

Effective 5/3/2023

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