their institutions as required in certificates prescribed by this part.
 - (b) The information described in Subsection (1)(a) shall:
 - (i) be recorded for collection at the time of admission of a patient;
 - (ii) be obtained from the patient, if possible; and
 - (iii) if the information cannot be obtained from the patient, the information shall be secured in as complete a manner as possible from other persons acquainted with the facts.
- (2)
 - (a) When a dead body or dead fetus is released or disposed of by an institution, the person in charge of the institution shall keep a record showing:
 - (i) the name of the deceased;
 - (ii) the date of death of the deceased;
 - (iii) the name and address of the person to whom the dead body or dead fetus is released; and
 - (iv) the date that the dead body or dead fetus is removed from the institution.
 - (b) If final disposal is by the institution, the date, place, manner of disposition, and the name of the person authorizing disposition shall be recorded by the person in charge of the institution.
- (3) Not later than the tenth day of each month, the administrator of each institution shall cause to be sent to the local registrar and the department a list of all births, deaths, fetal deaths, and induced abortions occurring in the institution during the preceding month. The 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.

Renumbered and Amended by Chapter 306, 2023 General Session

26B-8-127 Marriage licenses -- Execution and filing requirements.

- (1) The state registrar shall supply county clerks with application forms for marriage licenses.
- (2) Completed applications shall be transmitted by the clerks to the state registrar monthly.
- (3) The personal identification information contained on each application for a marriage license filed with the county clerk shall be entered on a form supplied by the state registrar.
- (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.

Renumbered and Amended by Chapter 306, 2023 General Session

26B-8-128 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 or, for a report of adoption, the state of the child's birth.
- (2) The petitioner shall provide the clerk of the court with the information necessary to prepare the certificate or report under Subsection (1), including the form furnished by the child's state of birth if the child was born in another state.
- (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, except for reports of adoption provided to an attorney or child-placing agency under Subsection (5)(b).
- (5)
 - (a) In addition to the report of adoption that the clerk forwards to the state registrar under Subsection (4), the clerk shall also provide an original report of adoption under Subsection (1), upon request, 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 the child was born in another state, the clerk of court shall prepare and provide one original report of adoption, upon request, to the attorney who is providing representation of a party to the adoption, or the child-placing agency that is placing the child, and the attorney or child-placing agency shall be responsible for submitting the report to the state of the child's birth.
 - (c) If the attorney or child-placing agency does not request an original report of adoption under Subsection (5)(a) or (b), the clerk shall forward the report of adoption to the state registrar pursuant to Subsection (4).
 - (d) If, pursuant to Subsection (5)(a), an original 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.

Amended by Chapter 289, 2023 General Session

Renumbered and Amended by Chapter 306, 2023 General Session

26B-8-129 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 26B-8-124 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.

Renumbered and Amended by Chapter 306, 2023 General Session

26B-8-130 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 old 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
 - (ii)
 - (A) has a physical or mental disability;
 - (B) is missing under circumstances that indicate that the person is endangered, missing involuntarily, or a victim of a catastrophe; or
 - (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.

Renumbered and Amended by Chapter 306, 2023 General Session

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 26B-8-119, 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.

Renumbered and Amended by Chapter 306, 2023 General Session

26B-8-132 Determination of death made by registered nurse.

- (1) As used in this section, "registered nurse" means a registered nurse licensed under Title 58, Chapter 31b, Nurse Practice Act.
- (2)
 - (a) An individual is dead if the individual has sustained either:
 - (i) irreversible cessation of circulatory and respiratory functions; or
 - (ii) irreversible cessation of all functions of the entire brain, including the brain stem.
 - (b) A determination of death shall be made in accordance with this part and accepted medical standards.
- (3) A registered nurse may make a determination of death of an individual if:
 - (a) an attending physician has:
 - (i) documented in the individual's medical or clinical record that the individual's death is anticipated due to illness, infirmity, or disease no later than 180 days after the day on which the physician makes the documentation; and
 - (ii) established clear assessment procedures for determining death;
 - (b) the death actually occurs within the 180-day period described in Subsection (3)(a); and
 - (c) at the time of the documentation described in Subsection (3)(a), the physician authorized the following, in writing, to make the determination of death:
 - (i) one or more specific registered nurses; or
 - (ii) if the individual is in a health care facility that has complied with Subsection (6), all registered nurses that the facility employs.
- (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 clinical record;
 - (b) notify the physician described in Subsection (3); and
 - (c) ensure that the death certificate includes:
 - (i) the name of the deceased;
 - (ii) the presence of a contagious disease, if known; and
 - (iii) the date and time of death.
- (5) Except as otherwise provided by law or rule, a physician shall certify a determination of death described in Subsection (4) within 24 hours after the registered nurse makes the determination of death.
- (6)
 - (a) For a health care facility to be eligible for a general authorization described in Subsection (3) (c), the facility shall adopt written policies and procedures that provide for the determination of death by a registered nurse under this section.

- (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 and procedures described in Subsection (6)(a).
- (7) The department may make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to ensure the appropriate determination of death under this section.

Renumbered and Amended by Chapter 306, 2023 General Session

26B-8-133 Unlawful acts concerning certificates, records, and reports -- Unlawful transportation or acceptance of dead human body.

It is unlawful for any person, association, or corporation and the officers of any of them:

- (1) to willfully and knowingly make any false statement in a certificate, record, or report required to be filed with the department, or in an application for a certified copy of a 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 to any of these;
- (2) to make, counterfeit, alter, amend, or mutilate any certificate, record, or report required to be filed under this code or a certified copy of the certificate, record, or report without lawful authority and with the intent to deceive;
- (3) to willfully and knowingly obtain, possess, use, sell, furnish, or attempt to obtain, 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;
- (4) without lawful authority, to possess any certificate, record, or report, required by the department or a copy or certified copy of the certificate, record, or report, knowing it to 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.

Renumbered and Amended by Chapter 306, 2023 General Session

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 26B-8-133.

Renumbered and Amended by Chapter 306, 2023 General Session

Part 2

Utah Medical Examiner

26B-8-201 Definitions.

As used in this part:

- (1) "Dead body" means the same as that term is defined in Section 26B-8-101.
- (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.
- (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 Title 58, Chapter 68, Utah Osteopathic Medical Practice Act;
 - (b) a physician assistant licensed under Title 58, Chapter 70a, Utah Physician Assistant Act; or
 - (c) an advance practice registered nurse licensed under Subsection 58-31b-301(2)(e).
- (5) "Medical examiner" means the state medical examiner appointed pursuant to Section 26B-8-202 or a deputy appointed by the medical examiner.
- (6) "Medical examiner record" means:
 - (a) all information that the medical examiner obtains regarding a decedent; and
 - (b) reports that the medical examiner makes regarding a decedent.
- (7) "Regional pathologist" means a trained pathologist licensed to practice medicine and surgery in the state, appointed by the medical examiner pursuant to Subsection 26B-8-202(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;
 - (ii) buried at sea;
 - (iii) cremated;
 - (iv) processed by alkaline hydrolysis; or

- (v) otherwise made unavailable to the medical examiner for postmortem investigation or autopsy.
- (b) "Unavailable for postmortem investigation" does not include embalming or burial of a dead body pursuant to the requirements of law.
- (13) "Within the scope of the decedent's employment" means all acts reasonably necessary or incident to the performance of work, including matters of personal convenience and comfort not in conflict with specific instructions.

Renumbered and Amended by Chapter 306, 2023 General Session

26B-8-202 Chief medical examiner -- Appointment -- Qualifications -- Authority.

- (1) The executive director, with the advice of an advisory board consisting of the chairman of the Department of Pathology at the University of Utah medical school and the dean of the law school at the University of Utah, shall appoint a chief medical examiner who shall be licensed to practice medicine in the state and shall meet the qualifications of a forensic pathologist, certified by the American Board of Pathology.
- (2)
 - (a) The medical examiner shall serve at the will of the executive director.
 - (b) The medical examiner has authority to:
 - (i) employ medical, technical and clerical personnel as may be required to effectively administer this chapter, subject to the rules of the department and the state merit system;
 - (ii) conduct investigations and pathological examinations;
 - (iii) perform autopsies authorized in this title;
 - (iv) conduct or authorize necessary examinations on dead bodies; and
 - (v) notwithstanding the provisions of Subsection 26B-8-321(3), retain tissues and biological samples:
 - (A) for scientific purposes;
 - (B) where necessary to accurately certify the cause and manner of death; or
 - (C) for tissue from an unclaimed body, subject to Section 26B-8-225, in order to donate the tissue or biological sample 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.
 - (c) In the case of an unidentified body, the medical examiner shall authorize or conduct investigations, tests and processes in order to determine its identity as well as the cause of death.
- (3) The medical examiner may appoint regional pathologists, each of whom shall be approved by the executive director.

Renumbered and Amended by Chapter 306, 2023 General Session

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.

Renumbered and Amended by Chapter 306, 2023 General Session

26B-8-204 Investigation of deaths -- Requests for autopsies.

- (1) The following have authority to investigate a death described in Section 26B-8-205 and any other case which may be within their jurisdiction:

- (a) the attorney general or an assistant attorney general;
 - (b) the district attorney or county attorney who has criminal jurisdiction over the death or case;
 - (c) a deputy of the district attorney or county attorney described in Subsection (1)(b); 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.

Renumbered and Amended by Chapter 306, 2023 General Session

26B-8-205 Custody by medical examiner.

Upon notification under Section 26B-8-206 or investigation by the medical examiner's office, the medical examiner shall assume custody of a deceased body if it appears that death:

- (1) was by violence, gunshot, suicide, or accident;
- (2) was sudden death while in apparent good health;
- (3) occurred unattended, except that an autopsy may only be performed in accordance with the provisions of Subsection 26B-8-207(3);
- (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;
- (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.

Renumbered and Amended by Chapter 306, 2023 General Session

26B-8-206 Discovery of dead body -- Notice requirements -- Procedure.

- (1) When death occurs under circumstances listed in Section 26B-8-205, 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 26B-8-205, 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.

Renumbered and Amended by Chapter 306, 2023 General Session

26B-8-207 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 26B-8-206, 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 26B-8-205, 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 this 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 26B-8-205(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 found.
 - (b) The county attorney or district attorney and law enforcement agency having jurisdiction shall consult with the medical examiner to determine the need for an autopsy.
 - (c) If the deceased chose not to be seen or treated by a health care professional for a spiritual or religious reason, a district attorney, county attorney, or law enforcement agency, may not request an autopsy or inquest under Subsection (3)(a) solely because of the deceased's choice.
 - (d) The medical examiner or medical examiner's designee may not conduct a requested autopsy described in Subsection (3)(a) if the medical examiner or medical examiner's designee determines:

- (i) the request violates Subsection (3)(c); or
- (ii) the cause of death can be determined without performing an autopsy.

Renumbered and Amended by Chapter 306, 2023 General Session

26B-8-208 Rendering a dead body unavailable for postmortem investigation.

- (1) As used in this section:
 - (a) "Medical examiner" means the same as that term is defined in Section 26B-8-201.
 - (b) "Unavailable for postmortem investigation" means the same as that term is defined in Section 26B-8-201.
- (2) It is unlawful for a person to engage in any conduct that makes a dead body unavailable for postmortem investigation, unless, before engaging in that conduct, the person obtains a permit from the medical examiner to render the dead body unavailable for postmortem investigation, under Section 26B-8-230, if the person intends to make the body unavailable for postmortem investigation.
- (3) A person who violates Subsection (2) is guilty of a third degree felony.
- (4) If a person engages in conduct that constitutes both a violation of this section and a violation of Section 76-9-704, the provisions and penalties of Section 76-9-704 supersede the provisions and penalties of this section.

Renumbered and Amended by Chapter 306, 2023 General Session

26B-8-209 Certification of cause of death.

- (1)
 - (a) For a death under any of the circumstances described in Section 26B-8-205, 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.
- (2)
 - (a) For a death described in Section 26B-8-205, an individual may not knowingly give false information, with the intent to mislead, to the medical examiner or the medical examiner's designee.
 - (b) A violation of Subsection (2)(a) is a class B misdemeanor.

Renumbered and Amended by Chapter 306, 2023 General Session

26B-8-210 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.

Renumbered and Amended by Chapter 306, 2023 General Session

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 26B-8-205 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.

Renumbered and Amended by Chapter 306, 2023 General Session

26B-8-212 Order to exhume body -- Procedure.

- (1) In case of any death described in Section 26B-8-205, 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 Section 26B-8-205, the district attorney or county attorney having criminal jurisdiction may make a motion that the court, upon ex parte hearing, order the body exhumed forthwith and without notice. Upon a showing of exigent circumstances the court may order the body exhumed forthwith and without notice. In any event, upon motion of the district attorney or county attorney having criminal jurisdiction and upon the personal appearance of the medical examiner, the court for good cause may order the body exhumed forthwith and without 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.

Renumbered and Amended by Chapter 306, 2023 General Session

26B-8-213 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; and
 - (b) in other cases involving questions of civil liability.

Renumbered and Amended by Chapter 306, 2023 General Session

26B-8-214 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 26B-8-205.
 - (b) If a health care professional is unable to determine an individual's cause of death in accordance with Subsection (1)(a), the health care professional shall notify the medical 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.

Renumbered and Amended by Chapter 306, 2023 General Session

26B-8-215 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.

Renumbered and Amended by Chapter 306, 2023 General Session

26B-8-216 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.
- (2) The right and duty to control the disposition of a deceased person is governed by Sections 58-9-601 through 58-9-606.

Renumbered and Amended by Chapter 306, 2023 General Session

26B-8-217 Records of medical examiner -- Confidentiality.

- (1) The medical examiner shall maintain complete, original records for the medical examiner record, which shall:
 - (a) be properly indexed, giving the name, if known, or otherwise identifying every individual whose death is investigated;
 - (b) indicate the place where the body was found;
 - (c) indicate the date of death;
 - (d) indicate the cause and manner of death;
 - (e) indicate the occupation of the decedent, if available;
 - (f) include all other relevant information concerning the death; and
 - (g) include a full report and detailed findings of the autopsy or report of the investigation.
- (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 of examination for the decedent, including the autopsy report, toxicology report, lab reports, and investigative reports to any of the following:
 - (i) a decedent's immediate relative;
 - (ii) a decedent's legal representative;
 - (iii) a physician or physician assistant who attended the decedent during the year before the decedent's death; or
 - (iv) a county attorney, a district attorney, a criminal defense attorney, or other law enforcement official with jurisdiction, as necessary for the performance of the attorney or official's professional duties.
 - (b) Upon written request from the director or a designee of the director of an entity described in Subsections (2)(b)(i) through (iv), the medical examiner may provide a copy of the of the medical examiner's final report of examination for the decedent, including any other reports described in Subsection (2)(a), to any of the following entities as necessary for performance of the entity's official purposes:

- (i) a local health department;
 - (ii) a local mental health authority;
 - (iii) a public health authority; or
 - (iv) another state or federal governmental agency.
- (c) The medical examiner may provide a copy of the medical examiner's final report of examination, including any other reports described in Subsection (2)(a), if the final report relates to an issue of public health or safety, as further defined by rule made by the department in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
- (3) Reports provided under Subsection (2) may not include records that the medical examiner obtains from a third party in the course of investigating the decedent's death.
- (4) The medical examiner may provide a medical examiner record to a researcher who:
- (a) has an advanced degree;
 - (b)
 - (i) is affiliated with an accredited college or university, a hospital, or another system of care, including an emergency medical response or a local health agency; or
 - (ii) is part of a research firm contracted with an accredited college or university, a hospital, or another system of care;
 - (c) requests a medical examiner record for a research project or a quality improvement initiative that will have a public health benefit, as determined by the department; and
 - (d) provides to the medical examiner an approval from:
 - (i) the researcher's sponsoring organization; and
 - (ii) the Utah Department of Health and Human Services Institutional Review Board.
- (5) Records provided under Subsection (4) may not include a third party record, unless:
- (a) a court has ordered disclosure of the third party record; and
 - (b) disclosure is conducted in compliance with state and federal law.
- (6) A person who obtains a medical examiner record under Subsection (4) shall:
- (a) maintain the confidentiality of the medical examiner record by removing personally identifying information about a decedent or the decedent's family and any other information that may be used to identify a decedent before using the medical examiner record in research;
 - (b) conduct any research within and under the supervision of the Office of the Medical Examiner, if the medical examiner record contains a third party record with personally identifiable information;
 - (c) limit the use of a medical examiner record to the purpose for which the person requested the medical examiner record;
 - (d) destroy a medical examiner record and the data abstracted from the medical examiner record at the conclusion of the research for which the person requested the medical examiner record;
 - (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;
 - (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).

Renumbered and Amended by Chapter 306, 2023 General Session

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 26B-8-221, 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.

Renumbered and Amended by Chapter 306, 2023 General Session

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 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.

Renumbered and Amended by Chapter 306, 2023 General Session

26B-8-220 Officials not liable for authorized acts.

Except as provided in this 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 part or for any other act authorized by this part.

Renumbered and Amended by Chapter 306, 2023 General Session

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.

Renumbered and Amended by Chapter 306, 2023 General Session

26B-8-222 Additional powers and duties of department.

The department may:

- (1) establish rules to carry out the provisions of this part;
- (2) arrange for the state health laboratory to perform toxicologic analysis for public or private institutions and fix fees for the services;
- (3) cooperate and train law enforcement personnel in the techniques of criminal investigation as related to medical and pathological matters; and
- (4) pay to private parties, institutions or funeral directors the reasonable value of services performed for the medical examiner's office.

Renumbered and Amended by Chapter 306, 2023 General Session

26B-8-223 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.

Renumbered and Amended by Chapter 306, 2023 General Session

26B-8-224 Autopsies -- Persons eligible to authorize.

- (1) Autopsies may be authorized:
 - (a) by the commissioner of the Labor Commission or the commissioner's designee as provided in Section 34A-2-603;
 - (b) by individuals by will or other written document;

- (c) upon a decedent by the next of kin in the following order and as known: surviving spouse, child, if 18 years old 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;
 - (d) by the county attorney, district attorney, or the district attorney's deputy, or a district judge; and
 - (e) by the medical examiner as provided in this part.
- (2) Autopsies authorized under Subsections (1)(a) and (1)(d) shall be performed by a certified pathologist.
- (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.

Renumbered and Amended by Chapter 306, 2023 General Session

26B-8-225 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.

Renumbered and Amended by Chapter 306, 2023 General Session

26B-8-226 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 upon request.

Renumbered and Amended by Chapter 306, 2023 General Session

26B-8-227 Registry of unidentified deceased persons.

- (1) If the identity of a deceased person over which the medical examiner has jurisdiction under Section 26B-8-205 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 26B-8-225:
 - (a) assign a unique identifying number to the body;
 - (b) create and maintain a file under the assigned number;
 - (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;
 - (d) use the identifying number in all records created by the medical examiner that pertains to the body;
 - (e) record all information pertaining to the body in the file created and maintained under Subsection (1)(b);
 - (f) communicate the unique identifying number to the county in which the body was 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 26B-8-203, 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.
- (5) The medical examiner shall maintain a file received under Subsection (4) in the same way that it maintains a file created and maintained by the medical examiner in 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
 - (b) a reasonable belief that the body of that deceased person may have come into the custody of the medical examiner.

Renumbered and Amended by Chapter 306, 2023 General Session

26B-8-228 Testing for suspected suicides -- Maintaining information -- 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;
 - (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; 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.
- (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).

Renumbered and Amended by Chapter 306, 2023 General Session

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 autopsy examiner.
- (2) The psychological autopsy examiner shall:
 - (a) work with the medical examiner to compile data regarding suicide related deaths;
 - (b) as relatives of the deceased are willing, gather information from relatives of the deceased regarding the psychological reasons for the decedent's death;
 - (c) maintain a database of information described in Subsections (2)(a) and (b);
 - (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 Department of Psychiatry or other university-based departments conducting research on suicide;
 - (e) coordinate no less than monthly with the suicide prevention coordinator described in Subsection 26B-5-611(2); and
 - (f) coordinate no less than quarterly with the state suicide prevention coalition.

Renumbered and Amended by Chapter 306, 2023 General Session

26B-8-230 Application for permit to render a dead body unavailable for postmortem examination -- Fees.

- (1) Upon receiving an application by a person for a permit to render a dead body unavailable for postmortem investigation, the medical examiner shall review the application to determine whether:
 - (a) the person is authorized by law to render the dead body unavailable for postmortem investigation in the manner specified in the application; and
 - (b) there is a need to delay any action that will render the dead body unavailable for postmortem investigation until a postmortem investigation or an autopsy of the dead body is performed by the medical examiner.
- (2) Except as provided in Subsection (4), within three days after receiving an application described in Subsection (1), the medical examiner shall:
 - (a) make the determinations described in Subsection (1); and
 - (b)
 - (i) issue a permit to render the dead body unavailable for postmortem investigation in the manner specified in the application; or
 - (ii) deny the permit.
- (3) The medical examiner may deny a permit to render a dead body unavailable for postmortem investigation only if:
 - (a) the applicant is not authorized by law to render the dead body unavailable for postmortem investigation in the manner specified in the application;
 - (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).
- (4) If the medical examiner cannot in good faith make the determinations described in Subsection (1) within three days after receiving an application described in Subsection (1), the medical examiner shall notify the applicant:
 - (a) that more time is needed to make the determinations described in Subsection (1); and

- (b) of the estimated amount of time needed before the determinations described in Subsection (1) can be made.
- (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.

Renumbered and Amended by Chapter 306, 2023 General Session

26B-8-231 Overdose fatality examiner.

- (1) Within funds appropriated by the Legislature, the department shall provide compensation, at a standard rate determined by the department, to an overdose fatality examiner.
- (2) The overdose fatality examiner shall:
 - (a) work with the medical examiner to compile data regarding overdose and opioid related deaths, including:
 - (i) toxicology information;
 - (ii) demographics; and
 - (iii) the source of opioids or drugs;
 - (b) as relatives of the deceased are willing, gather information from relatives of the deceased regarding the circumstances of the decedent's death;
 - (c) maintain a database of information described in Subsections (2)(a) and (b);
 - (d) coordinate no less than monthly with the suicide prevention coordinator described in Section 26B-5-611; and
 - (e) coordinate no less than quarterly with the Opioid and Overdose Fatality Review Committee created in Section 26B-1-403.

Renumbered and Amended by Chapter 306, 2023 General Session

26B-8-232 Injury reporting requirements by health care provider -- Contents of report -- Penalties.

- (1) As used in this section:
 - (a) "Health care provider" means any person, firm, corporation, or association which furnishes treatment or care to persons who have suffered bodily injury, and includes hospitals, clinics, podiatrists, dentists and dental hygienists, nurses, nurse practitioners, physicians and physicians' assistants, osteopathic physicians, naturopathic practitioners, chiropractors, acupuncturists, paramedics, and emergency medical technicians.
 - (b) "Injury" does not include any psychological or physical condition brought about solely through the voluntary administration of prescribed controlled substances.
 - (c) "Law enforcement agency" means the municipal or county law enforcement agency:
 - (i) having jurisdiction over the location where the injury occurred; or
 - (ii) if the reporting health care provider is unable to identify or contact the law enforcement agency with jurisdiction over the injury, "law enforcement agency" means the agency nearest to the location of the reporting health care provider.
 - (d) "Report to a law enforcement agency" means to report, by telephone or other spoken communication, the facts known regarding an injury subject to reporting under Section 26B-8-232 to the dispatch desk or other staff person designated by the law enforcement agency to receive reports from the public.
- (2)
 - (a) Any health care provider who treats or cares for any person who suffers from any wound or other injury inflicted by the person's own act or by the act of another by means of a knife, gun,

- pistol, explosive, infernal device, or deadly weapon, or by violation of any criminal statute of this state, shall immediately report to a law enforcement agency the facts regarding the injury.
- (b) The report shall state the name and address of the injured person, if known, the person's whereabouts, the character and extent of the person's injuries, and the name, address, and telephone number of the person making the report.
 - (3) A health care provider may not be discharged, suspended, disciplined, or harassed for making a report pursuant to this section.
 - (4) A person may not incur any civil or criminal liability as a result of making any report required by this section.
 - (5) A health care provider who has personal knowledge that the report of a wound or injury has been made in compliance with this section is under no further obligation to make a report regarding that wound or injury under this section.
 - (6) Any health care provider who intentionally or knowingly violates any provision of this section is guilty of a class B misdemeanor.

Renumbered and Amended by Chapter 306, 2023 General Session

Part 3

Revised Uniform Anatomical Gift Act

26B-8-301 Definitions.

As used in this part:

- (1) "Adult" means an individual who is at least 18 years old.
- (2) "Agent" means an individual:
 - (a) authorized to make health care decisions on the principal's behalf by a power of attorney for health care; or
 - (b) expressly authorized to make an anatomical gift on the principal's behalf by any other record signed by the principal.
- (3) "Anatomical gift" means a donation of all or part of a human body to take effect after the donor's death for the purpose of transplantation, therapy, research, or education.
- (4) "Decedent" means:
 - (a) a deceased individual whose body or part is or may be the source of an anatomical gift; and
 - (b) includes:
 - (i) a stillborn infant; and
 - (ii) subject to restrictions imposed by law other than this part, a fetus.
- (5)
 - (a) "Disinterested witness" means:
 - (i) a witness other than the spouse, child, parent, sibling, grandchild, grandparent, or guardian of the individual who makes, amends, revokes, or refuses to make an anatomical gift; or
 - (ii) another adult who exhibited special care and concern for the individual.
 - (b) "Disinterested witness" does not include a person to which an anatomical gift could pass under Section 26B-8-310.
- (6) "Document of gift" means a donor card or other record used to make an anatomical gift. The term includes a statement or symbol on a driver license, identification card, or donor registry.
- (7) "Donor" means an individual whose body or part is the subject of an anatomical gift.

- (8) "Donor registry" means a database that contains records of anatomical gifts and amendments to or revocations of anatomical gifts.
- (9) "Driver license" means a license or permit issued by the Driver License Division of the Department of Public Safety, to operate a vehicle, whether or not conditions are attached 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.
- (11) "Guardian":
 - (a) means a person appointed by a court to make decisions regarding the support, care, education, health, or welfare of an individual; and
 - (b) does not include a guardian ad litem.
- (12) "Hospital" means a facility licensed as a hospital under the law of any state or a facility operated as a hospital by the United States, a state, or a subdivision of a state.
- (13) "Identification card" means an identification card issued by the Driver License 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.
- (16) "Organ procurement organization" means a person designated by the Secretary of the United States Department of Health and Human Services as an organ procurement organization.
- (17) "Parent" means a parent whose parental rights have not been terminated.
- (18) "Part" means an organ, an eye, or tissue of a human being. The term does not include the whole body.
- (19) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.
- (20) "Physician" means an individual authorized to practice medicine or osteopathy under the law of any state.
- (21) "Procurement organization" means an eye bank, organ procurement organization, or tissue bank.
- (22) "Prospective donor":
 - (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.
- (24) "Recipient" means an individual into whose body a decedent's part has been or 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.
- (26) "Refusal" means a record created under Section 26B-8-306 that expressly states 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
 - (b) to attach to or logically associate with the record an electronic symbol, sound, or process.

- (28) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.
- (29) "Technician":
 - (a) means an individual determined to be qualified to remove or process parts by an appropriate organization that is licensed, accredited, or regulated under federal or state law; and
 - (b) includes an enucleator.
- (30) "Tissue" means a portion of the human body other than an organ or an eye. The term does not include blood unless the blood is donated for the purpose of research or education.
- (31) "Tissue 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 tissue.
- (32) "Transplant hospital" means a hospital that furnishes organ transplants and other medical and surgical specialty services required for the care of transplant patients.

Renumbered and Amended by Chapter 306, 2023 General Session

26B-8-302 Applicability.

This part applies to an anatomical gift or amendment to, revocation of, or refusal to make an anatomical gift, whenever made.

Renumbered and Amended by Chapter 306, 2023 General Session

26B-8-303 Who may make anatomical gift before donor's death.

Subject to Section 26B-8-307, an anatomical gift of a donor's body or part may be made during the life of the donor for the purpose of transplantation, therapy, research, or education in the manner provided in Section 26B-8-304 by:

- (1) the donor, if the donor is an adult or if the donor is a minor and is:
 - (a) emancipated; or
 - (b) authorized under state law to apply for a driver license because the donor is at least 15 years old;
- (2) an agent of the donor, unless the power of attorney for health care or other record prohibits the agent from making an anatomical gift;
- (3) a parent of the donor, if the donor is an unemancipated minor; or
- (4) the donor's guardian.

Renumbered and Amended by Chapter 306, 2023 General Session

26B-8-304 Manner of making anatomical gift before donor's death.

- (1) A donor may make an anatomical gift:
 - (a) by authorizing a statement or symbol indicating that the donor has made an anatomical gift to be imprinted on the donor's driver license or identification card;
 - (b) in a will;
 - (c) during a terminal illness or injury of the donor, by any form of communication addressed to at least two adults, at least one of whom is a disinterested witness; or
 - (d) as provided in Subsection (2).
- (2) A donor or other person authorized to make an anatomical gift under Section 26B-8-303 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 physically unable to sign a record, the record may be signed by another individual at the 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.
- (4) An anatomical gift made by will takes effect upon the donor's death whether or not the will is probated. Invalidation of the will after the donor's death does not invalidate the gift.

Renumbered and Amended by Chapter 306, 2023 General Session

26B-8-305 Amending or revoking anatomical gift before donor's death.

- (1) Subject to Section 26B-8-307, a donor or other person authorized to make an anatomical gift under Section 26B-8-303 may amend or revoke an anatomical gift by:
- (a) a record signed by:
 - (i) the donor;
 - (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 26B-8-307, a donor or other person authorized to make an anatomical gift under Section 26B-8-303 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, at least one of whom is a disinterested witness.
- (5) A donor who makes an anatomical gift in a will may amend or revoke the gift in the manner provided for amendment or revocation of wills or as provided in Subsection (1).

Renumbered and Amended by Chapter 306, 2023 General Session

26B-8-306 Refusal to make anatomical gift -- Effect of refusal.

- (1) An individual may refuse to make an anatomical gift of the individual's body or part by:
- (a) a record signed by:
 - (i) the individual; or
 - (ii) subject to Subsection (2), another individual acting at the direction of the individual 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 26B-8-304 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 26B-8-307(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.

Renumbered and Amended by Chapter 306, 2023 General Session

26B-8-307 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 26B-8-304 or an amendment to an anatomical gift of the donor's body or part under Section 26B-8-305.
- (2) A donor's revocation of an anatomical gift of the donor's body or part under Section 26B-8-305 is not a refusal and does not bar another person specified in Section 26B-8-303 or 26B-8-308 from making an anatomical gift of the donor's body or part under Section 26B-8-304 or 26B-8-309.
- (3) If a person other than the donor makes an unrevoked anatomical gift of the donor's body or part under Section 26B-8-304 or an amendment to an anatomical gift of the donor's body or part under Section 26B-8-305, another person may not make, amend, or revoke the gift of the donor's body or part under Section 26B-8-309.
- (4) A revocation of an anatomical gift of a donor's body or part under Section 26B-8-305 by a person other than the donor does not bar another person from making an anatomical gift of the body or part under Section 26B-8-304 or 26B-8-309.
- (5) In the absence of an express, contrary indication by the donor or other person authorized to make an anatomical gift under Section 26B-8-303, 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 26B-8-303, an anatomical gift of a part for one or more of the purposes set forth in Section 26B-8-303 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 26B-8-304 or 26B-8-309.
- (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.

Renumbered and Amended by Chapter 306, 2023 General Session

26B-8-308 Who may make anatomical gift of decedent's body or part.

- (1) Subject to Subsections (2) and (3) and unless barred by Section 26B-8-306 or 26B-8-307, an anatomical gift of a decedent's body or part for purpose of transplantation, therapy, research, or education may be made by any member of the following classes of persons who is reasonably available, in the order of priority listed:
- (a) an agent of the decedent at the time of death who could have made an anatomical gift under Subsection 26B-8-303(2) immediately before the decedent's death;
 - (b) the spouse of the decedent;
 - (c) adult children of the decedent;
 - (d) parents of the decedent;
 - (e) adult siblings of the decedent;
 - (f) adult grandchildren of the decedent;
 - (g) grandparents of the decedent;
 - (h) the persons who were acting as the guardians of the person of the decedent at the time of death;
 - (i) an adult who exhibited special care and concern for the decedent; and
 - (j) any other person having the authority to dispose of the decedent's body.
- (2) If there is more than one member of a class listed in Subsection (1)(a), (c), (d), (e), (f), (g), or (j) entitled to make an anatomical gift, an anatomical gift may be made by a member of the class unless that member or a person to which the gift may pass under Section 26B-8-310 knows of an objection by another member of the class. If an objection is known, the gift may be made only by a majority of the members of the class who are reasonably available.
- (3) A person may not make an anatomical gift if, at the time of the decedent's death, a person in a prior class under Subsection (1) is reasonably available to make or to object to the making of an anatomical gift.

Renumbered and Amended by Chapter 306, 2023 General Session

26B-8-309 Manner of making, amending, or revoking anatomical gift of decedent's body or part.

- (1) A person authorized to make an anatomical gift under Section 26B-8-308 may make an anatomical gift by a document of gift signed by the person making the gift or by that person's oral communication that is electronically recorded or is contemporaneously reduced 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 26B-8-308 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 26B-8-308 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.

Renumbered and Amended by Chapter 306, 2023 General Session

26B-8-310 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 gift passes to the appropriate tissue bank.
 - (c) If the part is an organ and the gift is for the purpose of transplantation or therapy, 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 this Subsection (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 26B-8-304 or 26B-8-309 or if the person knows that the decedent made a refusal under Section 26B-8-306 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 part affects the allocation of organs for transplantation or therapy.

Renumbered and Amended by Chapter 306, 2023 General Session

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 26B-8-308; 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:
 - (A) the funeral establishment receives notice from the organ procurement organization, tissue bank, or eye bank that the readily available persons listed as having priority in Section 26B-8-308 have been informed by the organ procurement organization of the option to make or refuse to make an anatomical gift in accordance with Section 26B-8-303, with reasonable discretion and sensitivity appropriate to the circumstances of the family;
 - (B) in accordance with federal law, prior approval for embalming has been obtained 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.

- (3) A person is not subject to criminal or civil liability for failing to discharge the duties imposed by this section but may be subject to administrative sanctions.

Renumbered and Amended by Chapter 306, 2023 General Session

26B-8-312 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 26B-8-310.

Renumbered and Amended by Chapter 306, 2023 General Session

26B-8-313 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 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 part, at any time after a donor's death, the person to which a part passes under Section 26B-8-310 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 part, 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 26B-8-308 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 26B-8-310(9) and Section 26B-8-322, the rights of the person to which a part passes under Section 26B-8-310 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 part, 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 26B-8-310, 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.

Renumbered and Amended by Chapter 306, 2023 General Session

26B-8-314 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.

Renumbered and Amended by Chapter 306, 2023 General Session

26B-8-315 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.

Renumbered and Amended by Chapter 306, 2023 General Session

26B-8-316 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.

Renumbered and Amended by Chapter 306, 2023 General Session

26B-8-317 Immunity.

- (1) A person that acts in accordance with this part 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 under this part, a person may rely upon representations of an individual listed in Subsection 26B-8-308(1) (b), (c), (d), (e), (f), (g), (h), (i), or (j) relating to the individual's relationship to the donor or prospective donor unless the person knows that the representation is untrue.

Renumbered and Amended by Chapter 306, 2023 General Session

26B-8-318 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:
 - (a) this part;
 - (b) the laws of the state or country where it was executed; or
 - (c) the laws of the state or country where the person making the anatomical gift was domiciled, has a place of residence, or was a national at the time the document of gift was 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.

Renumbered and Amended by Chapter 306, 2023 General Session

26B-8-319 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 26B-8-303 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
 - (c) be accessible for purposes of Subsections (3)(a) and (b) seven days a week on a 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).

Renumbered and Amended by Chapter 306, 2023 General Session

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 part 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 26B-8-308. 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.

Renumbered and Amended by Chapter 306, 2023 General Session

26B-8-321 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 26B-8-322, 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.

Renumbered and Amended by Chapter 306, 2023 General Session

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).

26B-8-323 Uniformity of application and construction.

In applying and construing 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.

Renumbered and Amended by Chapter 306, 2023 General Session

26B-8-324 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. Sec. 7001 et seq., but does not modify, limit or supersede Section 101(a) of that act, 15 U.S.C. Sec. 7001, or authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C. Sec. 7003(b).

Renumbered and Amended by Chapter 306, 2023 General Session

**Part 4
Health Statistics**

26B-8-401 Definitions.

As used in this part:

- (1) "Disclosure" or "disclose" means the communication of health data to any individual or organization outside the department.
- (2) "Health data" means any information, except vital records as defined in Section 26B-8-101, relating to the health status of individuals, the availability of health resources and services, and the use and cost of these resources and services.
- (3) "Identifiable health data" means any item, collection, or grouping of health data which makes the individual supplying it or described in it identifiable.
- (4) "Individual" means a natural person.
- (5) "Organization" means any corporation, association, partnership, agency, department, unit, or other legally constituted institution or entity, or part of any of these.
- (6) "Research and statistical purposes" means the performance of activities relating to health data, including:
 - (a) describing the group characteristics of individuals or organizations;
 - (b) analyzing the interrelationships among the various characteristics of individuals or organizations;
 - (c) the conduct of statistical procedures or studies to improve the quality of health data;
 - (d) the design of sample surveys and the selection of samples of individuals or organizations;
 - (e) the preparation and publication of reports describing these matters; and
 - (f) other related functions.

Renumbered and Amended by Chapter 306, 2023 General Session

26B-8-402 Powers of department to collect and maintain health data.

The department may on a voluntary basis, except when there is specific legal authority to compel reporting of health data:

- (1) collect and maintain health data on:

- (a) the extent, nature, and impact of illness and disability on the population of the state;
 - (b) the determinants of health and health hazards;
 - (c) health resources, including the extent of available manpower and resources;
 - (d) utilization of health care;
 - (e) health care costs and financing; or
 - (f) other health or health-related matters;
- (2) undertake and support research, demonstrations, and evaluations respecting new or improved methods for obtaining current data on the matters referred to in Subsection (1) of this section; and
- (3) collect health data under other authorities and on behalf of other governmental or not-for-profit organizations.

Renumbered and Amended by Chapter 306, 2023 General Session

26B-8-403 Quality and publication of statistics.

The department shall:

- (1) take such actions as may be necessary to assure that statistics developed under this part are of high quality, timely, and comprehensive, as well as specific, standardized, and adequately analyzed and indexed; and
- (2) publish, make available, and disseminate such statistics on as wide a basis as practicable.

Renumbered and Amended by Chapter 306, 2023 General Session

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 part does not independently provide authority for the department to compel the reporting of information.

Renumbered and Amended by Chapter 306, 2023 General Session

26B-8-405 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
- (2) undertake and support research, development, demonstrations, and evaluations that support uniform health information standards.

Renumbered and Amended by Chapter 306, 2023 General Session

26B-8-406 Disclosure of health data -- Limitations.

The department may not make a disclosure of any identifiable health data unless:

- (1) one of the following persons has consented to the disclosure:
 - (a) the individual;
 - (b) the next-of-kin if the individual is deceased;
 - (c) the parent or legal guardian if the individual is a minor or mentally incompetent; or
 - (d) a person holding a power of attorney covering such matters on behalf of the individual;

- (2) the disclosure is to a governmental entity in this or another state or the federal 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 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 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.

Renumbered and Amended by Chapter 306, 2023 General Session

26B-8-407 Disclosure of health data -- Discretion of department.

- (1) Any disclosure provided for in Section 26B-8-406 shall be made at the discretion of the department.
- (2) Notwithstanding Subsection (1), the disclosure provided for in Subsection 26B-8-406(4) shall be made when the requirements of that paragraph are met.

Renumbered and Amended by Chapter 306, 2023 General Session

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 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 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 part.

Renumbered and Amended by Chapter 306, 2023 General Session

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 training in the handling of such data;
- (2) designate a person to be responsible for physical security;
- (3) develop and implement a system for monitoring security; and
- (4) review periodically all identifiable health data to determine whether identifying characteristics should be removed from the data.

Renumbered and Amended by Chapter 306, 2023 General Session

26B-8-410 Relation to other provisions.

Because the following parts contain specific provisions regarding collection and disclosure of data, the provisions of this part do not apply to data that is subject to the following parts:

- (1) Part 1, Vital Statistics;
- (2) Part 2, Utah Medical Examiner; and
- (3) Sections 26B-7-201 through 26B-7-223.

Renumbered and Amended by Chapter 306, 2023 General Session

26B-8-411 Duty to establish standards for the electronic exchange of clinical health information -- Immunity.

(1) As used in this section:

- (a) "Affiliate" means an organization that directly or indirectly through one or more intermediaries controls, is controlled by, or is under common control with another organization.
- (b) "Clinical health information" shall be defined by the department by administrative rule adopted in accordance with Subsection (2).
- (c) "Electronic exchange":
 - (i) includes:
 - (A) the electronic transmission of clinical health data via Internet or extranet; and
 - (B) physically moving clinical health information from one location to another using magnetic tape, disk, or compact disc media; and
 - (ii) does not include exchange of information by telephone or fax.
- (d) "Health care provider" means a licensing classification that is either:
 - (i) licensed under Title 58, Occupations and Professions, to provide health care; or
 - (ii) licensed under Chapter 2, Part 2, Health Care Facility Licensing and Inspection.
- (e) "Health care system" shall include:
 - (i) affiliated health care providers;
 - (ii) affiliated third party payers; and
 - (iii) other arrangement between organizations or providers as described by the department by administrative rule.

- (f) "Qualified network" means an entity that:
 - (i) is a non-profit organization;
 - (ii) is accredited by the Electronic Healthcare Network Accreditation Commission, or 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.
- (g) "Third party payer" means:
 - (i) all insurers offering health insurance who are subject to Section 31A-22-614.5; and
 - (ii) the state Medicaid program.

- (2)
 - (a) The department shall make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to:
 - (i) define:
 - (A) "clinical health information" subject to this section; and
 - (B) "health system arrangements between providers or organizations" as described in 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.
 - (b) The department shall coordinate its rule making authority under the provisions of this section with the rule making authority of the Insurance Department under Section 31A-22-614.5.
 - (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 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 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).
 - (b) The department, a local health department, a health care provider, a third party 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 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.

Renumbered and Amended by Chapter 306, 2023 General Session

Part 5

Utah Health Data Authority

26B-8-501 Definitions.

As used in this part:

- (1) "Committee" means the Health Data Committee created in Section 26B-1-413.
- (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 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 Chapter 2, Part 2, Health Care Facility Licensing and Inspection.
 - (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 part.
- (6) "Health care provider" means 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 26B-8-101 shall be excluded.
- (8) "Health maintenance organization" 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.
- (11) "Research and statistical analysis" means activities using health data analysis 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.
- (13) "Plan" means the plan developed and adopted by the Health Data Committee under Section 26B-1-413.
- (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 7, Nonprofit Health Service Insurance Corporations;
 - (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 3, Part 1, Health Care Assistance; and
 - (d) a corporation, organization, association, entity, or person:
 - (i) which administers or offers a health benefit plan to at least 2,500 enrollees in the state; and
 - (ii) which is required by administrative rule adopted by the department in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to supply health data to the committee.

Renumbered and Amended by Chapter 306, 2023 General Session

26B-8-502 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 part;
 - (b) supervise the development of a draft health data plan for the committee's review, 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 part.

Renumbered and Amended by Chapter 306, 2023 General Session

26B-8-503 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.

Renumbered and Amended by Chapter 306, 2023 General Session

26B-8-504 Health care cost and reimbursement data.

- (1) The committee shall, as funding is available:
 - (a) establish a plan for collecting data from data suppliers to determine measurements of cost and reimbursements for risk-adjusted episodes of health care;
 - (b) share data regarding insurance claims and an individual's and small employer group's health risk factor and characteristics of insurance arrangements that affect claims and usage with the Insurance Department, only to the extent necessary for:
 - (i) risk adjusting; and
 - (ii) the review and analysis of health insurers' premiums and rate filings; and
 - (c) assist the Legislature and the public with awareness of, and the promotion of, transparency in the health care market by reporting on:
 - (i) geographic variances in medical care and costs as demonstrated by data available to the committee; and
 - (ii) rate and price increases by health care providers:
 - (A) that exceed the Consumer Price Index - Medical as provided by the United States Bureau of Labor Statistics;
 - (B) as calculated yearly from June to June; and
 - (C) as demonstrated by data available to the committee;
 - (d) provide on at least a monthly basis, enrollment data collected by the committee to a not-for-profit, broad-based coalition of state health care insurers and health care providers that are involved in the standardized electronic exchange of health data as described in Section 31A-22-614.5, to the extent necessary:
 - (i) for the department or the Medicaid Office of the Inspector General to determine insurance enrollment of an individual for the purpose of determining Medicaid third party liability;
 - (ii) for an insurer that is a data supplier, to determine insurance enrollment of an individual for the purpose of coordination of health care benefits; and
 - (iii) for a health care provider, to determine insurance enrollment for a patient for the purpose of claims submission by the health care provider;
 - (e) coordinate with the State Emergency Medical Services Committee to publish data regarding air ambulance charges under Section 26B-4-106;
 - (f) share data collected under this part with the state auditor for use in the health care price transparency tool described in Section 67-3-11; and
 - (g) publish annually a report on primary care spending within Utah.
- (2) 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).
- (3) The plan adopted under Subsection (1) shall include:
 - (a) the type of data that will be collected;
 - (b) how the data will be evaluated;
 - (c) how the data will be used;
 - (d) the extent to which, and how the data will be protected; and
 - (e) who will have access to the data.

Renumbered and Amended by Chapter 306, 2023 General Session

26B-8-505 Comparative analyses.

- (1) The committee may publish compilations or reports that compare and identify health care providers or data suppliers from the data it collects under this part or from any other source.
- (2)
 - (a) Except as provided in Subsection (7)(c), the committee shall publish compilations or reports from the data it collects under this part or from any other source which:
 - (i) contain the information described in Subsection (2)(b); and
 - (ii) compare and identify by name at least a majority of the health care facilities, health care plans, and institutions in the state.
 - (b) Except as provided in Subsection (7)(c), the report required by this Subsection (2) shall:
 - (i) be published at least annually;
 - (ii) list, as determined by the committee, the median paid amount for at least the top 50 medical procedures performed in the state by volume;
 - (iii) describe the methodology approved by the committee to determine the amounts described in Subsection (2)(b)(ii); and
 - (iv) contain comparisons based on at least the following factors:
 - (A) nationally or other generally recognized quality standards;
 - (B) charges; and
 - (C) nationally recognized patient safety standards.
- (3)
 - (a) The committee may contract with a private, independent analyst to evaluate the standard comparative reports of the committee that identify, compare, or rank the 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) The committee, with the concurrence of the department, shall make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, 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
 - (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 more physicians; and
 - (iv) a geographic region's aggregate results for a physician who practices at a clinic with less than five physicians, unless the physician requests physician-level data to be published on a clinic level.
- (c) The department:
- (i) may publish information required by this Subsection (6) directly or through one or more nonprofit, community-based health data organizations; and
 - (ii) may use a private, independent analyst under Subsection (3)(a) in preparing the report required by this section.
- (d) A report published by the department under this Subsection (6):
- (i) is subject to the requirements of Section 26B-8-506; and
 - (ii) shall, prior to being published by the department, be submitted to a neutral, non-biased entity with a broad base of support from health care payers and health care providers in accordance with Subsection (7) for the purpose of validating the report.
- (7)
- (a) The Health Data Committee shall, through the department, for purposes of Subsection (6)(a), use the quality measures that are developed and agreed upon by a neutral, non-biased entity with a broad base of support from health care payers and health care providers.
 - (b) If the entity described in Subsection (7)(a) does not submit the quality measures, the department may select the appropriate number of quality measures for purposes of the report required by Subsection (6).
 - (c)
 - (i) For purposes of the reports published on or after July 1, 2014, the department may not compare individual facilities or clinics as described in Subsections (6)(b)(i) through (iv) if the department determines that the data available to the department can not be appropriately validated, does not represent nationally recognized measures, does not reflect the mix of cases seen at a clinic or facility, or is not sufficient for the purposes of comparing providers.
 - (ii) The department shall report to the Legislature's Health and Human Services Interim Committee prior to making a determination not to publish a report under Subsection (7)(c)(i).

Renumbered and Amended by Chapter 306, 2023 General Session

26B-8-506 Limitations on release of reports.

The committee may not release a compilation or report that compares and identifies health care providers or data suppliers unless it:

- (1) allows the data supplier and the health care provider to verify the accuracy of the information submitted to the committee and submit to the committee any corrections of errors 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, Chapter 3, Utah Administrative Rulemaking Act ;
- (2) corrects data found to be in error; and
- (3) allows the data supplier a reasonable amount of time prior to publication to review the committee's interpretation of the data and prepare a response.

Renumbered and Amended by Chapter 306, 2023 General Session

26B-8-507 Disclosure of identifiable health data prohibited.

- (1)
 - (a) All information, reports, statements, memoranda, or other data received by the committee are strictly confidential.
 - (b) Any use, release, or publication of the information shall be done in such a way that no person is identifiable except as provided in Sections 26B-8-506 and 26B-8-508.
- (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).
- (3) No person, corporation, or entity may be held civilly liable for having provided data to the committee in accordance with this part.

Renumbered and Amended by Chapter 306, 2023 General Session

26B-8-508 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;
 - (b) the disclosure is to the department or a public health authority in accordance with Subsection (2); or
 - (c) the disclosure complies with the provisions of:
 - (i) Subsection (3);
 - (ii) insurance enrollment and coordination of benefits under Subsection 26B-8-504(1)(d); or
 - (iii) risk adjusting under Subsection 26B-8-504(1)(b).
- (2) The committee may disclose identifiable health data to the department or a public health authority under Subsection (1)(b) if:
 - (a) the department or the public health authority has clear statutory authority to possess the identifiable health data; and
 - (b) the disclosure is solely for use:
 - (i) in the Utah Statewide Immunization Information System operated by the department;
 - (ii) in the Utah Cancer Registry operated by the University of Utah, in collaboration with the department; or
 - (iii) by the medical examiner, as defined in Section 26B-8-201, or the medical examiner's designee.
- (3) The committee shall consider the following when responding to a request for disclosure of information that may include identifiable health data:
 - (a) whether the request comes from a person after that person has received approval to do the specific research or statistical work from an institutional review board; and
 - (b) whether the requesting entity complies with the provisions of Subsection (4).
- (4) A request for disclosure of information that may include identifiable health data shall:
 - (a) be for a specified period; or
 - (b) be solely for bona fide research or statistical purposes as determined in accordance with administrative rules adopted by the department in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, which shall require:
 - (i) the requesting entity to demonstrate to the department that the data is required for the research or statistical purposes proposed by the requesting entity; and
 - (ii) the requesting entity to enter into a written agreement satisfactory to the department to protect the data in accordance with this part or other applicable law.
- (5) A person accessing identifiable health data pursuant to Subsection (4) may not further disclose the identifiable health data:

- (a) without prior approval of the department; and
 - (b) unless the identifiable health data is disclosed or identified by control number only.
- (6) Identifiable health data that has been designated by a data supplier as being 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.

Renumbered and Amended by Chapter 306, 2023 General Session

26B-8-509 Penalties.

- (1) Any use, release, or publication of health care data contrary to the provisions of Sections 26B-8-507 and 26B-8-508 is a class A misdemeanor.
- (2) Subsection (1) does not relieve the person or organization responsible for that use, release, or publication from civil liability.

Renumbered and Amended by Chapter 306, 2023 General Session

26B-8-510 Health data not subject to subpoena or compulsory process -- Exception.

Identifiable health data obtained in the course of activities undertaken or supported under this part are not subject to 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 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 part.

Renumbered and Amended by Chapter 306, 2023 General Session

26B-8-511 Consumer-focused health care delivery and payment reform demonstration project.

- (1) The Legislature finds that:
 - (a) current health care delivery and payment systems do not provide system wide incentives for the competitive delivery and pricing of health care services to consumers;
 - (b) there is a compelling state interest to encourage consumers to seek high quality, low cost care and educate themselves about health care options;
 - (c) some health care providers and health care payers have developed consumer-focused ideas for health care delivery and payment system reform, but lack the critical number of patient lives and payer involvement to accomplish system-wide consumer-focused reform; and
 - (d) there is a compelling state interest to encourage as many health care providers and health care payers to join together and coordinate efforts at consumer-focused health care delivery and payment reform that would provide to consumers enrolled in a high-deductible health plan:
 - (i) greater choice in health care options;
 - (ii) improved services through competition; and
 - (iii) more affordable options for care.
- (2)
 - (a) The department shall meet with health care providers and health care payers for the purpose of coordinating a demonstration project for consumer-based health care delivery and payment reform.

- (b) Participation in the coordination efforts is voluntary, but encouraged.
- (3) The department, in order to facilitate the coordination of a demonstration project for consumer-based health care delivery and payment reform, shall convene and consult with pertinent entities including:
 - (a) the Utah Insurance Department;
 - (b) the Office of Consumer Services;
 - (c) the Utah Medical Association;
 - (d) the Utah Hospital Association; and
 - (e) neutral, non-biased third parties with an established record for broad based, multi-provider and multi-payer quality assurance efforts and data collection.
- (4) The department shall supervise the efforts by entities under Subsection (3) regarding:
 - (a) applying for and obtaining grant funding and other financial assistance that may be available for demonstrating consumer-based improvements to health care delivery and payment;
 - (b) obtaining and analyzing information and data related to current health system utilization and costs to consumers; and
 - (c) consulting with those health care providers and health care payers who elect to participate in the consumer-based health delivery and payment demonstration project.

Renumbered and Amended by Chapter 306, 2023 General Session

26B-8-512 Health care billing data.

- (1) Subject to Subsection (2), the department shall make aggregate data produced under this part available to the public through a standardized application program interface format.
- (2)
 - (a) The department shall ensure that data made available to the public under Subsection (1):
 - (i) does not contain identifiable health data of a patient; and
 - (ii) meets state and federal data privacy requirements, including the requirements of Section 26B-8-506.
 - (b) The department may not release any data under Subsection (1) that may be identifiable health data of a patient.

Renumbered and Amended by Chapter 306, 2023 General Session

26B-8-514 Standard health record access form.

- (1) As used in this section:
 - (a) "HIPAA" means the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191, 110 Stat. 1936, as amended.
 - (b) "Patient" means the individual whose information is being requested.
 - (c) "Personal representative" means an individual described in 45 C.F.R. Sec. 164.502(g).
- (2) Before December 31, 2022, the department shall create a standard form that:
 - (a) is compliant with HIPAA and 42 C.F.R. Part 2; and
 - (b) a patient or a patient's personal representative may use to request that a copy of the patient's health records be sent to any of the following:
 - (i) the patient;
 - (ii) the patient's personal representative;
 - (iii) the patient's attorney; or
 - (iv) a third party authorized by the patient.
- (3) The form described in Subsection (2) shall include fields for:

- (a) the patient's name;
 - (b) the patient's date of birth;
 - (c) the patient's phone number;
 - (d) the patient's address;
 - (e)
 - (i) the patient's signature and date of signature, which may not require notarization; or
 - (ii) the signature of the patient's personal representative and date of signature, which may not require notarization;
 - (f) the name, address, and phone number of the person to which the information will be disclosed;
 - (g) the records requested, including whether the patient is requesting paper or electronic records;
 - (h) the duration of time the authorization is valid; and
 - (i) the dates of service requested.
- (4) The form described in Subsection (2) shall include the following options for the field described in Subsection (3)(g):
- (a) history and physical examination records;
 - (b) treatment plans;
 - (c) emergency room records;
 - (d) radiology and lab reports;
 - (e) operative reports;
 - (f) pathology reports;
 - (g) consultations;
 - (h) discharge summary;
 - (i) outpatient clinic records and progress notes;
 - (j) behavioral health evaluation;
 - (k) behavioral health discharge summary;
 - (l) mental health therapy records;
 - (m) financial information including an itemized billing statement;
 - (n) health insurance claim form;
 - (o) billing form; and
 - (p) other.

Renumbered and Amended by Chapter 306, 2023 General Session

Chapter 9

Recovery Services and Administration of Child Support

Part 1

Office of Recovery Services

26B-9-101 Definitions.

As used in this part:

- (1) "Account" means a demand deposit account, checking or negotiable withdrawal order account, savings account, time deposit account, or money-market mutual fund account.
- (2) "Assistance" means public assistance.

- (3) "Cash medical support" means an obligation to equally share all reasonable and necessary medical and dental expenses of children.
- (4) "Child support" means the same as that term is defined in Section 26B-9-301.
- (5) "Child support services" means services provided pursuant to Part D of Title IV of the Social Security Act, 42 U.S.C. Sec. 651, et seq.
- (6) "Director" means the director of the Office of Recovery Services.
- (7) "Disposable earnings" means that part of the earnings of an individual remaining after the deduction of all amounts required by law to be withheld.
- (8) "Financial institution" means:
- (a) a depository institution as defined in Section 7-1-103 or the Federal Deposit Insurance Act, 12 U.S.C. Sec. 1813(c);
 - (b) an institution-affiliated party as defined in the Federal Deposit Insurance Act, 12 U.S.C. Sec. 1813(u);
 - (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 as defined in 12 U.S.C. Sec. 1786(r);
 - (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.
- (9) "Financial record" is defined in the Right to Financial Privacy Act of 1978, 12 U.S.C. Sec. 3401.
- (10)
- (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, and incentive pay.
 - (b) "Income" includes:
 - (i) all gain derived from capital assets, labor, or both, including profit gained through sale or conversion of capital assets;
 - (ii) interest and dividends;
 - (iii) periodic payments made under pension or retirement programs or insurance policies of any type;
 - (iv) unemployment compensation benefits;
 - (v) workers' compensation benefits; and
 - (vi) disability benefits.
- (11) "IV-D" means Part D of Title IV of the Social Security Act, 42 U.S.C. Sec. 651 et seq.
- (12) "IV-D child support services" means the same as child support services.
- (13) "New hire registry" means the centralized new hire registry created in Section 35A-7-103.
- (14) "Obligee" means an individual, this state, another state, or other comparable jurisdiction to whom a debt is owed or who is entitled to reimbursement of child support or public assistance.
- (15) "Obligor" means a person, firm, corporation, or the estate of a decedent owing money to this state, to an individual, to another state, or other comparable jurisdiction in whose behalf this state is acting.
- (16) "Office" means the Office of Recovery Services.
- (17) "Provider" means a person or entity that receives compensation from any public assistance program for goods or services provided to a public assistance recipient.
- (18) "Public assistance" means:
- (a) services or benefits provided under Title 35A, Chapter 3, Employment Support Act;

- (b) medical assistance provided under Chapter 3, Part 1, Health Care Assistance;
 - (c) foster care maintenance payments under Part E of Title IV of the Social Security Act, 42 U.S.C. Sec. 670, et seq.;
 - (d) SNAP benefits as defined in Section 35A-1-102; or
 - (e) any other public funds expended for the benefit of a person in need of financial, medical, food, housing, or related assistance.
- (19) "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
 - (b) each support order established or modified in the state on or after October 1, 1998.

Amended by Chapter 305, 2023 General Session

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.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-9-103 Office of Recovery Services -- Creation.

- (1) There is created within the department the Office of Recovery Services which has the powers and duties provided by law.
- (2) The office is under the administrative and general supervision of the executive director.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-9-104 Duties of the Office of Recovery Services.

- (1) The office has the following duties:
 - (a) except as provided in Subsection (2), to provide child support services if:
 - (i) the office has received an application for child support services;
 - (ii) the state has provided public assistance; or
 - (iii) a child lives out of the home in the protective custody, temporary custody, or custody or care of the state;
 - (b) for the purpose of collecting child support, to carry out the obligations of the department contained in:
 - (i) this chapter;
 - (ii) Title 78B, Chapter 12, Utah Child Support Act;
 - (iii) Title 78B, Chapter 14, Utah Uniform Interstate Family Support Act; and
 - (iv) Title 78B, Chapter 15, Utah Uniform Parentage Act;
 - (c) to collect money due the department which could act to offset expenditures by the state;
 - (d) to cooperate with the federal government in programs designed to recover health 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 3, Income Withholding in IV-D Cases;
 - (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 26B-9-208;
 - (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:
 - (i) the amount of monthly or other periodic support owed under the order, and other amounts, including arrearages, interest, late payment penalties, or fees, due or overdue under the order;
 - (ii) any amount described in Subsection (1)(h)(i) that has been collected;
 - (iii) the distribution of collected amounts;
 - (iv) the birth date of any child for whom the order requires the provision of support; and
 - (v) the amount of any lien imposed with respect to the order pursuant to this part;
 - (i) to contract with the Department of Workforce Services to establish and maintain the new hire registry created under Section 35A-7-103;
 - (j) to determine whether an individual who has applied for or is receiving cash assistance or Medicaid is cooperating in good faith with the office as required by Section 26B-9-213;
 - (k) to finance any costs incurred from collections, fees, General Fund appropriation, contracts, and federal financial participation; and
 - (l) to provide notice to a noncustodial parent in accordance with Section 26B-9-207 of the opportunity to contest the accuracy of allegations by a custodial parent of nonpayment of past-due child support, prior to taking action against a noncustodial parent to collect the alleged past-due support.
- (2) The office may not provide child support services to the Division of Child and Family Services for a calendar month when the child to whom the child support services relate is:
- (a) in the custody of the Division of Child and Family Services; and
 - (b) lives in the home of a custodial parent of the child for more than seven consecutive days, regardless of whether:
 - (i) the greater than seven consecutive day period starts during one month and ends in the next month; and
 - (ii) the child is living in the home on a trial basis.
- (3) The Division of Child and Family Services is not entitled to child support, for a child to whom the child support relates, for a calendar month when child support services may not be provided under Subsection (2).

Renumbered and Amended by Chapter 305, 2023 General Session

26B-9-105 Disclosure of information regarding employees.

- (1) Upon request by the office, for purposes of an official investigation made in connection with its duties under Section 26B-9-104, the following disclosures shall be made to the office:
 - (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.

Renumbered and Amended by Chapter 305, 2023 General Session

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.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-9-107 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.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-9-108 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.

Renumbered and Amended by Chapter 305, 2023 General Session

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.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-9-110 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;
 - (iii) realty fees, if any;
 - (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 Bar;
 - (vii) administrator's fee not to exceed \$150;
 - (viii) court costs; and
 - (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:
- (i) a real estate fee; or
 - (ii) an attorney fee.
- (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, and the same shall be allowed, approved, filed, and paid as a preferred claim, as provided in 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 personal property of the recipient or the recipient's spouse. Any person dealing with the recipient, heirs, or administrators, may rely upon that certificate as evidence of the amount of the existing lien against that real or personal property. That amount, however, shall increase by accruing interest until time of final settlement, at the rate of 6% per annum, commencing six months after the lien becomes due and payable, or at the termination of probate 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.

Renumbered and Amended by Chapter 305, 2023 General Session

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.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-9-112 Alternative payment by obligor through electronic 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 3, Income Withholding in IV-D Cases, or Part 4, 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, as defined in Section 26B-9-301, 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.
- (6) The office shall make rules specifying eligibility requirements for obligors to enter into alternative payment agreements.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-9-113 Mandatory distribution to obligee through electronic funds transfer.

- (1) Notwithstanding any provision of this chapter to the contrary, the office shall, except as provided in Subsection (3), distribute child support payments, under Subsection 26B-9-312(2) or Section 26B-9-406, by electronic funds transfer.
- (2) Distribution of child support payments by electronic payment under this section shall be made to:
 - (a) an account of the obligee; or
 - (b) an account that may be accessed by the obligee through the use of an electronic access card.
- (3)
 - (a) Subject to Subsection (3)(b), the office may make rules, pursuant to Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to allow exceptions to the requirement to make distributions by electronic funds transfer under Subsection (1).

- (b) The rules described in Subsection (3)(a) may only allow exceptions under circumstances where:
- (i) requiring distribution by electronic funds transfer would result in an undue hardship to the office or a person; or
 - (ii) it is not likely that distribution will be made to the obligee on a recurring basis.

Renumbered and Amended by Chapter 305, 2023 General Session

Part 2

Child Support Services

26B-9-201 Definitions.

As used in this part:

- (1) "Adjudicative proceeding" means an action or proceeding of the office conducted in accordance with Title 63G, Chapter 4, Administrative Procedures Act.
- (2) "Administrative order" means an order that has been issued by the office, the department, or an administrative agency of another state or other comparable jurisdiction with similar authority to that of the office.
- (3) "Arrears" means the same as support debt.
- (4) "Assistance" means public assistance as defined in Section 26B-9-101.
- (5) "Business day" means a day on which state offices are open for regular business.
- (6) "Child" means:
 - (a) a son or daughter under the age of 18 years who is not otherwise emancipated, 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 normal and expected year of graduation and not otherwise emancipated, self-supporting, married, or a member of the armed forces of the United States; or
 - (c) a son or daughter of any age who is incapacitated from earning a living and is without sufficient means.
- (7) "Child support" means the same as that term is defined in Section 26B-9-301.
- (8) "Child support guidelines" means guidelines as defined in Section 78B-12-102.
- (9) "Child support order" means the same as that term is defined in Section 26B-9-301.
- (10) "Child support services" means the same as that term is defined in Section 26B-9-101.
- (11) "Court order" means a judgment or order of a tribunal of appropriate jurisdiction of this state, another state, Native American tribe, the federal government, or any other comparable jurisdiction.
- (12) "Director" means the director of the Office of Recovery Services.
- (13) "Disposable earnings" means the same as that term is defined in Section 26B-9-101.
- (14) "Guidelines" means the same as that term is defined in Section 78B-12-102.
- (15) "High-volume automated administrative enforcement" in interstate cases means, on the request of another state, the identification by the office, through automatic data matches with financial institutions and other entities where assets may be found, of assets owned by persons who owe child support in the requesting state, and the seizure of the assets by the office, through levy or other appropriate processes.
- (16) "Income" means the same as that term is defined in Section 26B-9-101.
- (17) "IV-D child support services" means the same as child support services.

- (18) "Notice of agency action" means the notice required to commence an adjudicative proceeding in accordance with Section 63G-4-201.
- (19) "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 child support or public assistance.
- (20) "Obligor" means a person, firm, corporation, or the estate of a decedent owing a duty of support to this state, to an individual, to another state, or other corporate jurisdiction in whose behalf this state is acting.
- (21) "Office" means the Office of Recovery Services.
- (22) "Parent" means a natural parent or an adoptive parent of a dependent child.
- (23) "Past-due support" means the same as support debt.
- (24) "Person" includes an individual, firm, corporation, association, political subdivision, department, or office.
- (25) "Public assistance" means the same as that term is defined in Section 26B-9-101.
- (26) "Presiding officer" means a presiding officer described in Section 63G-4-103.
- (27) "Support" includes past-due, present, and future obligations established by:
 - (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.
- (28) "Support debt" means the debt created by nonpayment of support.
- (29) "Support order" means the same as child support order.
- (30) "Tribunal" means the district court, the department, 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.

Renumbered and Amended by Chapter 305, 2023 General Session

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.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-9-203 Application for child support services.

- (1) 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.
- (2) 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.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-9-204 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).
- (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.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-9-205 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;
 - (iv) records concerning occupational and professional licenses and the ownership and control of corporations, partnerships, and other business entities;
 - (v) employment security records;
 - (vi) records of agencies administering public assistance programs;
 - (vii) motor vehicle department records; and
 - (viii) corrections records;
 - (f) upon providing notice to the obligor and obligee, direct an obligor or other payor to 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 U.S.C. Sec. 654B;
 - (g) order income withholding in accordance with Part 3, Income Withholding in IV-D Cases;
 - (h) secure assets to satisfy past-due support by:
 - (i) intercepting or seizing periodic or lump-sum payments from:
 - (A) a state or local government agency, including unemployment compensation, workers' compensation, and other benefits; and
 - (B) judgments, settlements, and lotteries;
 - (ii) attaching and seizing assets of an obligor held in financial institutions;
 - (iii) attaching public and private retirement funds, if the obligor presently:
 - (A) receives periodic payments; or
 - (B) has the authority to withdraw some or all of the funds; and
 - (iv) imposing liens against real and personal property in accordance with this section and Section 26B-9-214; and
 - (i) increase monthly payments in accordance with Section 26B-9-219.
- (2)
- (a) When taking action under Subsection (1), the office shall send notice under this Subsection (2)(a) to the person or entity who is required to comply with the action if not a party to a case receiving IV-D services.
 - (b) The notice described in Subsection (2)(a) shall include:
 - (i) the authority of the office to take the action;
 - (ii) the response required by the recipient;
 - (iii) the opportunity to provide clarifying information to the office under Subsection (2)(c);
 - (iv) the name and telephone number of a person in the office who can respond to 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.
- (3) The office shall in any case in which it requires genetic testing under Subsection (1)(a):
- (a) consider clarifying information if submitted by the obligee and alleged father;
 - (b) proceed with testing as the office considers appropriate;
 - (c) pay the cost of the tests, subject to recoupment from the alleged father if paternity is established;
 - (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:
 - (i) of a type generally acknowledged as reliable by accreditation bodies designated by the Secretary of the United States Department of Health and Human Services; and

- (ii) performed by a laboratory approved by such an accreditation body.
- (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 26B-9-207 of:
 - (i) any action taken pursuant to Subsections (1)(h)(i)(B), (1)(h)(ii), (1)(h)(iii), or Subsection 26B-9-208(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 26B-9-208(1)(b), a person in possession of personal property of the obligor shall:
 - (A) secure the property from unauthorized transfer or disposition as required by Section 26B-9-215; and
 - (B) surrender the property to the office after 21 days of receiving the notice unless the 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:
 - (A) valid for 60 days; and
 - (B) effective against any additional property which the obligor may deposit or transfer into the possession of the person up to the amount of the levy.
 - (iii) If the property upon which the office imposes a levy is insufficient to satisfy the 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), (1)(h)(iii), or Subsection 26B-9-208(1)(b) against additional property of the obligor until the 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
 - (ii) include in the notice required by Subsection 59-10-529(4)(a) reference to 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 26B-9-214.
- (6) All information received under this section is subject to Title 63G, Chapter 2, Government Records Access and Management Act.

- (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 providing information to the office or taking any other action requested by the office pursuant to this section.
- (8) The actions the office may take under Subsection (1) are in addition to the actions the office may take pursuant to Part 3, Income Withholding in IV-D Cases.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-9-206 Issuance or modification of administrative order -- Compliance with court order -- Authority of office -- Stipulated agreements -- Notification requirements.

- (1) Through an adjudicative proceeding the office may issue or modify an administrative order that:
 - (a) determines paternity;
 - (b) determines whether an obligor owes support;
 - (c) determines temporary orders of child support upon clear and convincing evidence of paternity in the form of genetic test results or other evidence;
 - (d) requires an obligor to pay a specific or determinable amount of present and future support;
 - (e) determines the amount of past-due support;
 - (f) orders 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;
 - (g) imposes a penalty authorized under this chapter;
 - (h) determines an issue that may be specifically contested under this chapter by a party who timely files a written request for an adjudicative proceeding with the office; and
 - (i) renews an administrative judgment.
- (2)
 - (a) An abstract of a final administrative order issued under this section or a notice of judgment-lien under Section 26B-9-214 may be filed with the clerk of any district court.
 - (b) Upon a filing under Subsection (2)(a), the clerk of the court shall:
 - (i) docket the abstract or notice in the judgment docket of the court and note the time of receipt on the abstract or notice and in the judgment docket; and
 - (ii) at the request of the office, place a copy of the abstract or notice in the file of a child support action involving the same parties.
- (3) If a judicial order has been issued, the office may not issue an order under Subsection (1) that is not based on the judicial order, except:
 - (a) the office may establish a new obligation in those cases in which the juvenile court has ordered the parties to meet with the office to determine the support pursuant to Section 78A-6-356; or
 - (b) the office may issue an order of current support in accordance with the child 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 26B-9-209, 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;

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

Renumbered and Amended by Chapter 305, 2023 General Session

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 Secretary of the United States Department 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 the party; and
 - (ii) delivery of notice to the most recent residential or employer address filed with the court, administrative agency, or state case registry under Subsection (1)(a).
- (2)
 - (a) The office shall provide individuals who are applying for or receiving services under this chapter or who are parties to cases in which services are being provided under this chapter:
 - (i) with notice of all proceedings in which support obligations might be established or modified; and
 - (ii) with a copy of any order establishing or modifying a child support obligation, or in the case of a petition for modification, a notice of determination that there should be no change in the amount of the child support award, within 14 days after issuance of such order or determination.
 - (b) Notwithstanding Subsection (2)(a)(ii), notice in the case of an interstate order shall be provided in accordance with Section 78B-14-614.
- (3) Service of all notices and orders under this part shall be made in accordance with Title 63G, Chapter 4, Administrative Procedures Act, the Utah Rules of Civil Procedure, or this section.
- (4) Consistent with Title 63G, Chapter 2, Government Records Access and Management Act, the office shall adopt procedures to classify records to prohibit the unauthorized use or disclosure of information relating to a proceeding to:
 - (a) establish paternity; or
 - (b) establish or enforce support.
- (5)
 - (a) The office shall, upon written request, provide location information available in its files on a custodial or noncustodial parent to the other party or the other party's legal counsel provided that:
 - (i) the party seeking the information produces a copy of the parent-time order signed by the court;

- (ii) the information has not been safeguarded in accordance with Section 454 of the Social Security Act;
 - (iii) the party whose location is being sought has been afforded notice in accordance with this section of the opportunity to contest release of the information;
 - (iv) the party whose location is being sought has not provided the office with a copy of 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.

Renumbered and Amended by Chapter 305, 2023 General Session

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:
 - (A) maintains an account at the institution; and
 - (B) owes past-due support as identified by the office by name and social security 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 26B-9-205.
- (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.
- (6) The office shall provide notice and disburse funds seized or encumbered under this section in accordance with Section 26B-9-205.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-9-209 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 26B-9-206 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.
- (3) A request by another state shall constitute a certification by the requesting state:
 - (a) of the amount of support under the order of payment of which is in arrears; and
 - (b) that the requesting state has complied with procedural due process requirements applicable to the case.
- (4) The office shall give automated administrative interstate enforcement requests the same priority as a two-state referral received from another state to enforce a support order.
- (5) The office shall promptly report the results of the enforcement procedures to the requesting state.
- (6) As required by the Social Security Act, 42 U.S.C. Sec. 666(a)(14), the office shall maintain records of:
 - (a) the number of requests for enforcement assistance received by the office under this section;
 - (b) the number of cases for which the state collected support in response to those requests; and
 - (c) the amount of support collected.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-9-210 Issuance or modification of an order to collect support for persons not receiving public assistance.

The office may proceed to issue or modify an order under Section 26B-9-206 and collect under this part even though public assistance is not being provided on behalf of a dependent child if the office provides support collection services in accordance with:

- (1) an application for services provided under Title IV-D of the federal Social Security Act;
- (2) the continued service provisions of Subsection 26B-9-213(5); or
- (3) the interstate provisions of Section 26B-9-209.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-9-211 Mandatory review and adjustment of child support orders for TANF recipients.

If a child support order has not been issued, adjusted, or modified within the previous three years and the children who are the subject of the order currently receive TANF funds, 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.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-9-212 Collection directly from responsible parent.

- (1)
 - (a) The office may issue or modify an order under Section 26B-9-206 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.
 - (b) 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 26B-9-210 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 26B-9-213(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.

Renumbered and Amended by Chapter 305, 2023 General Session

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
 - (B) establishing, modifying, or enforcing a child support order;
 - (ii) supply additional necessary information and appear at interviews, hearings, and legal proceedings; and
 - (iii) submit the obligee's child and himself to judicially or administratively ordered genetic testing.

- (b) The obligee may not commence an action against an obligor or file a pleading to collect or modify support without the office's written consent.
 - (c) The obligee may not do anything to prejudice the rights of the office to establish paternity, enforce provisions requiring health insurance, or to establish and collect support.
 - (d) The obligee may not agree to allow the obligor to change the court or administratively ordered manner or amount of payment of past, present, or future support without the office's written consent.
- (2)
- (a) The office shall determine and redetermine, when appropriate, whether an obligee has cooperated with the office as required by Subsection (1)(a).
 - (b) If the office determines that an obligee has not cooperated as required by Subsection (1)(a), the office shall:
 - (i) forward the determination and the basis for it to the Department of Workforce Services, which shall inform the department of the determination, for a determination of whether compliance by the obligee should be excused on the basis of good cause or other exception; and
 - (ii) send to the obligee:
 - (A) a copy of the notice; and
 - (B) information that the obligee may, within 15 days of notice being sent:
 - (I) contest the office's determination of noncooperation by filing a written request for an adjudicative proceeding with the office; or
 - (II) assert that compliance should be excused on the basis of good cause or other exception by filing a written request for a good cause exception with the Department of Workforce Services.
- (3) The office's right to recover is not reduced or terminated if an obligee agrees to allow the obligor to change the court or administratively ordered manner or amount of 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)
- (a) If public assistance furnished on behalf of a dependent child is terminated, the office may continue to provide paternity establishment and support collection services.
 - (b) 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.

Renumbered and Amended by Chapter 305, 2023 General Session

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
 - (ii) the writ is signed by the director or the director's designee and served by certified 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 26B-9-217.

Renumbered and Amended by Chapter 305, 2023 General Session

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.

Renumbered and Amended by Chapter 305, 2023 General Session

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 26B-9-205 or Section 26B-9-214.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-9-217 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 the employer 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 the employee's earnings have been subjected to support lien, wage assignment, or garnishment for any indebtedness under this part.
- (3) If an employer discharges an employee in violation of Subsection (2), the employer is liable to the employee for the damages the employee 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 attorney 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 the individual's disposable earnings for the work pay period.
- (5) The support lien or garnishment shall continue to operate and require the employer to withhold the nonexempt portion of earnings at each succeeding earnings disbursement interval until released in writing by the court or office.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-9-218 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.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-9-219 Payment schedules.

- (1) The office may:
 - (a) set or reset a level and schedule of payments at any time consistent with the income, earning capacity, and resources of the obligor; or
 - (b) demand payment in full.

- (2) If a support debt is reduced to a schedule of payments and made subject to income withholding, the total monthly amount of the scheduled payment, current support payment, and cost of health insurance attributable to a child for whom the obligor has been ordered may only be subject to income withholding in an amount that does not exceed the maximum amount permitted under Section 303(b) of the Consumer Credit Protection Act, 15 U.S.C. Sec. 1673(b).
- (3)
 - (a) Within 15 days of receiving notice, an obligor may contest a payment schedule as inconsistent with Subsection (2) or the rules adopted by the office to establish payment schedules under Subsection (1) by filing a written request for an adjudicative proceeding.
 - (b) For purposes of Subsection (3)(a), notice includes:
 - (i) notice sent to the obligor by the office in accordance with Section 26B-9-207;
 - (ii) participation by the obligor in the proceedings related to the establishment of the payment schedule; and
 - (iii) receiving a paycheck in which a reduction has been made in accordance with a payment schedule established under Subsection (1).

Renumbered and Amended by Chapter 305, 2023 General Session

26B-9-220 Review and adjustment of child support order in three-year cycle -- Substantial change in circumstances not required.

- (1) If a child support order has not been issued, modified, or reviewed within the previous three years, the office shall review a child support order, taking into account the best interests of the child involved, if:
 - (a) requested by a parent or legal guardian involved in a case receiving IV-D services; or
 - (b) there has been an assignment under Section 35A-3-108 and the office determines that a review is appropriate.
- (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:
 - (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 26B-9-207.
 - (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.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-9-221 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.
 - (b) For purposes of Subsection (1)(a), a substantial change in circumstances may include:
 - (i) material changes in custody;
 - (ii) material changes in the relative wealth or assets of the parties;
 - (iii) material changes of 30% or more in the income of a parent;
 - (iv) material changes in the ability of a parent to earn;
 - (v) material changes in the medical needs of the child; and
 - (vi) material changes in the legal responsibilities of either parent for the support of others.
- (2) Upon receiving a request under Subsection (1), the office shall review the order, taking into account the best interests of the child involved, to determine whether the substantial change in circumstance has occurred, and if so, whether the change resulted in a difference of 15% or more between the amount of child support 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 support order issued or modified by the office, adjust the amount in accordance with the guidelines; or
 - (b) with respect to a support order issued or modified by a court, file a petition with the court to adjust the amount in accordance with the guidelines.
- (3) The office may use automated methods to collect information for a review conducted under Subsection (2).
- (4)
- (a) A parent or legal guardian who requests a review under Subsection (1) shall provide notice of the request to the other parent within five days and in accordance with Section 26B-9-207.
 - (b) If the office initiates and conducts a review under Subsection (1), the office shall provide notice of the request to any parent or legal guardian within five days and in accordance with Section 26B-9-207.
- (5) Within 30 days of notice being sent under Subsection (4), a parent or legal guardian may file a response to a request for review with the office.

Renumbered and Amended by Chapter 305, 2023 General Session

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 guardian involved in a case receiving IV-D services of the opportunity to request a review and, if appropriate, adjustment of a child support order under Sections 26B-9-220 and 26B-9-221.
- (2)
 - (a) The notice required by Subsection (1) may be included in an issued or modified order of support.
 - (b) Notwithstanding Subsection (2)(a), the office shall comply with Subsection (1), three years after the date of the order issued or modified under Subsection (2)(a).

Renumbered and Amended by Chapter 305, 2023 General Session

26B-9-223 Posting bond or security for payment of support debt -- Procedure.

- (1) The office shall, or an obligee may, petition the court for an order requiring an obligor to post a bond or provide other security for the payment of a support debt, if the office or an obligee determines that action is appropriate, and if the payments are more than 90 days delinquent. The office shall establish rules for determining when it shall seek an order for bond or other security.
- (2) When the office or an obligee petitions the court under this section, it shall give written notice to the obligor, stating:
 - (a) the amount of support debt;
 - (b) that it has petitioned the court for an order requiring the obligor to post security; and
 - (c) that the obligor has the right to appear before the court and contest the office's or obligee's petition.
- (3) After notice to the obligor and an opportunity for a hearing, the court shall order a bond posted or other security to be deposited upon the office's or obligee's showing of a support debt and of a reasonable basis for the security.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-9-224 Medical and dental expenses of dependent children.

In any action under this part, the office and the department in their orders shall:

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

Renumbered and Amended by Chapter 305, 2023 General Session

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 26B-9-207 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.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-9-226 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 under Section 26B-9-225 by enrolling the dependent child that is the subject of the notice in the:
 - (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 guardian'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.

Renumbered and Amended by Chapter 305, 2023 General Session

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
 - (b) receives direct payment from an insurer under insurance coverage obtained after 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.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-9-228 Reporting past-due support to consumer reporting agency.

The office shall periodically report the name of any obligor who is delinquent in the payment of support and the amount of overdue support owed by the obligor to consumer reporting agencies as defined in the Fair Credit Reporting Act, 15 U.S.C. Sec. 1681a(f):

- (1) only after the obligor has been afforded notice and a reasonable opportunity to contest the accuracy of the information; and
- (2) only to an entity that has provided satisfactory evidence that it is a consumer reporting agency under 15 U.S.C. Sec. 1681a(f).

Renumbered and Amended by Chapter 305, 2023 General Session

26B-9-229 Information received from State Tax Commission provided to other states' child support collection agencies.

The office shall, upon request, provide to any other state's child support collection agency the information which it receives from the State Tax Commission under Subsection 59-1-403(4)(l), with regard to a support debt which that agency is involved in enforcing.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-9-230 Right to judicial review.

- (1)
 - (a) Within 30 days of notice of any administrative action on the part of the office to establish paternity or establish, modify or enforce a child support order, the obligor may file a petition for de novo review with the district court.
 - (b) For purposes of Subsection (1)(a), notice includes:
 - (i) notice actually received by the obligor in accordance with Section 26B-9-207;
 - (ii) participation by the obligor in the proceedings related to the establishment of the paternity or the modification or enforcement of child support; or
 - (iii) receiving a paycheck in which a reduction has been made for child support.
- (2) The petition shall name the office and all other appropriate parties as respondents and meet the form requirements specified in Section 63G-4-402.
- (3) A copy of the petition shall be served upon the Child and Family Support Division of the Office of Attorney General.
- (4)
 - (a) If the petition is regarding the amount of the child support obligation 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 believed to be due and the court may issue a temporary order for that amount. The temporary order shall be valid for 60 days, unless extended by the court while the action is being pursued.

- (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.

Renumbered and Amended by Chapter 305, 2023 General Session

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;
 - (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 after the day on which the office receives the request for information.

Renumbered and Amended by Chapter 305, 2023 General Session

Part 3
Income Withholding in IV-D Cases

26B-9-301 Definitions.

As used in this part and Part 4, Income Withholding in Non IV-D Cases:

- (1) "Business day" means a day on which state offices are open for regular business.
- (2) "Child" means the same as that term is defined in Section 26B-9-201.
- (3)
 - (a) "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.
 - (b) "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" 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" means the same as that term is defined in Section 26B-9-101.
- (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" means the same as that term is defined in Section 26B-9-101.
- (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" means the same as that term is defined in Section 26B-9-201.
- (11) "Obligor" means the same as that term is defined in Section 26B-9-201.
- (12) "Office" means the Office of Recovery Services.
- (13) "Payor" means an employer or any person who is a source of income to an obligor.
- (14) "Support order" means the same as child support order.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-9-302 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 procedures.

Renumbered and Amended by Chapter 305, 2023 General Session

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.

Renumbered and Amended by Chapter 305, 2023 General Session

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:
 - (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:
 - (i) upon a delinquency;
 - (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
 - (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 26B-9-305.
- (6) Income withholding implemented under this section is subject to termination under Section 26B-9-308.
- (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.

Renumbered and Amended by Chapter 305, 2023 General Session

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:
 - (a) send notice to the payor for income withholding in accordance with Section 26B-9-306; and
 - (b) send notice to the obligor under Section 26B-9-207 that includes:
 - (i) a copy of the notice sent to the payor; and
 - (ii) information regarding:
 - (A) the commencement of income withholding; and
 - (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:
 - (a) provide an opportunity for the obligor to provide documentation and, if necessary, to present evidence supporting the obligor's claim of mistake of fact;
 - (b) decide whether income withholding shall continue;
 - (c) notify the obligor of its decision and the obligor's right to appeal under Subsection (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.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-9-306 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 26B-9-217, 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.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-9-307 Payor's procedures for income withholding.

- (1)
 - (a) A payor is subject to the requirements, penalties, and effects of a notice served on the payor under Section 26B-9-306.
 - (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 26B-9-306(3).
- (2)
 - (a) If a payor fails to comply with a notice served upon the payor under Section 26B-9-306, 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 26B-9-306 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 attorney fees incurred in enforcing a provision in the notice mailed or delivered under Section 26B-9-306.
- (6) Notwithstanding this section or Section 26B-9-306, 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;
 - (d) the priorities for withholding and allocating withheld income for multiple child support obligees; and
 - (e) any term or condition for withholding not specified in the notice.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-9-308 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 judicial hearing or administrative review to determine whether income withholding should be terminated due to:
 - (i) good cause under Section 26B-9-304;
 - (ii) the execution of a written agreement under Section 26B-9-304; or

- (iii) the completion of an obligor's support obligation.
- (b) An obligor's payment of overdue child support may not be the sole basis for termination of income withholding.
- (c) If it is determined by a court or the office that income withholding should be terminated, the office shall give written notice of termination to each payor within 10 days after receipt of notice of that decision.
- (d) If, after termination of income withholding by court or administrative order, an obligor's child support obligation becomes delinquent or subject to immediate and automatic income withholding under Section 26B-9-304, the office shall reinstate income withholding procedures in accordance with the provisions of this part.
- (e) If the office terminates income withholding through an agreement with a party, the office may reinstate income withholding if:
 - (i) a delinquency occurs;
 - (ii) the obligor requests reinstatement;
 - (iii) the obligee requests reinstatement; or
 - (iv) the office, based on internal procedures and standards, determines reinstatement 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.

Renumbered and Amended by Chapter 305, 2023 General Session

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.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-9-310 Violations by payor.

- (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 fee.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-9-311 Priority of notice or order to withhold income.

The notice to withhold provided by Section 26B-9-306, 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.

Renumbered and Amended by Chapter 305, 2023 General Session

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.

Renumbered and Amended by Chapter 305, 2023 General Session

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 the obligor's child support obligations.

Renumbered and Amended by Chapter 305, 2023 General Session

**Part 4
Income Withholding in Non IV-D Cases**

26B-9-401 Definitions.

The definitions in Section 26B-9-301 apply to this part.

Enacted by Chapter 305, 2023 General Session

26B-9-402 Application of this part only to Non IV-D cases.

The requirements of this part apply only to cases in which neither the obligee nor the obligor is receiving IV-D services.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-9-403 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;
 - (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;
 - (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 26B-9-407; 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
 - (ii) filing an ex parte motion with a district court of competent jurisdiction pursuant to Section 26B-9-405.

- (c) A payor who receives written notice under Subsection (5)(a)(i) shall comply with the requirements of Section 26B-9-408.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-9-404 Requirement of employment and location information.

- (1) As of July 1, 1997, a court, before issuing or modifying an order of support, shall require the parties to file the information required under Section 26B-9-207.
- (2) If a party fails to provide the information required by Section 26B-9-207, the court shall issue or modify an order upon receipt of a verified representation of employment or source of income for that party based on the best evidence available if:
 - (a) that party has participated in the current proceeding;
 - (b) the notice and service of process requirements of the Utah Rules of Civil Procedure have been met if the case is before the court to establish an original order of support; or
 - (c) the notice requirements of Section 26B-9-207 have been met if the case is before the court to modify an existing order.
- (3) A court may restrict the disclosure of information required by Section 26B-9-207:
 - (a) in accordance with a protective order involving the parties; or
 - (b) if the court has reason to believe that the release of information may result in physical or emotional harm by one party to the other party.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-9-405 Procedures for commencing income withholding.

- (1) If income withholding has not been commenced in connection with a child support order, an obligee or obligor may commence income withholding by:
 - (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 3, Income Withholding in IV-D Cases, upon receipt of an application for IV-D services under Subsection (1)(a).
- (3) A court shall grant an ex parte motion to commence income withholding filed under Subsection (1)(b) regardless of whether the child support order provided for income 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;
 - (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 26B-9-403, and a delinquency has occurred; or
 - (c) the child support order was issued or modified before January 1, 1994, and a delinquency has occurred.
- (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 26B-9-407;
 - (b) mail a copy of the written notice sent to the payor under Subsection (4)(a) to the nonrequesting party's address and a copy of the support order and the notice to the payor to the office; and

- (c) if the obligee is the requesting party, send notice to the obligor under Section 26B-9-207 that includes:
 - (i) a copy of the notice sent to the payor; and
 - (ii) information regarding:
 - (A) the commencement of income withholding; and
 - (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.
- (5) A payor who receives written notice under Subsection (4)(a) shall comply with the requirements of Section 26B-9-408.
- (6) If an obligor contests withholding, the court shall:
 - (a) provide an opportunity for the obligor to present evidence supporting his claim of a mistake of fact;
 - (b) decide whether income withholding should continue;
 - (c) notify the parties of the decision; and
 - (d) at the obligor's option, return or credit toward the most current and future support payments of the obligor any amount mistakenly withheld plus interest at the legal rate.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-9-406 Responsibilities of the office.

The office shall document and distribute payments in the manner provided for and in the time required by Section 26B-9-312 and federal law upon receipt of:

- (1) a copy of the written notice sent to the payor under Section 26B-9-403 or Section 26B-9-405;
- (2) the order of support;
- (3) the obligee's address; and
- (4) withheld income from the payor.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-9-407 Notice to payor.

- (1) A notice mailed or delivered to a payor under this part shall state in writing:
 - (a) the amount of child support to be withheld from income;
 - (b) 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);
 - (c) 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;
 - (d) 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);
 - (e) that the notice to withhold is binding on the payor and on any future payor until further notice by the office or a court;
 - (f)

- (i) that if the payor fails to mail or deliver withheld income to the office within the time period set in Subsection (1)(c), the payor is liable to the obligee for a late fee of \$50 or 10% of the withheld income, whichever is greater, for each payment that is late; and
 - (ii) that if the payor willfully fails to withhold income in accordance with the notice, the 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 26B-9-217 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 attorney fees incurred in enforcing a provision in a notice to withhold mailed or delivered under Section 26B-9-403 or 26B-9-405.
- (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.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-9-408 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 26B-9-407.
 - (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 26B-9-407(1)(c).
- (2) If a payor fails to comply with the requirements of a notice served upon him under Section 26B-9-407, the obligee, or obligor may proceed with a civil action against the payor to enforce a provision of the notice.
- (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 or obligee, 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 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 attorney fees incurred in enforcing a provision of the notice mailed or delivered under Section 26B-9-407.

- (6) Notwithstanding this section or Section 26B-9-407, 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.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-9-409 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 26B-9-403; or
 - (ii) the completion of an obligor's support obligation.
 - (b) An obligor's payment of overdue child support may not be the sole basis for termination of income withholding.
 - (c) After termination of income withholding under this section, a party may seek reinstatement of income withholding under Section 26B-9-405.
- (2)
- (a) If it is determined that income withholding should be terminated under Subsection (1)(a)(i), the court shall order written notice of termination be given to each payor within 10 days after receipt of notice of that decision.
 - (b) The obligee shall give written notice of termination to each payor:
 - (i) when the obligor no longer owes child support to the obligee; or
 - (ii) if the obligee and obligor enter into a written agreement that provides an alternative arrangement, which may be filed with the court.
- (3) A notice to withhold income is binding on a payor until the court or the obligee notifies the payor that his obligation to withhold income has been terminated.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-9-410 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.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-9-411 Violations by payor.

- (1) A payor may not discharge, refuse to hire, or discipline any obligor because of a notice to withhold under this part.

- (2) If a payor violates Subsection (1), the payor is liable to the obligor as provided in Section 26B-9-217 and the obligee for the greater of \$1,000 or the amount of child support accumulated to the date of discharge which should have been withheld plus interest on that amount and costs incurred in collecting the amount, including reasonable attorney fees.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-9-412 Priority of notice or order to withhold income.

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.

Renumbered and Amended by Chapter 305, 2023 General Session

Part 5

Administrative License Suspension for Child Support Enforcement

26B-9-501 Definitions.

As used in this part:

- (1) "Child support" is as defined in Section 26B-9-301.
- (2) "Delinquent on a child support obligation" means that a person:
- (a)
- (i) made no payment for 60 days on a current child support obligation as set forth in an administrative or court order;
 - (ii) after the 60-day period described in Subsection (2)(a)(i), failed to make a good faith effort under the circumstances to make payment on the child support obligation in accordance with the order; and
 - (iii) has not obtained a judicial order staying enforcement of the person's child support obligation, or the amount in arrears; or
- (b)
- (i) made no payment for 60 days on an arrearage obligation of child support as set forth in:
 - (A) a payment schedule;
 - (B) a written agreement with the office; or
 - (C) an administrative or judicial order;
 - (ii) after the 60-day period described in Subsection (2)(b)(i), failed to make a good faith effort under the circumstances to make payment on the child support obligation in accordance with the payment schedule, agreement, or order; and
 - (iii) has not obtained a judicial order staying enforcement of the person's child support obligation, or the amount in arrears.
- (3) "Driver license" means a license, as defined in Section 53-3-102.
- (4) "Driver License Division" means the Driver License Division of the Department of Public Safety created in Section 53-3-103.
- (5) "Office" means the Office of Recovery Services.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-9-502 Suspension of driver license for child support delinquency -- Reinstatement.

- (1) Subject to the provisions of this section, the office may order the suspension of a person's driver license if the person is delinquent on a child support obligation.
- (2) Before ordering a suspension of a person's driver license, the office shall serve the person with a "notice of intent to suspend driver license."
- (3) The notice described in Subsection (2) shall:
 - (a) be personally served or served by certified mail;
 - (b) except as otherwise provided in this section, comply with Title 63G, Chapter 4, Administrative Procedures Act;
 - (c) state the amount that the person is in arrears on the person's child support obligation; and
 - (d) state that, if the person desires to contest the suspension of the person's driver license, the person must request an informal adjudicative proceeding with the office within 30 days after the day on which the notice is mailed or personally served.
- (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 days after the day on which the notice described in Subsection (2) is mailed or personally served on the person.
 - (b) The informal adjudicative proceeding described in Subsection (4)(a), and any appeal of the decision rendered in that proceeding, shall comply with Title 63G, Chapter 4, Administrative Procedures Act.
- (5) Except as provided in Subsection (6), the office may order that a person's driver license be suspended:
 - (a) if, after the notice described in Subsection (2) is mailed or personally served, the person fails to request an informal adjudicative proceeding within the time period described in Subsection (4)(a); or
 - (b) following the informal adjudicative proceeding described in Subsection (4)(a), if:
 - (i) the presiding officer finds that the person is delinquent on a child support obligation; and
 - (ii) the finding described in Subsection (5)(b)(i):
 - (A) is not timely appealed; or
 - (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:
 - (a) pays the full amount that the person is in arrears on the person's child support obligation;
 - (b) subject to Subsection (8):
 - (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 (6)(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.
- (7) The office shall rescind an order made by the office to suspend a driver license if the person:
 - (a) pays the full amount that the person is in arrears on the person's child support obligation;
 - (b) subject to Subsection (8):
 - (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 changed such that the person is entitled to have the order of suspension rescinded under Subsection (7); and
 - (ii) the office has not rescinded the order of suspension.
 - (b) The office shall respond, in writing, to a person described in Subsection (10), within 10 days after the day on which the request is filed with the office, stating whether the person is entitled to have the order of suspension rescinded.
 - (c) If the office determines, under Subsection (10)(b), that an order to suspend a person's license should be rescinded, the office shall immediately rescind the order.
 - (d) If the office determines, under Subsection (10)(b), that an order to suspend a person's license should not be rescinded:
 - (i) the office shall, as part of the response described in Subsection (10)(b), notify the person, in writing, of the reasons for that determination; and
 - (ii) the person described in this Subsection (10)(d) may, within 15 days after the day on which the office sends the response described in Subsection (10)(b), appeal the determination of the office to district court.
 - (e) The office may not require that a person file the request described in Subsection (10)(a) before the office orders that an order of suspension is rescinded, if the office has already determined that the order of suspension should be rescinded under Subsection (7).
- (11) The office may make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to:
- (a) implement the provisions of this part; and
 - (b) determine when the arrears described in Subsections (6) and (7) are considered paid.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-9-503 Notification of order to suspend or rescission of order.

- (1) When, pursuant to this part, the office orders the suspension of a person's driver license, or rescinds an order suspending a person's driver license, the office shall, within five 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 and identifying information of the person described in Subsection (1).
 - (b) The notification to a person described in Subsection (1)(b) shall include a statement indicating that the person must reinstate the person's driver license with the Driver License Division before driving a motor vehicle.

Renumbered and Amended by Chapter 305, 2023 General Session