

Effective 5/12/2020

Chapter 4a Utah Professionals Health Program

58-4a-101 Title.

This chapter is known as the "Utah Professionals Health Program."

Enacted by Chapter 107, 2020 General Session

58-4a-102 Definitions.

As used in this chapter:

- (1) "Diversion agreement" means a written agreement entered into by a licensee and the division that describes the requirements of the licensee's monitoring regimen and that was entered into before May 12, 2020.
- (2) "Licensee" means an individual licensed to practice:
 - (a) under Title 58, Chapter 5a, Podiatric Physician Licensing Act;
 - (b) under Title 58, Chapter 17b, Pharmacy Practice Act;
 - (c) under Title 58, Chapter 28, Veterinary Practice Act;
 - (d) under Title 58, Chapter 31b, Nurse Practice Act;
 - (e) mental health therapy under Title 58, Chapter 60, Mental Health Professional Practice Act;
 - (f) mental health therapy under Title 58, Chapter 61, Psychologist Licensing Act;
 - (g) under Title 58, Chapter 67, Utah Medical Practice Act;
 - (h) under Title 58, Chapter 68, Utah Osteopathic Medical Practice Act;
 - (i) under Title 58, Chapter 69, Dentist and Dental Hygienist Practice Act; or
 - (j) under Title 58, Chapter 70a, Utah Physician Assistant Act.
- (3) "Program" means the Utah Professionals Health Program.
- (4) "Program contract" means a written agreement entered into by a licensee and the division that allows the licensee to participate in the program.
- (5) "Substance use disorder" means the same as that term is defined in Section 26B-5-501.

Amended by Chapter 420, 2024 General Session

58-4a-103 Program established.

- (1) The division, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, shall establish the Utah Professionals Health Program to provide an alternative to public disciplinary action for licensees who have substance use disorders.
- (2) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the division shall make rules governing the criteria for:
 - (a) entry into and participation of licensees in the program;
 - (b) successful completion of the program;
 - (c) expulsion from the program; and
 - (d) disqualifying a licensee from participation in the program.
- (3) The division shall promote the program by:
 - (a) engaging in wellness education and outreach to licensees, students, and the community in order to make them aware of the existence and purpose of the program;
 - (b) partnering with health care organizations, universities, trade associations, and other stakeholder groups to promote professional awareness and wellness; and

- (c) providing guidance to employers, colleagues, and family members on initiating conversations with licensees about substance use.

Enacted by Chapter 107, 2020 General Session

58-4a-104 Committees.

- (1) In accordance with Section 58-1-203, the division shall establish an executive advisory committee consisting of nine members as follows:
 - (a) the executive director of the Department of Commerce, or the designee of the executive director of the Department of Commerce, who shall serve as chair;
 - (b) the director of the Division of Substance Abuse and Mental Health or the director's designee; and
 - (c) the following members appointed by the director of the division:
 - (i) one member of the public; and
 - (ii) six licensees.
- (2) The executive advisory committee shall:
 - (a) advise the division and make recommendations to the division on policy;
 - (b) serve without compensation, travel costs, or per diem for their services; and
 - (c) perform other duties as directed by the division.
- (3) Members of the executive advisory committee are immune from civil liability for any actions or judgments made in the execution of duties performed in service of the executive committee.
- (4) In accordance with Section 58-1-203, the director shall establish and appoint members of a clinical advisory committee consisting of community members who have expert knowledge in the diagnosis and treatment of substance use disorders.
- (5) The clinical advisory committee shall:
 - (a) advise the division and make recommendations to the division on actions regarding specific program contracts;
 - (b) perform duties as assigned by the division; and
 - (c) serve without compensation, travel costs, or per diem for their services.
- (6) The committees described in Subsections (1) and (4) and the division may seek input from other licensing boards.

Enacted by Chapter 107, 2020 General Session

58-4a-105 Program contract.

- (1) A licensee may enter into a program contract:
 - (a) any time before the conclusion of a hearing under Section 63G-4-206; and
 - (b) if the licensee who enters into the program contract has a substance use disorder.
- (2) A licensee may enter into a program contract to replace a diversion agreement the licensee previously entered into with the department.
- (3) A licensee who does not have a substance use disorder may not enter into a program contract with the division.
- (4) The committees described in Section 58-4a-104 may assist the division in evaluating or verifying documentation showing completion of or compliance with a program contract.
- (5) A decision by the program not to permit a licensee to participate in the program is not subject to appeal, agency review, or judicial review.

Enacted by Chapter 107, 2020 General Session

58-4a-106 Effect on other disciplinary proceedings.

- (1) Findings of fact stipulated to in a program contract are binding admissions on the licensee in any proceeding to terminate the program contract or any other division disciplinary administrative proceeding.
- (2) If the program contract is entered into after an adjudicative proceeding has commenced, the adjudicative proceeding shall be stayed pending successful completion of the program contract.
- (3) Acceptance of a licensee into the program does not preclude the division from investigating or taking disciplinary action against the licensee for other misconduct that:
 - (a) is not included in the program contract; or
 - (b) was committed at any time before or after the licensee entered into the program contract.
- (4) The period described in Subsection 58-1-401(6) is tolled during any period during which a licensee applies to participate in the program or is operating under a program contract.
- (5) In any proceedings to determine disciplinary sanctions under Title 58, Chapter 1, Part 4, License Denial, the division may consider:
 - (a) successful completion of the program;
 - (b) failure to complete the program; or
 - (c) the contents of the program contract.
- (6) A licensee terminated from the program may have disciplinary action taken against the licensee for misconduct committed before, during, or after the licensee's participation in the program.

Enacted by Chapter 107, 2020 General Session

58-4a-107 Violation of a program contract -- Adjudicative proceedings -- Penalties.

- (1) The division may serve an order to show cause on the licensee if the licensee:
 - (a) violates any term or condition of the program contract or diversion agreement;
 - (b) makes an intentional, material misrepresentation of fact in the program contract or diversion agreement; or
 - (c) violates any rule or law governing the licensee's profession.
- (2) The order to show cause described in Subsection (1) shall:
 - (a) describe the alleged misconduct;
 - (b) set a time and place for a hearing to determine whether the licensee's program contract should be terminated; and
 - (c) contain all of the information required by a notice of agency action in Subsection 63G-4-201(2).
- (3) Proceedings to terminate a program contract shall comply with Title 63G, Chapter 4, Administrative Procedures Act, except the notice of agency action shall be in the form of the order to show cause described in Subsection (2).
- (4) During a proceeding to terminate a program contract, the licensee, the licensee's legal representative, and the division shall have access to information contained in the division's program file as permitted by law.
- (5) The director shall terminate the program contract and place the licensee on probation in accordance with rules made by the division in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act if, during the administrative proceedings described in Subsection (3), the presiding officer finds that the licensee has:
 - (a) violated the program contract;
 - (b) made an intentional material misrepresentation of fact in the program contract; or
 - (c) violated a law or rule governing the licensee's profession.

- (6) If, during the proceedings described in Subsection (3), the presiding officer finds that the licensee has engaged in especially egregious misconduct, the director may revoke the licensee's license or take other appropriate disciplinary action.
- (7) A licensee who is terminated from the program may have disciplinary action taken under Title 58, Chapter 1, Part 4, License Denial, for misconduct committed before, during, or after the licensee's participation in the program.

Amended by Chapter 420, 2024 General Session

58-4a-108 Emergency order.

Nothing in this chapter precludes the division from issuing an emergency order pursuant to Section 63G-4-502 regarding a licensee's participation in the program.

Enacted by Chapter 107, 2020 General Session

58-4a-109 Public meetings.

Program meetings and hearings are not subject to Title 52, Chapter 4, Open and Public Meetings Act.

Enacted by Chapter 107, 2020 General Session

58-4a-110 Fees -- Fines.

- (1) The division, in accordance with Section 63J-1-504, shall establish fees in an amount to pay the costs to the division of operating the program.
- (2) The division may, for a licensee who has entered into a program contract, assess a fine for a violation of a program contract, in accordance with a fine schedule the division establishes by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

Enacted by Chapter 107, 2020 General Session

58-4a-111 Reporting.

- (1) Program contracts shall allow the division to report regularly to the licensee's Utah professional licensing board regarding the licensee's progress in the program to the extent that reporting does not violate HIPAA.
- (2) The executive advisory committee and the clinical advisory committee described in Section 58-4a-104 may assist Utah professional licensing boards and division staff in monitoring the compliance of a licensee who has entered into a program contract.

Enacted by Chapter 107, 2020 General Session