Effective 5/10/2016

Title 62A. Utah Human Services Code

Chapter 1
Department of Human Services

Part 1
Department of Human Services Administration

62A-1-104 Definitions.

(1) As used in this title:
  (a) "Competency evaluation" means the same as that term is defined in Section 77-15-2.
  (b) "Concurrence of the board" means agreement by a majority of the members of a board.
  (c) "Department" means the Department of Health and Human Services created in Section 26B-1-201.
  (d) "Executive director" means the executive director of the department, appointed under Section 26B-1-203.
  (e) "Forensic evaluator" means the same as that term is defined in Section 77-15-2.
  (f) "Stabilization services" means in-home services provided to a child with, or who is at risk for, complex emotional and behavioral needs, including teaching the child's parent or guardian skills to improve family functioning.
  (g) "System of care" means a broad, flexible array of services and supports that:
    (i) serves a child with or who is at risk for complex emotional and behavioral needs;
    (ii) is community based;
    (iii) is informed about trauma;
    (iv) builds meaningful partnerships with families and children;
    (v) integrates service planning, service coordination, and management across state and local entities;
    (vi) includes individualized case planning;
    (vii) provides management and policy infrastructure that supports a coordinated network of interdepartmental service providers, contractors, and service providers who are outside of the department; and
    (viii) is guided by the type and variety of services needed by a child with or who is at risk for complex emotional and behavioral needs and by the child's family.
(2) The definitions provided in Subsection (1) are to be applied in addition to definitions contained throughout this title that are applicable to specified chapters or parts.

Amended by Chapter 255, 2022 General Session

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

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

(b) Notwithstanding the requirements of Subsection (2)(a), the governor shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of board members are staggered so that approximately half of the board is appointed every two years.
(c) Board members shall continue in office until the expiration of their terms and until their successors are appointed, which may not exceed 90 days after the formal expiration of a term.
(d) When a vacancy occurs in the membership for any reason, the replacement shall be appointed for the unexpired term.
(3) No more than four members of the board may be from the same political party. The board shall have diversity of gender, ethnicity, and culture; and members shall be chosen on the basis of their active interest, experience, and demonstrated ability to deal with issues related to the Board of Aging and Adult Services .
(4) The board shall annually elect a chairperson from the board's membership. The board shall hold meetings at least once every three months. Within budgetary constraints, meetings may be held from time to time on the call of the chairperson or of the majority of the members of the board. Four members of the board are necessary to constitute a quorum at any meeting, and, if a quorum exists, the action of the majority of members present shall be the action of the board.
(5) A member may not receive compensation or benefits for the member's service, but, at the executive director's discretion, may receive per diem and travel expenses in accordance with:
(a) Section 63A-3-106;
(b) Section 63A-3-107; and
(c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.
(6) The board shall adopt bylaws governing its activities. Bylaws shall include procedures for removal of a board member who is unable or unwilling to fulfill the requirements of the board member's appointment.
(7) The board has program policymaking authority for the division over which the board presides.
(8) A member of the board shall comply with the conflict of interest provisions described in Title 63G, Chapter 24, Part 3, Conflicts of Interest.

Amended by Chapter 255, 2022 General Session

62A-1-108.5 Mental illness and intellectual disability examinations -- Responsibilities of the department.

(1) In accomplishing the department's duties to conduct a competency evaluation under Title 77, Utah Code of Criminal Procedure, and a juvenile competency evaluation under Section 80-6-402, the department shall proceed as outlined in this section and within appropriations authorized by the Legislature.
(2) When the department is ordered by a court to conduct a competency evaluation, the department shall designate a forensic evaluator, selected under Subsection (4), to evaluate the defendant in the defendant's current custody or status.
(3) When the department is ordered by the juvenile court to conduct a juvenile competency evaluation under Section 80-6-402, the department shall:
(a) designate an examiner selected pursuant to Subsection (4) to evaluate the minor; and
(b) upon a finding of good cause and order of the court, designate a second examiner to evaluate the minor.
(4) The department shall establish criteria, in consultation with the Commission on Criminal and Juvenile Justice, and shall contract with persons to conduct competency evaluations and

juvenile competency evaluations under Subsections (2) and (3)(b). In making this selection, the department shall follow the provisions of Title 63G, Chapter 6a, Utah Procurement Code.

(5) Nothing in this section prohibits the department, at the request of defense counsel or a prosecuting attorney in a criminal proceeding under Title 77, Utah Code of Criminal Procedure, and for good cause shown, from proposing a person who has not been previously selected under Subsection (4) to contract with the department to conduct the evaluation. In selecting that person, the criteria of the department established under Subsection (4) and the provisions of Title 63G, Chapter 6a, Utah Procurement Code, shall be met.

Amended by Chapter 262, 2021 General Session

62A-1-115 Actions on behalf of department -- Party in interest.

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

Enacted by Chapter 1, 1988 General Session

62A-1-117 Assignment of support -- Children in state custody.

(1) Child support is assigned to the department by operation of law when a child is residing outside of his home in the protective custody, temporary custody, custody, or care of the state for at least 30 days.

(2) The department has the right to receive payment for child support assigned to it under Subsection (1).

(3) The Office of Recovery Services is the payee for the department for payment received under this section.

Enacted by Chapter 174, 1997 General Session

62A-1-121 Tracking effects of abuse of alcoholic products.

(1) There is created a committee within the department known as the "Alcohol Abuse Tracking Committee" that consists of:

  (a) the executive director or the executive director's designee;
  (b) the executive director of the Department of Health or that executive director's designee;
  (c) the commissioner of the Department of Public Safety or the commissioner's designee;
  (d) the director of the Department of Alcoholic Beverage Services or that director's designee;
  (e) the executive director of the Department of Workforce Services or that executive director's designee;
  (f) the chair of the Utah Substance Use and Mental Health Advisory Council or the chair's designee;
  (g) the state court administrator or the state court administrator's designee; and
  (h) the director of the Division of Technology Services or that director's designee.

(2) The executive director or the executive director's designee shall chair the committee.

(3)

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

Amended by Chapter 447, 2022 General Session

62A-1-122 Child pornography.
(1) As used in this section:
(a) "Child pornography" means the same as that term is defined in Section 76-5b-103.
(b) "Secure" means to prevent and prohibit access, electronic upload, transmission, or transfer of an image.
(2) The department or a division within the department may not retain child pornography longer than is necessary to comply with the requirements of this section.
(3) When the department or a division within the department obtains child pornography as a result of an employee unlawfully viewing child pornography, the department or division shall consult with and follow the guidance of the Division of Human Resource Management regarding personnel action and local law enforcement regarding retention of the child pornography.
(4) When the department or a division within the department obtains child pornography as a result of a report or an investigation, the department or division shall immediately secure the child pornography, or the electronic device if the child pornography is digital, and contact the law enforcement office that has jurisdiction over the area where the division's case is located.

Amended by Chapter 344, 2021 General Session

62A-1-123 Intergenerational poverty mitigation reporting.
(1) As used in this section:
  (a) "Cycle of poverty" means the same as that term is defined in Section 35A-9-102.
  (b) "Intergenerational poverty" means the same as that term is defined in Section 35A-9-102.
(2) On or before October 1 of each year, the department shall provide an annual report to the Department of Workforce Services for inclusion in the intergenerational poverty report described in Section 35A-9-202.
(3) The report shall:
  (a) describe policies, procedures, and programs that the department has implemented or modified to help break the cycle of poverty and end welfare dependency for children in the state affected by intergenerational poverty; and
  (b) contain recommendations to the Legislature on how to address issues relating to breaking the cycle of poverty and ending welfare dependency for children in the state affected by intergenerational poverty.

Enacted by Chapter 36, 2022 General Session

Part 2
National Professional Men's Basketball Team Support of Women and Children Issues Restricted Account Act

62A-1-201 Title.
This part is known as the "National Professional Men's Basketball Team Support of Women and Children Issues Restricted Account Act."

Enacted by Chapter 37, 2014 General Session

Chapter 2
Licensure of Programs and Facilities

62A-2-101 Definitions.
As used in this chapter:
(1) "Adoption services" means the same as that term is defined in Section 80-2-801.
(2) "Adult day care" means nonresidential care and supervision:
  (a) for three or more adults for at least four but less than 24 hours a day; and
  (b) that meets the needs of functionally impaired adults through a comprehensive program that provides a variety of health, social, recreational, and related support services in a protective setting.
(3) "Applicant" means a person that applies for an initial license or a license renewal under this chapter.
(4)

(a) "Associated with the licensee" means that an individual is:
(i) affiliated with a licensee as an owner, director, member of the governing body, employee, agent, provider of care, department contractor, or volunteer; or
(ii) applying to become affiliated with a licensee in a capacity described in Subsection (4)(a)(i).
(b) "Associated with the licensee" does not include:
(i) service on the following bodies, unless that service includes direct access to a child or a vulnerable adult:
(A) a local mental health authority described in Section 17-43-301;
(B) a local substance abuse authority described in Section 17-43-201; or
(C) a board of an organization operating under a contract to provide mental health or substance abuse programs, or services for the local mental health authority or substance abuse authority; or
(ii) a guest or visitor whose access to a child or a vulnerable adult is directly supervised at all times.
(5)
(a) "Boarding school" means a private school that:
(i) uses a regionally accredited education program;
(ii) provides a residence to the school's students:
(A) for the purpose of enabling the school's students to attend classes at the school; and
(B) as an ancillary service to educating the students at the school;
(iii) has the primary purpose of providing the school's students with an education, as defined in Subsection (5)(b)(i); and
(iv)
(A) does not provide the treatment or services described in Subsection (38)(a); or
(B) provides the treatment or services described in Subsection (38)(a) on a limited basis, as described in Subsection (5)(b)(ii).
(b)
(i) For purposes of Subsection (5)(a)(iii), "education" means a course of study for one or more of grades kindergarten through 12th grade.
(ii) For purposes of Subsection (5)(a)(iv)(B), a private school provides the treatment or services described in Subsection (38)(a) on a limited basis if:
(A) the treatment or services described in Subsection (38)(a) are provided only as an incidental service to a student; and
(B) the school does not:
(I) specifically solicit a student for the purpose of providing the treatment or services described in Subsection (38)(a); or
(II) have a primary purpose of providing the treatment or services described in Subsection (38)(a).
(c) "Boarding school" does not include a therapeutic school.
(6) "Child" means an individual under 18 years old.
(7) "Child placing" means receiving, accepting, or providing custody or care for any child, temporarily or permanently, for the purpose of:
(a) finding a person to adopt the child;
(b) placing the child in a home for adoption; or
(c) foster home placement.
(8) "Child-placing agency" means a person that engages in child placing.
(9) "Client" means an individual who receives or has received services from a licensee.
(10)

(a) "Congregate care program" means any of the following that provide services to a child:
(i) an outdoor youth program;
(ii) a residential support program;
(iii) a residential treatment program; or
(iv) a therapeutic school.
(b) "Congregate care program" does not include a human services program that:
(i) is licensed to serve adults; and
(ii) is approved by the office to service a child for a limited time.
(11) "Day treatment" means specialized treatment that is provided to:
(a) a client less than 24 hours a day; and
(b) four or more persons who:
(i) are unrelated to the owner or provider; and
(ii) have emotional, psychological, developmental, physical, or behavioral dysfunctions, impairments, or chemical dependencies.
(12) "Department" means the Department of Human Services.
(13) "Department contractor" means an individual who:
(a) provides services under a contract with the department; and
(b) due to the contract with the department, has or will likely have direct access to a child or vulnerable adult.
(14) "Direct access" means that an individual has, or likely will have:
(a) contact with or access to a child or vulnerable adult that provides the individual with an opportunity for personal communication or touch; or
(b) an opportunity to view medical, financial, or other confidential personal identifying information of the child, the child's parents or legal guardians, or the vulnerable adult.
(15) "Directly supervised" means that an individual is being supervised under the uninterrupted visual and auditory surveillance of another individual who has a current background screening approval issued by the office.
(16) "Director" means the director of the office.
(17) "Domestic violence" means the same as that term is defined in Section 77-36-1.
(18) "Domestic violence treatment program" means a nonresidential program designed to provide psychological treatment and educational services to perpetrators and victims of domestic violence.
(19) "Elder adult" means a person 65 years old or older.
(20) "Executive director" means the executive director of the department.
(21) "Foster home" means a residence that is licensed or certified by the office for the full-time substitute care of a child.
(22) "Health benefit plan" means the same as that term is defined in Section 31A-1-301.
(23) "Health care provider" means the same as that term is defined in Section 78B-3-403.
(24) "Health insurer" means the same as that term is defined in Section 31A-22-615.5.
(25)
(a) "Human services program" means:
(i) a foster home;
(ii) a therapeutic school;
(iii) a youth program;
(iv) an outdoor youth program;
(v) a residential treatment program;
(vi) a residential support program;
(vii) a resource family home;

(viii) a recovery residence; or
(ix) a facility or program that provides:
(A) adult day care;
(B) day treatment;
(C) outpatient treatment;
(D) domestic violence treatment;
(E) child-placing services;
(F) social detoxification; or
(G) any other human services that are required by contract with the department to be licensed with the department.
(b) "Human services program" does not include:
(i) a boarding school; or
(ii) a residential, vocational and life skills program, as defined in Section 13-53-102.
(26) "Indian child" means the same as that term is defined in 25 U.S.C. Sec. 1903.
(27) "Indian country" means the same as that term is defined in 18 U.S.C. Sec. 1151.
(28) "Indian tribe" means the same as that term is defined in 25 U.S.C. Sec. 1903.
(29) "Intermediate secure treatment" means 24-hour specialized residential treatment or care for an individual who:
(a) cannot live independently or in a less restrictive environment; and
(b) requires, without the individual's consent or control, the use of locked doors to care for the individual.
(30) "Licensee" means an individual or a human services program licensed by the office.
(31) "Local government" means a city, town, metro township, or county.
(32) "Minor" means child.
(33) "Office" means the Office of Licensing within the Department of Human Services.
(34) "Outdoor youth program" means a program that provides:
(a) services to a child that has:
(i) a chemical dependency; or
(ii) a dysfunction or impairment that is emotional, psychological, developmental, physical, or behavioral;
(b) a 24-hour outdoor group living environment; and
(c)
(i) regular therapy, including group, individual, or supportive family therapy; or
(ii) informal therapy or similar services, including wilderness therapy, adventure therapy, or outdoor behavioral healthcare.
(35) "Outpatient treatment" means individual, family, or group therapy or counseling designed to improve and enhance social or psychological functioning for those whose physical and emotional status allows them to continue functioning in their usual living environment.
(36) "Practice group" or "group practice" means two or more health care providers legally organized as a partnership, professional corporation, or similar association, for which:
(a) substantially all of the services of the health care providers who are members of the group are provided through the group and are billed in the name of the group and amounts received are treated as receipts of the group; and
(b) the overhead expenses of and the income from the practice are distributed in accordance with methods previously determined by members of the group.
(37) "Private-placement child" means a child whose parent or guardian enters into a contract with a congregate care program for the child to receive services.
(38)

(a) "Recovery residence" means a home, residence, or facility that meets at least two of the following requirements:
(i) provides a supervised living environment for individuals recovering from a substance use disorder;
(ii) provides a living environment in which more than half of the individuals in the residence are recovering from a substance use disorder;
(iii) provides or arranges for residents to receive services related to their recovery from a substance use disorder, either on or off site;
(iv) is held out as a living environment in which individuals recovering from substance abuse disorders live together to encourage continued sobriety; or
(v)
(A) receives public funding; or
(B) is run as a business venture, either for-profit or not-for-profit.
(b) "Recovery residence" does not mean:
(i) a residential treatment program;
(ii) residential support program; or
(iii) a home, residence, or facility, in which:
(A) residents, by their majority vote, establish, implement, and enforce policies governing the living environment, including the manner in which applications for residence are approved and the manner in which residents are expelled;
(B) residents equitably share rent and housing-related expenses; and
(C) a landlord, owner, or operator does not receive compensation, other than fair market rental income, for establishing, implementing, or enforcing policies governing the living environment.
(39) "Regular business hours" means:
(a) the hours during which services of any kind are provided to a client; or
(b) the hours during which a client is present at the facility of a licensee.
(40)
(a) "Residential support program" means a program that arranges for or provides the necessities of life as a protective service to individuals or families who have a disability or who are experiencing a dislocation or emergency that prevents them from providing these services for themselves or their families.
(b) "Residential support program" includes a program that provides a supervised living environment for individuals with dysfunctions or impairments that are:
(i) emotional;
(ii) psychological;
(iii) developmental; or
(iv) behavioral.
(c) Treatment is not a necessary component of a residential support program.
(d) "Residential support program" does not include:
(i) a recovery residence; or
(ii) a program that provides residential services that are performed:
(A) exclusively under contract with the department and provided to individuals through the Division of Services for People with Disabilities; or
(B) in a facility that serves fewer than four individuals.
(41)
(a) "Residential treatment" means a 24-hour group living environment for four or more individuals unrelated to the owner or provider that offers room or board and specialized treatment,

behavior modification, rehabilitation, discipline, emotional growth, or habilitation services for persons with emotional, psychological, developmental, or behavioral dysfunctions, impairments, or chemical dependencies.

(b) "Residential treatment" does not include a:

(i) boarding school;

(ii) foster home; or

(iii) recovery residence.

(42) "Residential treatment program" means a program or facility that provides:

(a) residential treatment; or

(b) intermediate secure treatment.

(43) "Seclusion" means the involuntary confinement of an individual in a room or an area:

(a) away from the individual's peers; and

(b) in a manner that physically prevents the individual from leaving the room or area.

(44) "Social detoxification" means short-term residential services for persons who are experiencing or have recently experienced drug or alcohol intoxication, that are provided outside of a health care facility licensed under Title 26, Chapter 21, Health Care Facility Licensing and Inspection Act, and that include:

(a) room and board for persons who are unrelated to the owner or manager of the facility;

(b) specialized rehabilitation to acquire sobriety; and

(c) aftercare services.

(45) "Substance abuse disorder" or "substance use disorder" mean the same as "substance use disorder" is defined in Section 62A-15-1202.

(46) "Substance abuse treatment program" or "substance use disorder treatment program" means a program:

(a) designed to provide:

(i) specialized drug or alcohol treatment;

(ii) rehabilitation; or

(iii) habilitation services; and

(b) that provides the treatment or services described in Subsection (46)(a) to persons with:

(i) a diagnosed substance use disorder; or

(ii) chemical dependency disorder.

(47) "Therapeutic school" means a residential group living facility:

(a) for four or more individuals that are not related to:

(i) the owner of the facility; or

(ii) the primary service provider of the facility;

(b) that serves students who have a history of failing to function:

(i) at home;

(ii) in a public school; or

(iii) in a nonresidential private school; and

(c) that offers:

(i) room and board; and

(ii) an academic education integrated with:

(A) specialized structure and supervision; or

(B) services or treatment related to:

(I) a disability;

(II) emotional development;

(III) behavioral development;

(IV) familial development; or

(V) social development.
(48) "Unrelated persons" means persons other than parents, legal guardians, grandparents, brothers, sisters, uncles, or aunts.
(49) "Vulnerable adult" means an elder adult or an adult who has a temporary or permanent mental or physical impairment that substantially affects the person's ability to:
(a) provide personal protection;
(b) provide necessities such as food, shelter, clothing, or mental or other health care;
(c) obtain services necessary for health, safety, or welfare;
(d) carry out the activities of daily living;
(e) manage the adult's own resources; or
(f) comprehend the nature and consequences of remaining in a situation of abuse, neglect, or exploitation.
(50)
(a) "Youth program" means a program designed to provide behavioral, substance abuse, or mental health services to minors that:
(i) serves adjudicated or nonadjudicated youth;
(ii) charges a fee for its services;
(iii) may provide host homes or other arrangements for overnight accommodation of the youth;
(iv) may provide all or part of its services in the outdoors;
(v) may limit or censor access to parents or guardians; and
(vi) prohibits or restricts a minor's ability to leave the program at any time of the minor's own free will.
(b) "Youth program" does not include recreational programs such as Boy Scouts, Girl Scouts, 4-H, and other such organizations.
(51)
(a) "Youth transportation company" means any person that transports a child for payment to or from a congregate care program in Utah.
(b) "Youth transportation company" does not include:
(i) a relative of the child;
(ii) a state agency; or
(iii) a congregate care program's employee who transports the child from the congregate care program that employs the employee and returns the child to the same congregate care program.

Amended by Chapter 334, 2022 General Session
Amended by Chapter 468, 2022 General Session

62A-2-102 Purpose of licensure.

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

Amended by Chapter 358, 1998 General Session

62A-2-103 Office of Licensing -- Appointment -- Qualifications of director.

(1) There is created the Office of Licensing within the Department of Human Services. The office shall be the licensing authority for the department, and is vested with all the powers, duties, and responsibilities described in this chapter.
(2) The executive director shall appoint the director of the office.

(3) The director shall have a bachelor's degree from an accredited university or college, be experienced in administration, and be knowledgeable of human services licensing.

Amended by Chapter 358, 1998 General Session

62A-2-106 Office responsibilities.

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

(I) staff and client safety and protection that permits the school to provide for the direct supervision of clients at all times;
(J) the administration and maintenance of client and service records;
(K) staff qualifications and training, including standards for permitting experience to be substituted for education, unless prohibited by law;
(L) staff to client ratios;
(M) access to firearms; and
(N) the prevention of abuse, neglect, exploitation, harm, mistreatment, or fraud;
(iii) procedures and standards for permitting a licensee to:
(A) provide in the same facility and under the same conditions as children, residential treatment services to a person 18 years old or older who:
(I) begins to reside at the licensee's residential treatment facility before the person's 18th birthday;
(II) has resided at the licensee's residential treatment facility continuously since the time described in Subsection (1)(a)(iii)(A)(I);
(III) has not completed the course of treatment for which the person began residing at the licensee's residential treatment facility; and
(IV) voluntarily consents to complete the course of treatment described in Subsection (1)(a)(iii)(A)(III); or
(B)
(I) provide residential treatment services to a child who is:
(Aa) at least 12 years old or, as approved by the office, younger than 12 years old; and
(Bb) under the custody of the Department of Human Services, or one of its divisions; and
(II) provide, in the same facility as a child described in Subsection (1)(a)(iii)(B)(I), residential treatment services to a person who is:
(Aa) at least 18 years old, but younger than 21 years old; and
(Bb) under the custody of the Department of Human Services, or one of its divisions;
(iv) minimum administration and financial requirements for licensees;
(v) guidelines for variances from rules established under this Subsection (1);
(vi) ethical standards, as described in Subsection 78B-6-106(3), and minimum responsibilities of a child-placing agency that provides adoption services and that is licensed under this chapter;
(vii) what constitutes an "outpatient treatment program" for purposes of this chapter;
(viii) a procedure requiring a licensee to provide an insurer the licensee's records related to any services or supplies billed to the insurer, and a procedure allowing the licensee and the insurer to contact the Insurance Department to resolve any disputes;
(ix) a protocol for the office to investigate and process complaints about licensees;
(x) a procedure for a licensee to:
(A) report the use of a restraint or seclusion within one business day after the day on which the use of the restraint or seclusion occurs; and
(B) report a critical incident within one business day after the day on which the incident occurs;
(xi) guidelines for the policies and procedures described in Sections 62A-2-123 and 62A-2-124;
(xii) a procedure for the office to review and approve the policies and procedures described in Sections 62A-2-123 and 62A-2-124; and
(xiii) a requirement that each human services program publicly post information that informs an individual how to submit a complaint about a human services program to the office;
(b) enforce rules relating to the office;

(c) issue licenses in accordance with this chapter;
(d) if the United States Department of State executes an agreement with the office that designates the office to act as an accrediting entity in accordance with the Intercountry Adoption Act of 2000, Pub. L. No. 106-279, accredit one or more agencies and persons to provide intercountry adoption services pursuant to:
(i) the Intercountry Adoption Act of 2000, Pub. L. No. 106-279; and
(ii) the implementing regulations for the Intercountry Adoption Act of 2000, Pub. L. No. 106-279;
(e) make rules to implement the provisions of Subsection (1)(d);
(f) conduct surveys and inspections of licensees and facilities in accordance with Section 62A-2-118;
(g) collect licensure fees;
(h) notify licensees of the name of a person within the department to contact when filing a complaint;
(i) investigate complaints regarding any licensee or human services program;
(j) have access to all records, correspondence, and financial data required to be maintained by a licensee;
(k) have authority to interview any client, family member of a client, employee, or officer of a licensee;
(l) have authority to deny, condition, revoke, suspend, or extend any license issued by the department under this chapter by following the procedures and requirements of Title 63G, Chapter 4, Administrative Procedures Act;
(m) electronically post notices of agency action issued to a human services program, with the exception of a foster home, on the office's website, in accordance with Title 63G, Chapter 2, Government Records Access and Management Act; and
(n) upon receiving a local government's request under Section 62A-2-108.4, notify the local government of new human services program license applications, except for foster homes, for human services programs located within the local government's jurisdiction.

(2) In establishing rules under Subsection (1)(a)(ii)(G), the office shall require a licensee to establish and comply with an emergency response plan that requires clients and staff to:
(a) immediately report to law enforcement any significant criminal activity, as defined by rule, committed:
(i) on the premises where the licensee operates its human services program;
(ii) by or against its clients; or
(iii) by or against a staff member while the staff member is on duty;
(b) immediately report to emergency medical services any medical emergency, as defined by rule:
(i) on the premises where the licensee operates its human services program;
(ii) involving its clients; or
(iii) involving a staff member while the staff member is on duty; and
(c) immediately report other emergencies that occur on the premises where the licensee operates its human services program to the appropriate emergency services agency.

Amended by Chapter 400, 2021 General Session

62A-2-108 Licensure requirements -- Expiration -- Renewal.

(1) Except as provided in Section 62A-2-110, an individual, agency, firm, corporation, association, or governmental unit acting severally or jointly with any other individual, agency, firm, corporation, association, or governmental unit may not establish, conduct, or maintain a human

services program in this state without a valid and current license issued by and under the authority of the office as provided by this chapter and the rules under the authority of this chapter.

(2)

(a) For purposes of this Subsection (2), "member" means a person or entity that is associated with another person or entity:

(i) as a member;

(ii) as a partner;

(iii) as a shareholder; or

(iv) as a person or entity involved in the ownership or management of a human services program owned or managed by the other person or entity.

(b) A license issued under this chapter may not be assigned or transferred.

(c) An application for a license under this chapter shall be treated as an application for reinstatement of a revoked license if:

(i)

(A) the person or entity applying for the license had a license revoked under this chapter; and

(B) the revoked license described in Subsection (2)(c)(i)(A) is not reinstated before the application described in this Subsection (2)(c) is made; or

(ii) a member of an entity applying for the license:

(A)

(I) had a license revoked under this chapter; and

(II) the revoked license described in Subsection (2)(c)(ii)(A)(I) is not reinstated before the application described in this Subsection (2)(c) is made; or

(B)

(I) was a member of an entity that had a license revoked under this chapter at any time before the license was revoked; and

(II) the revoked license described in Subsection (2)(c)(ii)(B)(I) is not reinstated before the application described in this Subsection (2)(c) is made.

(3) A current license shall at all times be posted in the facility where each human services program is operated, in a place that is visible and readily accessible to the public.

(4)

(a) Except as provided in Subsection (4)(c), each license issued under this chapter expires at midnight on the last day of the same month the license was issued, one year following the date of issuance unless the license has been:

(i) previously revoked by the office;

(ii) voluntarily returned to the office by the licensee; or

(iii) extended by the office.

(b) A license shall be renewed upon application and payment of the applicable fee, unless the office finds that the licensee:

(i) is not in compliance with the:

(A) provisions of this chapter; or

(B) rules made under this chapter;

(ii) has engaged in a pattern of noncompliance with the:

(A) provisions of this chapter; or

(B) rules made under this chapter;

(iii) has engaged in conduct that is grounds for denying a license under Section 62A-2-112; or

(iv) has engaged in conduct that poses a substantial risk of harm to any person.

(c) The office may issue a renewal license that expires at midnight on the last day of the same month the license was issued, two years following the date of issuance, if:
(i) the licensee has maintained a human services license for at least 24 months before the day on which the licensee applies for the renewal; and
(ii) the licensee has not violated this chapter or a rule made under this chapter.
(5) Any licensee that is in operation at the time rules are made in accordance with this chapter shall be given a reasonable time for compliance as determined by the rule.
(6)
(a) A license for a human services program issued under this section shall apply to a specific human services program site.
(b) A human services program shall obtain a separate license for each site where the human services program is operated.

Amended by Chapter 78, 2017 General Session

62A-2-108.1 Coordination of human services and educational services -- Licensing of programs -- Procedures.
(1) As used in this section:
(a) "Accredited private school" means a private school that is accredited by an accrediting entity recognized by the Utah State Board of Education.
(b) "Education entitled children" means children:
(i) subject to compulsory education under Section 53G-6-202;
(ii) subject to the school attendance requirements of Section 53G-6-203; or
(iii) who are eligible for special education services as described in Title 53E, Chapter 7, Part 2, Special Education Program.
(2) Subject to Subsection (9) or (10), a human services program may not be licensed to serve education entitled children unless the human services program presents an educational service plan that includes evidence:
(a) satisfactory to:
(i) the office; and
(ii)
(A) the local school board of the school district in which the human services program will be operated; or
(B) the school district superintendent of the school district in which the human services program will be operated; and
(b) that children served by the human services program shall receive appropriate educational services satisfying the requirements of applicable law.
(3) An educational services plan may be accepted if the educational services plan includes:
(a) the following information provided by the human services program:
(i) the number of children served by the human services program estimated to be enrolled in the local school district;
(ii) the ages and grade levels of children served by the human services program estimated to be enrolled in the local school district;
(iii) the subjects or hours of the school day for which children served by the human services program are estimated to enroll in the local school district;
(iv) the direct contact information for the purposes of taking custody of a child served by the human services program during the school day in case of illness, disciplinary removal by a school, or emergency evacuation of a school; and

(v) the method or arrangements for the transportation of children served by the human services program to and from the school; and
(b) the following information provided by the school district:
(i) enrollment procedures and forms;
(ii) documentation required prior to enrollment from each of the child's previous schools of enrollment;
(iii) if applicable, a schedule of the costs for tuition and school fees; and
(iv) schools and services for which a child served by the human services program may be eligible.
(4) Subject to Subsection (9) or (10), if a human services program serves any education entitled children whose custodial parents or legal guardians reside outside the state, then the program shall also provide an educational funding plan that includes evidence:
(a) satisfactory to:
(i) the office; and
(ii)
(A) the local school board of the school district in which the human services program will be operated; or
(B) the school district superintendent of the school district in which the human services program will be operated; and
(b) that all costs for educational services to be provided to the education entitled children, including tuition, and school fees approved by the local school board, shall be borne by the human services program.
(5) Subject to Subsection (9) or (10), and in accordance with Subsection (2), the human services program shall obtain and provide the office with a letter:
(a) from the entity referred to in Subsection (2)(a)(ii):
(i) approving the educational service plan referred to in Subsection (3); or
(ii)
(A) disapproving the educational service plan referred to in Subsection (3); and
(B) listing the specific requirements the human services program must meet before approval is granted; and
(b) from the entity referred to in Subsection (4)(a)(ii):
(i) approving the educational funding plan, referred to in Subsection (4); or
(ii)
(A) disapproving the educational funding plan, referred to in Subsection (4); and
(B) listing the specific requirements the human services program must meet before approval is granted.
(6) Subject to Subsection (9), failure of a local school board or school district superintendent to respond to a proposed plan within 45 days of receipt of the plan is equivalent to approval of the plan by the local school board or school district superintendent if the human services program provides to the office:
(a) proof that:
(i) the human services program submitted the proposed plan to the local school board or school district superintendent; and
(ii) more than 45 days have passed from the day on which the plan was submitted; and
(b) an affidavit, on a form produced by the office, stating:
(i) the date that the human services program submitted the proposed plan to the local school board or school district superintendent;
(ii) that more than 45 days have passed from the day on which the plan was submitted; and

(iii) that the local school board or school district superintendent described in Subsection (6)(b)(i) failed to respond to the proposed plan within 45 days from the day on which the plan was submitted.

(7) If a licensee that is licensed to serve an education entitled child fails to comply with the licensee's approved educational service plan or educational funding plan, then:

(a) the office may give the licensee notice of intent to revoke the licensee's license; and

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

(8) If an education entitled child whose custodial parent or legal guardian resides within the state is provided with educational services by a school district other than the school district in which the custodial parent or legal guardian resides, then the funding provisions of Section 53G-6-405 apply.

(9) A human services program that is an accredited private school:

(a) for purposes of Subsection (3):

(i) is only required to submit proof to the office that the accreditation of the private school is current; and

(ii) is not required to submit an educational service plan for approval by an entity described in Subsection (2)(a)(ii);

(b) for purposes of Subsection (4):

(i) is only required to submit proof to the office that all costs for educational services provided to education entitled children will be borne by the human services program; and

(ii) is not required to submit an educational funding plan for approval by an entity described in Subsection (4)(a)(ii); and

(c) is not required to comply with Subsections (5) and (6).

(10) Except for Subsection (8), the provisions of this section do not apply to a human services program that is a licensed or certified foster home as defined in Section 62A-2-101.

Amended by Chapter 187, 2019 General Session
Amended by Chapter 316, 2019 General Session

62A-2-108.2 Licensing residential treatment programs and recovery residences -- Notification of local government.

(1)

(a) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the office shall make rules that establish categories of residential treatment and recovery residence licenses based on differences in the types of residential treatment programs and recovery residences.

(b) The categories referred to in Subsection (1)(a) may be based on differences in:

(i) services offered;

(ii) types of clients served;

(iii) risks posed to the community; or

(iv) other factors that make regulatory differences advisable.

(2) Subject to the requirements of federal and state law, and pursuant to the authority granted by Section 62A-2-106, the office shall establish and enforce rules that:

(a) relate generally to all categories of residential treatment program and recovery residence licenses; and

(b) relate to specific categories of residential treatment program and recovery residence licenses on the basis of the regulatory needs, as determined by the office, of residential treatment programs and recovery residences within those specific categories.

(3)
(a) Beginning July 1, 2014, the office shall charge an annual licensing fee, set by the office in accordance with the procedures described in Section 63J-1-504, to a recovery residence in an amount that will pay for the cost of the licensing and inspection requirements described in this section and in Section 62A-2-106.
(b) The office shall deposit the licensing fees described in this section in the General Fund as a dedicated credit to be used solely to pay for the cost of the licensing and inspection requirements described in this section and in Section 62A-2-106.
(4) Before submitting an application for a license to operate a residential treatment program, the applicant shall serve notice of its intent to operate a residential treatment program on the governing body of:
(a) the city in which the residential treatment program will be located; or
(b) if the residential treatment program will be located in the unincorporated area of a county, the county in which the residential treatment program will be located.
(5) The notice described in Subsection (4) shall include the following information relating to the residential treatment program:
(a) an accurate description of the residential treatment program;
(b) the location where the residential treatment program will be operated;
(c) the services that will be provided by the residential treatment program;
(d) the type of clients that the residential treatment program will serve;
(e) the category of license for which the residential treatment program is applying to the office;
(f) the name, telephone number, and address of a person that may be contacted to make inquiries about the residential treatment program; and
(g) any other information that the office may require by rule.
(6) When submitting an application for a license to operate a residential treatment program, the applicant shall include with the application:
(a) a copy of the notice described in Subsection (4); and
(b) proof that the applicant served the notice described in Subsection (4) on the governing body described in Subsection (4).

Amended by Chapter 240, 2014 General Session

62A-2-108.4 Request by local government.
(1) A local government may request that the office notify the local government of new human services program license applications for human services programs located within the local government's jurisdiction.
(2) Subsection (1) does not apply to foster homes.

Enacted by Chapter 342, 2016 General Session

62A-2-108.5 Notification requirement for child-placing agencies that provide foster home services -- Rulemaking authority.
(1) The office shall require a child-placing agency that provides foster home services to notify a foster parent that if the foster parent signs as the responsible adult for a foster child to receive a driver license under Section 53-3-211:
(a) the foster parent is jointly and severally liable with the minor for civil compensatory damages caused by the minor when operating a motor vehicle upon a highway as provided under Subsections 53-3-211(2) and (4); and

(b) the foster parent may file with the Driver License Division a verified written request that the learner permit or driver license be canceled in accordance with Section 53-3-211 if the foster child no longer resides with the foster parent.

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

Amended by Chapter 148, 2017 General Session

62A-2-108.6 Child placing licensure requirements -- Prohibited acts.

(1) As used in this section:

(a)

(i) "Advertisement" means any written, oral, or graphic statement or representation made in connection with a solicitation of business.

(ii) "Advertisement" includes a statement or representation described in Subsection (1)(a)(i) by a noncable television system, radio, printed brochure, newspaper, leaflet, flyer, circular, billboard, banner, Internet website, social media, or sign.

(b) "Birth parent" means the same as that term is defined in Section 78B-6-103.

(c) "Clearly and conspicuously disclose" means the same as that term is defined in Section 13-11a-2.

(d)

(i) "Matching advertisement" means any written, oral, or graphic statement or representation made in connection with a solicitation of business to provide the assistance described in Subsection (3)(a)(i), regardless of whether there is or will be an exchange described in Subsection (3)(a)(ii).

(ii) "Matching advertisement" includes a statement or representation described in Subsection (1)(d)(i) by a noncable television system, radio, printed brochure, newspaper, leaflet, flyer, circular, billboard, banner, Internet website, social media, or sign.

(2)

(a) Subject to Section 78B-24-205, a person may not engage in child placing, or solicit money or other assistance for child placing, without a valid license issued by the office in accordance with this chapter.

(b) If a child-placing agency's license is suspended or revoked in accordance with this chapter, the care, control, or custody of any child who is in the care, control, or custody of the child-placing agency shall be transferred to the Division of Child and Family Services.

(3)

(a)

(i) An attorney, physician, or other person may assist:

(A) a birth parent to identify or locate a prospective adoptive parent who is interested in adopting the birth parent's child; or

(B) a prospective adoptive parent to identify or locate a child to be adopted.

(ii) A payment, charge, fee, reimbursement of expense, or exchange of value of any kind, or promise or agreement to make the same, may not be made for the assistance described in Subsection (3)(a)(i).

(b) An attorney, physician, or other person may not:

(i) issue or cause to be issued to any person a card, sign, or device indicating that the attorney, physician, or other person is available to provide the assistance described in Subsection (3)(a)(i);

(ii) cause, permit, or allow any sign or marking indicating that the attorney, physician, or other person is available to provide the assistance described in Subsection (3)(a)(i), on or in any building or structure;
(iii) announce, cause, permit, or allow an announcement indicating that the attorney, physician, or other person is available to provide the assistance described in Subsection (3)(a)(i), to appear in any newspaper, magazine, directory, on radio or television, or an Internet website relating to a business;
(iv) announce, cause, permit, or allow a matching advertisement; or
(v) announce, cause, permit, or allow an advertisement that indicates or implies the attorney, physician, or other person is available to provide the assistance described in Subsection (3)(a)(i) as part of, or related to, other adoption-related services by using any of the following terms:
(A) "comprehensive";
(B) "complete";
(C) "one-stop";
(D) "all-inclusive"; or
(E) any other term similar to the terms described in Subsections (3)(b)(v)(A) through (D).
(c) An attorney, physician, or other person who is not licensed by the office shall clearly and conspicuously disclose in any print media advertisement or written contract regarding adoption services or adoption-related services that the attorney, physician, or other person is not licensed to provide adoption services by the office.
(4) A person who intentionally or knowingly violates Subsection (2) or (3) is guilty of a third degree felony.
(5) This section does not preclude payment of fees for medical, legal, or other lawful services rendered in connection with the care of a mother, delivery and care of a child, or lawful adoption proceedings.
(6) In accordance with federal law, only an agent or employee of the Division of Child and Family Services or of a licensed child-placing agency may certify to United States Citizenship and Immigration Services that a family meets the preadoption requirements of the Division of Child and Family Services.
(7) A licensed child-placing agency or an attorney practicing in this state may not place a child for adoption, either temporarily or permanently, with an individual who would not be qualified for adoptive placement under Sections 78B-6-102, 78B-6-117, and 78B-6-137.

Amended by Chapter 287, 2022 General Session
Amended by Chapter 326, 2022 General Session
Renumbered and Amended by Chapter 334, 2022 General Session
Amended by Chapter 334, 2022 General Session, (Coordination Clause)

62A-2-108.8 Residential support program -- Temporary homeless youth shelter.

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

Amended by Chapter 262, 2021 General Session

62A-2-109 License application -- Classification of information.

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

Amended by Chapter 75, 2009 General Session

62A-2-110 Exclusions from chapter.

The provisions of this chapter do not apply to:
(1) a facility or program owned or operated by an agency of the United States government;
(2) a facility or program operated by or under an exclusive contract with the Department of Corrections;
(3) unless required otherwise by a contract with the department, individual or group counseling by a mental health professional licensed under Title 58, Chapter 60, Mental Health Professional Practice Act;
(4) a general acute hospital, small health care facility, specialty hospital, nursing care facility, or other health care facility licensed by the Department of Health under Title 26, Chapter 21, Health Care Facility Licensing and Inspection Act; or
(5) a boarding school.

Amended by Chapter 188, 2005 General Session

62A-2-111 Adjudicative proceedings.

(1) Whenever the office has reason to believe that a licensee is in violation of this chapter or rules made under this chapter, the office may commence adjudicative proceedings to determine the legal rights of the licensee by serving notice of agency action in accordance with Title 63G, Chapter 4, Administrative Procedures Act.
(2) A licensee, human services program, or individual may commence adjudicative proceedings, in accordance with Title 63G, Chapter 4, Administrative Procedures Act, regarding all office actions that determine the legal rights, duties, privileges, immunities, or other legal interests of the licensee, human services program, or persons associated with the licensee, including all office actions to grant, deny, place conditions on, revoke, suspend, withdraw, or amend an authority, right, or license under this chapter.

Amended by Chapter 382, 2008 General Session

62A-2-112 Violations -- Penalties.

(1) As used in this section, "health care provider" means a person licensed to provide health care services under this chapter.
(2) The office may deny, place conditions on, suspend, or revoke a human services license, if it finds, related to the human services program:
  (a) that there has been a failure to comply with the rules established under this chapter;
  (b) evidence of aiding, abetting, or permitting the commission of any illegal act; or
  (c) evidence of conduct adverse to the standards required to provide services and promote public trust, including aiding, abetting, or permitting the commission of abuse, neglect, exploitation, harm, mistreatment, or fraud.
(3) The office may restrict or prohibit new admissions to a human services program, if it finds:
  (a) that there has been a failure to comply with rules established under this chapter;

(b) evidence of aiding, abetting, or permitting the commission of any illegal act; or
(c) evidence of conduct adverse to the standards required to provide services and promote public trust, including aiding, abetting, or permitting the commission of abuse, neglect, exploitation, harm, mistreatment, or fraud.
(4)
(a) The office may assess a fine of up to $500 per violation against a health care provider that violates Section 31A-26-313.
(b) The office shall waive the fine described in Subsection (4)(a) if:
(i) the health care provider demonstrates to the office that the health care provider mitigated and reversed any damage to the insured caused by the health care provider or third party's violation; or
(ii) the insured does not pay the full amount due on the bill that is the subject of the violation, including any interest, fees, costs, and expenses, within 120 days after the day on which the health care provider or third party makes a report to a credit bureau or takes an action in violation of Section 31A-26-313.
(5) If a congregate care program knowingly fails to comply with the provisions of Section 62A-2-125, the office may impose a penalty on the congregate care program that is less than or equal to the cost of care incurred by the state for a private-placement child described in Subsection 62A-2-125(3).
(6) The office shall make rules for calculating the cost of care described in Subsection (5) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

Amended by Chapter 117, 2021 General Session

62A-2-113 License revocation -- Suspension.
(1) If a license is revoked, the office may not grant a new license unless:
(a) the human services program provides satisfactory evidence to the office that the conditions upon which revocation was based have been corrected;
(b) the human services program is inspected by the office and found to be in compliance with all provisions of this chapter and applicable rules;
(c) at least five years have passed since the day on which the licensee is served with final notice that the license is revoked; and
(d) the office determines that the interests of the public will not be jeopardized by granting the license.
(2) The office may suspend a license for no longer than three years.
(3) When a license has been suspended, the office may restore, or restore subject to conditions, the suspended license upon a determination that the:
(a) conditions upon which the suspension was based have been completely or partially corrected; and
(b) interests of the public will not be jeopardized by restoration of the license.

Amended by Chapter 93, 2018 General Session

62A-2-115 Injunctive relief and other legal procedures.
In addition to, and notwithstanding, any other remedy provided by law the department may, in a manner provided by law and upon the advice of the attorney general, who shall represent the department in the proceedings, maintain an action in the name of the state for injunction or other process against any person or governmental unit to restrain or prevent the establishment,

management, or operation of a human services program or facility in violation of this chapter or rules established under this chapter.

Amended by Chapter 75, 2009 General Session

62A-2-115.1 Injunctive relief and civil penalty for unlawful child placing -- Enforcement by county attorney or attorney general.

(1) The office or another interested person may commence an action in district court to enjoin any person, agency, firm, corporation, or association from violating Section 62A-2-108.6.
(2) The office shall:
  (a) solicit information from the public relating to violations of Section 62A-2-108.6; and
  (b) upon identifying a violation of Section 62A-2-108.6:
    (i) send a written notice to the person who violated Section 62A-2-108.6 that describes the alleged violation; and
    (ii) notify the following persons of the alleged violation:
      (A) the local county attorney; and
      (B) the Division of Professional Licensing.
(3)
  (a) A county attorney or the attorney general shall institute legal action as necessary to enforce the provisions of Section 62A-2-108.6 after being informed of an alleged violation.
  (b) If a county attorney does not take action within 30 days after the day on which the county attorney is informed of an alleged violation of Section 62A-2-108.6, the attorney general may be requested to take action, and shall then institute legal proceedings in place of the county attorney.
(4)
  (a) In addition to the remedies provided in Subsections (1) and (3), any person, agency, firm, corporation, or association found to be in violation of Section 62A-2-108.6 shall forfeit all proceeds identified as resulting from the transaction, and may also be assessed a civil penalty of not more than $10,000 for each violation.
  (b) Each act in violation of Section 62A-2-108.6, including each placement or attempted placement of a child, is a separate violation.
(5)
  (a) The amount recovered as a penalty under Subsection (4) shall be placed in the General Fund of the prosecuting county, or in the state General Fund if the attorney general prosecutes.
  (b) If two or more governmental entities are involved in the prosecution, the court shall apportion the penalty among the entities, according to the entities' involvement.
(6) A judgment ordering the payment of any penalty or forfeiture under Subsection (4) is a lien when recorded in the judgment docket, and has the same effect and is subject to the same rules as a judgment for money in a civil action.

Renumbered and Amended by Chapter 334, 2022 General Session
Amended by Chapter 415, 2022 General Session

62A-2-115.2 Child-placing agency proof of authority in a proceeding.

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

the proceeding requests that the child-placing agency or the child-placing agency's representative establish proof of authority.

Renumbered and Amended by Chapter 334, 2022 General Session

62A-2-116 Violation -- Criminal penalties.

(1)

(a) A person who owns, establishes, conducts, maintains, manages, or operates a human services program in violation of this chapter is guilty of a class A misdemeanor if the violation endangers or harms the health, welfare, or safety of persons participating in that program.

(b) Conviction in a criminal proceeding does not preclude the office from:

(i) assessing a civil penalty or an administrative penalty;

(ii) denying, placing conditions on, suspending, or revoking a license; or

(iii) seeking injunctive or equitable relief.

(2) Any person that violates a provision of this chapter, lawful orders of the office, or rules adopted under this chapter may be assessed a penalty not to exceed the sum of $10,000 per violation, in:

(a) a judicial civil proceeding; or

(b) an administrative action in accordance with Title 63G, Chapter 4, Administrative Procedures Act.

(3) Assessment of a judicial penalty or an administrative penalty does not preclude the office from:

(a) seeking criminal penalties;

(b) denying, placing conditions on, suspending, or revoking a license; or

(c) seeking injunctive or equitable relief.

(4) The office may assess the human services program the cost incurred by the office in placing a monitor.

(5) Notwithstanding Subsection (1)(a) and subject to Subsections (1)(b) and (2), an individual is guilty of a class A misdemeanor if the individual knowingly and willfully offers, pays, promises to pay, solicits, or receives any remuneration, including any commission, bonus, kickback, bribe, or rebate, directly or indirectly, overtly or covertly, in cash or in kind, or engages in any split-fee arrangement in return for:

(a) referring an individual to a person for the furnishing or arranging for the furnishing of any item or service for the treatment of a substance use disorder;

(b) receiving a referred individual for the furnishing or arranging for the furnishing of any item or service for the treatment of a substance use disorder; or

(c) referring a clinical sample to a person, including a laboratory, for testing that is used toward the furnishing of any item or service for the treatment of a substance use disorder.

(6) Subsection (5) does not prohibit:

(a) any discount, payment, waiver of payment, or payment practice not prohibited by 42 U.S.C. Sec. 1320a-7(b) or regulations made under 42 U.S.C. Sec. 1320a-7(b);

(b) patient referrals within a practice group;

(c) payments by a health insurer who reimburses, provides, offers to provide, or administers health, mental health, or substance use disorder goods or services under a health benefit plan;

(d) payments to or by a health care provider, practice group, or substance use disorder treatment program that has contracted with a local mental health authority, a local substance abuse authority, a health insurer, a health care purchasing group, or the Medicare or Medicaid program to provide health, mental health, or substance use disorder services;

(e) payments by a health care provider, practice group, or substance use disorder treatment program to a health, mental health, or substance use disorder information service that provides information upon request and without charge to consumers about providers of health care goods or services to enable consumers to select appropriate providers or facilities, if the information service:

(i) does not attempt, through standard questions for solicitation of consumer criteria or through any other means, to steer or lead a consumer to select or consider selection of a particular health care provider, practice group, or substance use disorder treatment program;

(ii) does not provide or represent that the information service provides diagnostic or counseling services or assessments of illness or injury and does not make any promises of cure or guarantees of treatment; and

(iii) charges and collects fees from a health care provider, practice group, or substance use disorder treatment program participating in information services that:

(A) are set in advance;

(B) are consistent with the fair market value for those information services; and

(C) are not based on the potential value of the goods or services that a health care provider, practice group, or substance use disorder treatment program may provide to a patient; or

(f) payments by a laboratory to a person that:

(i) does not have a financial interest in or with a facility or person who refers a clinical sample to the laboratory;

(ii) is not related to an owner of a facility or a person who refers a clinical sample to the laboratory;

(iii) is not related to and does not have a financial relationship with a health care provider who orders the laboratory to conduct a test that is used toward the furnishing of an item or service for the treatment of a substance use disorder;

(iv) identifies, in advance of providing marketing or sales services, the types of clinical samples that each laboratory will receive, if the person provides marketing or sales services to more than one laboratory;

(v) the person does not identify as or hold itself out to be a laboratory or part of a network with an insurance payor, if the person provides marketing or sales services under a contract with a laboratory, as described in Subsection (6)(f)(vii)(B);

(vi) the person identifies itself in all marketing materials as a salesperson for a licensed laboratory and identifies each laboratory that the person represents, if the person provides marketing or sales services under a contract with a laboratory, as described in Subsection (6)(f)(vii)(B); and

(vii)

(A) is a sales person employed by the laboratory to market or sell the laboratory's services to a person who provides substance use disorder treatment; or

(B) is a person under contract with the laboratory to market or sell the laboratory's services to a person who provides substance use disorder treatment, if the total compensation paid by the laboratory does not exceed the total compensation that the laboratory pays to employees of the laboratory for similar marketing or sales services.

(7)

(a) A person may not knowingly or willfully, in exchange for referring an individual to a youth transportation company:

(i) offer, pay, promise to pay, solicit, or receive any remuneration directly or indirectly, overtly or covertly, in cash or in kind, including:

(A) a commission;

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

Amended by Chapter 468, 2022 General Session

62A-2-116.5 Numerical limit of foster children in a foster home.

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

Enacted by Chapter 29, 2017 General Session

62A-2-117 Licensure of tribal foster homes.

(1) The Indian Child Welfare Act, 25 U.S.C. Secs. 1901-1963, provides that Indian tribes may develop and implement tribal foster home standards.
(2) The office shall give full faith and credit to an Indian tribe's certification or licensure of a tribal foster home for an Indian child and siblings of that Indian child, both on and off Indian country, according to standards developed and approved by the Indian tribe, pursuant to the Indian Child Welfare Act, 25 U.S.C. Secs. 1901-1963.
(3) If the Indian tribe has not developed standards, the office shall license tribal foster homes pursuant to this chapter.

Amended by Chapter 209, 2017 General Session

62A-2-117.5 Foster care by a child's relative.

(1) In accordance with state and federal law, the division shall provide for licensure of a child's relative for foster or substitute care, when the child is in the temporary custody or custody of the Division of Child and Family Services. If it is determined that, under federal law, allowance is made for an approval process requiring less than full foster parent licensure proceedings for a child's relative, the division shall establish an approval process to accomplish that purpose.
(2) For purposes of this section:
(a) "Custody" and "temporary custody" mean the same as those terms are defined in Section 80-2-102.

(b) "Relative" means the same as that term is defined in Section 80-3-102.

Amended by Chapter 335, 2022 General Session

62A-2-118 Administrative inspections.

(1)

(a) Subject to Subsection (1)(b), the office may, for the purpose of ascertaining compliance with this chapter, enter and inspect on a routine basis the facility of a licensee.

(b)

(i) The office shall enter and inspect a congregate care program at least once each calendar quarter.

(ii) At least two of the inspections described in Subsection (1)(b)(i) shall be unannounced.

(c) If another government entity conducts an inspection that is substantially similar to an inspection conducted by the office, the office may conclude the inspection satisfies an inspection described in Subsection (1)(b).

(2) Before conducting an inspection under Subsection (1), the office shall, after identifying the person in charge:

(a) give proper identification;

(b) request to see the applicable license;

(c) describe the nature and purpose of the inspection; and

(d) if necessary, explain the authority of the office to conduct the inspection and the penalty for refusing to permit the inspection as provided in Section 62A-2-116.

(3) In conducting an inspection under Subsection (1), the office may, after meeting the requirements of Subsection (2):

(a) inspect the physical facilities;

(b) inspect and copy records and documents;

(c) interview officers, employees, clients, family members of clients, and others; and

(d) observe the licensee in operation.

(4) An inspection conducted under Subsection (1) shall be during regular business hours and may be announced or unannounced.

(5) The licensee shall make copies of inspection reports available to the public upon request.

(6) The provisions of this section apply to on-site inspections and do not restrict the office from contacting family members, neighbors, or other individuals, or from seeking information from other sources to determine compliance with this chapter.

Amended by Chapter 400, 2021 General Session

62A-2-119 Adoption of inspections, examinations, and studies.

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

Enacted by Chapter 358, 1998 General Session

62A-2-120 Background check -- Direct access to children or vulnerable adults.

(1) As used in this section:

(a)

(i) "Applicant" means:

(A) the same as that term is defined in Section 62A-2-101;
(B) an individual who is associated with a licensee and has or will likely have direct access to a child or a vulnerable adult;
(C) an individual who provides respite care to a foster parent or an adoptive parent on more than one occasion;
(D) a department contractor;
(E) an individual who transports a child for a youth transportation company;
(F) a guardian submitting an application on behalf of an individual, other than the child or vulnerable adult who is receiving the service, if the individual is 12 years old or older and resides in a home, that is licensed or certified by the office, with the child or vulnerable adult who is receiving services; or
(G) a guardian submitting an application on behalf of an individual, other than the child or vulnerable adult who is receiving the service, if the individual is 12 years old or older and is a person described in Subsection (1)(a)(i)(A), (B), (C), or (D).
(ii) "Applicant" does not mean an individual, including an adult, who is in the custody of the Division of Child and Family Services or the Division of Juvenile Justice Services.
(b) "Application" means a background screening application to the office.
(c) "Bureau" means the Bureau of Criminal Identification within the Department of Public Safety, created in Section 53-10-201.
(d) "Incidental care" means occasional care, not in excess of five hours per week and never overnight, for a foster child.
(e) "Personal identifying information" means:
(i) current name, former names, nicknames, and aliases;
(ii) date of birth;
(iii) physical address and email address;
(iv) telephone number;
(v) driver license or other government-issued identification;
(vi) social security number;
(vii) only for applicants who are 18 years old or older, fingerprints, in a form specified by the office; and
(viii) other information specified by the office by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
(2)
(a) Except as provided in Subsection (13), an applicant or a representative shall submit the following to the office:
(i) personal identifying information;
(ii) a fee established by the office under Section 63J-1-504; and
(iii) a disclosure form, specified by the office, for consent for:
(A) an initial background check upon submission of the information described under this Subsection (2)(a);
(B) ongoing monitoring of fingerprints and registries until no longer associated with a licensee for 90 days;
(C) a background check when the office determines that reasonable cause exists; and
(D) retention of personal identifying information, including fingerprints, for monitoring and notification as described in Subsections (3)(d) and (4).
(b) In addition to the requirements described in Subsection (2)(a), if an applicant resided outside of the United States and its territories during the five years immediately preceding the day on which the information described in Subsection (2)(a) is submitted to the office, the office

may require the applicant to submit documentation establishing whether the applicant was convicted of a crime during the time that the applicant resided outside of the United States or its territories.

(3) The office:

(a) shall perform the following duties as part of a background check of an applicant:

(i) check state and regional criminal background databases for the applicant's criminal history by:

(A) submitting personal identifying information to the bureau for a search; or

(B) using the applicant's personal identifying information to search state and regional criminal background databases as authorized under Section 53-10-108;

(ii) submit the applicant's personal identifying information and fingerprints to the bureau for a criminal history search of applicable national criminal background databases;

(iii) search the Department of Human Services, Division of Child and Family Services' Licensing Information System described in Section 80-2-1002;

(iv) search the Department of Human Services, Division of Aging and Adult Services' vulnerable adult abuse, neglect, or exploitation database described in Section 62A-3-311.1;

(v) search the juvenile court records for substantiated findings of severe child abuse or neglect described in Section 80-3-404; and

(vi) search the juvenile court arrest, adjudication, and disposition records, as provided under Section 78A-6-209;

(b) shall conduct a background check of an applicant for an initial background check upon submission of the information described under Subsection (2)(a);

(c) may conduct all or portions of a background check of an applicant, as provided by rule, made by the office in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act:

(i) for an annual renewal; or

(ii) when the office determines that reasonable cause exists;

(d) may submit an applicant's personal identifying information, including fingerprints, to the bureau for checking, retaining, and monitoring of state and national criminal background databases and for notifying the office of new criminal activity associated with the applicant;

(e) shall track the status of an approved applicant under this section to ensure that an approved applicant is not required to duplicate the submission of the applicant's fingerprints if the applicant applies for:

(i) more than one license;

(ii) direct access to a child or a vulnerable adult in more than one human services program; or

(iii) direct access to a child or a vulnerable adult under a contract with the department;

(f) shall track the status of each license and each individual with direct access to a child or a vulnerable adult and notify the bureau within 90 days after the day on which the license expires or the individual's direct access to a child or a vulnerable adult ceases;

(g) shall adopt measures to strictly limit access to personal identifying information solely to the individuals responsible for processing and entering the applications for background checks and to protect the security of the personal identifying information the office reviews under this Subsection (3);

(h) as necessary to comply with the federal requirement to check a state's child abuse and neglect registry regarding any individual working in a congregate care program, shall:

(i) search the Department of Human Services, Division of Child and Family Services' Licensing Information System described in Section 80-2-1002; and

(ii) require the child abuse and neglect registry be checked in each state where an applicant resided at any time during the five years immediately preceding the day on which the applicant submits the information described in Subsection (2)(a) to the office; and

(i) shall make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to implement the provisions of this Subsection (3) relating to background checks.

(4)

(a) With the personal identifying information the office submits to the bureau under Subsection (3), the bureau shall check against state and regional criminal background databases for the applicant's criminal history.

(b) With the personal identifying information and fingerprints the office submits to the bureau under Subsection (3), the bureau shall check against national criminal background databases for the applicant's criminal history.

(c) Upon direction from the office, and with the personal identifying information and fingerprints the office submits to the bureau under Subsection (3)(d), the bureau shall:

(i) maintain a separate file of the fingerprints for search by future submissions to the local and regional criminal records databases, including latent prints; and

(ii) monitor state and regional criminal background databases and identify criminal activity associated with the applicant.

(d) The bureau is authorized to submit the fingerprints to the Federal Bureau of Investigation Next Generation Identification System, to be retained in the Federal Bureau of Investigation Next Generation Identification System for the purpose of:

(i) being searched by future submissions to the national criminal records databases, including the Federal Bureau of Investigation Next Generation Identification System and latent prints; and

(ii) monitoring national criminal background databases and identifying criminal activity associated with the applicant.

(e) The Bureau shall notify and release to the office all information of criminal activity associated with the applicant.

(f) Upon notice from the office that a license has expired or an individual's direct access to a child or a vulnerable adult has ceased for 90 days, the bureau shall:

(i) discard and destroy any retained fingerprints; and

(ii) notify the Federal Bureau of Investigation when the license has expired or an individual's direct access to a child or a vulnerable adult has ceased, so that the Federal Bureau of Investigation will discard and destroy the retained fingerprints from the Federal Bureau of Investigation Next Generation Identification System.

(5)

(a) After conducting the background check described in Subsections (3) and (4), the office shall deny an application to an applicant who, within three years before the day on which the applicant submits information to the office under Subsection (2) for a background check, has been convicted of any of the following, regardless of whether the offense is a felony, a misdemeanor, or an infraction:

(i) an offense identified as domestic violence, lewdness, voyeurism, battery, cruelty to animals, or bestiality;

(ii) a violation of any pornography law, including sexual exploitation of a minor or aggravated sexual exploitation of a minor;

(iii) prostitution;

(iv) an offense included in:

(A)Title 76, Chapter 5, Offenses Against the Individual;

(B) Section 76-5b-201, Sexual Exploitation of a Minor;
(C) Section 76-5b-201.1, Aggravated Sexual Exploitation of a Minor; or
(D)Title 76, Chapter 7, Offenses Against the Family;
(v) aggravated arson, as described in Section 76-6-103;
(vi) aggravated burglary, as described in Section 76-6-203;
(vii) aggravated robbery, as described in Section 76-6-302;
(viii) identity fraud crime, as described in Section 76-6-1102; or
(ix) a felony or misdemeanor offense committed outside of the state that, if committed in the state, would constitute a violation of an offense described in Subsections (5)(a)(i) through (viii).
(b) If the office denies an application to an applicant based on a conviction described in Subsection (5)(a), the applicant is not entitled to a comprehensive review described in Subsection (6).
(c) If the applicant will be working in a program serving only adults whose only impairment is a mental health diagnosis, including that of a serious mental health disorder, with or without co-occurring substance use disorder, the denial provisions of Subsection (5)(a) do not apply, and the office shall conduct a comprehensive review as described in Subsection (6).
(6)
(a) The office shall conduct a comprehensive review of an applicant's background check if the applicant:
(i) has an open court case or a conviction for any felony offense, not described in Subsection (5)(a), with a date of conviction that is no more than 10 years before the date on which the applicant submits the application;
(ii) has an open court case or a conviction for a misdemeanor offense, not described in Subsection (5)(a), and designated by the office, by rule, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, if the conviction is within three years before the day on which the applicant submits information to the office under Subsection (2) for a background check;
(iii) has a conviction for any offense described in Subsection (5)(a) that occurred more than three years before the day on which the applicant submitted information under Subsection (2)(a);
(iv) is currently subject to a plea in abeyance or diversion agreement for any offense described in Subsection (5)(a);
(v) has a listing in the Department of Human Services, Division of Child and Family Services' Licensing Information System described in Section 80-2-1002;
(vi) has a listing in the Department of Human Services, Division of Aging and Adult Services' vulnerable adult abuse, neglect, or exploitation database described in Section 62A-3-311.1;
(vii) has a record in the juvenile court of a substantiated finding of severe child abuse or neglect described in Section 80-3-404;
(viii) has a record of an adjudication in juvenile court for an act that, if committed by an adult, would be a felony or misdemeanor, if the applicant is:
(A) under 28 years old; or
(B) 28 years old or older and has been convicted of, has pleaded no contest to, or is currently subject to a plea in abeyance or diversion agreement for a felony or a misdemeanor offense described in Subsection (5)(a);
(ix) has a pending charge for an offense described in Subsection (5)(a); or
(x) is an applicant described in Subsection (5)(c).
(b) The comprehensive review described in Subsection (6)(a) shall include an examination of:

(i) the date of the offense or incident;
(ii) the nature and seriousness of the offense or incident;
(iii) the circumstances under which the offense or incident occurred;
(iv) the age of the perpetrator when the offense or incident occurred;
(v) whether the offense or incident was an isolated or repeated incident;
(vi) whether the offense or incident directly relates to abuse of a child or vulnerable adult, including:
(A) actual or threatened, nonaccidental physical, mental, or financial harm;
(B) sexual abuse;
(C) sexual exploitation; or
(D) negligent treatment;
(vii) any evidence provided by the applicant of rehabilitation, counseling, psychiatric treatment received, or additional academic or vocational schooling completed;
(viii) the applicant's risk of harm to clientele in the program or in the capacity for which the applicant is applying; and
(ix) any other pertinent information presented to or publicly available to the committee members.
(c) At the conclusion of the comprehensive review described in Subsection (6)(a), the office shall deny an application to an applicant if the office finds that approval would likely create a risk of harm to a child or a vulnerable adult.
(d) At the conclusion of the comprehensive review described in Subsection (6)(a), the office may not deny an application to an applicant solely because the applicant was convicted of an offense that occurred 10 or more years before the day on which the applicant submitted the information required under Subsection (2)(a) if:
(i) the applicant has not committed another misdemeanor or felony offense after the day on which the conviction occurred; and
(ii) the applicant has never been convicted of an offense described in Subsection (14)(c).
(e) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the office may make rules, consistent with this chapter, to establish procedures for the comprehensive review described in this Subsection (6).
(7) Subject to Subsection (10), the office shall approve an application to an applicant who is not denied under Subsection (5), (6), or (14).
(8)
(a) The office may conditionally approve an application of an applicant, for a maximum of 60 days after the day on which the office sends written notice to the applicant under Subsection (12), without requiring that the applicant be directly supervised, if the office:
(i) is awaiting the results of the criminal history search of national criminal background databases; and
(ii) would otherwise approve an application of the applicant under Subsection (7).
(b) The office may conditionally approve an application of an applicant, for a maximum of one year after the day on which the office sends written notice to the applicant under Subsection (12), without requiring that the applicant be directly supervised if the office:
(i) is awaiting the results of an out-of-state registry for providers other than foster and adoptive parents; and
(ii) would otherwise approve an application of the applicant under Subsection (7).
(c) Upon receiving the results of the criminal history search of a national criminal background database, the office shall approve or deny the application of the applicant in accordance with Subsections (5) through (7).

(9) A licensee or department contractor may not permit an individual to have direct access to a child or a vulnerable adult unless, subject to Subsection (10):
(a) the individual is associated with the licensee or department contractor and:
(i) the individual's application is approved by the office under this section;
(ii) the individual's application is conditionally approved by the office under Subsection (8); or
(iii)
(A) the individual has submitted the background check information described in Subsection (2) to the office;
(B) the office has not determined whether to approve the applicant's application; and
(C) the individual is directly supervised by an individual who has a current background screening approval issued by the office under this section and is associated with the licensee or department contractor;
(b)
(i) the individual is associated with the licensee or department contractor;
(ii) the individual has a current background screening approval issued by the office under this section;
(iii) one of the following circumstances, that the office has not yet reviewed under Subsection (6), applies to the individual:
(A) the individual was charged with an offense described in Subsection (5)(a);
(B) the individual is listed in the Licensing Information System, described in Section 80-2-1002;
(C) the individual is listed in the vulnerable adult abuse, neglect, or exploitation database, described in Section 62A-3-311.1;
(D) the individual has a record in the juvenile court of a substantiated finding of severe child abuse or neglect, described in Section 80-3-404; or
(E) the individual has a record of an adjudication in juvenile court for an act that, if committed by an adult, would be a felony or a misdemeanor as described in Subsection (5)(a) or (6); and
(iv) the individual is directly supervised by an individual who:
(A) has a current background screening approval issued by the office under this section; and
(B) is associated with the licensee or department contractor;
(c) the individual:
(i) is not associated with the licensee or department contractor; and
(ii) is directly supervised by an individual who:
(A) has a current background screening approval issued by the office under this section; and
(B) is associated with the licensee or department contractor;
(d) the individual is the parent or guardian of the child, or the guardian of the vulnerable adult;
(e) the individual is approved by the parent or guardian of the child, or the guardian of the vulnerable adult, to have direct access to the child or the vulnerable adult;
(f) the individual is only permitted to have direct access to a vulnerable adult who voluntarily invites the individual to visit; or
(g) the individual only provides incidental care for a foster child on behalf of a foster parent who has used reasonable and prudent judgment to select the individual to provide the incidental care for the foster child.
(10) An individual may not have direct access to a child or a vulnerable adult if the individual is prohibited by court order from having that access.

(11) Notwithstanding any other provision of this section, an individual for whom the office denies an application may not have direct access to a child or vulnerable adult unless the office approves a subsequent application by the individual.

(12)

(a) Within 30 days after the day on which the office receives the background check information for an applicant, the office shall give notice of the clearance status to:

(i) the applicant, and the licensee or department contractor, of the office's decision regarding the background check and findings; and

(ii) the applicant of any convictions and potentially disqualifying charges and adjudications found in the search.

(b) With the notice described in Subsection (12)(a), the office shall also give the applicant the details of any comprehensive review conducted under Subsection (6).

(c) If the notice under Subsection (12)(a) states that the applicant's application is denied, the notice shall further advise the applicant that the applicant may, under Subsection 62A-2-111(2), request a hearing in the department's Office of Administrative Hearings, to challenge the office's decision.

(d) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the office shall make rules, consistent with this chapter:

(i) defining procedures for the challenge of the office's background check decision described in Subsection (12)(c); and

(ii) expediting the process for renewal of a license under the requirements of this section and other applicable sections.

(13) An individual or a department contractor who provides services in an adults only substance use disorder program, as defined by rule, is exempt from this section. This exemption does not extend to a program director or a member, as defined by Section 62A-2-108, of the program.

(14)

(a) Except as provided in Subsection (14)(b), in addition to the other requirements of this section, if the background check of an applicant is being conducted for the purpose of giving clearance status to an applicant seeking a position in a congregate care program, an applicant for a one-time adoption, an applicant seeking to provide a prospective foster home, or an applicant seeking to provide a prospective adoptive home, the office shall:

(i) check the child abuse and neglect registry in each state where each applicant resided in the five years immediately preceding the day on which the applicant applied to be a foster parent or adoptive parent, to determine whether the prospective foster parent or prospective adoptive parent is listed in the registry as having a substantiated or supported finding of child abuse or neglect; and

(ii) check the child abuse and neglect registry in each state where each adult living in the home of the applicant described in Subsection (14)(a)(i) resided in the five years immediately preceding the day on which the applicant applied to be a foster parent or adoptive parent, to determine whether the adult is listed in the registry as having a substantiated or supported finding of child abuse or neglect.

(b) The requirements described in Subsection (14)(a) do not apply to the extent that:

(i) federal law or rule permits otherwise; or

(ii) the requirements would prohibit the Division of Child and Family Services or a court from placing a child with:

(A) a noncustodial parent under Section 80-2a-301, 80-3-302, or 80-3-303; or

(B) a relative, other than a noncustodial parent, under Section 80-2a-301, 80-3-302, or 80-3-303, pending completion of the background check described in Subsection (5).

(c) Notwithstanding Subsections (5) through (9), the office shall deny a clearance to an applicant seeking a position in a congregate care program, an applicant for a one-time adoption, an applicant to become a prospective foster parent, or an applicant to become a prospective adoptive parent if the applicant has been convicted of:

(i) a felony involving conduct that constitutes any of the following:

(A) child abuse, as described in Sections 76-5-109, 76-5-109.2, and 76-5-109.3;

(B) commission of domestic violence in the presence of a child, as described in Section 76-5-114;

(C) abuse or neglect of a child with a disability, as described in Section 76-5-110;

(D) endangerment of a child or vulnerable adult, as described in Section 76-5-112.5;

(E) aggravated murder, as described in Section 76-5-202;

(F) murder, as described in Section 76-5-203;

(G) manslaughter, as described in Section 76-5-205;

(H) child abuse homicide, as described in Section 76-5-208;

(I) homicide by assault, as described in Section 76-5-209;

(J) kidnapping, as described in Section 76-5-301;

(K) child kidnapping, as described in Section 76-5-301.1;

(L) aggravated kidnapping, as described in Section 76-5-302;

(M) human trafficking of a child, as described in Section 76-5-308.5;

(N) an offense described in Title 76, Chapter 5, Part 4, Sexual Offenses;

(O) sexual exploitation of a minor, as described in Section 76-5b-201;

(P) aggravated exploitation of a minor, as described in Section 76-5b-201.1;

(Q) aggravated arson, as described in Section 76-6-103;

(R) aggravated burglary, as described in Section 76-6-203;

(S) aggravated robbery, as described in Section 76-6-302; or

(T) domestic violence, as described in Section 77-36-1; or

(ii) an offense committed outside the state that, if committed in the state, would constitute a violation of an offense described in Subsection (14)(c)(i).

(d) Notwithstanding Subsections (5) through (9), the office shall deny a license or license renewal to a prospective foster parent or a prospective adoptive parent if, within the five years immediately preceding the day on which the individual's application or license would otherwise be approved, the applicant was convicted of a felony involving conduct that constitutes a violation of any of the following:

(i) aggravated assault, as described in Section 76-5-103;

(ii) aggravated assault by a prisoner, as described in Section 76-5-103.5;

(iii) mayhem, as described in Section 76-5-105;

(iv) an offense described in Title 58, Chapter 37, Utah Controlled Substances Act;

(v) an offense described in Title 58, Chapter 37a, Utah Drug Paraphernalia Act;

(vi) an offense described in Title 58, Chapter 37b, Imitation Controlled Substances Act;

(vii) an offense described in Title 58, Chapter 37c, Utah Controlled Substance Precursor Act; or

(viii) an offense described in Title 58, Chapter 37d, Clandestine Drug Lab Act.

(e) In addition to the circumstances described in Subsection (6)(a), the office shall conduct the comprehensive review of an applicant's background check pursuant to this section if the registry check described in Subsection (14)(a) indicates that the individual is listed in a child abuse and neglect registry of another state as having a substantiated or supported finding of a severe type of child abuse or neglect as defined in Section 80-1-102.

Amended by Chapter 185, 2022 General Session

Amended by Chapter 335, 2022 General Session
Amended by Chapter 430, 2022 General Session
Amended by Chapter 468, 2022 General Session

62A-2-121 Access to abuse and neglect information.

(1) As used in this section:
  (a) "Direct service worker" means the same as that term is defined in Section 62A-5-101.
  (b) "Personal care attendant" means the same as that term is defined in Section 62A-3-101.
(2) With respect to a licensee, a direct service worker, or a personal care attendant, the department may access only the Licensing Information System of the Division of Child and Family Services created by Section 80-2-1002 and juvenile court records under Subsection 80-3-404(4), for the purpose of:
  (a)
    (i) determining whether a person associated with a licensee, with direct access to children:
      (A) is listed in the Licensing Information System; or
      (B) has a substantiated finding by a juvenile court of a severe type of child abuse or neglect under Subsections 80-3-404(1) and (2); and
    (ii) informing a licensee that a person associated with the licensee:
      (A) is listed in the Licensing Information System; or
      (B) has a substantiated finding by a juvenile court of a severe type of child abuse or neglect under Subsections 80-3-404(1) and (2);
  (b)
    (i) determining whether a direct service worker:
      (A) is listed in the Licensing Information System; or
      (B) has a substantiated finding by a juvenile court of a severe type of child abuse or neglect under Subsections 80-3-404(1) and (2); and
    (ii) informing a direct service worker or the direct service worker's employer that the direct service worker:
      (A) is listed in the Licensing Information System; or
      (B) has a substantiated finding by a juvenile court of a severe type of child abuse or neglect under Subsections 80-3-404(1) and (2); or
  (c)
    (i) determining whether a personal care attendant:
      (A) is listed in the Licensing Information System; or
      (B) has a substantiated finding by a juvenile court of a severe type of child abuse or neglect under Subsections 80-3-404(1) and (2); and
    (ii) informing a person described in Subsections 62A-3-101(9)(a)(i) through (iv) that a personal care attendant:
      (A) is listed in the Licensing Information System; or
      (B) has a substantiated finding by a juvenile court of a severe type of child abuse or neglect under Subsections 80-3-404(1) and (2).
(3) Notwithstanding Subsection (2), the department may access the Division of Child and Family Services' Management Information System under Section 80-2-1001:
  (a) for the purpose of licensing and monitoring foster parents;
  (b) for the purposes described in Subsection 80-2-1001(5)(b)(iii); and
  (c) for the purpose described in Section 26B-1-211.
(4) The department shall receive and process personal identifying information under Subsection 62A-2-120(1) for the purposes described in Subsection (2).

(5) The department shall adopt rules under Title 63G, Chapter 3, Utah Administrative Rulemaking Act, consistent with this chapter, defining the circumstances under which a person may have direct access or provide services to children when:
(a) the person is listed in the Licensing Information System of the Division of Child and Family Services created by Section 80-2-1002; or
(b) juvenile court records show that a court made a substantiated finding under Section 80-3-404, that the person committed a severe type of child abuse or neglect.

Amended by Chapter 255, 2022 General Session
Amended by Chapter 335, 2022 General Session

62A-2-122 Access to vulnerable adult abuse and neglect information.
(1) For purposes of this section:
(a) "Direct service worker" means the same as that term is defined in Section 62A-5-101.
(b) "Personal care attendant" means the same as that term is defined in Section 62A-3-101.
(2) With respect to a licensee, a direct service worker, or a personal care attendant, the department may access the database created by Section 62A-3-311.1 for the purpose of:
(a)
(i) determining whether a person associated with a licensee, with direct access to vulnerable adults, has a supported or substantiated finding of:
(A) abuse;
(B) neglect; or
(C) exploitation; and
(ii) informing a licensee that a person associated with the licensee has a supported or substantiated finding of:
(A) abuse;
(B) neglect; or
(C) exploitation;
(b)
(i) determining whether a direct service worker has a supported or substantiated finding of:
(A) abuse;
(B) neglect; or
(C) exploitation; and
(ii) informing a direct service worker or the direct service worker's employer that the direct service worker has a supported or substantiated finding of:
(A) abuse;
(B) neglect; or
(C) exploitation; or
(c)
(i) determining whether a personal care attendant has a supported or substantiated finding of:
(A) abuse;
(B) neglect; or
(C) exploitation; and
(ii) informing a person described in Subsections 62A-3-101(9)(a)(i) through (iv) that a personal care attendant has a supported or substantiated finding of:
(A) abuse;
(B) neglect; or
(C) exploitation.

(3) The department shall receive and process personal identifying information under Subsection 62A-2-120(1) for the purposes described in Subsection (2).
(4) The department shall adopt rules under Title 63G, Chapter 3, Utah Administrative Rulemaking Act, consistent with this chapter and Title 62A, Chapter 3, Part 3, Abuse, Neglect, or Exploitation of a Vulnerable Adult, defining the circumstances under which a person may have direct access or provide services to vulnerable adults when the person is listed in the statewide database of the Division of Aging and Adult Services created by Section 62A-3-311.1 as having a supported or substantiated finding of abuse, neglect, or exploitation.

Amended by Chapter 348, 2016 General Session

62A-2-123 Congregate care program regulation.
(1) A congregate care program may not use a cruel, severe, unusual, or unnecessary practice on a child, including:
(a) a strip search unless the congregate care program determines and documents that a strip search is necessary to protect an individual's health or safety;
(b) a body cavity search unless the congregate care program determines and documents that a body cavity search is necessary to protect an individual's health or safety;
(c) inducing pain to obtain compliance;
(d) hyperextending joints;
(e) peer restraints;
(f) discipline or punishment that is intended to frighten or humiliate;
(g) requiring or forcing the child to take an uncomfortable position, including squatting or bending;
(h) for the purpose of punishing or humiliating, requiring or forcing the child to repeat physical movements or physical exercises such as running laps or performing push-ups;
(i) spanking, hitting, shaking, or otherwise engaging in aggressive physical contact;
(j) denying an essential program service;
(k) depriving the child of a meal, water, rest, or opportunity for toileting;
(l) denying shelter, clothing, or bedding;
(m) withholding personal interaction, emotional response, or stimulation;
(n) prohibiting the child from entering the residence;
(o) abuse as defined in Section 80-1-102; and
(p) neglect as defined in Section 80-1-102.
(2) Before a congregate care program may use a restraint or seclusion, the congregate care program shall:
(a) develop and implement written policies and procedures that:
(i) describe the circumstances under which a staff member may use a restraint or seclusion;
(ii) describe which staff members are authorized to use a restraint or seclusion;
(iii) describe procedures for monitoring a child that is restrained or in seclusion;
(iv) describe time limitations on the use of a restraint or seclusion;
(v) require immediate and continuous review of the decision to use a restraint or seclusion;
(vi) require documenting the use of a restraint or seclusion;
(vii) describe record keeping requirements for records related to the use of a restraint or seclusion;
(viii) to the extent practicable, require debriefing the following individuals if debriefing would not interfere with an ongoing investigation, violate any law or regulation, or conflict with a child's treatment plan:
(A) each witness to the event;

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

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

Amended by Chapter 468, 2022 General Session

62A-2-124 Human services program non-discrimination.

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

Enacted by Chapter 400, 2021 General Session

62A-2-125 Congregate care program requirements.

(1) As used in this section, "disruption plan" means a child specific plan used:
(a) when the private-placement child stops receiving services from a congregate care program; and
(b) for transporting a private-placement child to a parent or guardian or to another congregate care program.
(2) A congregate care program shall keep the following for a private-placement child whose parent or guardian lives outside the state:
(a) regularly updated contact information for the parent or guardian that lives outside the state; and
(b) a disruption plan.
(3) If a private-placement child whose parent or guardian resides outside the state leaves a congregate care program without following the child's disruption plan, the congregate care program shall:
(a) notify the parent or guardian, office, and local law enforcement authorities;
(b) assist the state in locating the private-placement child; and
(c) after the child is located, transport the private-placement child:
(i) to a parent or guardian;
(ii) back to the congregate care program; or
(iii) to another congregate care program.

(4) This section does not apply to a guardian that is a state or agency.
(5) The office shall make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, describing:
(a) additional mandatory provisions for a disruption plan; and
(b) how a congregate care program shall notify the office when a private-placement child begins receiving services.

Enacted by Chapter 117, 2021 General Session

62A-2-127 Child-placing agency responsibility for educational services -- Payment of costs.
(1) A child-placing agency shall ensure that the requirements of Subsections 53G-6-202(2) and 53G-6-203(1) are met through the provision of appropriate educational services for all children served in the state by the child-placing agency.
(2)
(a) If the educational services described in Subsection (1) are provided through a public school and the custodial parent or legal guardian resides outside the state, the child-placing agency shall pay all educational costs required under Sections 53G-6-306 and 53G-7-503.
(b) If the educational services described in Subsection (1) are provided through a public school and the custodial parent or legal guardian resides within the state, then the child-placing agency shall pay all educational costs required under Section 53G-7-503.
(3) A child in the custody or under the care of a Utah state agency is exempt from the payment of fees required under Subsection (2).
(4) A public school shall admit any child living within the public school's boundaries who is under the supervision of a child-placing agency upon payment by the child-placing agency of the tuition and fees required under Subsection (2).

Renumbered and Amended by Chapter 334, 2022 General Session

62A-2-128 Youth transportation company registration.
(1) The office shall establish a registration system for youth transportation companies.
(2) The office shall establish a fee:
(a) under Section 63J-1-504 that does not exceed $500; and
(b) that when paid by all registrants generates sufficient revenue to cover or substantially cover the costs for the creation and maintenance of the registration system.
(3) A youth transportation company shall:
(a) register with the office; and
(b) provide the office:
(i) proof of a business insurance policy that provides at least $1,000,000 in coverage; and
(ii) a valid business license from the state where the youth transportation company is headquartered.
(4) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the office shall make rules to implement this section.

Enacted by Chapter 468, 2022 General Session

Chapter 3

Aging and Adult Services

Part 1
Division and Board of Aging and Adult Services

62A-3-101 Definitions.

As used in this chapter:

(1) "Adult" or "high risk adult" means a person 18 years of age or older who experiences a condition:

(a) that places the person at a high risk of being unable to care for himself:

(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)Chapter 5, Services for People with Disabilities; or

(ii)Chapter 15, Substance Abuse and Mental Health Act.

(2) "Aging" and "aged" means a person 60 years of age 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.

(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 of Health;
(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 107, 2005 General Session

62A-3-102 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.

Amended by Chapter 181, 1990 General Session

62A-3-103 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.

Amended by Chapter 104, 1992 General Session

62A-3-104 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. 3001 et seq.;

(B) federal regulations enacted under the Older Americans Act of 1965, 42 U.S.C. 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 62A-3-104.3.
(5) The division has authority to establish, either directly or by contract, programs of advocacy, monitoring, evaluation, technical assistance, and public education to enhance the quality of life for aging and adult citizens of the state.
(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 62A-3-110; 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 62A-3-110.

Amended by Chapter 347, 2012 General Session

62A-3-104.1 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, Licensure of 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 62A-3-104.3.

(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.

Amended by Chapter 256, 2018 General Session

62A-3-104.2 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.

Amended by Chapter 254, 1998 General Session

62A-3-104.3 Disbursal of public funds -- Background check of a personal care attendant.

(1) For purposes of this section, "office" means the same as that term is defined in Section 62A-2-101.
(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 62A-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 62A-2-120.

Amended by Chapter 255, 2015 General Session

62A-3-105 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.

Amended by Chapter 110, 2013 General Session

62A-3-106 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.

Enacted by Chapter 1, 1988 General Session

62A-3-106.5 Agency responsible to investigate and provide services.

(1) For purposes of this section, "responsible agency" means the agency responsible to investigate or provide services in a particular case under the rules established under Subsection (2)(a).

(2) In order to avoid duplication in responding to a report of alleged abuse, neglect, or exploitation of a vulnerable adult who resides in a long-term care facility, the division shall make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, that establish procedures to:

(a) determine whether Adult Protective Services or the Long-Term Care Ombudsman Program will be responsible to investigate or provide services in a particular case; and

(b) determine whether, and under what circumstances, the agency described in Subsection (2)(a) that is not the responsible agency will provide assistance to the responsible agency in a particular case.

(3) Notwithstanding Subsection (2), or the rules made pursuant to Subsection (2), Adult Protective Services shall be the agency within the division that is responsible for receiving all reports of alleged abuse, neglect, or exploitation of a vulnerable adult as provided in Section 62A-3-305.

Amended by Chapter 382, 2008 General Session

62A-3-107 Requirements for establishing division policy.

(1) The board is the program policymaking body for the division and for programs funded with state and federal money under Sections 62A-3-104.1 and 62A-3-104.2. In establishing policy and reviewing existing policy, the board shall seek input from local area agencies, consumers, providers, advocates, division staff, and other interested parties as determined by the board.

(2) The board shall establish, by rule, procedures for developing its policies which ensure that local area agencies are given opportunity to comment and provide input on any new policy of the board and on any proposed changes in the board's existing policy. The board shall also

provide a mechanism for review of its existing policy and for consideration of policy changes that are proposed by those local area agencies.
(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.

Amended by Chapter 286, 2010 General Session

62A-3-107.5 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 62A-3-104(8).
(5) It is the intent of the Legislature that the grants made under this section serve the statewide purpose of providing support for senior citizens throughout the state, and that the grants shall be made to serve as effectively as possible the facilities in greatest need of assistance.

Enacted by Chapter 299, 1996 General Session

62A-3-108 Allocation of funds to local area agencies -- Formulas.
(1) 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. 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. 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.

Amended by Chapter 254, 1998 General Session

62A-3-109 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.

Amended by Chapter 91, 2008 General Session
Amended by Chapter 382, 2008 General Session

62A-3-110 "Out and About" Homebound Transportation Assistance Fund.

(1)

(a) There is created an expendable special revenue fund known as the "Out and About" Homebound Transportation Assistance Fund.

(b) The "Out and About" Homebound Transportation Assistance Fund shall consist of:

(i) private contributions;

(ii) donations or grants from public or private entities;

(iii) voluntary donations collected under Section 53-3-214.8; and

(iv) interest and earnings on account money.

(c) The cost of administering the "Out and About" Homebound Transportation Assistance Fund shall be paid from money in the fund.

(2) The Division of Aging and Adult Services in the Department of Human Services shall:

(a) administer the funds contained in the "Out and About" Homebound Transportation Assistance Fund; and

(b) select qualified organizations and distribute the funds in the "Out and About" Homebound Transportation Assistance Fund in accordance with Subsection (3).

(3)

(a) The division may distribute the funds in the "Out and About" Homebound Transportation Assistance Fund to a selected organization that provides public transportation to aging persons, high risk adults, or people with disabilities.

(b) An organization that provides public transportation to aging persons, high risk adults, or people with disabilities may apply to the Division of Aging and Adult Services, in a manner prescribed by the division, to receive all or part of the money contained in the "Out and About" Homebound Transportation Assistance Fund.

Amended by Chapter 167, 2013 General Session

Amended by Chapter 400, 2013 General Session

Part 2
Long-Term Care Ombudsman Program

62A-3-201 Legislative findings -- Purpose -- Ombudsman.

(1) The Legislature finds and declares that the citizens of this state should be assisted in asserting their civil and human rights as patients, residents, and clients of long-term care facilities created to serve their specialized needs and problems; and that for the health, safety, and welfare of these citizens, the state should take appropriate action through an adequate legal framework to address their difficulties.
(2) The purpose of this part is to establish within the division the Long-Term Care Ombudsman Program for the citizens of this state and identify duties and responsibilities of that program and of the ombudsman, in order to address problems relating to long-term care and to fulfill federal requirements.

Amended by Chapter 60, 2018 General Session

62A-3-202 Definitions.

As used in this part:
(1) "Assisted living facility" means the same as that term is defined in Section 26-21-2.
(2) "Auxiliary aids and services" means items, equipment, or services that assist in effective communication between an individual who has a mental, hearing, vision, or speech disability and another individual.
(3) "Government agency" means any department, division, office, bureau, board, commission, authority, or any other agency or instrumentality created by the state, or to which the state is a party, or created by any county or municipality, which is responsible for the regulation, visitation, inspection, or supervision of facilities, or which provides services to patients, residents, or clients of facilities.
(4) "Intermediate care facility" means the same as that term is defined in Section 58-15-101.
(5)
(a) "Long-term care facility" means:
(i) a skilled nursing facility;
(ii) except as provided in Subsection (5)(b), an intermediate care facility;
(iii) a nursing home;
(iv) a small health care facility;
(v) a small health care facility type N; or
(vi) an assisted living facility.
(b) "Long-term care facility" does not mean an intermediate care facility for people with an intellectual disability, as defined in Section 58-15-101.
(6) "Ombudsman" means the administrator of the long-term care ombudsman program, created pursuant to Section 62A-3-203.
(7) "Ombudsman program" means the Long-Term Care Ombudsman Program.
(8) "Resident" means an individual who resides in a long-term care facility.
(9) "Skilled nursing facility" means the same as that term is defined in Section 58-15-101.
(10) "Small health care facility" means the same as that term is defined in Section 26-21-2.

(11) "Small health care facility type N" means a residence in which a licensed nurse resides and provides protected living arrangements, nursing care, and other services on a daily basis for two to three individuals who are also residing in the residence and are unrelated to the licensee.

Amended by Chapter 415, 2022 General Session

62A-3-203 Long-Term Care Ombudsman Program -- Responsibilities.

(1)

(a) There is created within the division the ombudsman program for the purpose of promoting, advocating, and ensuring the adequacy of care received and the quality of life experienced by residents of long-term care facilities within the state.

(b) Subject to the rules made under Section 62A-3-106.5, the ombudsman is responsible for:

(i) receiving and resolving complaints relating to residents of long-term care facilities;

(ii) conducting investigations of any act, practice, policy, or procedure of a long-term care facility or government agency that the ombudsman has reason to believe affects or may affect the health, safety, welfare, or civil and human rights of a resident of a long-term care facility;

(iii) coordinating the department's services for residents of long-term care facilities to ensure that those services are made available to eligible citizens of the state; and

(iv) providing training regarding the delivery and regulation of long-term care to public agencies, local ombudsman program volunteers, and operators and employees of long-term care facilities.

(2)

(a) A long-term care facility shall display an ombudsman program information poster in a location that is readily visible to all residents, visitors, and staff members.

(b) The division is responsible for providing the posters, which shall include phone numbers for local ombudsman programs.

Amended by Chapter 60, 2018 General Session

62A-3-204 Powers and responsibilities of ombudsman.

The long-term care ombudsman shall:

(1) comply with Title VII of the federal Older Americans Act, 42 U.S.C. 3058 et seq.;

(2) establish procedures for and engage in receiving complaints, conducting investigations, reporting findings, issuing findings and recommendations, promoting community contact and involvement with residents of long-term care facilities through the use of volunteers, and publicizing its functions and activities;

(3) investigate an administrative act or omission of a long-term care facility or governmental agency if the act or omission relates to the purposes of the ombudsman. The ombudsman may exercise its authority under this subsection without regard to the finality of the administrative act or omission, and it may make findings in order to resolve the subject matter of its investigation;

(4) recommend to the division rules that it considers necessary to carry out the purposes of the ombudsman;

(5) cooperate and coordinate with governmental entities and voluntary assistance organizations in exercising its powers and responsibilities;

(6) request and receive cooperation, assistance, services, and data from any governmental agency, to enable it to properly exercise its powers and responsibilities;

(7) establish local ombudsman programs to assist in carrying out the purposes of this part, which shall meet the standards developed by the division, and possess all of the authority and power granted to the ombudsman program under this part; and
(8) exercise other powers and responsibilities as reasonably required to carry out the purposes of this part.

Amended by Chapter 60, 2018 General Session

62A-3-205 Procedures -- Adjudicative proceedings.

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

Amended by Chapter 60, 2018 General Session

62A-3-206 Investigation of complaints -- Procedures.

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

Amended by Chapter 60, 2018 General Session

62A-3-207 Confidentiality of materials relating to complaints or investigations -- Immunity from liability -- Discriminatory, disciplinary, or retaliatory actions prohibited.

(1) The ombudsman shall establish procedures to ensure that all files maintained by the ombudsman program are disclosed only at the discretion of and under the authority of the ombudsman. The identity of a complainant or resident of a long-term care facility may not be disclosed by the ombudsman unless:

(a) the complainant or resident, or the legal representative of either, consents in writing, orally, or through the use of auxiliary aids and services to the disclosure;

(b) disclosure is ordered by the court; or

(c) the disclosure is approved by the ombudsman and is made, as part of an investigation involving the resident, to an agency that:

(i) has statutory responsibility for the resident;

(ii) has statutory responsibility over the action alleged in the complaint;

(iii) is able to assist the ombudsman to achieve resolution of the complaint; or

(iv) is able to provide expertise that would benefit the resident.

(2) Neither the ombudsman nor the ombudsman's agent or designee may be required to testify in court with respect to confidential matters, except as the court finds necessary to enforce this part.

(3) Any person who makes a complaint to the ombudsman pursuant to this part is immune from any civil or criminal liability unless the complaint was made maliciously or without good faith.

(4)

(a) Discriminatory, disciplinary, or retaliatory action may not be taken against a volunteer or employee of a long-term care facility or governmental agency, or against a resident of a long-term care facility, for any communication made or information given or disclosed to aid the ombudsman or other appropriate public agency in carrying out its duties and responsibilities, unless the same was done maliciously or without good faith.

(b) This subsection does not infringe on the rights of an employer to supervise, discipline, or terminate an employee for any other reason.

Amended by Chapter 60, 2018 General Session

62A-3-208 Prohibited acts -- Penalty.

(1) No person may:

(a) give or cause to be given advance notice to a long-term care facility or agency that an investigation or inspection under the direction of the ombudsman is pending or under consideration, except as provided by law;

(b) disclose confidential information submitted to the ombudsman pursuant to this part, except as provided by law;

(c) willfully interfere with the lawful actions of the ombudsman;

(d) willfully refuse to comply with lawful demands of the ombudsman, including the demand for immediate entry into or inspection of the premises of any long-term care facility or agency or for immediate access to a resident of a long-term care facility; or

(e) offer or accept any compensation, gratuity, or promise thereof in an effort to affect the outcome of a matter being investigated or of a matter that is before the ombudsman for determination of whether an investigation should be conducted.

(2) Violation of any provision of this part constitutes a class B misdemeanor.

Amended by Chapter 60, 2018 General Session

62A-3-209 Assisted living facility transfers.

(1) After the ombudsman receives a notice described in Subsection 26-21-305(1)(a), the ombudsman shall:

(a) review the notice; and

(b) contact the resident or the resident's responsible person to conduct a voluntary interview.

(2) The voluntary interview described in Subsection (1)(b) shall:

(a) provide the resident with information about the services available through the ombudsman;

(b) confirm the details in the notice described in Subsection 26-21-305(1)(a), including:

(i) the name of the resident;

(ii) the reason for the transfer or discharge;

(iii) the date of the transfer or discharge; and

(iv) a description of the resident's next living arrangement; and

(c) provide the resident an opportunity to discuss any concerns or complaints the resident may have regarding:

(i) the resident's treatment at the assisted living facility; and

(ii) whether the assisted living facility treated the resident fairly when the assisted living facility transferred or discharged the resident.

(3) On or before November 1 of each year, the ombudsman shall provide a report to the Health and Human Services Interim Committee regarding:

(a) the reasons why assisted living facilities are transferring residents;

(b) where residents are going upon transfer or discharge; and

(c) the type and prevalence of complaints that the ombudsman receives regarding assisted living facilities, including complaints about the process or reasons for a transfer or discharge.

Enacted by Chapter 220, 2018 General Session

Part 3
Abuse, Neglect, or Exploitation of a Vulnerable Adult

62A-3-301 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 62A-3-311.1.
(10)
(a) "Dependent adult" means an individual 18 years old or older, who has a physical or mental impairment that restricts the individual's ability to carry out normal activities or to protect the individual's rights.
(b) "Dependent adult" includes an individual who has physical or developmental disabilities or whose physical or mental capacity has substantially diminished because of age.
(11) "Elder abuse" means abuse, neglect, or exploitation of an elder adult.
(12) "Elder adult" means an individual 65 years old or older.
(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.

Amended by Chapter 430, 2022 General Session

62A-3-302 Purpose of Adult Protective Services Program.

Subject to the rules made by the division under Section 62A-3-106.5, 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 62A-3-320, 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.

Amended by Chapter 176, 2017 General Session

62A-3-303 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 or the Department of Health 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) for a vulnerable adult who lacks capacity to consent, an administrative subpoena is issued by Adult Protective Services;
(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 62A-3-320, 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.

Amended by Chapter 176, 2017 General Session

62A-3-304 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.

Amended by Chapter 91, 2008 General Session

62A-3-305 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 26-21-201, that knowingly fails to report suspected abuse, neglect, or exploitation of a vulnerable adult to Adult Protective Services, or to the nearest peace officer or law enforcement agency, under Subsection (1), is subject to a private right of action and liability for the abuse, neglect, or exploitation of a vulnerable adult that is committed by the individual who was not reported to Adult Protective Services or to the nearest peace officer or law enforcement agency.
(c) This Subsection (7) does not provide immunity with respect to acts or omissions of a governmental employee except as provided in Title 63G, Chapter 7, Governmental Immunity Act of Utah.
(8) If Adult Protective Services has substantial grounds to believe that an individual has knowingly failed to report suspected abuse, neglect, or exploitation of a vulnerable adult in accordance with this section, Adult Protective Services shall file a complaint with:
(a) the Division of Professional Licensing if the individual is a health care provider, as defined in Section 80-2-603, or a mental health therapist, as defined in Section 58-60-102;
(b) the appropriate law enforcement agency if the individual is a law enforcement officer, as defined in Section 53-13-103; and
(c) the State Board of Education if the individual is an educator, as defined in Section 53E-6-102.
(9)
(a) An individual is guilty of a class B misdemeanor if the individual willfully fails to report suspected abuse, neglect, or exploitation of a vulnerable adult to Adult Protective Services, or to the nearest peace officer or law enforcement agency under Subsection (1).
(b) If an individual is convicted under Subsection (9)(a), the court may order the individual, in addition to any other sentence the court imposes, to:
(i) complete community service hours; or
(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.

Amended by Chapter 274, 2022 General Session
Amended by Chapter 335, 2022 General Session
Amended by Chapter 415, 2022 General Session

62A-3-307 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).

Repealed and Re-enacted by Chapter 91, 2008 General Session

62A-3-308 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.

Amended by Chapter 91, 2008 General Session

62A-3-309 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.

Amended by Chapter 237, 2013 General Session

62A-3-311 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.

Amended by Chapter 91, 2008 General Session
Amended by Chapter 382, 2008 General Session

62A-3-311.1 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 Bureau of Licensing, within the Department of Health;
    (iv) the Bureau of Emergency Medical Services and Preparedness, within the Department of Health, 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.

Amended by Chapter 415, 2022 General Session

62A-3-311.5 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.

Enacted by Chapter 91, 2008 General Session

62A-3-312 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 62A-14-103; and
      (B) the Long-Term Care Ombudsman Program, created in Section 62A-3-203.

Amended by Chapter 415, 2022 General Session

62A-3-314 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.

Amended by Chapter 176, 2007 General Session

62A-3-315 Protective services voluntary unless court ordered.

(1) Vulnerable adults who receive protective services under this part shall do so knowingly or voluntarily or upon district court order.

(2) Protective services may be provided without a court order for a vulnerable adult who has the capacity to consent and who requests or knowingly or voluntarily consents to those services. Protective services may also be provided for a vulnerable adult whose guardian or conservator with authority to consent does consent to those services. When short-term, limited protective services are provided, the division and the recipient, or the recipient's guardian or conservator, shall execute a written agreement setting forth the purposes and limitations of the services to be provided. If consent is subsequently withdrawn by the recipient, the recipient's guardian or conservator, or the court, services, including any investigation, shall cease.
(3) A court may order emergency protective services to be provided to a vulnerable adult who does not consent or who lacks capacity to consent to protective services in accordance with Section 62A-3-320.

Amended by Chapter 176, 2017 General Session

62A-3-316 Costs incurred in providing of protective services.

Costs incurred in providing protective services are the responsibility of the vulnerable adult when:
(1) the vulnerable adult is financially able to pay for those services, according to rates established by the division, and that payment is provided for as part of the written agreement for services described in Section 62A-3-315;
(2) the vulnerable adult to be protected is eligible for those services from another governmental agency; or
(3) the court appoints a guardian or conservator and orders that the costs be paid from the vulnerable adult's estate.

Enacted by Chapter 108, 2002 General Session

62A-3-317 Venue for protective services proceedings.

Venue for all proceedings related to protective services and emergency protective services under this chapter is in the county where the vulnerable adult resides or is present.

Amended by Chapter 176, 2017 General Session

62A-3-320 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.

Amended by Chapter 176, 2017 General Session

62A-3-321 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 62A-3-320.

Amended by Chapter 176, 2017 General Session

62A-3-322 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 Title 26, Chapter 61a, Utah Medical Cannabis Act; or
(2) the guardian of the vulnerable adult assisting with the use of or possessing cannabis in accordance with Title 26, Chapter 61a, Utah Medical Cannabis Act.

Enacted by Chapter 1, 2018 Special Session 3

Chapter 4a
Juvenile Services

Part 1

General Provisions

62A-4a-101.5 Juvenile services.

Title 80, Utah Juvenile Code, governs the services provided by the Division of Juvenile Justice Services and the Division of Child and Family Services within the department.

Enacted by Chapter 334, 2022 General Session

Part 2
Child Welfare Services

62A-4a-210 Definitions.

As used in this part:

(1) "Activity" means an extracurricular, enrichment, or social activity.
(2) "Age-appropriate" means a type of activity that is generally accepted as suitable for a child of the same age or level of maturity, based on the development of cognitive, emotional, physical, and behavioral capacity that is typical for the child's age or age group.
(3) "Caregiver" means a person with whom a child is placed in an out-of-home placement.
(4) "Division" means the Division of Child and Family Services.
(5) "Out-of-home placement" means the placement of a child in the division's custody outside of the child's home, including placement in a foster home, a residential treatment program, proctor care, or with kin.
(6) "Reasonable and prudent parent standard" means the standard characterized by careful and sensible parental decisions to maintain a child's health, safety, and best interest while at the same time encouraging the child's emotional and developmental growth.

Enacted by Chapter 67, 2014 General Session

62A-4a-211 Division responsibilities -- Normalizing lives of children.

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

Enacted by Chapter 67, 2014 General Session

Chapter 5
Services for People with Disabilities

Part 1

Services for People with Disabilities

62A-5-101 Definitions.

As used in this chapter:

(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 62A-5-202.5.

(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 2, 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. 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 3, 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 62A-5-206.7.

Amended by Chapter 444, 2020 General Session

62A-5-102 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 chapter, 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 62A-5-103; and
(b) is authorized to work in cooperation with other state, governmental, and private agencies to carry out the responsibilities described in Subsection (5)(a).
(6) Within appropriations authorized by the Legislature, and to the extent allowed under Title XIX of the Social Security Act, the division shall ensure that the services and support that the division provides to an individual with a disability:
(a) are provided in the least restrictive and most enabling environment;
(b) ensure opportunities to access employment; and
(c) enable reasonable personal choice in selecting services and support that:
(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 26-18-3 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.

Amended by Chapter 444, 2020 General Session

62A-5-103 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 62A-5-206, 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 62A-5-103.5, 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 2, Utah State Developmental Center, and Part 3, 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 Chapter 5a, Coordinating Council for Persons with Disabilities.
(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.

Amended by Chapter 366, 2011 General Session

62A-5-103.1 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.

Amended by Chapter 125, 2013 General Session

62A-5-103.2 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.

Amended by Chapter 29, 2009 General Session

62A-5-103.3 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.

Enacted by Chapter 169, 2011 General Session

62A-5-103.5 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 62A-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 62A-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 62A-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, pursuant to the requirements of Subsection 62A-2-120(14).
(5) If a public transit district, as described in Title 17B, Chapter 2a, Part 8, Public Transit District Act, contracts with the division to provide services:
(a) the provisions of this section are not applicable to a direct service worker employed by the public transit district; and
(b) the division may not reimburse the public transit district for services provided unless a direct service worker hired or transferred internally after July 1, 2013, by the public transit district to drive a paratransit route:
(i) is approved by the office to have direct access to children and vulnerable adults in accordance with Section 62A-2-120; and
(ii) is subject to a background check established in a statute or rule governing a public transit district or other public transit district policy.

Amended by Chapter 181, 2017 General Session

62A-5-104 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.

Amended by Chapter 369, 2012 General Session

62A-5-105 Division responsibilities -- Policy mediation.
(1) The division shall establish its rules in accordance with:
(a) the policy of the Legislature as set forth by this chapter; and
(b)Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
(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 62A-5-109;
(d) establish procedures to ensure that private citizens, consumers, private contract providers, allied state and local agencies, and others are provided with an opportunity to comment and provide input regarding any new policy or proposed revision to an existing policy;
(e) provide a mechanism for systematic and regular review of existing policy and for consideration of policy changes proposed by the persons and agencies described under Subsection (2)(d);
(f) establish and periodically review the criteria used to determine who may receive services from the division and how the delivery of those services is prioritized within available funding;
(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.

Amended by Chapter 167, 2013 General Session

62A-5-106 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.

Enacted by Chapter 1, 1988 General Session

62A-5-109 Parent liable for cost and support of minor -- Guardian liable for costs.
(1) Parents of a person who receives services or support from the division, who are financially responsible, are liable for the cost of the actual care and maintenance of that person and for

the support of the child in accordance with Title 78B, Chapter 12, Utah Child Support Act, and Title 62A, Chapter 11, Recovery Services, until the person reaches 18 years of age.

(2) A guardian of a person who receives services or support from the division is liable for the cost of actual care and maintenance of that person, regardless of his age, where funds are available in the guardianship estate established on his behalf for that purpose. However, if the person who receives services is a beneficiary of a trust created in accordance with Section 62A-5-110, or if the guardianship estate meets the requirements of a trust described in that section, the trust income prior to distribution to the beneficiary, and the trust principal are not subject to payment for services or support for that person.

(3) If, at the time a person who receives services or support from the division is discharged from a facility or program owned or operated by or under contract with the division, or after the death and burial of a resident of the developmental center, there remains in the custody of the division or the superintendent any money paid by a parent or guardian for the support or maintenance of that person, it shall be repaid upon demand.

Amended by Chapter 3, 2008 General Session

62A-5-110 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 age 65 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 26-18-2.

(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.

Amended by Chapter 88, 2018 General Session

Part 2
Utah State Developmental Center

62A-5-201 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 3, 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 3, Admission to an Intermediate Care Facility for People with an Intellectual Disability, a person who is under 18 years of age may be a resident of, admitted to, or receive care, services, or treatment at the developmental center only if the director certifies in writing that the developmental center is the most appropriate placement for that person.

(6)

(a) If the division determines, pursuant to Utah's Community Supports Waiver for Individuals with Intellectual Disabilities and Other Related Conditions, that a person who otherwise qualifies for placement in an intermediate care facility for people with an intellectual disability should receive services in a home or community-based setting, the division shall:

(i) if the person does not have a legal representative or legal guardian:

(A) inform the person of any feasible alternatives under the waiver; and

(B) give the person the choice of being placed in an intermediate care facility for people with an intellectual disability or receiving services in a home or community-based setting; or

(ii) if the person has a legal representative or legal guardian:

(A) inform the legal representative or legal guardian of any feasible alternatives under the waiver; and

(B) give the legal representative or legal guardian the choice of having the person placed in an intermediate care facility for people with an intellectual disability or receiving services in a home or community-based setting.

(b) If a person chooses, under Subsection (6)(a)(i), to be placed in an intermediate care facility for people with an intellectual disability instead of receiving services in a home or community-based setting, the division shall:

(i) ask the person whether the person prefers to be placed in the developmental 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).

Amended by Chapter 211, 2017 General Session

62A-5-202 Developmental center within division.

The programs and facilities of the developmental center are within the division, and under the policy direction of the division.

Amended by Chapter 75, 2009 General Session

62A-5-202.5 Utah State Developmental Center Board -- Creation -- Membership -- Duties -- Powers.

(1) There is created the Utah State Developmental Center Board within the Department of Human Services.

(2) The board is composed of nine members as follows:

(a) the director of the division or the director's designee;

(b) the superintendent of the developmental center or the superintendent's designee;

(c) the executive director of the Department of Human Services or the executive director's designee;

(d) a resident of the developmental center selected by the superintendent; and

(e) five members appointed by the governor with the advice and consent of the Senate as follows:

(i) three members of the general public; and

(ii) two members who are parents or guardians of individuals who receive services at the developmental center.

(3) In making appointments to the board, the governor shall ensure that:

(a) no more than three members have immediate family residing at the developmental center; and

(b) members represent a variety of geographic areas and economic interests of the state.

(4)

(a) The governor shall appoint each member described in Subsection (2)(e) for a term of four years.

(b) An appointed member may not serve more than two full consecutive terms unless the governor determines that an additional term is in the best interest of the state.

(c) Notwithstanding the requirements of Subsections (4)(a) and (b), the governor shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of

appointed members are staggered so that approximately half of the appointed members are appointed every two years.
(d) Appointed members shall continue in office until the expiration of their terms and until their successors are appointed, which may not exceed 120 days after the formal expiration of a term.
(e) When a vacancy occurs in the membership for any reason, the replacement shall be appointed for the unexpired term.
(5)
(a) The director shall serve as the chair.
(b) The board shall appoint a member to serve as vice chair.
(c) The board shall hold meetings quarterly or as needed.
(d) Five members are necessary to constitute a quorum at any meeting, and, if a quorum exists, the action of the majority of members present shall be the action of the board.
(e) The chair shall be a non-voting member except that the chair may vote to break a tie vote between the voting members.
(6) An appointed member may not receive compensation or benefits for the member's service, but, at the executive director's discretion, may receive per diem and travel expenses in accordance with:
(a) Section 63A-3-106;
(b) Section 63A-3-107; and
(c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.
(7)
(a) The board shall adopt bylaws governing the board's activities.
(b) Bylaws shall include procedures for removal of a member who is unable or unwilling to fulfill the requirements of the member's appointment.
(8) The board shall:
(a) act for the benefit of the developmental center and the division;
(b) advise and assist the division with the division's functions, operations, and duties related to the developmental center, described in Sections 62A-5-102, 62A-5-103, 62A-5-201, 62A-5-203, and 62A-5-206;
(c) administer the Utah State Developmental Center Miscellaneous Donation Fund, as described in Section 62A-5-206.5;
(d) administer the Utah State Developmental Center Land Fund, as described in Section 62A-5-206.6;
(e) approve the sale, lease, or other disposition of real property or water rights associated with the developmental center, as described in Subsection 62A-5-206.6(2); and
(f) within 21 days after the day on which the board receives the notice required under Subsection 10-2-419(3)(c), provide a written opinion regarding the proposed boundary adjustment to:
(i) the director of the Division of Facilities and Construction Management; and
(ii) the Legislative Management Committee.

Amended by Chapter 355, 2021 General Session

62A-5-203 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.

Amended by Chapter 207, 1991 General Session

62A-5-205 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.

Amended by Chapter 207, 1991 General Session

62A-5-206 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 3, Admission to an Intermediate Care Facility for People with an Intellectual Disability, to any other facility or program operated by or under contract with the division, after careful evaluation of the treatment needs of that person, if the facilities or programs available meet the needs indicated, and if transfer would be in the best interest of that person. A person transferred shall remain under the jurisdiction of the division;
(5) the developmental center may receive a person who meets the requirements of Subsection 62A-5-201(3) from any other facility or program operated by or under contract with the division, after careful evaluation of the treatment needs of that person, if the facility or programs of the developmental center meet those needs, and if transfer would be in the best interest of that person. A person so received by the developmental center remains under the jurisdiction of the division;
(6) to manage funds for a person residing in the developmental center, upon request by that person's parent or guardian, or upon administrative or court order;
(7) to charge and collect a fair and equitable fee from developmental center residents, parents who have the ability to pay, or guardians where funds for that purpose are available; and
(8) supervision and administration of security responsibilities for the developmental center is vested in the division. The executive director may designate, as special function officers, individuals to perform special security functions for the developmental center that require peace officer authority. Those special function officers may not become or be designated as members of the Public Safety Retirement System.

Amended by Chapter 300, 2016 General Session

62A-5-206.5 Utah State Developmental Center Miscellaneous Donation Fund -- Use.

(1) There is created an expendable special revenue fund known as the "Utah State Developmental Center Miscellaneous Donation Fund."
(2) The board shall deposit donations made to the Utah State Developmental Center under Section 62A-1-111 into the expendable special revenue fund described in Subsection (1).
(3) The state treasurer shall invest the money in the fund described in Subsection (1) according to the procedures and requirements of Title 51, Chapter 7, State Money Management Act, and the revenue received from the investment shall remain with the fund described in Subsection (1).
(4)
(a) Except as provided in Subsection (5), the money or revenue in the fund described in Subsection (1) may not be diverted, appropriated, expended, or committed to be expended for a purpose that is not listed in this section.
(b) Notwithstanding Section 63J-1-211, the Legislature may not appropriate money or revenue from the fund described in Subsection (1) to eliminate or otherwise reduce an operating deficit if the money or revenue appropriated from the fund is expended or committed to be expended for a purpose other than one listed in this section.
(c) The Legislature may not amend the purposes for which money or revenue in the fund described in Subsection (1) may be expended or committed to be expended except by the affirmative vote of two-thirds of all the members elected to each house.
(5)
(a) The board shall approve expenditures of money and revenue in the fund described in Subsection (1).
(b) The board may expend money and revenue in the fund described in Subsection (1) only:
(i) as designated by the donor; or
(ii) for the benefit of:
(A) residents of the developmental center; or
(B) individuals with disabilities who receive services and support from the Utah State Developmental Center, as described in Subsection 62A-5-201(2)(b).
(c) Money and revenue in the fund described in Subsection (1) may not be used for items normally paid for by operating revenues or for items related to personnel costs without specific legislative authorization.

Amended by Chapter 300, 2016 General Session

62A-5-206.6 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.

Amended by Chapter 404, 2018 General Session

62A-5-206.7 Utah State Developmental Center Long-Term Sustainability Fund.

(1) There is created a special revenue fund entitled the "Utah State Developmental Center Long-Term Sustainability Fund."

(2) The sustainability fund consists of:

(a) revenue generated from the lease, except any lease existing on May 1, 1995, of land associated with the Utah State Developmental Center;

(b) all proceeds from the sale or other disposition of real property, water rights, or water shares associated with the Utah State Developmental Center; and

(c) all existing money in the Utah State Developmental Center Land Fund, created in Section 62A-5-206.6.

(3) The state treasurer shall invest sustainability fund money by following the procedures and requirements in Section 62A-5-206.8.

(4)

(a) The board shall ensure that money or revenue deposited into the sustainability fund is irrevocable and is expended only as provided in Subsection (5).

(b) The Legislature may not amend the purposes in Subsection (5) for which money or revenue in the fund may be expended or committed to be expended, except by the affirmative vote of two-thirds of all the members elected to each house.

(5)

(a) Money may be expended from the sustainability fund to:

(i) fulfill the functions of the Utah State Developmental Center described in Sections 62A-5-201 and 62A-5-203; and

(ii) assist the division in the division's administration of services and supports described in Sections 62A-5-102 and 62A-5-103.

(b) Money from the sustainability fund may not be expended:

(i) for a purpose other than the purposes described in Subsection (5)(a); or

(ii) to reduce the amount of money that the Legislature appropriates from the General Fund for the purposes described in Subsection (5)(a).

(6) Money may be expended from the sustainability fund only under the following conditions:

(a) if the balance of the sustainability fund is at least $5,000,000 at the end of the fiscal year, the board may expend the earnings generated by the sustainability fund during the fiscal year for a purpose described in Subsection (5)(a);

(b) if the balance of the sustainability fund is at least $50,000,000 at the end of the fiscal year, the Legislature may appropriate to the division up to 5% of the balance of the sustainability fund for a purpose described in Subsection (5)(a); and

(c) the board or the division may not expend any money from the sustainability fund, except as provided in Subsection (6)(a), without legislative appropriation.

(7) The sustainability fund is revocable only by the affirmative vote of two-thirds of all the members elected to each house of the Legislature.

Enacted by Chapter 404, 2018 General Session

62A-5-206.8 Management of the Utah State Developmental Center Sustainability Fund.

(1) The state treasurer shall invest the assets of the sustainability fund with the primary goal of providing for the stability, income, and growth of the principal.
(2) Nothing in this section requires a specific outcome in investing.
(3) The state treasurer may deduct any administrative costs incurred in managing sustainability fund assets from earnings before depositing earnings into the sustainability fund.
(4)
  (a) The state treasurer may employ professional asset managers to assist in the investment of assets of the sustainability fund.
  (b) The state treasurer may only provide compensation to asset managers from earnings generated by the sustainability fund's investments.
(5) The state treasurer shall invest and manage the sustainability fund assets as a prudent investor would under Section 67-19d-302.

Enacted by Chapter 404, 2018 General Session

62A-5-207 Superintendent -- Qualifications.

The superintendent of the developmental center, appointed in accordance with Subsection 62A-5-104(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.

Amended by Chapter 366, 2011 General Session

62A-5-208 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.

Amended by Chapter 207, 1991 General Session

62A-5-211 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 62A-5-201(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.

Enacted by Chapter 211, 2017 General Session

Part 3
Admission to an Intermediate Care Facility for People with an Intellectual Disability

62A-5-302 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.

Amended by Chapter 366, 2011 General Session

62A-5-305 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. 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.

Amended by Chapter 366, 2011 General Session

62A-5-308 Commitment -- Individual who is under 18 years old.

(1) The director of the division, or the director's designee, may commit an individual under 18 years old who has an intellectual disability or symptoms of an intellectual disability, to the division for observation, diagnosis, care, and treatment if that commitment is based on:

(a) an emergency commitment in accordance with Section 62A-5-311; or

(b) involuntary commitment in accordance with Section 62A-5-312.

(2) A proceeding for involuntary commitment under Subsection (1)(a) may be commenced by filing a written petition with the juvenile court under Section 62A-5-312.

(3)

(a) A juvenile court has jurisdiction over the proceeding under Subsection (2) as described in Subsection 78A-6-103(2)(f).

(b) A juvenile court shall proceed with the written petition in the same manner and with the same authority as the district court.

(4) If an individual who is under 18 years old is committed to the custody of the Utah State Developmental Center by the juvenile court, the director or the director's designee shall give

the juvenile court written notice of the intention to release the individual not fewer than five days before the day on which the individual is released.

Amended by Chapter 261, 2021 General Session

62A-5-309 Commitment -- Individual who is 18 years old or older.

(1) The director, or the director's designee may commit to the division an individual 18 years old or older who has an intellectual disability, for observation, diagnosis, care, and treatment if that commitment is based on:

(a) involuntary commitment in accordance with Section 62A-5-312; or

(b) temporary emergency commitment in accordance with Section 62A-5-311.

(2) If an individual who is 18 years old or older is committed to the custody of the Utah State Developmental Center by the juvenile court, the director or the director's designee shall give the juvenile court written notice of the intention to release the individual not fewer than five days before the day on which the individual is released.

Amended by Chapter 261, 2021 General Session

62A-5-310 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 62A-5-311 and 62A-5-312.

Amended by Chapter 366, 2011 General Session

62A-5-311 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 62A-5-312.
(b) After proceedings for involuntary commitment have been commenced the individual shall be released unless an order of detention is issued in accordance with Section 62A-5-312.
(5) If an individual is committed to the division under this section on the application of any person other than the individual's legal guardian, spouse, parent, or next of kin, the director or his designee shall immediately give notice of the commitment to the individual's legal guardian, spouse, parent, or next of kin, if known.

Amended by Chapter 366, 2011 General Session

62A-5-312 Involuntary commitment -- Procedures -- Necessary findings -- Periodic review.
(1) Any responsible person who has reason to know that an individual is in need of commitment, who has a belief that the individual has an intellectual disability, and who has personal knowledge of the conditions and circumstances supporting that belief, may commence proceedings for involuntary commitment by filing a written petition with the district court, or if the subject of the petition is less than 18 years of age with the juvenile court, of the county in which the individual to be committed is physically located at the time the petition is filed. The application shall be accompanied by:
(a) a certificate of a licensed physician or a designated intellectual disability professional, stating that within a seven-day period immediately preceding the certification, the physician or designated intellectual disability professional examined the individual and believes that the individual has an intellectual disability and is in need of involuntary commitment; or
(b) a written statement by the petitioner that:
(i) states that the individual was requested to, but refused to, submit to an examination for an intellectual disability by a licensed physician or designated intellectual disability professional, and that the individual refuses to voluntarily go to the division or an intermediate care facility for people with an intellectual disability recommended by the division for treatment;
(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 62A-5-311, the director or his designee shall inform the individual, orally and in writing, of his right to communicate with an attorney. If an individual desires to communicate with an attorney, the director or his designee shall take immediate steps to assist the individual in contacting and communicating with an attorney.
(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.

Amended by Chapter 366, 2011 General Session

62A-5-313 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.

Amended by Chapter 366, 2011 General Session

62A-5-315 Petition for reexamination.

(1) A resident committed under Section 62A-5-312, or his parent, spouse, legal guardian, relative, or attorney, may file a petition for reexamination with the district court of the county in which the resident is domiciled or detained.

(2) Upon receipt of that petition, the court shall conduct proceedings under Section 62A-5-312.

Amended by Chapter 114, 2004 General Session

62A-5-316 Temporary detention.

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. 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. The division shall take reasonable measures, as may be necessary, to assure proper care of an individual temporarily detained under this part.

Amended by Chapter 366, 2011 General Session

62A-5-317 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.

Amended by Chapter 366, 2011 General Session

62A-5-318 Involuntary treatment with medication -- Committee -- Findings.

(1) If, after commitment, a resident elects to refuse treatment with medication, the director, the administrator of the intermediate care facility for people with an intellectual disability, or a designee, shall submit documentation regarding the resident's proposed treatment to a committee composed of:

(a) a licensed physician experienced in treating persons with an intellectual disability, who is not directly involved in the resident's treatment or diagnosis, and who is not biased toward any one facility;

(b) a psychologist who is a designated intellectual disability professional who is not directly involved in the resident's treatment or diagnosis; and

(c) another designated intellectual disability professional of the facility for persons with an intellectual disability, or a designee.

(2) Based upon the court's finding, under Subsection 62A-5-312(13), that the resident lacks the ability to engage in a rational decision-making process regarding the need for habilitation, rehabilitation, care, or treatment, as demonstrated by evidence of inability to weigh the possible costs and benefits of treatment, the committee may authorize involuntary 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.

Amended by Chapter 366, 2011 General Session

Part 4
Home-based Services

62A-5-401 Purpose.

The purpose of this part is to provide support to families in their role as primary caregivers for family members with disabilities.

Enacted by Chapter 207, 1991 General Session

62A-5-402 Scope of services -- Principles.

(1)

(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.
(2) 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 (2)(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.

Amended by Chapter 61, 2005 General Session

62A-5-403 Services for persons under 11 years of age.
(1) Except as provided in Subsection (2), after June 30, 1996, the division may not provide residential services to persons with disabilities who are under 11 years of age.
(2) The prohibition of Subsection (1) 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.

Amended by Chapter 179, 1996 General Session
Amended by Chapter 318, 1996 General Session

Part 5
Disability Ombudsman Program

62A-5-501 Definitions.

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 62A-5-502.
(4) "Rights and privileges of an individual with a disability" means the rights and privileges of an individual with a disability described in Subsections 62A-5b-103(1) through (3).

Enacted by Chapter 220, 2022 General Session

62A-5-502 Disability ombudsman -- Purpose -- Appointment -- Qualifications -- Staff.

(1) There is created within the division 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.

Enacted by Chapter 220, 2022 General Session

62A-5-503 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 62A-3-203, and the child protection ombudsman, appointed under Section 62A-4a-208, 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.

Enacted by Chapter 220, 2022 General Session

62A-5-504 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.

Enacted by Chapter 220, 2022 General Session

62A-5-505 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.

Enacted by Chapter 220, 2022 General Session

Chapter 5a
Coordinating Council for Persons with Disabilities

62A-5a-101 Policy statement.

It is the policy of this state that all agencies that provide services to persons with disabilities:

(1) coordinate and ensure that services and supports are provided in a cost-effective manner. It is the intent of the Legislature that services and supports provided under this chapter be coordinated to meet the individual needs of persons with disabilities; and

(2) whenever possible, regard an individual's personal choices concerning services and supports that are best suited to his individual needs and that promote his independence, productivity, and integration in community life.

Enacted by Chapter 207, 1991 General Session

62A-5a-102 Definitions.

As used in this chapter:

(1) "Council" means the Coordinating Council for Persons with Disabilities.

(2) "State agencies" means:

(a) the Division of Services for People with Disabilities and the Division of Substance Abuse and Mental Health, within the Department of Human Services;

(b) the Division of Health Care Financing within the Department of Health;

(c) family health services programs established under Title 26, Chapter 10, Family Health Services, operated by the Department of Health;

(d) the Utah State Office of Rehabilitation created in Section 35A-1-202; and

(e) special education programs operated by the State Board of Education or an LEA under Title 53E, Chapter 7, Part 2, Special Education Program.

Amended by Chapter 187, 2019 General Session

62A-5a-103 Coordinating Council for Persons with Disabilities -- Creation -- Membership -- Expenses.

(1) There is created the Coordinating Council for Persons with Disabilities.

(2) The council shall consist of:

(a) the director of the Division of Services for People with Disabilities within the Department of Human Services, or the director's designee;

(b) the director of family health services programs, appointed under Section 26-10-3, or the director's designee;

(c) the director of the Utah State Office of Rehabilitation created in Section 35A-1-202, or the director's designee;

(d) the state director of special education, or the director's designee;

(e) the director of the Division of Health Care Financing within the Department of Health, or the director's designee;

(f) the director of the Division of Substance Abuse and Mental Health within the Department of Human Services, or the director's designee;

(g) the superintendent of Schools for the Deaf and the Blind, or the superintendent's designee; and
(h) a person with a disability, a family member of a person with a disability, or an advocate for persons with disabilities, appointed by the members listed in Subsections (2)(a) through (g).
(3)
(a) The council shall annually elect a chair from its membership.
(b) Five members of the council are a quorum.
(4) A member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:
(a) Section 63A-3-106;
(b) Section 63A-3-107; and
(c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.

Amended by Chapter 271, 2016 General Session

62A-5a-104 Powers of council.
(1) The council has authority, after local or individual efforts have failed, to:
(a) coordinate the appropriate transition of persons with disabilities who receive services and support from one state agency to receive services and support from another state agency;
(b) coordinate policies governing the provision of services and support for persons with disabilities by state agencies; and
(c) consider issues regarding eligibility for services and support and, where possible, develop uniform eligibility standards for state agencies.
(2) The council may receive appropriations from the Legislature to purchase services and supports for persons with disabilities as the council deems appropriate.

Amended by Chapter 167, 2013 General Session
Amended by Chapter 413, 2013 General Session

62A-5a-105 Coordination of services for school-age children.
(1) Within appropriations authorized by the Legislature, the state director of special education, the director of the Utah State Office of Rehabilitation created in Section 35A-1-202, the executive director of the Department of Human Services, and the family health services director within the Department of Health, or their designees, and the affected LEA, as defined in Section 53E-1-102, shall cooperatively develop a single coordinated education program, treatment services, and individual and family supports for students entitled to a free appropriate education under Title 53E, Chapter 7, Part 2, Special Education Program, who also require services from the Department of Human Services, the Department of Health, or the Utah State Office of Rehabilitation.
(2) Distribution of costs for services and supports described in Subsection (1) shall be determined through a process established by the State Board of Education, the Department of Human Services, and the Department of Health.

Amended by Chapter 187, 2019 General Session

Chapter 5b

Rights and Privileges of an Individual with a Disability

62A-5b-101 Title.

This chapter is known as "Rights and Privileges of an Individual with a Disability."

Amended by Chapter 190, 2019 General Session

62A-5b-102 Definitions.

As used in this chapter:

(1) "Disability" has the same meaning as defined in 42 U.S.C. 12102 of the Americans With Disabilities Act of 1990, as may be amended in the future, and 28 C.F.R. 36.104 of the Code of Federal Regulations, as may be amended in the future.

(2)

(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.

(3) "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.

Amended by Chapter 190, 2019 General Session

62A-5b-103 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 62A-5b-104.

Amended by Chapter 190, 2019 General Session

62A-5b-104 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 62A-5b-103; and
(ii) without additional charge for the service animal.
(b) An owner or lessor of private housing accommodations:
(i) may not, in any manner, discriminate against an individual with a disability on the basis of the individual's possession of a service animal or a support animal, including by charging an extra fee or deposit for a service animal or a support animal; and
(ii) may recover a reasonable cost to repair damage caused by a service animal or a support animal.
(2) An individual who is not an individual with a disability has the right to be accompanied by an animal that is in training to become a service animal or a police service canine, as defined in Section 53-16-102:
(a) in any of the places specified in Section 62A-5b-103; and
(b) without additional charge for the animal.
(3) An individual described in Subsection (1) or (2) is liable for any loss or damage the individual's accompanying service animal, support animal, or animal described in Subsection (2) causes or inflicts to the premises of a place specified in Section 62A-5b-103.
(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 62A-5b-103.

Amended by Chapter 190, 2019 General Session

62A-5b-105 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.

Amended by Chapter 190, 2019 General Session

62A-5b-106 Interference with rights provided in this chapter -- Misrepresentation of rights under this chapter.

(1) Any individual, or agent of any individual, who denies or interferes with the rights provided in this chapter is guilty of a class C misdemeanor.
(2) An individual is guilty of a class C misdemeanor if:
  (a) the individual intentionally and knowingly falsely represents to another person that an animal is a service animal or a support animal;
  (b) the individual knowingly and intentionally misrepresents a material fact to a health care provider for the purpose of obtaining documentation from the health care provider necessary to designate an animal as a service animal or a support animal; or
  (c) the individual, except for an individual with a disability, uses an animal to gain treatment or benefits only provided for an individual with a disability.
(3) This section does not affect the enforceability of any criminal law, including Subsection 76-6-501(2).
(4) An agent of a protection and advocacy agency, acting in the agent's professional capacity and in compliance with 29 U.S.C. Sec. 794e et seq., 42 U.S.C. Sec. 15041 et seq., and 42 U.S.C. Sec. 1801 et seq., is not criminally liable under Subsection (2).

Amended by Chapter 190, 2019 General Session

62A-5b-107 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 22, 2007 General Session

Chapter 6
Sterilization of a Person with a Disability

62A-6-101 Definitions.

As used in this chapter:

(1) "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.
(2) "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.
(3) "Sterilization" means any medical procedure, treatment, or operation rendering an individual permanently incapable of procreation.

Amended by Chapter 366, 2011 General Session

62A-6-102 Sterilization of persons 18 years of age or older.

(1) It is lawful for a physician to sterilize a person who is 18 years of age or older and who has the capacity to give informed consent.

(2) It is unlawful for a physician to sterilize a person who is 18 years of age or older and who is institutionalized, unless:

(a) the physician, through careful examination and counseling, ensures that the person is capable of giving informed consent and that no undue influence or coercion to consent has been placed on that person by nature of the fact that he is institutionalized; or

(b) the person is not capable of giving informed consent, a petition has been filed in accordance with Section 62A-6-107, and an order authorizing the sterilization has been entered by a court of competent jurisdiction.

(3) It is unlawful for a physician to sterilize a person who is 18 years of age or older and who is not capable of giving informed consent unless a petition has been filed in accordance with Section 62A-6-107 and an order authorizing sterilization has been entered by a court of competent jurisdiction.

Enacted by Chapter 1, 1988 General Session

62A-6-103 Sterilization of persons under 18 years of age.

It is unlawful for a physician to sterilize a person who is under 18 years of age unless:

(1) the person is married or otherwise emancipated and the physician, through careful examination and counseling, ensures that the person is capable of giving informed consent. If that person is institutionalized, the physician shall also ensure that no undue influence or coercion to consent has been placed on the person by nature of the fact that he is institutionalized; or

(2) a petition has been filed in accordance with Section 62A-6-107, and an order authorizing sterilization has been entered by a court of competent jurisdiction.

Enacted by Chapter 1, 1988 General Session

62A-6-104 Emergency -- Medical necessity.

If an emergency situation exists that prevents compliance with Section 62A-6-102 or 62A-6-103 because of medical necessity, if delay in performing the sterilization could result in serious physical injury or death to the person, the attending physician shall certify, in writing, the specific medical reasons that necessitated suspension of those requirements. That certified statement shall become a permanent part of the sterilized person's medical record.

Enacted by Chapter 1, 1988 General Session

62A-6-105 Persons who may give informed consent.

For purposes of this chapter, the following persons may give informed consent to sterilization:

(1) a person who is the subject of sterilization, if he 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.

Enacted by Chapter 1, 1988 General Session

62A-6-106 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.

Enacted by Chapter 1, 1988 General Session

62A-6-107 Petition for order authorizing sterilization.

A petition for an order authorizing sterilization may be filed by a person who desires sterilization, or by his parent, spouse, guardian, custodian, or other interested party. The court shall adjudicate the petition for sterilization in accordance with Section 62A-6-108.

Enacted by Chapter 1, 1988 General Session

62A-6-108 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 his mental impairment, and the likelihood that the condition is permanent;
- (b) the level of his understanding regarding the concepts of reproduction and contraception, and whether his ability to understand those concepts is likely to improve;
- (c) his capability for procreation or reproduction. It is 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 he 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 his rights to bodily and psychological integrity;
- (h) the advisability of postponing sterilization until a later date; and
- (i) the likelihood that he could adequately care and provide for a child.

(2) 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. 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) The court shall interview the subject of sterilization to determine his understanding of and desire for sterilization. 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. 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) When adjudicating a petition for sterilization the court shall determine, on the basis of all the evidence, what decision regarding sterilization would have been made by the subject of sterilization, if he were capable of giving informed consent to sterilization. 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, it shall make appropriate findings of fact in support of its order.

Enacted by Chapter 1, 1988 General Session

62A-6-109 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.

Enacted by Chapter 1, 1988 General Session

62A-6-110 Notice of hearing -- Service.

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. 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. 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.

Enacted by Chapter 1, 1988 General Session

62A-6-111 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) 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. If the court grants that motion, the person shall be represented by a guardian ad litem at the hearing.

Enacted by Chapter 1, 1988 General Session

62A-6-112 Jury -- Rules of evidence -- Transcript -- Burden of proof.

(1) The petitioner is entitled to request a jury to hear the petition. The rules of evidence apply in any hearing on a petition for sterilization. A transcript shall be made of the hearing and shall be made a permanent part of the record.
(2) 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.

Enacted by Chapter 1, 1988 General Session

62A-6-113 Appeal to Supreme Court -- Stay.

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. The pendency of an appeal in the Supreme Court shall stay the proceedings until the appeal is finally determined.

Enacted by Chapter 1, 1988 General Session

62A-6-114 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.

Enacted by Chapter 1, 1988 General Session

62A-6-115 Immunity.

A physician, assistant, or any other person acting pursuant to an order authorizing sterilization, as provided in this chapter, is not civilly or criminally liable for participation in or assistance to sterilization. This section does not apply to negligent acts committed in the performance of sterilization.

Enacted by Chapter 1, 1988 General Session

62A-6-116 Unauthorized sterilization -- Criminal penalty.

Except as authorized by this chapter, 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 chapter have not been met, is guilty of a third degree felony.

Enacted by Chapter 1, 1988 General Session

Chapter 11
Recovery Services

Part 1
Office of Recovery Services

62A-11-101 Legislative intent -- Liberal construction.

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

Enacted by Chapter 1, 1988 General Session

62A-11-102 Office of Recovery Services -- Creation.

(1) There is created within the department the Office of Recovery Services which has the powers and duties provided by law.

(2) The office is under the administrative and general supervision of the executive director.

Enacted by Chapter 1, 1988 General Session

62A-11-103 Definitions.

As used in this part:

(1) "Account" means a demand deposit account, checking or negotiable withdrawal order account, savings account, time deposit account, or money-market mutual fund account.

(2) "Cash medical support" means an obligation to equally share all reasonable and necessary medical and dental expenses of children.

(3) "Child support services" or "IV-D child support services" means services provided pursuant to Part D of Title IV of the Social Security Act, 42 U.S.C. Sec. 651, et seq.

(4) "Director" means the director of the Office of Recovery Services.

(5) "Disposable earnings" means that part of the earnings of an individual remaining after the deduction of all amounts required by law to be withheld.

(6) "Financial institution" means:

(a) a depository institution as defined in Section 7-1-103 or the Federal Deposit Insurance Act, 12 U.S.C. Sec. 1813(c);

(b) an institution-affiliated party as defined in the Federal Deposit Insurance Act, 12 U.S.C. Sec. 1813(u);

(c) any federal credit union or state credit union as defined in the Federal Credit Union Act, 12 U.S.C. Sec. 1752, including an institution-affiliated party of such a credit union as defined in 12 U.S.C. Sec. 1786(r);

(d) a broker-dealer as defined in Section 61-1-13; or

(e) any benefit association, insurance company, safe deposit company, money-market mutual fund, or similar entity authorized to do business in the state.

(7) "Financial record" is defined in the Right to Financial Privacy Act of 1978, 12 U.S.C. Sec. 3401.

(8) "Income" means earnings, compensation, or other payment due to an individual, regardless of source, whether denominated as wages, salary, commission, bonus, pay, or contract payment, or denominated as advances on future wages, salary, commission, bonus, pay, allowances, contract payment, or otherwise, including severance pay, sick pay, and incentive pay. "Income" includes:

(a) all gain derived from capital assets, labor, or both, including profit gained through sale or conversion of capital assets;

(b) interest and dividends;

(c) periodic payments made under pension or retirement programs or insurance policies of any type;

(d) unemployment compensation benefits;

(e) workers' compensation benefits; and

(f) disability benefits.

(9) "IV-D" means Part D of Title IV of the Social Security Act, 42 U.S.C. Sec. 651 et seq.

(10) "New hire registry" means the centralized new hire registry created in Section 35A-7-103.

(11) "Obligee" means an individual, this state, another state, or other comparable jurisdiction to whom a debt is owed or who is entitled to reimbursement of child support or public assistance.

(12) "Obligor" means a person, firm, corporation, or the estate of a decedent owing money to this state, to an individual, to another state, or other comparable jurisdiction in whose behalf this state is acting.

(13) "Office" means the Office of Recovery Services.

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

Amended by Chapter 41, 2012 General Session

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

(iii) the distribution of collected amounts;
(iv) the birth date of any child for whom the order requires the provision of support; and
(v) the amount of any lien imposed with respect to the order pursuant to this part;
(i) to contract with the Department of Workforce Services to establish and maintain the new hire registry created under Section 35A-7-103;
(j) to determine whether an individual who has applied for or is receiving cash assistance or Medicaid is cooperating in good faith with the office as required by Section 62A-11-307.2;
(k) to finance any costs incurred from collections, fees, General Fund appropriation, contracts, and federal financial participation; and
(l) to provide notice to a noncustodial parent in accordance with Section 62A-11-304.4 of the opportunity to contest the accuracy of allegations by a custodial parent of nonpayment of past-due child support, prior to taking action against a noncustodial parent to collect the alleged past-due support.
(2) The office may not provide child support services to the Division of Child and Family Services for a calendar month when the child to whom the child support services relate is:
(a) in the custody of the Division of Child and Family Services; and
(b) lives in the home of a custodial parent of the child for more than seven consecutive days, regardless of whether:
(i) the greater than seven consecutive day period starts during one month and ends in the next month; and
(ii) the child is living in the home on a trial basis.
(3) The Division of Child and Family Services is not entitled to child support, for a child to whom the child support relates, for a calendar month when child support services may not be provided under Subsection (2).

Amended by Chapter 45, 2015 General Session

62A-11-104.1 Disclosure of information regarding employees.
(1) Upon request by the office, for purposes of an official investigation made in connection with its duties under Section 62A-11-104, the following disclosures shall be made to the office:
(a) a public or private employer shall disclose an employee's name, address, date of birth, income, social security number, and health insurance information pertaining to the employee and the employee's dependents;
(b) an insurance organization subject to Title 31A, Insurance Code, or the insurance administrators of a self-insured employer shall disclose health insurance information pertaining to an insured or an insured's dependents, if known; and
(c) a financial institution subject to Title 7, Financial Institutions Act, shall disclose financial record information of a customer named in the request.
(2) The office shall specify by rule the type of health insurance and financial record information required to be disclosed under this section.
(3) All information received under this section is subject to Title 63G, Chapter 2, Government Records Access and Management Act.
(4) An employer, financial institution, or insurance organization, or its agent or employee, is not civilly or criminally liable for providing information to the office in accordance with this section, whether the information is provided pursuant to oral or written request.

Amended by Chapter 382, 2008 General Session

62A-11-105 Adjudicative proceedings.

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

Amended by Chapter 382, 2008 General Session

62A-11-106 Office may file as real party in interest -- Written consent to payment agreements -- Money judgment in favor of obligee considered to be in favor of office to extent of right to recover.

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

Amended by Chapter 140, 1994 General Session

62A-11-107 Director -- Powers of office -- Representation by county attorney or attorney general -- Receipt of grants -- Rulemaking and enforcement.

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

Amended by Chapter 3, 2008 General Session

62A-11-108 Office designated as criminal justice agency -- Access by IV-D agencies to motor vehicle and law enforcement data through the office.

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

Amended by Chapter 232, 1997 General Session

62A-11-111 Lien provisions.

Provisions for collection of any lien placed as a condition of eligibility for any federally or state-funded public assistance program are as follows:
(1) Any assistance granted after July 1, 1953 to the spouse of an old-age recipient who was not eligible for old-age assistance but who participated in the assistance granted to the family is recoverable in the same manner as old-age assistance granted to the old-age recipient.
(2) At the time of the settlement of a lien given as a condition of eligibility for the old-age assistance program, there shall be allowed a cash exemption of $1,000, less any additional money invested by the department in the home of an old-age recipient or recipients of other assistance programs either as payment of taxes, home and lot improvements, or to protect the interest of the state in the property for necessary improvements to make the home habitable, to be deducted from the market or appraised value of the real property. When it is necessary to sell property or to settle an estate the department may grant reasonable costs of sale and settlement of an estate as follows:
(a) When the total cost of probate, including the sale of property when it is sold, and the cost of burial and last illness do not exceed $1,000, the exemption of $1,000 shall be the total exemption, which shall be the only amount deductible from the market or appraised value of the property.
(b) Subject to Subsection (2)(c), when $1,000 is not sufficient to pay for the costs of probate, the following expenditures are authorized:
(i) cost of funeral expenses not exceeding $1,500;
(ii) costs of terminal illness, provided the medical expenses have not been paid from any state or federally-funded assistance program;
(iii) realty fees, if any;
(iv) costs of revenue stamps, if any;
(v) costs of abstract or title insurance, whichever is the least costly;
(vi) attorney fees not exceeding the recommended fee established by the Utah State Bar;
(vii) administrator's fee not to exceed $150;
(viii) court costs; and
(ix) delinquent taxes, if any.
(c) An attorney, who sells the property in an estate that the attorney is probating, is entitled to the lesser of:
(i) a real estate fee; or
(ii) an attorney fee.

(3) The amounts listed in Subsection (2)(b) are to be considered only when the total costs of probate exceed $1,000, and those amounts are to be deducted from the market or appraised value of the property in lieu of the exemption of $1,000 and are not in addition to the $1,000 exemption.
(4) When both husband and wife are recipients and one or both of them own an interest in real property, the lien attaches to the interests of both for the reimbursement of assistance received by either or both spouses. Only one exemption, as provided in this section, is allowed.
(5) When a lien was executed by one party on property that is owned in joint tenancy with full rights of survivorship, the execution of the lien severs the joint tenancy and a tenancy in common results, insofar as a department lien is affected, unless the recipients are husband and wife. When recipients are husband and wife who own property in joint tenancy with full rights of survivorship, the execution of a lien does not sever the joint tenancy, insofar as a department lien might be affected, and settlement of the lien shall be in accordance with the provisions of Subsection (4).
(6) The amount of the lien given for old-age assistance shall be the total amount of assistance granted up to the market or appraised value of the real or personal property, less the amount of the legal maximum property limitations from the execution of the lien until settlement thereof. There shall be no exemption of any kind or nature allowed against real or personal property liens granted for old-age assistance except assistance in the form of medical care, and nursing home care, other types of congregate care, and similar plans for persons with a physical or mental disability.
(7) When it is necessary to sell property or to settle an estate, the department is authorized to approve payment of the reasonable costs of sale and settlement of an estate on which a lien has been given for old-age assistance.
(8) The amount of reimbursement of all liens held by the department shall be determined on the basis of the formulas described in this section, when they become due and payable.
(9) All lien agreements shall be recorded with the county recorder of the county in which the real property is located, and that recording has the same effect as a judgment lien on any real property in which the recipient has any title or interest. All such real property including but not limited to, joint tenancy interests, shall, from the time a lien agreement is recorded, be and become charged with a lien for all assistance received by the recipient or his spouse as provided in this section. That lien has priority over all unrecorded encumbrances. No fees or costs shall be paid for such recording.
(10) Liens shall become due and payable, and the department shall seek collection of each lien now held:
  (a) when the property to which the lien attaches is transferred to a third party prior to the recipient's death, provided, that if other property is purchased by the recipient to be used by the recipient as a home, the department may transfer the amount of the lien from the property sold to the property purchased;
  (b) upon the death of the recipient and the recipient's spouse, if any. When the heirs or devisees of the property are also recipients of public assistance, or when other hardship circumstances exist, the department may postpone settlement of the lien if that would be in the best interest of the recipient and the state;
  (c) when a recipient voluntarily offers to settle the lien; or
  (d) when property subject to a lien is no longer used by a recipient and appears to be abandoned.
(11) When a lien becomes due and payable, a certificate in a form approved by the department certifying to the amount of assistance provided to the recipient and the amount of the lien,

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

(12) If heirs are unable to make a lump-sum settlement of the lien at the time it becomes due and payable, the department may permit settlement based upon periodic repayments in a manner prescribed by the department, with interest as provided in Subsection (11).

(13) All sums so recovered, except those credited to the federal government, shall be retained by the department.

(14) The department is empowered to accept voluntary conveyance of real or personal property in satisfaction of its interest therein. All property acquired by the department under the provisions of this section may be disposed of by public or private sale under rules prescribed by the department. The department is authorized to execute and deliver any document necessary to convey title to all property that comes into its possession, as though the department constituted a corporate entity.

(15) Any real property acquired by the department, either by foreclosure or voluntary conveyance, is tax exempt, so long as it is so held.

Amended by Chapter 366, 2011 General Session

Part 3
Child Support Services Act

62A-11-301 Title.

This part is known as the "Child Support Services Act."

Amended by Chapter 161, 2000 General Session

62A-11-302 Common-law and statutory remedies augmented by act -- Public policy.

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

Enacted by Chapter 1, 1988 General Session

62A-11-303 Definitions.

As used in this part:

(1) "Adjudicative proceeding" means an action or proceeding of the office conducted in accordance with Title 63G, Chapter 4, Administrative Procedures Act.
(2) "Administrative order" means an order that has been issued by the office, the department, or an administrative agency of another state or other comparable jurisdiction with similar authority to that of the office.
(3) "Assistance" or "public assistance" is defined in Section 62A-11-103.
(4) "Business day" means a day on which state offices are open for regular business.
(5) "Child" means:
  (a) a son or daughter under the age of 18 years who is not otherwise emancipated, self-supporting, married, or a member of the armed forces of the United States;
  (b) a son or daughter over the age of 18 years, while enrolled in high school during the normal and expected year of graduation and not otherwise emancipated, self-supporting, married, or a member of the armed forces of the United States; or
  (c) a son or daughter of any age who is incapacitated from earning a living and is without sufficient means.
(6) "Child support" is defined in Section 62A-11-401.
(7) "Child support guidelines" or "guidelines" is defined in Section 78B-12-102.
(8) "Child support order" or "support order" is defined in Section 62A-11-401.
(9) "Child support services" or "IV-D child support services" is defined in Section 62A-11-103.
(10) "Court order" means a judgment or order of a tribunal of appropriate jurisdiction of this state, another state, Native American tribe, the federal government, or any other comparable jurisdiction.
(11) "Director" means the director of the Office of Recovery Services.
(12) "Disposable earnings" is defined in Section 62A-11-103.
(13) "High-volume automated administrative enforcement" in interstate cases means, on the request of another state, the identification by the office, through automatic data matches with financial institutions and other entities where assets may be found, of assets owned by persons who owe child support in the requesting state, and the seizure of the assets by the office, through levy or other appropriate processes.
(14) "Income" is defined in Section 62A-11-103.
(15) "Notice of agency action" means the notice required to commence an adjudicative proceeding in accordance with Section 63G-4-201.
(16) "Obligee" means an individual, this state, another state, or other comparable jurisdiction to whom a duty of child support is owed, or who is entitled to reimbursement of child support or public assistance.
(17) "Obligor" means a person, firm, corporation, or the estate of a decedent owing a duty of support to this state, to an individual, to another state, or other corporate jurisdiction in whose behalf this state is acting.
(18) "Office" is defined in Section 62A-11-103.
(19) "Parent" means a natural parent or an adoptive parent of a dependent child.
(20) "Person" includes an individual, firm, corporation, association, political subdivision, department, or office.
(21) "Presiding officer" means a presiding officer described in Section 63G-4-103.
(22) "Support" includes past-due, present, and future obligations established by:

(a) a tribunal or imposed by law for the financial support, maintenance, medical, or dental care of a dependent child; and
(b) a tribunal for the financial support of a spouse or former spouse with whom the obligor's dependent child resides if the obligor also owes a child support obligation that is being enforced by the state.
(23) "Support debt," "past-due support," or "arrears" means the debt created by nonpayment of support.
(24) "Tribunal" means the district court, the Department of Human Services, the Office of Recovery Services, or court or administrative agency of any state, territory, possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Native American Tribe, or other comparable domestic or foreign jurisdiction.

Amended by Chapter 3, 2008 General Session
Amended by Chapter 382, 2008 General Session

62A-11-303.5 Application for child support services.

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

Enacted by Chapter 60, 2002 General Session

62A-11-303.7 Annual fee for child support services to a custodial parent who has not received TANF assistance.

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

Amended by Chapter 285, 2019 General Session

62A-11-304.1 Expedited procedures for establishing paternity or establishing, modifying, or enforcing a support order.

(1) The office may, without the necessity of initiating an adjudicative proceeding or obtaining an order from any other judicial or administrative tribunal, take the following actions related to the establishment of paternity or the establishment, modification, or enforcement of a support

order, and to recognize and enforce the authority of state agencies of other states to take the following actions:

(a) require a child, mother, and alleged father to submit to genetic testing;

(b) subpoena financial or other information needed to establish, modify, or enforce a support order, including:

(i) the name, address, and employer of a person who owes or is owed support that appears on the customer records of public utilities and cable television companies; and

(ii) information held by financial institutions on such things as the assets and liabilities of a person who owes or is owed support;

(c) require a public or private employer to promptly disclose information to the office on the name, address, date of birth, social security number, employment status, compensation, and benefits, including health insurance, of any person employed as an employee or contractor by the employer;

(d) require an insurance organization subject to Title 31A, Insurance Code, or an insurance administrator of a self-insured employer to promptly disclose to the office health insurance information pertaining to an insured or an insured's dependents, if known;

(e) obtain access to information in the records and automated databases of other state and local government agencies, including:

(i) marriage, birth, and divorce records;

(ii) state and local tax and revenue records providing information on such things as residential and mailing addresses, employers, income, and assets;

(iii) real and titled personal property records;

(iv) records concerning occupational and professional licenses and the ownership and control of corporations, partnerships, and other business entities;

(v) employment security records;

(vi) records of agencies administering public assistance programs;

(vii) motor vehicle department records; and

(viii) corrections records;

(f) upon providing notice to the obligor and obligee, direct an obligor or other payor to change the payee to the office if support has been assigned to the office under Section 35A-7-108 or if support is paid through the office pursuant to the Social Security Act, 42 U.S.C. Sec. 654B;

(g) order income withholding in accordance with Part 4, Income Withholding in IV-D Cases;

(h) secure assets to satisfy past-due support by:

(i) intercepting or seizing periodic or lump-sum payments from:

(A) a state or local government agency, including unemployment compensation, workers' compensation, and other benefits; and

(B) judgments, settlements, and lotteries;

(ii) attaching and seizing assets of an obligor held in financial institutions;

(iii) attaching public and private retirement funds, if the obligor presently:

(A) receives periodic payments; or

(B) has the authority to withdraw some or all of the funds; and

(iv) imposing liens against real and personal property in accordance with this section and Section 62A-11-312.5; and

(i) increase monthly payments in accordance with Section 62A-11-320.

(2)

(a) When taking action under Subsection (1), the office shall send notice under this Subsection (2)(a) to the person or entity who is required to comply with the action if not a party to a case receiving IV-D services.

(b) The notice described in Subsection (2)(a) shall include:
(i) the authority of the office to take the action;
(ii) the response required by the recipient;
(iii) the opportunity to provide clarifying information to the office under Subsection (2)(c);
(iv) the name and telephone number of a person in the office who can respond to inquiries; and
(v) the protection from criminal and civil liability extended under Subsection (7).
(c) The recipient of a notice sent under this Subsection (2) shall promptly comply with the terms of the notice and may, if the recipient believes the office's request is in error, send clarifying information to the office setting forth the basis for the recipient's belief.
(3) The office shall in any case in which it requires genetic testing under Subsection (1)(a):
(a) consider clarifying information if submitted by the obligee and alleged father;
(b) proceed with testing as the office considers appropriate;
(c) pay the cost of the tests, subject to recoupment from the alleged father if paternity is established;
(d) order a second test if the original test result is challenged, and the challenger pays the cost of the second test in advance; and
(e) require that the genetic test is:
(i) of a type generally acknowledged as reliable by accreditation bodies designated by the federal Secretary of Health and Human Services; and
(ii) performed by a laboratory approved by such an accreditation body.
(4) The office may impose a penalty against an entity for failing to provide information requested in a subpoena issued under Subsection (1) as follows:
(a) $25 for each failure to provide requested information; or
(b) $500 if the failure to provide requested information is the result of a conspiracy between the entity and the obligor to not supply the requested information or to supply false or incomplete information.
(5)
(a) Unless a court or administrative agency has reduced past-due support to a sum certain judgment, the office shall provide concurrent notice to an obligor in accordance with Section 62A-11-304.4 of:
(i) any action taken pursuant to Subsections (1)(h)(i)(B), (1)(h)(ii), (1)(h)(iii), or Subsection 62A-11-304.5(1)(b) if Subsection (5)(b)(iii) does not apply; and
(ii) the opportunity of the obligor to contest the action and the amount claimed to be past-due by filing a written request for an adjudicative proceeding with the office within 15 days of notice being sent.
(b)
(i) Upon receipt of a notice of levy from the office for an action taken pursuant to Subsections (1)(h)(i)(B), (1)(h)(ii), (1)(h)(iii), or Subsection 62A-11-304.5(1)(b), a person in possession of personal property of the obligor shall:
(A) secure the property from unauthorized transfer or disposition as required by Section 62A-11-313; and
(B) surrender the property to the office after 21 days of receiving the notice unless the office has notified the person to release all or part of the property to the obligor.
(ii) Unless released by the office, a notice of levy upon personal property shall be:
(A) valid for 60 days; and
(B) effective against any additional property which the obligor may deposit or transfer into the possession of the person up to the amount of the levy.

(iii) If the property upon which the office imposes a levy is insufficient to satisfy the specified amount of past-due support and the obligor fails to contest that amount under Subsection (5)(a)(ii), the office may proceed under Subsections (1)(h)(i)(B), (1)(h)(ii), (1)(h)(iii), or Subsection 62A-11-304.5(1)(b) against additional property of the obligor until the amount specified and the reasonable costs of collection are fully paid.

(c) Except as provided in Subsection (5)(b)(iii), the office may not disburse funds resulting from action requiring notice under Subsection (5)(a)(i) until:

(i) 21 days after notice was sent to the obligor; and

(ii) the obligor, if the obligor contests the action under Subsection (5)(a)(ii), has exhausted the obligor's administrative remedies and, if appealed to a district court, the district court has rendered a final decision.

(d) Before intercepting or seizing any periodic or lump-sum payment under Subsection (1)(h)(i)(A), the office shall:

(i) comply with Subsection 59-10-529(4)(a); and

(ii) include in the notice required by Subsection 59-10-529(4)(a) reference to Subsection (1)(h)(i)(A).

(e) If Subsection (5)(a) or (5)(d) does not apply, an action against the real or personal property of the obligor shall be in accordance with Section 62A-11-312.5.

(6) All information received under this section is subject to Title 63G, Chapter 2, Government Records Access and Management Act.

(7) No employer, financial institution, public utility, cable company, insurance organization, its agent or employee, or related entity may be civilly or criminally liable for providing information to the office or taking any other action requested by the office pursuant to this section.

(8) The actions the office may take under Subsection (1) are in addition to the actions the office may take pursuant to Part 4, Income Withholding in IV-D Cases.

Amended by Chapter 212, 2009 General Session

62A-11-304.2 Issuance or modification of administrative order -- Compliance with court order -- Authority of office -- Stipulated agreements -- Notification requirements.

(1) Through an adjudicative proceeding the office may issue or modify an administrative order that:

(a) determines paternity;

(b) determines whether an obligor owes support;

(c) determines temporary orders of child support upon clear and convincing evidence of paternity in the form of genetic test results or other evidence;

(d) requires an obligor to pay a specific or determinable amount of present and future support;

(e) determines the amount of past-due support;

(f) orders an obligor who owes past-due support and is obligated to support a child receiving public assistance to participate in appropriate work activities if the obligor is unemployed and is not otherwise incapacitated;

(g) imposes a penalty authorized under this chapter;

(h) determines an issue that may be specifically contested under this chapter by a party who timely files a written request for an adjudicative proceeding with the office; and

(i) renews an administrative judgment.

(2)

(a) An abstract of a final administrative order issued under this section or a notice of judgment-lien under Section 62A-11-312.5 may be filed with the clerk of any district court.

(b) Upon a filing under Subsection (2)(a), the clerk of the court shall:

(i) docket the abstract or notice in the judgment docket of the court and note the time of receipt on the abstract or notice and in the judgment docket; and
(ii) at the request of the office, place a copy of the abstract or notice in the file of a child support action involving the same parties.
(3) If a judicial order has been issued, the office may not issue an order under Subsection (1) that is not based on the judicial order, except:
(a) the office may establish a new obligation in those cases in which the juvenile court has ordered the parties to meet with the office to determine the support pursuant to Section 78A-6-356; or
(b) the office may issue an order of current support in accordance with the child support guidelines if the conditions of Subsection 78B-14-207(2)(c) are met.
(4) The office may proceed under this section in the name of this state, another state under Section 62A-11-305, any department of this state, the office, or the obligee.
(5) The office may accept voluntary acknowledgment of a support obligation and enter into stipulated agreements providing for the issuance of an administrative order under this part.
(6) The office may act in the name of the obligee in endorsing and cashing any drafts, checks, money orders, or other negotiable instruments received by the office for support.
(7) The obligor shall, after a notice of agency action has been served on the obligor in accordance with Section 63G-4-201, keep the office informed of:
(a) the obligor's current address;
(b) the name and address of current payors of income;
(c) availability of or access to health insurance coverage; and
(d) applicable health insurance policy information.

Amended by Chapter 262, 2021 General Session

62A-11-304.4 Filing of location information -- Service of process.
(1)
(a) Upon the entry of an order in a proceeding to establish paternity or to establish, modify, or enforce a support order, each party shall file identifying information and shall update that information as changes occur:
(i) with the court or administrative agency that conducted the proceeding; and
(ii) after October 1, 1998, with the state case registry.
(b) The identifying information required under Subsection (1)(a) shall include the person's Social Security number, driver's license number, residential and mailing addresses, telephone numbers, the name, address, and telephone number of employers, and any other data required by the United States Secretary of Health and Human Services.
(c) In any subsequent child support action involving the office or between the parties, state due process requirements for notice and service of process shall be satisfied as to a party upon:
(i) a sufficient showing that diligent effort has been made to ascertain the location of the party; and
(ii) delivery of notice to the most recent residential or employer address filed with the court, administrative agency, or state case registry under Subsection (1)(a).
(2)
(a) The office shall provide individuals who are applying for or receiving services under this chapter or who are parties to cases in which services are being provided under this chapter:
(i) with notice of all proceedings in which support obligations might be established or modified; and

(ii) with a copy of any order establishing or modifying a child support obligation, or in the case of a petition for modification, a notice of determination that there should be no change in the amount of the child support award, within 14 days after issuance of such order or determination.

(b) Notwithstanding Subsection (2)(a)(ii), notice in the case of an interstate order shall be provided in accordance with Section 78B-14-614.

(3) Service of all notices and orders under this part shall be made in accordance with Title 63G, Chapter 4, Administrative Procedures Act, the Utah Rules of Civil Procedure, or this section.

(4) Consistent with Title 63G, Chapter 2, Government Records Access and Management Act, the office shall adopt procedures to classify records to prohibit the unauthorized use or disclosure of information relating to a proceeding to:

(a) establish paternity; or

(b) establish or enforce support.

(5)

(a) The office shall, upon written request, provide location information available in its files on a custodial or noncustodial parent to the other party or the other party's legal counsel provided that:

(i) the party seeking the information produces a copy of the parent-time order signed by the court;

(ii) the information has not been safeguarded in accordance with Section 454 of the Social Security Act;

(iii) the party whose location is being sought has been afforded notice in accordance with this section of the opportunity to contest release of the information;

(iv) the party whose location is being sought has not provided the office with a copy of a protective order, a current court order prohibiting disclosure, a current court order limiting or prohibiting the requesting person's contact with the party or child whose location is being sought, a criminal order, an administrative order pursuant to Section 80-2-707, or documentation of a pending proceeding for any of the above; and

(v) there is no other state or federal law that would prohibit disclosure.

(b) "Location information" shall consist of the current residential address of the custodial or noncustodial parent and, if different and known to the office, the current residence of any children who are the subject of the parent-time order. If there is no current residential address available, the person's place of employment and any other location information shall be disclosed.

(c) For the purposes of this section, "reason to believe" under Section 454 of the Social Security Act means that the person seeking to safeguard information has provided to the office a copy of a protective order, current court order prohibiting disclosure, current court order prohibiting or limiting the requesting person's contact with the party or child whose location is being sought, criminal order signed by a court of competent jurisdiction, an administrative order pursuant to Section 80-2-707, or documentation of a pending proceeding for any of the above.

(d) Neither the state, the department, the office nor its employees shall be liable for any information released in accordance with this section.

(6) Custodial or noncustodial parents or their legal representatives who are denied location information in accordance with Subsection (5) may serve the Office of Recovery Services to initiate an action to obtain the information.

Amended by Chapter 335, 2022 General Session

62A-11-304.5 Financial institutions.

(1) The office shall enter into agreements with financial institutions doing business in the state:
(a) to develop and operate, in coordination with such financial institutions, a data match system that:
(i) uses automated data exchanges to the maximum extent feasible; and
(ii) requires a financial institution each calendar quarter to provide the name, record address, social security number, other taxpayer identification number, or other identifying information for each obligor who:
(A) maintains an account at the institution; and
(B) owes past-due support as identified by the office by name and social security number or other taxpayer identification number; and
(b) to require a financial institution upon receipt of a notice of lien to encumber or surrender assets held by the institution on behalf of an obligor who is subject to a child support lien in accordance with Section 62A-11-304.1.
(2) The office may pay a reasonable fee to a financial institution for compliance with Subsection (1)(a), which may not exceed the actual costs incurred.
(3) A financial institution may not be liable under any federal or state law to any person for any disclosure of information or action taken in good faith under Subsection (1).
(4) The office may disclose a financial record obtained from a financial institution under this section only for the purpose of, and to the extent necessary in, establishing, modifying, or enforcing a child support obligation.
(5) If an employee of the office knowingly, or by reason of negligence, discloses a financial record of an individual in violation of Subsection (4), the individual may bring a civil action for damages in a district court of the United States as provided for in the Social Security Act, 42 U.S.C. Sec. 669A.
(6) The office shall provide notice and disburse funds seized or encumbered under this section in accordance with Section 62A-11-304.1.

Enacted by Chapter 232, 1997 General Session

62A-11-305 Support collection services requested by agency of another state.

(1) In accordance with Title 78B, Chapter 14, Utah Uniform Interstate Family Support Act, the office may proceed to issue or modify an order under Section 62A-11-304.2 to collect under this part from an obligor who is located in or is a resident of this state regardless of the presence or residence of the obligee if:
(a) support collection services are requested by an agency of another state that is operating under Part IV-D of the Social Security Act; or
(b) an individual applies for services.
(2) The office shall use high-volume automated administrative enforcement, to the same extent it is used for intrastate cases, in response to a request made by another state's IV-D child support agency to enforce support orders.
(3) A request by another state shall constitute a certification by the requesting state:
(a) of the amount of support under the order of payment of which is in arrears; and
(b) that the requesting state has complied with procedural due process requirements applicable to the case.
(4) The office shall give automated administrative interstate enforcement requests the same priority as a two-state referral received from another state to enforce a support order.

(5) The office shall promptly report the results of the enforcement procedures to the requesting state.
(6) As required by the Social Security Act, 42 U.S.C. Sec. 666(a)(14), the office shall maintain records of:
(a) the number of requests for enforcement assistance received by the office under this section;
(b) the number of cases for which the state collected support in response to those requests; and
(c) the amount of support collected.

Amended by Chapter 45, 2015 General Session

62A-11-306.1 Issuance or modification of an order to collect support for persons not receiving public assistance.

The office may proceed to issue or modify an order under Section 62A-11-304.2 and collect under this part even though public assistance is not being provided on behalf of a dependent child if the office provides support collection services in accordance with:
(1) an application for services provided under Title IV-D of the federal Social Security Act;
(2) the continued service provisions of Subsection 62A-11-307.2(5); or
(3) the interstate provisions of Section 62A-11-305.

Amended by Chapter 232, 1997 General Session

62A-11-306.2 Mandatory review and adjustment of child support orders for TANF recipients.

If a child support order has not been issued, adjusted, or modified within the previous three years and the children who are the subject of the order currently receive TANF funds, the office shall review the order, and if appropriate, move the tribunal to adjust the amount of the order if there is a difference of 10% or more between the payor's ordered support amount and the payor's support amount required under the guidelines.

Enacted by Chapter 282, 2007 General Session

62A-11-307.1 Collection directly from responsible parent.

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

parent currently or formerly in a same-sex marriage on the same terms as the Office of Recovery Services' authority against other mothers and fathers.

Amended by Chapter 156, 2017 General Session

62A-11-307.2 Duties of obligee after assignment of support rights.

(1) An obligee whose rights to support have been assigned under Section 35A-3-108 as a condition of eligibility for public assistance has the following duties:

(a) Unless a good cause or other exception applies, the obligee shall, at the request of the office:

(i) cooperate in good faith with the office by providing the name and other identifying information of the other parent of the obligee's child for the purpose of:

(A) establishing paternity; or

(B) establishing, modifying, or enforcing a child support order;

(ii) supply additional necessary information and appear at interviews, hearings, and legal proceedings; and

(iii) submit the obligee's child and himself to judicially or administratively ordered genetic testing.

(b) The obligee may not commence an action against an obligor or file a pleading to collect or modify support without the office's written consent.

(c) The obligee may not do anything to prejudice the rights of the office to establish paternity, enforce provisions requiring health insurance, or to establish and collect support.

(d) The obligee may not agree to allow the obligor to change the court or administratively ordered manner or amount of payment of past, present, or future support without the office's written consent.

(2)

(a) The office shall determine and redetermine, when appropriate, whether an obligee has cooperated with the office as required by Subsection (1)(a).

(b) If the office determines that an obligee has not cooperated as required by Subsection (1)(a), the office shall:

(i) forward the determination and the basis for it to the Department of Workforce Services, which shall inform the Department of Health of the determination, for a determination of whether compliance by the obligee should be excused on the basis of good cause or other exception; and

(ii) send to the obligee:

(A) a copy of the notice; and

(B) information that the obligee may, within 15 days of notice being sent:

(I) contest the office's determination of noncooperation by filing a written request for an adjudicative proceeding with the office; or

(II) assert that compliance should be excused on the basis of good cause or other exception by filing a written request for a good cause exception with the Department of Workforce Services.

(3) The office's right to recover is not reduced or terminated if an obligee agrees to allow the obligor to change the court or administratively ordered manner or amount of payment of support regardless of whether that agreement is entered into before or after public assistance is furnished on behalf of a dependent child.

(4)

(a) If an obligee receives direct payment of assigned support from an obligor, the obligee shall immediately deliver that payment to the office.

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

Amended by Chapter 174, 1997 General Session
Amended by Chapter 232, 1997 General Session

62A-11-312.5 Liens by operation of law and writs of garnishment.
(1) Each payment or installment of child support is, on and after the date it is due, a judgment with the same attributes and effect of any judgment of a district court in accordance with Section 78B-12-112 and for purposes of Section 78B-5-202.
(2)
(a) A judgment under Subsection (1) or final administrative order shall constitute a lien against the real property of the obligor upon the filing of a notice of judgment-lien in the district court where the obligor's real property is located if the notice:
(i) specifies the amount of past-due support; and
(ii) complies with the procedural requirements of Section 78B-5-202.
(b) Rule 69, Utah Rules of Civil Procedure, shall apply to any action brought to execute a judgment or final administrative order under this section against real or personal property in the obligor's possession.
(3)
(a) The office may issue a writ of garnishment against the obligor's personal property in the possession of a third party for a judgment under Subsection (1) or a final administrative order in the same manner and with the same effect as if the writ were issued on a judgment of a district court if:
(i) the judgment or final administrative order is recorded on the office's automated case registry; and
(ii) the writ is signed by the director or the director's designee and served by certified mail, return receipt requested, or as prescribed by Rule 4, Utah Rules of Civil Procedure.
(b) A writ of garnishment issued under Subsection (3)(a) is subject to the procedures and due process protections provided by Rule 64D, Utah Rules of Civil Procedure, except as provided by Section 62A-11-316.

Amended by Chapter 3, 2008 General Session

62A-11-313 Effect of Lien.
(1) After receiving notice that a support lien has been filed under this part by the office, no person in possession of any property which may be subject to that lien may pay over, release, sell, transfer, encumber, or convey that property to any person other than the office, unless he first receives:

(a) a release or waiver thereof from the office; or
(b) a court order that orders release of the lien on the basis that the debt does not exist or has been satisfied.
(2) Whenever any such person has in his possession earnings, deposits, accounts, or balances in excess of $100 over the amount of the debt claimed by the office, that person may, without liability under this part, release that excess to the obligor.

Amended by Chapter 62, 1989 General Session

62A-11-315.5 Enforcement of liens arising in another state.

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

Enacted by Chapter 232, 1997 General Session

62A-11-316 Requirement to honor voluntary assignment of earnings -- Discharge of employee prohibited -- Liability for discharge -- Earnings subject to support lien or garnishment.

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

Amended by Chapter 203, 1988 General Session

62A-11-319 Release of lien, attachment, or garnishment by department.

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

Enacted by Chapter 1, 1988 General Session

62A-11-320 Payment schedules.

(1) The office may:
  (a) set or reset a level and schedule of payments at any time consistent with the income, earning capacity, and resources of the obligor; or
  (b) demand payment in full.
(2) If a support debt is reduced to a schedule of payments and made subject to income withholding, the total monthly amount of the scheduled payment, current support payment, and cost of health insurance attributable to a child for whom the obligor has been ordered may only be subject to income withholding in an amount that does not exceed the maximum amount permitted under Section 303(b) of the Consumer Credit Protection Act, 15 U.S.C. Sec. 1673(b).
(3)
  (a) Within 15 days of receiving notice, an obligor may contest a payment schedule as inconsistent with Subsection (2) or the rules adopted by the office to establish payment schedules under Subsection (1) by filing a written request for an adjudicative proceeding.
  (b) For purposes of Subsection (3)(a), notice includes:
    (i) notice sent to the obligor by the office in accordance with Section 62A-11-304.4;
    (ii) participation by the obligor in the proceedings related to the establishment of the payment schedule; and
    (iii) receiving a paycheck in which a reduction has been made in accordance with a payment schedule established under Subsection (1).

Amended by Chapter 232, 1997 General Session

62A-11-320.5 Review and adjustment of child support order in three-year cycle -- Substantial change in circumstances not required.

(1) If a child support order has not been issued, modified, or reviewed within the previous three years, the office shall review a child support order, taking into account the best interests of the child involved, if:
  (a) requested by a parent or legal guardian involved in a case receiving IV-D services; or
  (b) there has been an assignment under Section 35A-3-108 and the office determines that a review is appropriate.
(2) If the office conducts a review under Subsection (1), the office shall determine if there is a difference of 10% or more between the amount ordered and the amount that would be required under the child support guidelines. If there is such a difference and the difference is not of a temporary nature, the office shall:

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

Repealed and Re-enacted by Chapter 232, 1997 General Session

62A-11-320.6 Review and adjustment of support order for substantial change in circumstances outside three-year cycle.
(1)
(a) A parent or legal guardian involved in a case receiving IV-D services or the office, if there has been an assignment under Section 35A-3-108, may at any time request the office to review a child support order if there has been a substantial change in circumstances.
(b) For purposes of Subsection (1)(a), a substantial change in circumstances may include:
(i) material changes in custody;
(ii) material changes in the relative wealth or assets of the parties;
(iii) material changes of 30% or more in the income of a parent;
(iv) material changes in the ability of a parent to earn;
(v) material changes in the medical needs of the child; and
(vi) material changes in the legal responsibilities of either parent for the support of others.
(2) Upon receiving a request under Subsection (1), the office shall review the order, taking into account the best interests of the child involved, to determine whether the substantial change in circumstance has occurred, and if so, whether the change resulted in a difference of 15% or more between the amount of child support ordered and the amount that would be required under the child support guidelines. If there is such a difference and the difference is not of a temporary nature, the office shall:

(a) with respect to a support order issued or modified by the office, adjust the amount in accordance with the guidelines; or
(b) with respect to a support order issued or modified by a court, file a petition with the court to adjust the amount in accordance with the guidelines.
(3) The office may use automated methods to collect information for a review conducted under Subsection (2).
(4)
(a) A parent or legal guardian who requests a review under Subsection (1) shall provide notice of the request to the other parent within five days and in accordance with Section 62A-11-304.4.
(b) If the office initiates and conducts a review under Subsection (1), the office shall provide notice of the request to any parent or legal guardian within five days and in accordance with Section 62A-11-304.4.
(5) Within 30 days of notice being sent under Subsection (4), a parent or legal guardian may file a response to a request for review with the office.

Enacted by Chapter 232, 1997 General Session

62A-11-320.7 Three-year notice of opportunity to review.
(1) Once every three years, the office shall give notice to each parent or legal guardian involved in a case receiving IV-D services of the opportunity to request a review and, if appropriate, adjustment of a child support order under Sections 62A-11-320.5 and 62A-11-320.6.
(2)
(a) The notice required by Subsection (1) may be included in an issued or modified order of support.
(b) Notwithstanding Subsection (2)(a), the office shall comply with Subsection (1), three years after the date of the order issued or modified under Subsection (2)(a).

Enacted by Chapter 232, 1997 General Session

62A-11-321 Posting bond or security for payment of support debt -- Procedure.
(1) The office shall, or an obligee may, petition the court for an order requiring an obligor to post a bond or provide other security for the payment of a support debt, if the office or an obligee determines that action is appropriate, and if the payments are more than 90 days delinquent. The office shall establish rules for determining when it shall seek an order for bond or other security.
(2) When the office or an obligee petitions the court under this section, it shall give written notice to the obligor, stating:
(a) the amount of support debt;
(b) that it has petitioned the court for an order requiring the obligor to post security; and
(c) that the obligor has the right to appear before the court and contest the office's or obligee's petition.
(3) After notice to the obligor and an opportunity for a hearing, the court shall order a bond posted or other security to be deposited upon the office's or obligee's showing of a support debt and of a reasonable basis for the security.

Enacted by Chapter 1, 1988 General Session

62A-11-326 Medical and dental expenses of dependent children.

In any action under this part, the office and the department in their orders shall:
(1) include a provision assigning responsibility for cash medical support;
(2) include a provision requiring the purchase and maintenance of appropriate medical, hospital, and dental care insurance for those children, if:
(a) insurance coverage is or becomes available at a reasonable cost; and
(b) the insurance coverage is accessible to the children; and
(3) include a designation of which health, dental or hospital insurance plan, is primary and which is secondary in accordance with the provisions of Section 30-3-5.4 which will take effect if at any time the dependent children are covered by both parents' health, hospital, or dental insurance plans.

Amended by Chapter 285, 2010 General Session

62A-11-326.1 Enrollment of child in accident and health insurance plan -- Order -- Notice.
(1) The office may issue a notice to existing and future employers or unions to enroll a dependent child in an accident and health insurance plan that is available through the dependent child's parent or legal guardian's employer or union, when the following conditions are satisfied:
(a) the parent or legal guardian is already required to obtain insurance coverage for the child by a prior court or administrative order; and
(b) the parent or legal guardian has failed to provide written proof to the office that:
(i) the child has been enrolled in an accident and health insurance plan in accordance with the court or administrative order; or
(ii) the coverage required by the order was not available at group rates through the employer or union 30 or more days prior to the date of the mailing of the notice to enroll.
(2) The office shall provide concurrent notice to the parent or legal guardian in accordance with Section 62A-11-304.4 of:
(a) the notice to enroll sent to the employer or union; and
(b) the opportunity to contest the enrollment due to a mistake of fact by filing a written request for an adjudicative proceeding with the office within 15 days of the notice being sent.
(3) A notice to enroll shall result in the enrollment of the child in the parent's accident and health insurance plan, unless the parent successfully contests the notice based on a mistake of fact.
(4) A notice to enroll issued under this section may be considered a "qualified medical support order" for the purposes of enrolling a dependent child in a group accident and health insurance plan as defined in Section 609(a), Federal Employee Retirement Income Security Act of 1974.

Amended by Chapter 116, 2001 General Session

62A-11-326.2 Compliance with order -- Enrollment of dependent child for insurance.
(1) An employer or union shall comply with a notice to enroll issued by the office under Section 62A-11-326.1 by enrolling the dependent child that is the subject of the notice in the:
(a) accident and health insurance plan in which the parent or legal guardian is enrolled, if the plan satisfies the prior court or administrative order; or
(b) least expensive plan, assuming equivalent benefits, offered by the employer or union that complies with the prior court or administrative order which provides coverage that is reasonably accessible to the dependent child.
(2) The employer, union, or insurer may not refuse to enroll a dependent child pursuant to a notice to enroll because a parent or legal guardian has not signed an enrollment application.

(3) Upon enrollment of the dependent child, the employer shall deduct the appropriate premiums from the parent or legal guardian's wages and remit them directly to the insurer.
(4) The insurer shall provide proof of insurance to the office upon request.
(5) The signature of the custodial parent of the insured dependent is a valid authorization to the insurer for purposes of processing any insurance reimbursement claim.

Amended by Chapter 116, 2001 General Session

62A-11-326.3 Determination of parental liability.

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

Amended by Chapter 382, 2008 General Session

62A-11-327 Reporting past-due support to consumer reporting agency.

The office shall periodically report the name of any obligor who is delinquent in the payment of support and the amount of overdue support owed by the obligor to consumer reporting agencies as defined in the Fair Credit Reporting Act, 15 U.S.C. Sec. 1681a(f):
(1) only after the obligor has been afforded notice and a reasonable opportunity to contest the accuracy of the information; and
(2) only to an entity that has provided satisfactory evidence that it is a consumer reporting agency under 15 U.S.C. Sec. 1681a(f).

Repealed and Re-enacted by Chapter 232, 1997 General Session

62A-11-328 Information received from State Tax Commission provided to other states' child support collection agencies.

The office shall, upon request, provide to any other state's child support collection agency the information which it receives from the State Tax Commission under Subsection 59-1-403(4)(l), with regard to a support debt which that agency is involved in enforcing.

Amended by Chapter 367, 2021 General Session

62A-11-333 Right to judicial review.

(1)
  (a) Within 30 days of notice of any administrative action on the part of the office to establish paternity or establish, modify or enforce a child support order, the obligor may file a petition for de novo review with the district court.

(b) For purposes of Subsection (1)(a), notice includes:
(i) notice actually received by the obligor in accordance with Section 62A-11-304.4;
(ii) participation by the obligor in the proceedings related to the establishment of the paternity or the modification or enforcement of child support; or
(iii) receiving a paycheck in which a reduction has been made for child support.
(2) The petition shall name the office and all other appropriate parties as respondents and meet the form requirements specified in Section 63G-4-402.
(3) A copy of the petition shall be served upon the Child and Family Support Division of the Office of Attorney General.
(4)
(a) If the petition is regarding the amount of the child support obligation established in accordance with Title 78B, Chapter 12, Utah Child Support Act, the court may issue a temporary order for child support until a final order is issued.
(b) The petitioner may file an affidavit stating the amount of child support reasonably believed to be due and the court may issue a temporary order for that amount. The temporary order shall be valid for 60 days, unless extended by the court while the action is being pursued.
(c) If the court upholds the amount of support established in Subsection (4)(a), the petitioner shall be ordered to make up the difference between the amount originally ordered in Subsection (4)(a) and the amount temporarily ordered under Subsection (4)(b).
(d) This Subsection (4) does not apply to an action for the court-ordered modification of a judicial child support order.
(5) The court may, on its own initiative and based on the evidence before it, determine whether the petitioner violated U.R. Civ. P. Rule 11 by filing the action. If the court determines that U.R.Civ.P. Rule 11 was violated, it shall, at a minimum, award to the office attorney fees and costs for the action.
(6) Nothing in this section precludes the obligor from seeking administrative remedies as provided in this chapter.

Amended by Chapter 3, 2008 General Session
Amended by Chapter 382, 2008 General Session

62A-11-334 Reporting past-due support for criminal prosecution.
(1)
(a) Upon request from an official described in Subsection (1)(b), the office shall report the name of an obligor who is over $10,000 delinquent in the payment of support and the amount of overdue support owed by the obligor to an obligee.
(b) The following officials may request the information described in Subsection (1)(a):
(i) the attorney general;
(ii) a county attorney in whose jurisdiction the obligor's obligee resides; or
(iii) a district attorney in whose jurisdiction the obligor's obligee resides.
(2) The office shall make the report described in Subsection (1) no later than 30 days after the day on which the office receives the request for information.

Enacted by Chapter 132, 2021 General Session

Part 4

Income Withholding in IV-D Cases

62A-11-401 Definitions.

As used in this part, Part 5, Income Withholding in Non IV-D Cases, and Part 7, Electronic Funds Transfer:

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

Amended by Chapter 3, 2008 General Session
Amended by Chapter 73, 2008 General Session

62A-11-402 Administrative procedures.

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

Enacted by Chapter 1, 1988 General Session

62A-11-403 Provision for income withholding in child support order -- Immediate income withholding.

(1) Whenever a child support order is issued or modified in this state the obligor's income is subject to immediate income withholding for the child support described in the order in accordance with the provisions of this chapter, unless:
  (a) the court or administrative body which entered the order finds that one of the parties has demonstrated good cause so as not to require immediate income withholding; or

(b) a written agreement which provides an alternative payment arrangement is executed by the obligor and obligee, and reviewed and entered in the record by the court or administrative body.

(2) In every child support order issued or modified on or after January 1, 1994, the court or administrative body shall include a provision that the income of an obligor is subject to immediate income withholding in accordance with this chapter. If for any reason other than the provisions of Subsection (1) that provision is not included in the child support order the obligor's income is nevertheless subject to immediate income withholding.

(3) In determining "good cause," the court or administrative body may, in addition to any other requirement it considers appropriate, consider whether the obligor has:

(a) obtained a bond, deposited money in trust for the benefit of the dependent children, or otherwise made arrangements sufficient to guarantee child support payments for at least two months;

(b) arranged to deposit all child support payments into a checking account belonging to the obligee, or made arrangements insuring that a reliable and independent record of the date and place of child support payments will be maintained; or

(c) arranged for electronic transfer of funds on a regular basis to meet court-ordered child support obligations.

Amended by Chapter 131, 2007 General Session

62A-11-404 Office procedures for income withholding for orders issued or modified on or after October 13, 1990.

(1) With regard to obligees or obligors who are receiving IV-D services, each child support order issued or modified on or after October 13, 1990, subjects the income of an obligor to immediate income withholding as of the effective date of the order, regardless of whether a delinquency occurs unless:

(a) the court or administrative body that entered the order finds that one of the parties has demonstrated good cause not to require immediate income withholding; or

(b) a written agreement that provides an alternative arrangement is executed by the obligor and obligee, and by the office, if there is an assignment under Section 35A-3-108, and reviewed and entered in the record by the court or administrative body.

(2) For purposes of this section:

(a) "good cause" shall be based on, at a minimum:

(i) a determination and explanation on the record by the court or administrative body that implementation of income withholding would not be in the best interest of the child; and

(ii) proof of timely payment of any previously ordered support;

(b) in determining "good cause," the court or administrative body may, in addition to any other requirement that it determines appropriate, consider whether the obligor has:

(i) obtained a bond, deposited money in trust for the benefit of the dependent children, or otherwise made arrangements sufficient to guarantee child support payments for at least two months; and

(ii) arranged to deposit all child support payments into a checking account belonging to the obligee or made arrangements insuring that a reliable and independent record of the date and place of child support payments will be maintained.

(3) An exception from immediate income withholding shall be:

(a) included in the court or administrative agency's child support order; and

(b) negated without further administrative or judicial action:

(i) upon a delinquency;
(ii) upon the obligor's request; or
(iii) if the office, based on internal procedures and standards, or a party requests immediate income withholding for a case in which the parties have entered into an alternative arrangement to immediate income withholding pursuant to Subsection (1)(b).

(4) If an exception to immediate income withholding has been ordered on the basis of good cause under Subsection (1)(a), the office may commence income withholding under this part:
(a) in accordance with Subsection (3)(b); or
(b) if the administrative or judicial body that found good cause determines that circumstances no longer support that finding.

(5)
(a) A party may contest income withholding due to a mistake of fact by filing a written objection with the office within 15 days of the commencement of income withholding under Subsection (4).
(b) If a party contests income withholding under Subsection (5)(a), the office shall proceed with the objection as it would an objection filed under Section 62A-11-405.

(6) Income withholding implemented under this section is subject to termination under Section 62A-11-408.

(7)
(a) Income withholding under the order may be effective until the obligor no longer owes child support to the obligee.
(b) Appropriate income withholding procedures apply to existing and future payors and all withheld income shall be submitted to the office.

Repealed and Re-enacted by Chapter 232, 1997 General Session

62A-11-405 Office procedures for income withholding for orders issued or modified before October 13, 1990.

(1) With regard to child support orders issued prior to October 13, 1990, and not otherwise modified after that date, and for which an obligor or obligee is receiving IV-D services, the office shall proceed to withhold income as a means of collecting child support if a delinquency occurs under the order, regardless of whether the relevant child support order includes authorization for income withholding.

(2) Upon receipt of a verified statement or affidavit alleging that a delinquency has occurred, the office shall:
(a) send notice to the payor for income withholding in accordance with Section 62A-11-406; and
(b) send notice to the obligor under Section 62A-11-304.4 that includes:
(i) a copy of the notice sent to the payor; and
(ii) information regarding:
(A) the commencement of income withholding; and
(B) the opportunity to contest the withholding or the amount withheld due to mistake of fact by filing a written request for review under this section with the office within 15 days.

(3) If the obligor contests the withholding, the office shall:
(a) provide an opportunity for the obligor to provide documentation and, if necessary, to present evidence supporting the obligor's claim of mistake of fact;
(b) decide whether income withholding shall continue;
(c) notify the obligor of its decision and the obligor's right to appeal under Subsection (4); and

(d) at the obligor's option, return, if in the office's possession, or credit toward the most current and future support obligations of the obligor any amount mistakenly withheld and, if the mistake is attributable to the office, interest at the legal rate.

(4)

(a) An obligor may appeal the office's decision to withhold income under Subsection (3) by filing an appeal with the district court within 30 days after service of the notice under Subsection (3) and immediately notifying the office in writing of the obligor's decision to appeal.

(b) The office shall proceed with income withholding under this part during the appeal, but shall hold all funds it receives, except current child support, in a reserve account pending the court's decision on appeal. The funds, plus interest at the legal rate, shall be paid to the party determined by the court.

(c) If an obligor appeals a decision of the office to a district court under Subsection (4)(a), the obligor shall provide to the obligee:

(i) notice of the obligor's appeal; and

(ii) a copy of any documents filed by the obligor upon the office in connection with the appeal.

(5) An obligor's payment of overdue child support may not be the sole basis for not implementing income withholding in accordance with this part.

Amended by Chapter 232, 1997 General Session

62A-11-406 Notice to payor.

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

(1) the amount of child support to be withheld from income;

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

(3) that the payor must mail or deliver the withheld income to the office within seven business days of the date the amount would have been paid or credited to the employee but for this section;

(4) that the payor may deduct from the obligor's income an additional amount which is equal to the amount payable to a garnishee under Rule 64D of the Utah Rules of Civil Procedure, as the payor's fee for administrative costs, but the total amount withheld may not exceed the maximum amount permitted under Section 303(b) of the Consumer Credit Protection Act, 15 U.S.C. Sec. 1673(b);

(5) that the notice to withhold is binding on the payor and on any future payor until further notice by the office or a court;

(6)

(a) that if the payor fails to mail or deliver withheld income to the office within the time period set in Subsection (3), the payor is liable to the office for a late fee of $50 or 10% of the withheld income, whichever is greater, for each payment that is late, per obligor; and

(b) that if the payor willfully fails to withhold income in accordance with the notice, the payor is liable to the office for $1,000 or the accumulated amount the payor should have withheld, whichever is greater, plus interest on that amount;

(7) that the notice to withhold is prior to any other legal process under state law;

(8) that the payor must begin to withhold income no later than the first time the obligor's earnings are normally paid after five working days from the date the payor receives the notice;

(9) that the payor must notify the office within five days after the obligor terminates employment or the periodic income payment is terminated, and provide the obligor's last-known address and the name and address of any new payor, if known;
(10) that if the payor discharges, refuses to employ, or takes disciplinary action against an obligor because of the notice to withhold, the payor is liable to the obligor as provided in Section 62A-11-316, and to the office for the greater of $1,000 or the amount of child support accumulated to the date of discharge which the payor should have withheld, plus interest on that amount; and
(11) that, in addition to any other remedy provided in this section, the payor is liable for costs and reasonable attorneys' fees incurred in enforcing any provision in a notice to withhold mailed or delivered to the payor's last-known address.

Amended by Chapter 161, 2000 General Session

62A-11-407 Payor's procedures for income withholding.

(1)
(a) A payor is subject to the requirements, penalties, and effects of a notice served on the payor under Section 62A-11-406.
(b) A payment of withheld income mailed to the office in an envelope postmarked within seven business days of the date the amount would have been paid or credited to the obligor but for this section satisfies Subsection 62A-11-406(3).

(2)
(a) If a payor fails to comply with a notice served upon him under Section 62A-11-406, the office, the obligee, if an assignment has not been made under Section 35A-7-108, or the obligor may proceed with a civil action against the payor to enforce a provision of the notice.
(b) In addition to a civil action under Subsection (2)(a), the office may bring an administrative action pursuant to Title 63G, Chapter 4, Administrative Procedures Act, to enforce a provision of the notice.
(c) If an obligee or obligor brings a civil action under Subsection (2)(a) to enforce a provision of the notice, the obligee or obligor may recover any penalty related to that provision under Section 62A-11-406 in place of the office.

(3) If the obligor's child support is owed monthly and the payor's pay periods are at more frequent intervals, the payor, with the consent of the office may withhold an equal amount at each pay period cumulatively sufficient to pay the monthly child support obligation.
(4) A payor may combine amounts which the payor has withheld from the incomes of multiple obligors into a single payment to the office. If such a combined payment is made, the payor shall specify the amount attributable to each individual obligor by name and Social Security number.
(5) In addition to any other remedy provided in this section, a payor is liable to the office, obligee, or obligor for costs and reasonable attorneys' fees incurred in enforcing a provision in the notice mailed or delivered under Section 62A-11-406.
(6) Notwithstanding this section or Section 62A-11-406, if a payor receives an income withholding order or notice issued by another state, the payor shall apply the income withholding law of the state of the obligor's principal place of employment in determining:
(a) the payor's fee for processing income withholding;
(b) the maximum amount permitted to be withheld from the obligor's income;
(c) the time periods within which the payor must implement income withholding and forward child support payments;

(d) the priorities for withholding and allocating withheld income for multiple child support obligees; and
(e) any term or condition for withholding not specified in the notice.

Amended by Chapter 382, 2008 General Session

62A-11-408 Termination of income withholding.

(1)
(a) At any time after the date income withholding begins, a party to the child support order may request a judicial hearing or administrative review to determine whether income withholding should be terminated due to:
(i) good cause under Section 62A-11-404;
(ii) the execution of a written agreement under Section 62A-11-404; or
(iii) the completion of an obligor's support obligation.
(b) An obligor's payment of overdue child support may not be the sole basis for termination of income withholding.
(c) If it is determined by a court or the office that income withholding should be terminated, the office shall give written notice of termination to each payor within 10 days after receipt of notice of that decision.
(d) If, after termination of income withholding by court or administrative order, an obligor's child support obligation becomes delinquent or subject to immediate and automatic income withholding under Section 62A-11-404, the office shall reinstate income withholding procedures in accordance with the provisions of this part.
(e) If the office terminates income withholding through an agreement with a party, the office may reinstate income withholding if:
(i) a delinquency occurs;
(ii) the obligor requests reinstatement;
(iii) the obligee requests reinstatement; or
(iv) the office, based on internal procedures and standards, determines reinstatement is appropriate.
(2) The office shall give written notice of termination to each payor when the obligor no longer owes child support to the obligee.
(3) A notice to withhold income, served by the office, is binding on a payor until the office notifies the payor that the obligation to withhold income has been terminated.

Amended by Chapter 232, 1997 General Session

62A-11-409 Payor's compliance with income withholding.

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

Amended by Chapter 232, 1997 General Session

62A-11-410 Violations by payor.

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

Enacted by Chapter 1, 1988 General Session

62A-11-411 Priority of notice or order to withhold income.

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

Enacted by Chapter 1, 1988 General Session

62A-11-413 Records and documentation -- Distribution or refund of collected income -- Allocation of payments among multiple notices to withhold.

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

Enacted by Chapter 1, 1988 General Session

62A-11-414 Income withholding upon obligor's request.

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

Enacted by Chapter 1, 1988 General Session

Part 5
Income Withholding in Non IV-D Cases

62A-11-501 Definitions -- Application.

(1) The requirements of this part apply only to cases in which neither the obligee nor the obligor is receiving IV-D services.
(2) For purposes of this part the definitions contained in Section 62A-11-401 apply.

Amended by Chapter 232, 1997 General Session

62A-11-502 Child support orders issued or modified on or after January 1, 1994 -- Immediate income withholding.

(1) With regard to obligees or obligors who are not receiving IV-D services, each child support order issued or modified on or after January 1, 1994, subjects the income of an obligor to immediate income withholding as of the effective date of the order, regardless of whether a delinquency occurs unless:
  (a) the court or administrative body that entered the order finds that one of the parties has demonstrated good cause so as not to require immediate income withholding; or
  (b) a written agreement which provides an alternative payment arrangement is executed by the obligor and obligee, and reviewed and entered in the record by the court or administrative body.
(2) For purposes of this section:
  (a) an action on or after January 1, 1994, to reduce child support arrears to judgment, without a corresponding establishment of or modification to a base child support amount, is not sufficient to trigger immediate income withholding;
  (b) "good cause" shall be based on, at a minimum:
    (i) a determination and explanation on the record by the court or administrative body that implementation of income withholding would not be in the best interest of the child; and
    (ii) proof of timely payment of any previously ordered support;
  (c) in determining "good cause," the court or administrative body may, in addition to any other requirement it considers appropriate, consider whether the obligor has:
    (i) obtained a bond, deposited money in trust for the benefit of the dependent children, or otherwise made arrangements sufficient to guarantee child support payments for at least two months;
    (ii) arranged to deposit all child support payments into a checking account belonging to the obligee, or made arrangements insuring that a reliable and independent record of the date and place of child support payments will be maintained; or
    (iii) arranged for electronic transfer of funds on a regular basis to meet court-ordered child support obligations.
(3) In cases where the court or administrative body that entered the order finds a demonstration of good cause or enters a written agreement that immediate income withholding is not required, in accordance with this section, any party may subsequently pursue income withholding on the earliest of the following dates:
  (a) the date payment of child support becomes delinquent;
  (b) the date the obligor requests;
  (c) the date the obligee requests if a written agreement under Subsection (1)(b) exists; or
  (d) the date the court or administrative body so modifies that order.
(4) The court shall include in every child support order issued or modified on or after January 1, 1994, a provision that the income of an obligor is subject to income withholding in accordance with this chapter; however, if for any reason that provision is not included in the child support order, the obligor's income is nevertheless subject to income withholding.
(5)
  (a) In any action to establish or modify a child support order after July 1, 1997, the court, upon request by the obligee or obligor, shall commence immediate income withholding by ordering the clerk of the court or the requesting party to:
    (i) mail written notice to the payor at the payor's last-known address that contains the information required by Section 62A-11-506; and

(ii) mail a copy of the written notice sent to the payor under Subsection (5)(a)(i) and a copy of the support order to the office.

(b) If neither the obligee nor obligor requests commencement of income withholding under Subsection (5)(a), the court shall include in the order to establish or modify child support a provision that the obligor or obligee may commence income withholding by:

(i) applying for IV-D services with the office; or

(ii) filing an ex parte motion with a district court of competent jurisdiction pursuant to Section 62A-11-504.

(c) A payor who receives written notice under Subsection (5)(a)(i) shall comply with the requirements of Section 62A-11-507.

Amended by Chapter 131, 2007 General Session

62A-11-503 Requirement of employment and location information.

(1) As of July 1, 1997, a court, before issuing or modifying an order of support, shall require the parties to file the information required under Section 62A-11-304.4.

(2) If a party fails to provide the information required by Section 62A-11-304.4, the court shall issue or modify an order upon receipt of a verified representation of employment or source of income for that party based on the best evidence available if:

(a) that party has participated in the current proceeding;

(b) the notice and service of process requirements of the Utah Rules of Civil Procedure have been met if the case is before the court to establish an original order of support; or

(c) the notice requirements of Section 62A-11-304.4 have been met if the case is before the court to modify an existing order.

(3) A court may restrict the disclosure of information required by Section 62A-11-304.4:

(a) in accordance with a protective order involving the parties; or

(b) if the court has reason to believe that the release of information may result in physical or emotional harm by one party to the other party.

Repealed and Re-enacted by Chapter 232, 1997 General Session

62A-11-504 Procedures for commencing income withholding.

(1) If income withholding has not been commenced in connection with a child support order, an obligee or obligor may commence income withholding by:

(a) applying for IV-D services from the office; or

(b) filing an ex parte motion for income withholding with a district court of competent jurisdiction.

(2) The office shall commence income withholding in accordance with Part 4, Income Withholding in IV-D Cases, upon receipt of an application for IV-D services under Subsection (1)(a).

(3) A court shall grant an ex parte motion to commence income withholding filed under Subsection (1)(b) regardless of whether the child support order provided for income withholding, if the obligee provides competent evidence showing:

(a) the child support order was issued or modified after January 1, 1994, and the obligee or obligor expresses a desire to commence income withholding;

(b) the child support order was issued or modified after January 1, 1994, and the order contains a good cause exception to income withholding as provided for in Section 62A-11-502, and a delinquency has occurred; or

(c) the child support order was issued or modified before January 1, 1994, and a delinquency has occurred.

(4) If a court grants an ex parte motion under Subsection (3), the court shall order the clerk of the court or the requesting party to:
(a) mail written notice to the payor at the payor's last-known address that contains the information required by Section 62A-11-506;
(b) mail a copy of the written notice sent to the payor under Subsection (4)(a) to the nonrequesting party's address and a copy of the support order and the notice to the payor to the office; and
(c) if the obligee is the requesting party, send notice to the obligor under Section 62A-11-304.4 that includes:
(i) a copy of the notice sent to the payor; and
(ii) information regarding:
(A) the commencement of income withholding; and
(B) the opportunity to contest the withholding or the amount withheld due to mistake of fact by filing an objection with the court within 20 days.
(5) A payor who receives written notice under Subsection (4)(a) shall comply with the requirements of Section 62A-11-507.
(6) If an obligor contests withholding, the court shall:
(a) provide an opportunity for the obligor to present evidence supporting his claim of a mistake of fact;
(b) decide whether income withholding should continue;
(c) notify the parties of the decision; and
(d) at the obligor's option, return or credit toward the most current and future support payments of the obligor any amount mistakenly withheld plus interest at the legal rate.

Amended by Chapter 188, 1998 General Session

62A-11-505 Responsibilities of the office.

The office shall document and distribute payments in the manner provided for and in the time required by Section 62A-11-413 and federal law upon receipt of:
(1) a copy of the written notice sent to the payor under Section 62A-11-502 or Section 62A-11-504;
(2) the order of support;
(3) the obligee's address; and
(4) withheld income from the payor.

Enacted by Chapter 232, 1997 General Session

62A-11-506 Notice to payor.

(1) A notice mailed or delivered to a payor under this part shall state in writing:
(a) the amount of child support to be withheld from income;
(b) that the child support must be withheld from the obligor's income each time the obligor is paid, but that the amount withheld may not exceed the maximum amount permitted under Section 303(b) of the Consumer Credit Protection Act, 15 U.S.C. Section 1673(b);
(c) that the payor must mail or deliver the withheld income to the office within seven business days of the date the amount would have been paid or credited to the employee but for this section;
(d) that the payor may deduct from the obligor's income an additional amount which is equal to the amount payable to a garnishee under Rule 64D of the Utah Rules of Civil Procedure, as the payor's fee for administrative costs, but the total amount withheld may not exceed the

maximum amount permitted under Section 303(b) of the Consumer Credit Protection Act, 15 U.S.C. Section 1673(b);
(e) that the notice to withhold is binding on the payor and on any future payor until further notice by the office or a court;
(f)
(i) that if the payor fails to mail or deliver withheld income to the office within the time period set in Subsection (1)(c), the payor is liable to the obligee for a late fee of $50 or 10% of the withheld income, whichever is greater, for each payment that is late; and
(ii) that if the payor willfully fails to withhold income in accordance with the notice, the payor is liable to the obligee for $1,000 or the accumulated amount the payor should have withheld, whichever is greater, plus interest on that amount;
(g) that the notice to withhold is prior to any other legal process under state law;
(h) that the payor must begin to withhold income no later than the first time the obligor's earnings are normally paid after five working days from the date the payor receives the notice;
(i) that the payor must notify the office within five days after the obligor terminates employment or the periodic income payment is terminated, and provide the obligor's last-known address and the name and address of any new payor, if known;
(j) that if the payor discharges, refuses to employ, or takes disciplinary action against an obligor because of the notice to withhold, the payor is liable to the obligor as provided in Section 62A-11-316 and the obligee for the greater of $1,000 or the amount of child support accumulated to the date of discharge which the payor should have withheld plus interest on that amount; and
(k) that, in addition to any other remedy provided in this section, the payor is liable to the obligee or obligor for costs and reasonable attorneys' fees incurred in enforcing a provision in a notice to withhold mailed or delivered under Section 62A-11-502 or 62A-11-504.
(2) If the obligor's employment with a payor is terminated, the office shall, if known and if contacted by the obligee, inform the obligee of:
(a) the obligor's last-known address; and
(b) the name and address of any new payor.

Amended by Chapter 161, 2000 General Session

62A-11-507 Payor's procedures for income withholding.
(1)
(a) A payor is subject to the requirements, penalties, and effects of a notice mailed or delivered to him under Section 62A-11-506.
(b) A payment of withheld income mailed to the office in an envelope postmarked within seven business days of the date the amount would have been paid or credited to the obligor but for this section satisfies Subsection 62A-11-506(1)(c).
(2) If a payor fails to comply with the requirements of a notice served upon him under Section 62A-11-506, the obligee, or obligor may proceed with a civil action against the payor to enforce a provision of the notice.
(3) If the obligor's child support is owed monthly and the payor's pay periods are at more frequent intervals, the payor, with the consent of the office or obligee, may withhold an equal amount at each pay period cumulatively sufficient to pay the monthly child support obligation.
(4) A payor may combine amounts which he has withheld from the income of multiple obligors into a single payment to the office. If such a combined payment is made, the payor shall specify the amount attributable to each individual obligor by name and Social Security number.

(5) In addition to any other remedy provided in this section, a payor is liable to the obligee or obligor for costs and reasonable attorneys' fees incurred in enforcing a provision of the notice mailed or delivered under Section 62A-11-506.
(6) Notwithstanding this section or Section 62A-11-506, if a payor receives an income withholding order or notice issued by another state, the payor shall apply the income withholding law of the state of the obligor's principal place of business in determining:
(a) the payor's fee for processing income withholding;
(b) the maximum amount permitted to be withheld from the obligor's income;
(c) the time periods within which the payor must implement income withholding and forward child support payments;
(d) the priorities for withholding and allocating withheld income for multiple child support obligees; and
(e) any terms or conditions for withholding not specified in the notice.

Enacted by Chapter 232, 1997 General Session

62A-11-508 Termination of income withholding.
(1)
(a) At any time after the date income withholding begins, a party to the child support order may request a court to determine whether income withholding should be terminated due to:
(i) good cause under Section 62A-11-502; or
(ii) the completion of an obligor's support obligation.
(b) An obligor's payment of overdue child support may not be the sole basis for termination of income withholding.
(c) After termination of income withholding under this section, a party may seek reinstatement of income withholding under Section 62A-11-504.
(2)
(a) If it is determined that income withholding should be terminated under Subsection (1)(a)(i), the court shall order written notice of termination be given to each payor within 10 days after receipt of notice of that decision.
(b) The obligee shall give written notice of termination to each payor:
(i) when the obligor no longer owes child support to the obligee; or
(ii) if the obligee and obligor enter into a written agreement that provides an alternative arrangement, which may be filed with the court.
(3) A notice to withhold income is binding on a payor until the court or the obligee notifies the payor that his obligation to withhold income has been terminated.

Enacted by Chapter 232, 1997 General Session

62A-11-509 Payor's compliance with income withholding.
(1) Payment by a payor under this part satisfies the terms for payment of income under any contract between a payor and obligor.
(2) A payor who complies with an income withholding notice that is regular on its face may not be subject to civil liability to any person for conduct in compliance with the notice.

Enacted by Chapter 232, 1997 General Session

62A-11-510 Violations by payor.

(1) A payor may not discharge, refuse to hire, or discipline any obligor because of a notice to withhold under this part.
(2) If a payor violates Subsection (1), the payor is liable to the obligor as provided in Section 62A-11-316 and the obligee for the greater of $1,000 or the amount of child support accumulated to the date of discharge which should have been withheld plus interest on that amount and costs incurred in collecting the amount, including reasonable attorneys' fees.

Enacted by Chapter 232, 1997 General Session

62A-11-511 Priority of notice or order to withhold income.

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

Enacted by Chapter 232, 1997 General Session

Part 6
Administrative License Suspension Child Support Enforcement Act

62A-11-601 Title.

This part is known as the "Administrative License Suspension Child Support Enforcement Act."

Enacted by Chapter 338, 2007 General Session

62A-11-602 Definitions.

As used in this part:

(1) "Child support" is as defined in Section 62A-11-401.
(2) "Delinquent on a child support obligation" means that a person:
  (a)
    (i) made no payment for 60 days on a current child support obligation as set forth in an administrative or court order;
    (ii) after the 60-day period described in Subsection (2)(a)(i), failed to make a good faith effort under the circumstances to make payment on the child support obligation in accordance with the order; and
    (iii) has not obtained a judicial order staying enforcement of the person's child support obligation, or the amount in arrears; or
  (b)
    (i) made no payment for 60 days on an arrearage obligation of child support as set forth in:
      (A) a payment schedule;
      (B) a written agreement with the office; or
      (C) an administrative or judicial order;
    (ii) after the 60-day period described in Subsection (2)(b)(i), failed to make a good faith effort under the circumstances to make payment on the child support obligation in accordance with the payment schedule, agreement, or order; and
    (iii) has not obtained a judicial order staying enforcement of the person's child support obligation, or the amount in arrears.
(3) "Driver license" means a license, as defined in Section 53-3-102.

(4) "Driver License Division" means the Driver License Division of the Department of Public Safety created in Section 53-3-103.
(5) "Office" means the Office of Recovery Services created in Section 62A-11-102.

Enacted by Chapter 338, 2007 General Session

62A-11-603 Suspension of driver license for child support delinquency -- Reinstatement.
(1) Subject to the provisions of this section, the office may order the suspension of a person's driver license if the person is delinquent on a child support obligation.
(2) Before ordering a suspension of a person's driver license, the office shall serve the person with a "notice of intent to suspend driver license."
(3) The notice described in Subsection (2) shall:
(a) be personally served or served by certified mail;
(b) except as otherwise provided in this section, comply with Title 63G, Chapter 4, Administrative Procedures Act;
(c) state the amount that the person is in arrears on the person's child support obligation; and
(d) state that, if the person desires to contest the suspension of the person's driver license, the person must request an informal adjudicative proceeding with the office within 30 days after the day on which the notice is mailed or personally served.
(4)
(a) The office shall hold an informal adjudicative proceeding to determine whether a person's driver license should be suspended if the person requests a hearing within 30 days after the day on which the notice described in Subsection (2) is mailed or personally served on the person.
(b) The informal adjudicative proceeding described in Subsection (4)(a), and any appeal of the decision rendered in that proceeding, shall comply with Title 63G, Chapter 4, Administrative Procedures Act.
(5) Except as provided in Subsection (6), the office may order that a person's driver license be suspended:
(a) if, after the notice described in Subsection (2) is mailed or personally served, the person fails to request an informal adjudicative proceeding within the time period described in Subsection (4)(a); or
(b) following the informal adjudicative proceeding described in Subsection (4)(a), if:
(i) the presiding officer finds that the person is delinquent on a child support obligation; and
(ii) the finding described in Subsection (5)(b)(i):
(A) is not timely appealed; or
(B) is upheld after a timely appeal becomes final.
(6) The office may not order the suspension of a person's driver license if the person:
(a) pays the full amount that the person is in arrears on the person's child support obligation;
(b) subject to Subsection (8):
(i) enters into a payment agreement with the office for the payment of the person's current child support obligation and all arrears; and
(ii) complies with the agreement described in Subsection (6)(b)(i) for any initial compliance period required by the agreement;
(c) obtains a judicial order staying enforcement of the person's child support obligation or the amount in arrears; or
(d) is not currently delinquent on a child support obligation.
(7) The office shall rescind an order made by the office to suspend a driver license if the person:

(a) pays the full amount that the person is in arrears on the person's child support obligation;
(b) subject to Subsection (8):
(i) enters into a payment agreement with the office for the payment of the person's current child support obligation and all arrears; and
(ii) complies with the agreement described in Subsection (7)(b)(i) for any initial compliance period required by the agreement;
(c) obtains a judicial order staying enforcement of the person's child support obligation or the amount in arrears; or
(d) is not currently delinquent on a child support obligation.
(8) For purposes of Subsections (6)(b) and (7)(b), the office shall diligently strive to enter into a fair and reasonable payment agreement that takes into account the person's employment and financial ability to make payments, provided that there is a reasonable basis to believe that the person will comply with the agreement.
(9)
(a) If, after the office seeks to suspend a person's driver license under this section, it is determined that the person is not delinquent, the office shall refund to the person any noncustodial parent income withholding fee that was collected from the person during the erroneously alleged delinquency.
(b) Subsection (9)(a) does not apply if the person described in Subsection (9)(a) is otherwise in arrears on a child support obligation.
(10)
(a) A person whose driver license is ordered suspended pursuant to this section may file a request with the office, on a form provided by the office, to have the office rescind the order of suspension if:
(i) the person claims that, since the time of the suspension, circumstances have changed such that the person is entitled to have the order of suspension rescinded under Subsection (7); and
(ii) the office has not rescinded the order of suspension.
(b) The office shall respond, in writing, to a person described in Subsection (10), within 10 days after the day on which the request is filed with the office, stating whether the person is entitled to have the order of suspension rescinded.
(c) If the office determines, under Subsection (10)(b), that an order to suspend a person's license should be rescinded, the office shall immediately rescind the order.
(d) If the office determines, under Subsection (10)(b), that an order to suspend a person's license should not be rescinded:
(i) the office shall, as part of the response described in Subsection (10)(b), notify the person, in writing, of the reasons for that determination; and
(ii) the person described in this Subsection (10)(d) may, within 15 days after the day on which the office sends the response described in Subsection (10)(b), appeal the determination of the office to district court.
(e) The office may not require that a person file the request described in Subsection (10)(a) before the office orders that an order of suspension is rescinded, if the office has already determined that the order of suspension should be rescinded under Subsection (7).
(11) The office may make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to:
(a) implement the provisions of this part; and
(b) determine when the arrears described in Subsections (6) and (7) are considered paid.

Amended by Chapter 382, 2008 General Session

62A-11-604 Notification of order to suspend or rescission of order.

(1) When, pursuant to this part, the office orders the suspension of a person's driver license, or rescinds an order suspending a person's driver license, the office shall, within five business days after the day on which the order or rescission is made, notify:

(a) the Driver License Division; and

(b) the person to whom the order or rescission applies.

(2)

(a) The notification described in Subsections (1)(a) and (b) shall include the name and identifying information of the person described in Subsection (1).

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

Enacted by Chapter 338, 2007 General Session

Part 7
Electronic Funds Transfer

62A-11-701 Title.

This part is known as "Electronic Funds Transfer."

Enacted by Chapter 73, 2008 General Session

62A-11-702 Definitions.

(1) The definitions in Section 62A-11-401 apply to this section.

(2) As used in this section, "account" is as defined in Section 62A-11-103.

Enacted by Chapter 73, 2008 General Session

62A-11-703 Alternative payment by obligor through electronic funds transfer.

(1) The office may enter into a written alternative payment agreement with an obligor which provides for electronic payment of child support under Part 4, Income Withholding in IV-D Cases, or Part 5, Income Withholding in Non IV-D Cases. Electronic payment shall be accomplished through an automatic withdrawal from the obligor's account at a financial institution.

(2) The alternative payment agreement shall:

(a) provide for electronic payment of child support in lieu of income withholding;

(b) specify the date on which electronic payments will be withdrawn from an obligor's account; and

(c) specify the amount which will be withdrawn.

(3) The office may terminate the agreement and initiate immediate income withholding if:

(a) required to meet federal or state requirements or guidelines;

(b) funds available in the account at the scheduled time of withdrawal are insufficient to satisfy the agreement; or

(c) requested by the obligor.
(4) If the payment amount requires adjusting, the office may initiate a new written agreement with the obligor. If, for any reason, the office and obligor fail to agree on the terms, the office may terminate the agreement and initiate income withholding.
(5) If an agreement is terminated for insufficient funds, a new agreement may not be entered into between the office and obligor for a period of at least 12 months.
(6) The office shall make rules specifying eligibility requirements for obligors to enter into alternative payment agreements.

Renumbered and Amended by Chapter 73, 2008 General Session

62A-11-704 Mandatory distribution to obligee through electronic funds transfer.
(1) Notwithstanding any provision of this chapter to the contrary, the office shall, except as provided in Subsection (3), distribute child support payments, under Subsection 62A-11-413(2) or Section 62A-11-505, by electronic funds transfer.
(2) Distribution of child support payments by electronic payment under this section shall be made to:
(a) an account of the obligee; or
(b) an account that may be accessed by the obligee through the use of an electronic access card.
(3)
(a) Subject to Subsection (3)(b), the office may make rules, pursuant to Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to allow exceptions to the requirement to make distributions by electronic funds transfer under Subsection (1).
(b) The rules described in Subsection (3)(a) may only allow exceptions under circumstances where:
(i) requiring distribution by electronic funds transfer would result in an undue hardship to the office or a person; or
(ii) it is not likely that distribution will be made to the obligee on a recurring basis.

Enacted by Chapter 73, 2008 General Session

Chapter 14
Office of Public Guardian Act

62A-14-101 Title.
This chapter is known as the "Office of Public Guardian Act."

Enacted by Chapter 69, 1999 General Session

62A-14-102 Definitions.
As used in this chapter:
(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 62A-14-107.
(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.

Amended by Chapter 364, 2013 General Session

62A-14-103 Office of Public Guardian -- Creation.
(1) There is created within the department the Office of Public Guardian which has the powers and duties provided in this chapter.
(2) The office is under the administrative and general supervision of the executive director.

Enacted by Chapter 69, 1999 General Session

62A-14-104 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.

Amended by Chapter 75, 2009 General Session

62A-14-105 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 63I-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 62A-14-107;
(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 62A-14-107(1);
(d) solicit and receive private donations to provide guardian and conservator services under this chapter; 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.

Amended by Chapter 441, 2022 General Session

62A-14-107 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.

Enacted by Chapter 69, 1999 General Session

62A-14-108 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.

Amended by Chapter 255, 2022 General Session

62A-14-109 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.

Amended by Chapter 347, 2012 General Session

62A-14-110 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 attorneys' fees.
(3) If the office recovers attorneys' 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 attorneys' fees be assessed to the office.

Enacted by Chapter 69, 1999 General Session

62A-14-111 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.

Enacted by Chapter 69, 1999 General Session

Chapter 15
Substance Abuse and Mental Health Act

Part 1
Division of Substance Abuse and Mental Health

62A-15-101 Title.
(1) This chapter is known as the "Substance Abuse and Mental Health Act."
(2) This part is known as the "Division of Substance Abuse and Mental Health."

Amended by Chapter 75, 2009 General Session

62A-15-102 Definitions.
As used in this chapter:
(1) "Criminal risk factors" means a person's characteristics and behaviors that:
(a) affect the person's risk of engaging in criminal behavior; and
(b) are diminished when addressed by effective treatment, supervision, and other support resources, resulting in reduced risk of criminal behavior.
(2) "Director" means the director appointed under Section 62A-15-104.
(3) "Division" means the Division of Integrated Healthcare created in Section 26B-1-202.
(4) "Local mental health authority" means a county legislative body.
(5) "Local substance abuse authority" means a county legislative body.
(6) "Mental health crisis" means:
(a) a mental health condition that manifests in an individual by symptoms of sufficient severity that a prudent layperson who possesses an average knowledge of mental health issues could reasonably expect the absence of immediate attention or intervention to result in:
(i) serious danger to the individual's health or well-being; or
(ii) a danger to the health or well-being of others; or
(b) a mental health condition that, in the opinion of a mental health therapist or the therapist's designee, requires direct professional observation or intervention.
(7) "Mental health crisis response training" means community-based training that educates laypersons and professionals on the warning signs of a mental health crisis and how to respond.
(8) "Mental health crisis services" means an array of services provided to an individual who experiences a mental health crisis, which may include:
(a) direct mental health services;
(b) on-site intervention provided by a mobile crisis outreach team;
(c) the provision of safety and care plans;
(d) prolonged mental health services for up to 90 days after the day on which an individual experiences a mental health crisis;
(e) referrals to other community resources;
(f) local mental health crisis lines; and
(g) the statewide mental health crisis line.
(9) "Mental health therapist" means the same as that term is defined in Section 58-60-102.

(10) "Mobile crisis outreach team" or "MCOT" means a mobile team of medical and mental health professionals that, in coordination with local law enforcement and emergency medical service personnel, provides mental health crisis services.
(11)
(a) "Public funds" means federal money received from the department, and state money appropriated by the Legislature to the department, a county governing body, or a local substance abuse authority, or a local mental health authority for the purposes of providing substance abuse or mental health programs or services.
(b) "Public funds" include federal and state money that has been transferred by a local substance abuse authority or a local mental health authority to a private provider under an annual or otherwise ongoing contract to provide comprehensive substance abuse or mental health programs or services for the local substance abuse authority or local mental health authority. The money maintains the nature of "public funds" while in the possession of the private entity that has an annual or otherwise ongoing contract with a local substance abuse authority or a local mental health authority to provide comprehensive substance abuse or mental health programs or services for the local substance abuse authority or local mental health authority.
(c) Public funds received for the provision of services under substance abuse or mental health service plans may not be used for any other purpose except those authorized in the contract between the local mental health or substance abuse authority and provider for the provision of plan services.
(12) "Severe mental disorder" means schizophrenia, major depression, bipolar disorders, delusional disorders, psychotic disorders, and other mental disorders as defined by the division.
(13) "Statewide mental health crisis line" means the same as that term is defined in Section 62A-15-1301.

Amended by Chapter 255, 2022 General Session

62A-15-103 Division -- Creation -- Responsibilities.
(1)
(a) The division shall exercise responsibility over the policymaking functions, regulatory and enforcement powers, rights, duties, and responsibilities outlined in state law that were previously vested in the Division of Substance Abuse and Mental Health within the department, under the administration and general supervision of the executive director.
(b) The division is the substance abuse authority and the mental health authority for this state.
(2) The division shall:
(a)
(i) educate the general public regarding the nature and consequences of substance abuse by promoting school and community-based prevention programs;
(ii) render support and assistance to public schools through approved school-based substance abuse education programs aimed at prevention of substance abuse;
(iii) promote or establish programs for the prevention of substance abuse within the community setting through community-based prevention programs;
(iv) cooperate with and assist treatment centers, recovery residences, and other organizations that provide services to individuals recovering from a substance abuse disorder, by identifying and disseminating information about effective practices and programs;
(v) promote integrated programs that address an individual's substance abuse, mental health, and physical health;

(vi) establish and promote an evidence-based continuum of screening, assessment, prevention, treatment, and recovery support services in the community for individuals with a substance use disorder or mental illness;
(vii) evaluate the effectiveness of programs described in this Subsection (2);
(viii) consider the impact of the programs described in this Subsection (2) on:
(A) emergency department utilization;
(B) jail and prison populations;
(C) the homeless population; and
(D) the child welfare system; and
(ix) promote or establish programs for education and certification of instructors to educate individuals convicted of driving under the influence of alcohol or drugs or driving with any measurable controlled substance in the body;
(b)
(i) collect and disseminate information pertaining to mental health;
(ii) provide direction over the state hospital including approval of the state hospital's budget, administrative policy, and coordination of services with local service plans;
(iii) make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to educate families concerning mental illness and promote family involvement, when appropriate, and with patient consent, in the treatment program of a family member; and
(iv) make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to direct that an individual receiving services through a local mental health authority or the Utah State Hospital be informed about and, if desired by the individual, provided assistance in the completion of a declaration for mental health treatment in accordance with Section 62A-15-1002;
(c)
(i) consult and coordinate with local substance abuse authorities and local mental health authorities regarding programs and services;
(ii) provide consultation and other assistance to public and private agencies and groups working on substance abuse and mental health issues;
(iii) promote and establish cooperative relationships with courts, hospitals, clinics, medical and social agencies, public health authorities, law enforcement agencies, education and research organizations, and other related groups;
(iv) promote or conduct research on substance abuse and mental health issues, and submit to the governor and the Legislature recommendations for changes in policy and legislation;
(v) receive, distribute, and provide direction over public funds for substance abuse and mental health services;
(vi) monitor and evaluate programs provided by local substance abuse authorities and local mental health authorities;
(vii) examine expenditures of local, state, and federal funds;
(viii) monitor the expenditure of public funds by:
(A) local substance abuse authorities;
(B) local mental health authorities; and
(C) in counties where they exist, a private contract provider that has an annual or otherwise ongoing contract to provide comprehensive substance abuse or mental health programs or services for the local substance abuse authority or local mental health authority;
(ix) contract with local substance abuse authorities and local mental health authorities to provide a comprehensive continuum of services that include community-based services

for individuals involved in the criminal justice system, in accordance with division policy, contract provisions, and the local plan;
(x) contract with private and public entities for special statewide or nonclinical services, or services for individuals involved in the criminal justice system, according to division rules;
(xi) review and approve each local substance abuse authority's plan and each local mental health authority's plan in order to ensure:
(A) a statewide comprehensive continuum of substance abuse services;
(B) a statewide comprehensive continuum of mental health services;
(C) services result in improved overall health and functioning;
(D) a statewide comprehensive continuum of community-based services designed to reduce criminal risk factors for individuals who are determined to have substance abuse or mental illness conditions or both, and who are involved in the criminal justice system;
(E) compliance, where appropriate, with the certification requirements in Subsection (2)(j); and
(F) appropriate expenditure of public funds;
(xii) review and make recommendations regarding each local substance abuse authority's contract with the local substance abuse authority's provider of substance abuse programs and services and each local mental health authority's contract with the local mental health authority's provider of mental health programs and services to ensure compliance with state and federal law and policy;
(xiii) monitor and ensure compliance with division rules and contract requirements; and
(xiv) withhold funds from local substance abuse authorities, local mental health authorities, and public and private providers for contract noncompliance, failure to comply with division directives regarding the use of public funds, or for misuse of public funds or money;
(d) ensure that the requirements of this part are met and applied uniformly by local substance abuse authorities and local mental health authorities across the state;
(e) require each local substance abuse authority and each local mental health authority, in accordance with Subsections 17-43-201(5)(b) and 17-43-301(6)(a)(ii), to submit a plan to the division on or before May 15 of each year;
(f) conduct an annual program audit and review of each local substance abuse authority and each local substance abuse authority's contract provider, and each local mental health authority and each local mental health authority's contract provider, including:
(i) a review and determination regarding whether:
(A) public funds allocated to the local substance abuse authority or the local mental health authorities are consistent with services rendered by the authority or the authority's contract provider, and with outcomes reported by the authority's contract provider; and
(B) each local substance abuse authority and each local mental health authority is exercising sufficient oversight and control over public funds allocated for substance use disorder and mental health programs and services; and
(ii) items determined by the division to be necessary and appropriate;
(g) define "prevention" by rule as required under Title 32B, Chapter 2, Part 4, Alcoholic Beverage and Substance Abuse Enforcement and Treatment Restricted Account Act;
(h)
(i) train and certify an adult as a peer support specialist, qualified to provide peer supports services to an individual with:
(A) a substance use disorder;
(B) a mental health disorder; or
(C) a substance use disorder and a mental health disorder;

(ii) certify a person to carry out, as needed, the division's duty to train and certify an adult as a peer support specialist;
(iii) make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, that:
(A) establish training and certification requirements for a peer support specialist;
(B) specify the types of services a peer support specialist is qualified to provide;
(C) specify the type of supervision under which a peer support specialist is required to operate; and
(D) specify continuing education and other requirements for maintaining or renewing certification as a peer support specialist; and
(iv) make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, that:
(A) establish the requirements for a person to be certified to carry out, as needed, the division's duty to train and certify an adult as a peer support specialist; and
(B) specify how the division shall provide oversight of a person certified to train and certify a peer support specialist;
(i) collaborate with the State Commission on Criminal and Juvenile Justice to analyze and provide recommendations to the Legislature regarding:
(i) pretrial services and the resources needed to reduce recidivism;
(ii) county jail and county behavioral health early-assessment resources needed for an individual convicted of a class A or class B misdemeanor; and
(iii) the replacement of federal dollars associated with drug interdiction law enforcement task forces that are reduced;
(j) establish performance goals and outcome measurements for a mental health or substance use treatment program that is licensed under Chapter 2, Licensure of Programs and Facilities, and contracts with the department, including goals and measurements related to employment and reducing recidivism of individuals receiving mental health or substance use treatment who are involved with the criminal justice system;
(k) annually, on or before November 30, submit a written report to the Judiciary Interim Committee, the Health and Human Services Interim Committee, and the Law Enforcement and Criminal Justice Interim Committee, that includes:
(i) a description of the performance goals and outcome measurements described in Subsection (2)(j); and
(ii) information on the effectiveness of the goals and measurements in ensuring appropriate and adequate mental health or substance use treatment is provided in a treatment program described in Subsection (2)(j);
(l) collaborate with the Administrative Office of the Courts, the Department of Corrections, the Department of Workforce Services, and the Board of Pardons and Parole to collect data on recidivism, including data on:
(i) individuals who participate in a mental health or substance use treatment program while incarcerated and are convicted of another offense within two years after release from incarceration;
(ii) individuals who are ordered by a criminal court or the Board of Pardons and Parole to participate in a mental health or substance use treatment program and are convicted of another offense while participating in the treatment program or within two years after the day on which the treatment program ends;
(iii) the type of treatment provided to, and employment of, the individuals described in Subsections (2)(l)(i) and (ii); and

(iv) cost savings associated with recidivism reduction and the reduction in the number of inmates in the state;

(m) at the division's discretion, use the data described in Subsection (2)(l) to make decisions regarding the use of funds allocated to the division to provide treatment;

(n) annually, on or before August 31, submit the data collected under Subsection (2)(l) and any recommendations to improve the data collection to the State Commission on Criminal and Juvenile Justice to be included in the report described in Subsection 63M-7-204(1)(x);

(o) publish the following on the division's website:

(i) the performance goals and outcome measurements described in Subsection (2)(j); and

(ii) a description of the services provided and the contact information for the mental health and substance use treatment programs described in Subsection (2)(j) and residential, vocational and life skills programs, as defined in Section 13-53-102; and

(p) consult and coordinate with the Division of Child and Family Services to develop and manage the operation of a program designed to reduce substance abuse during pregnancy and by parents of a newborn child that includes:

(i) providing education and resources to health care providers and individuals in the state regarding prevention of substance abuse during pregnancy;

(ii) providing training to health care providers in the state regarding screening of a pregnant woman or pregnant minor to identify a substance abuse disorder; and

(iii) providing referrals to pregnant women, pregnant minors, or parents of a newborn child in need of substance abuse treatment services to a facility that has the capacity to provide the treatment services.

(3) In addition to the responsibilities described in Subsection (2), the division shall, within funds appropriated by the Legislature for this purpose, implement and manage the operation of a firearm safety and suicide prevention program, in consultation with the Bureau of Criminal Identification created in Section 53-10-201, including:

(a) coordinating with local mental health and substance abuse authorities, a nonprofit behavioral health advocacy group, and a representative from a Utah-based nonprofit organization with expertise in the field of firearm use and safety that represents firearm owners, to:

(i) produce and periodically review and update a firearm safety brochure and other educational materials with information about the safe handling and use of firearms that includes:

(A) information on safe handling, storage, and use of firearms in a home environment;

(B) information about at-risk individuals and individuals who are legally prohibited from possessing firearms;

(C) information about suicide prevention awareness; and

(D) information about the availability of firearm safety packets;

(ii) procure cable-style gun locks for distribution under this section;

(iii) produce a firearm safety packet that includes the firearm safety brochure and the cable-style gun lock described in this Subsection (3); and

(iv) create a suicide prevention education course that:

(A) provides information for distribution regarding firearm safety education;

(B) incorporates current information on how to recognize suicidal behaviors and identify individuals who may be suicidal; and

(C) provides information regarding crisis intervention resources;

(b) distributing, free of charge, the firearm safety packet to the following persons, who shall make the firearm safety packet available free of charge:

(i) health care providers, including emergency rooms;

(ii) mobile crisis outreach teams;

(iii) mental health practitioners;
(iv) other public health suicide prevention organizations;
(v) entities that teach firearm safety courses;
(vi) school districts for use in the seminar, described in Section 53G-9-702, for parents of students in the school district; and
(vii) firearm dealers to be distributed in accordance with Section 76-10-526;
(c) creating and administering a rebate program that includes a rebate that offers between $10 and $200 off the purchase price of a firearm safe from a participating firearms dealer or a person engaged in the business of selling firearm safes in Utah, by a Utah resident;
(d) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, making rules that establish procedures for:
(i) producing and distributing the suicide prevention education course and the firearm safety brochures and packets;
(ii) procuring the cable-style gun locks for distribution; and
(iii) administering the rebate program; and
(e) reporting to the Health and Human Services Interim Committee regarding implementation and success of the firearm safety program and suicide prevention education course at or before the November meeting each year.
(4)
(a) The division may refuse to contract with and may pursue legal remedies against any local substance abuse authority or local mental health authority that fails, or has failed, to expend public funds in accordance with state law, division policy, contract provisions, or directives issued in accordance with state law.
(b) The division may withhold funds from a local substance abuse authority or local mental health authority if the authority's contract provider of substance abuse or mental health programs or services fails to comply with state and federal law or policy.
(5)
(a) Before reissuing or renewing a contract with any local substance abuse authority or local mental health authority, the division shall review and determine whether the local substance abuse authority or local mental health authority is complying with the oversight and management responsibilities described in Sections 17-43-201, 17-43-203, 17-43-303, and 17-43-309.
(b) Nothing in this Subsection (5) may be used as a defense to the responsibility and liability described in Section 17-43-303 and to the responsibility and liability described in Section 17-43-203.
(6) In carrying out the division's duties and responsibilities, the division may not duplicate treatment or educational facilities that exist in other divisions or departments of the state, but shall work in conjunction with those divisions and departments in rendering the treatment or educational services that those divisions and departments are competent and able to provide.
(7) The division may accept in the name of and on behalf of the state donations, gifts, devises, or bequests of real or personal property or services to be used as specified by the donor.
(8) The division shall annually review with each local substance abuse authority and each local mental health authority the authority's statutory and contract responsibilities regarding:
(a) use of public funds;
(b) oversight of public funds; and
(c) governance of substance use disorder and mental health programs and services.
(9) The Legislature may refuse to appropriate funds to the division upon the division's failure to comply with the provisions of this part.

(10) If a local substance abuse authority contacts the division under Subsection 17-43-201(10) for assistance in providing treatment services to a pregnant woman or pregnant minor, the division shall:
(a) refer the pregnant woman or pregnant minor to a treatment facility that has the capacity to provide the treatment services; or
(b) otherwise ensure that treatment services are made available to the pregnant woman or pregnant minor.
(11) The division shall employ a school-based mental health specialist to be housed at the State Board of Education who shall work with the State Board of Education to:
(a) provide coordination between a local education agency and local mental health authority;
(b) recommend evidence-based and evidence informed mental health screenings and intervention assessments for a local education agency; and
(c) coordinate with the local community, including local departments of health, to enhance and expand mental health related resources for a local education agency.

Amended by Chapter 187, 2022 General Session
Amended by Chapter 255, 2022 General Session
Amended by Chapter 415, 2022 General Session

62A-15-103.1 Suicide Prevention Education Program -- Definitions -- Grant requirements.
(1) As used in this section, "bureau" means the Bureau of Criminal Identification created in Section 53-10-201 within the Department of Public Safety.
(2) There is created a Suicide Prevention Education Program to fund suicide prevention education opportunities for federally licensed firearms dealers who operate a retail establishment open to the public and the dealers' employees.
(3) The division, in conjunction with the bureau, shall provide a grant to an employer described in Subsection (2) in accordance with the criteria provided in Subsection 62A-15-1101(7)(b).
(4) An employer may apply for a grant of up to $2,500 under the program.

Enacted by Chapter 440, 2019 General Session

62A-15-104 Director -- Qualifications.
(1) The executive director shall appoint a director within the division to carry out all or part of the duties and responsibilities described in this part.
(2) The director appointed under Subsection (1) shall have a bachelor's degree from an accredited university or college, be experienced in administration, and be knowledgeable in matters concerning substance abuse and mental health.

Amended by Chapter 255, 2022 General Session

62A-15-105 Authority and responsibilities of division.
The division shall set policy for its operation and for programs funded with state and federal money under Sections 17-43-201, 17-43-301, 17-43-304, and 62A-15-110. The division shall:
(1) in establishing rules, seek input from local substance abuse authorities, local mental health authorities, consumers, providers, advocates, division staff, and other interested parties as determined by the division;
(2) establish, by rule, minimum standards for local substance abuse authorities and local mental health authorities;

(3) establish, by rule, procedures for developing policies that ensure that local substance abuse authorities and local mental health authorities are given opportunity to comment and provide input on any new policy of the division or proposed changes in existing rules of the division;
(4) provide a mechanism for review of its existing policy, and for consideration of policy changes that are proposed by local substance abuse authorities or local mental health authorities;
(5) develop program policies, standards, rules, and fee schedules for the division; and
(6) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, make rules approving the form and content of substance abuse treatment, educational series, screening, and assessment that are described in Section 41-6a-501.

Amended by Chapter 75, 2009 General Session

62A-15-105.2 Employment first emphasis on the provision of services.
(1) As used in this section, "recipient" means an individual who is:
(a) undergoing treatment for a substance abuse problem; or
(b) suffers from a mental illness.
(2) When providing services to a recipient, the division shall, within funds appropriated by the Legislature and in accordance with the requirements of federal and state law and memorandums of understanding between the division and other state entities that provide services to a recipient, give priority to providing services that assist an eligible recipient in obtaining and retaining meaningful and gainful employment that enables the recipient to earn sufficient income to:
(a) purchase goods and services;
(b) establish self-sufficiency; and
(c) exercise economic control of the recipient's life.
(3) The division shall develop a written plan to implement the policy described in Subsection (2) that includes:
(a) assessing the strengths and needs of a recipient;
(b) customizing strength-based approaches to obtaining employment;
(c) expecting, encouraging, providing, and rewarding:
(i) integrated employment in the workplace at competitive wages and benefits; and
(ii) self-employment;
(d) developing partnerships with potential employers;
(e) maximizing appropriate employment training opportunities;
(f) coordinating services with other government agencies and community resources;
(g) to the extent possible, eliminating practices and policies that interfere with the policy described in Subsection (2); and
(h) arranging sub-minimum wage work or volunteer work for an eligible recipient when employment at market rates cannot be obtained.
(4) The division shall, on an annual basis:
(a) set goals to implement the policy described in Subsection (2) and the plan described in Subsection (3);
(b) determine whether the goals for the previous year have been met; and
(c) modify the plan described in Subsection (3) as needed.

Enacted by Chapter 305, 2012 General Session

62A-15-107 Authority to assess fees.

The division may, with the approval of the Legislature and the executive director, establish fee schedules and assess fees for services rendered by the division.

Amended by Chapter 75, 2009 General Session

62A-15-108 Formula for allocation of funds to local substance abuse authorities and local mental health authorities.

(1) The division shall establish, by rule, formulas for allocating funds to local substance abuse authorities and local mental health authorities through contracts, to provide substance abuse prevention and treatment services in accordance with the provisions of this chapter and Title 17, Chapter 43, Part 2, Local Substance Abuse Authorities, and mental health services in accordance with the provisions of this chapter and Title 17, Chapter 43, Part 3, Local Mental Health Authorities. The formulas shall provide for allocation of funds based on need. Determination of need shall be based on population unless the division establishes, by valid and accepted data, that other defined factors are relevant and reliable indicators of need. The formulas shall include a differential to compensate for additional costs of providing services in rural areas.

(2) The formulas established under Subsection (1) apply to all state and federal funds appropriated by the Legislature to the division for local substance abuse authorities and local mental health authorities, but does not apply to:

(a) funds that local substance abuse authorities and local mental health authorities receive from sources other than the division;

(b) funds that local substance abuse authorities and local mental health authorities receive from the division to operate specific programs within their jurisdictions which are available to all residents of the state;

(c) funds that local substance abuse authorities and local mental health authorities receive from the division to meet needs that exist only within their local areas; and

(d) funds that local substance abuse authorities and local mental health authorities receive from the division for research projects.

Amended by Chapter 75, 2009 General Session

62A-15-110 Contracts for substance abuse and mental health services -- Provisions -- Responsibilities.

(1) If the division contracts with a local substance abuse authority or a local mental health authority to provide substance abuse or mental health programs and services in accordance with the provisions of this chapter and Title 17, Chapter 43, Part 2, Local Substance Abuse Authorities, or Title 17, Chapter 43, Part 3, Local Mental Health Authorities, it shall ensure that those contracts include at least the following provisions:

(a) that an independent auditor shall conduct any audit of the local substance abuse authority or its contract provider's programs or services and any audit of the local mental health authority or its contract provider's programs or services, pursuant to the provisions of Title 51, Chapter 2a, Accounting Reports from Political Subdivisions, Interlocal Organizations, and Other Local Entities Act;

(b) in addition to the requirements described in Title 51, Chapter 2a, Accounting Reports from Political Subdivisions, Interlocal Organizations, and Other Local Entities Act, the division:

(i) shall prescribe guidelines and procedures, in accordance with those formulated by the state auditor pursuant to Section 67-3-1, for auditing the compensation and expenses of officers,

directors, and specified employees of the private contract provider, to assure the state that no personal benefit is gained from travel or other expenses; and

(ii) may prescribe specific items to be addressed by that audit, depending upon the particular needs or concerns relating to the local substance abuse authority, local mental health authority, or contract provider at issue;

(c) the local substance abuse authority or its contract provider and the local mental health authority and its contract provider shall invite and include all funding partners in its auditor's pre- and exit conferences;

(d) each member of the local substance abuse authority and each member of the local mental health authority shall annually certify that he has received and reviewed the independent audit and has participated in a formal interview with the provider's executive officers;

(e) requested information and outcome data will be provided to the division in the manner and within the time lines defined by the division; and

(f) all audit reports by state or county persons or entities concerning the local substance abuse authority or its contract provider, or the local mental health authority or its contract provider shall be provided to the executive director of the department, the local substance abuse authority or local mental health authority, and members of the contract provider's governing board.

(2) Each contract between the division and a local substance abuse authority or a local mental health authority shall authorize the division to withhold funds, otherwise allocated under Section 62A-15-108, to cover the costs of audits, attorney fees, and other expenditures associated with reviewing the expenditure of public funds by a local substance abuse authority or its contract provider or a local mental health authority or its contract provider, if there has been an audit finding or judicial determination that public funds have been misused by the local substance abuse authority or its contract provider or the local mental health authority or its contract provider.

Amended by Chapter 71, 2005 General Session

62A-15-113 Local plan program funding.

(1) To facilitate the distribution of newly appropriated funds beginning from fiscal year 2018 for prevention, treatment, and recovery support services that reduce recidivism or reduce the per capita number of incarcerated offenders with a substance use disorder or a mental health disorder, the division shall:

(a) form an application review and fund distribution committee that includes:

(i) one representative of the Utah Sheriffs' Association;

(ii) one representative of the Statewide Association of Prosecutors of Utah;

(iii) two representatives from the division; and

(iv) two representatives from the Utah Association of Counties; and

(b) require the application review and fund distribution committee to:

(i) establish a competitive application process for funding of a local plan, as described in Sections 17-43-201(5)(b) and 17-43-301(6)(a)(ii);

(ii) establish criteria in accordance with Subsection (1) for the evaluation of an application;

(iii) ensure that the committee members' affiliate groups approve of the application process and criteria;

(iv) evaluate applications; and

(v) distribute funds to programs implemented by counties, local mental health authorities, or local substance abuse authorities.

(2) Demonstration of matching county funds is not a requirement to receive funds, but the application review committee may take into consideration the existence of matching funds when determining which programs to fund.

Enacted by Chapter 315, 2017 General Session

62A-15-115 Mental health crisis response training.

(1) The division shall award grants to communities to conduct mental health crisis response training.
(2) For the application and award of the grants described in Subsection (1), the division shall make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, that determine:
  (a) the requirements and process for a community to apply for a grant; and
  (b) the substantive mental health crisis response programs that qualify for the award of a grant.

Enacted by Chapter 414, 2018 General Session

62A-15-116 Mobile crisis outreach team expansion.

(1)The division shall award grants for the development of:
  (a) five mobile crisis outreach teams:
    (i) in counties of the second, third, fourth, fifth, or sixth class; or
    (ii) in counties of the first class, if no more than two mobile crisis outreach teams are operating or have been awarded a grant to operate in the county; and
  (b) at least three mobile crisis outreach teams in counties of the third, fourth, fifth, or sixth class.
(2) A mobile crisis outreach team awarded a grant under Subsection (1) shall provide mental health crisis services 24 hours per day, 7 days per week, and every day of the year.
(3) The division shall prioritize the award of a grant described in Subsection (1) to entities, based on:
  (a) the number of individuals the proposed mobile crisis outreach team will serve; and
  (b) the percentage of matching funds the entity will provide to develop the proposed mobile crisis outreach team.
(4) An entity does not need to have resources already in place to be awarded a grant described in Subsection (1).
(5)The division shall make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, for the application and award of the grants described in Subsection (1).

Amended by Chapter 303, 2020 General Session

62A-15-117 Medicaid reimbursement for school-based health services -- Report to Legislature.

(1) As used in this section, "individualized education program" or "IEP" means a written statement for a student with a disability that is developed, reviewed, and revised in accordance with the Individuals with Disabilities Education Act, 20 U.S.C. Sec. 1400 et seq.
(2) The division shall coordinate with the State Board of Education, the Department of Health, and stakeholders to address and develop recommendations related to:
  (a) the expansion of Medicaid reimbursement for school-based health services, including how to expand Medicaid-eligible school-based services beyond the services for students with IEPs; and

(b) other areas concerning Medicaid reimbursement for school-based health services, including the time threshold for medically necessary IEP services.
(3) The division, the State Board of Education, and the Department of Health shall jointly report the recommendations described in Subsection (2) to the Education Interim Committee on or before August 15, 2019.

Enacted by Chapter 446, 2019 General Session

62A-15-118 Behavioral Health Receiving Center Grant Program.
(1) As used in this section:
(a) "Behavioral health receiving center" means a 23-hour nonsecure program or facility that is responsible for, and provides mental health crisis services to, an individual experiencing a mental health crisis.
(b) "Project" means a behavioral health receiving center project described in Subsection (2)(a).
(2)
(a)
(i) Before July 1, 2020, the division shall issue a request for proposals in accordance with this section to award a grant to one or more counties of the first or second class, as classified in Section 17-50-501, to, except as provided in Subsection (2)(a)(ii), develop and implement a behavioral health receiving center.
(ii) A grant awarded under Subsection (2)(a)(i) may not be used to purchase land for the behavioral health receiving center.
(b) The division shall award all grants under this section before December 31, 2020.
(3) The purpose of a project is to:
(a) increase access to mental health crisis services for individuals in the state who are experiencing a mental health crisis; and
(b) reduce the number of individuals in the state who are incarcerated or in a hospital emergency room while experiencing a mental health crisis.
(4) An application for a grant under this section shall:
(a) identify the population to which the behavioral health receiving center will provide mental health crisis services;
(b) identify the type of mental health crisis services the behavioral health receiving center will provide;
(c) explain how the population described in Subsection (4)(a) will benefit from the provision of mental health crisis services;
(d) provide details regarding:
(i) how the proposed project plans to provide mental health crisis services;
(ii) how the proposed project will ensure that consideration is given to the capacity of the behavioral health receiving center;
(iii) how the proposed project will ensure timely and effective provision of mental health crisis services;
(iv) the cost of the proposed project;
(v) any existing or planned contracts or partnerships between the applicant and other individuals or entities to develop and implement the proposed project;
(vi) any plan to use funding sources in addition to a grant under this section for the proposed project;
(vii) the sustainability of the proposed project; and
(viii) the methods the proposed project will use to:

(A) protect the privacy of each individual who receives mental health crisis services from the behavioral health receiving center;
(B) collect nonidentifying data relating to the proposed project; and
(C) provide transparency on the costs and operation of the proposed project; and
(e) provide other information requested by the division to ensure that the proposed project satisfies the criteria described in Subsection (5).
(5) In evaluating an application for the grant, the division shall consider:
(a) the extent to which the proposed project will fulfill the purposes described in Subsection (3);
(b) the extent to which the population described in Subsection (4)(a) is likely to benefit from the proposed project;
(c) the cost of the proposed project;
(d) the extent to which any existing or planned contracts or partnerships between the applicant and other individuals or entities to develop and implement the project, or additional funding sources available to the applicant for the proposed project, are likely to benefit the proposed project; and
(e) the viability and innovation of the proposed project.
(6) Before June 30, 2021, the division shall report to the Health and Human Services Interim Committee regarding:
(a) each county awarded a grant under this section; and
(b) the details of each project.
(7) Before June 30, 2023, the division shall report to the Health and Human Services Interim Committee regarding:
(a) data gathered in relation to each project;
(b) knowledge gained relating to the provision of mental health crisis services in a behavioral health receiving center;
(c) recommendations for the future use of mental health crisis services in behavioral health receiving centers; and
(d) obstacles encountered in the provision of mental health crisis services in a behavioral health receiving center.

Enacted by Chapter 303, 2020 General Session

62A-15-119 Safety Net Initiative.
(1) As used in this section, "individuals in underserved communities" means individuals living in culturally isolated communities in the state who may lack access to public assistance and other government services.
(2) There is created within the division the Safety Net Initiative to:
(a) implement strategies to increase awareness and reduce risk factors in order to improve the safety and well-being of individuals in underserved communities;
(b) coordinate with government agencies, nonprofit organizations, and interested individuals to provide open communication with individuals in underserved communities; and
(c) coordinate efforts to give individuals in underserved communities needed access to public assistance and other government services.
(3) The division may employ or contract with individuals, entities, and support staff as necessary to administer the duties required by this section.

Renumbered and Amended by Chapter 29, 2020 General Session

62A-15-121 Suicide technical assistance program.

(1) As used in this section, "technical assistance" means training for the prevention of suicide.

(2)

(a) Before July 1, 2021, and each subsequent July 1, the division shall solicit applications from health care organizations to receive technical assistance provided by the division.

(b) The division shall approve at least one but not more than six applications each year.

(c) The division shall determine which applicants receive the technical assistance before December 31 of each year.

(3) An application for technical assistance under this section shall:

(a) identify the population to whom the health care organization will provide suicide prevention services;

(b) identify how the health care organization plans to implement the skills and knowledge gained from the technical assistance;

(c) identify the health care organization's current resources used for the prevention of suicide;

(d) explain how the population described in Subsection (3)(a) will benefit from the health care organization receiving technical assistance;

(e) provide details regarding:

(i) how the health care organization will provide timely and effective suicide prevention services;

(ii) any existing or planned contracts or partnerships between the health care organization and other persons that are related to suicide prevention;

(iii) the methods the health care organization will use to:

(A) protect the privacy of each individual to whom the health care organization provides suicide prevention services; and

(B) collect non-identifying data; and

(f) provide other information requested by the division for the division to evaluate the application.

(4) In evaluating an application for technical assistance, the division shall consider:

(a) the extent to which providing technical assistance to the health care organization will fulfill the purpose of preventing suicides in the state;

(b) the extent to which the population described in Subsection (3)(a) is likely to benefit from the health care organization receiving the technical assistance;

(c) the cost of providing the technical assistance to the health care organization; and

(d) the extent to which any of the following are likely to benefit the heath care organization's ability to assist in preventing suicides in the state:

(i) existing or planned contracts or partnerships between the applicant and other persons to develop and implement other initiatives; or

(ii) additional funding sources available to the applicant for suicide prevention services.

(5) Before June 30, 2022, and each subsequent June 30, the division shall submit a written report to the Health and Human Services Interim Committee regarding each health care organization the division provided technical assistance to in the preceding year under this section.

(6) Before June 30, 2024, the division shall submit a written report to the Health and Human Services Interim Committee regarding:

(a) data gathered in relation to providing technical assistance to a health care organization;

(b) knowledge gained relating to providing technical assistance;

(c) recommendations for the future regarding how the state can better prevent suicides; and

(d) obstacles encountered when providing technical assistance.

Enacted by Chapter 277, 2021 General Session

62A-15-122 Early childhood mental health support grant program.

(1) As used in this section:

(a) "Child care" means the child care services defined in Section 35A-3-102 for a child during early childhood.

(b) "Child care provider" means a person who provides child care or mental health support or interventions to a child during early childhood.

(c) "Early childhood" means the time during which a child is zero to six years old.

(d) "Project" means a project to provide education and training to child care providers regarding evidence-based best practices for delivery of mental health support and interventions during early childhood.

(2) On or before July 1, 2021, the division shall issue a request for proposals in accordance with this section to award a grant to a public or nonprofit entity to implement a project.

(3) The purpose of a project is to facilitate education about early childhood mental health support and interventions.

(4) An application for a grant under this section shall provide details regarding:

(a) the education and training regarding early childhood mental health support and interventions that the proposed project will provide to child care providers;

(b) how the proposed project plans to provide the education and training to child care providers;

(c) the number of child care providers served by the proposed project;

(d) how the proposed project will ensure the education and training is effectively provided to child care providers;

(e) the cost of the proposed project; and

(f) the sustainability of the proposed project.

(5) In evaluating a project proposal for a grant under this section, the division shall consider:

(a) the extent to which the proposed project will fulfill the purpose described in Subsection (3);

(b) the extent to which child care providers that will be served by the proposed project are likely to benefit from the proposed project;

(c) the cost of the proposed project; and

(d) the viability of the proposed project.

(6) Before June 30, 2022, the division shall report to the Health and Human Services Interim Committee regarding:

(a) each entity awarded a grant under this section; and

(b) the details of each project.

(7) Before June 30, 2024, the division shall report to the Health and Human Services Interim Committee regarding:

(a) any knowledge gained from providing the education and training regarding early childhood mental health support to child care providers;

(b) data gathered in relation to each project;

(c) recommendations for the future use of the education and training provided to child care providers; and

(d) obstacles encountered in providing the education and training to child care providers.

Enacted by Chapter 278, 2021 General Session

62A-15-123 Statewide Behavioral Health Crisis Response Account -- Creation -- Administration -- Permitted uses.

(1) There is created a restricted account within the General Fund known as the "Statewide Behavioral Health Crisis Response Account," consisting of:

(a) money appropriated or otherwise made available by the Legislature; and
(b) contributions of money, property, or equipment from federal agencies, political subdivisions of the state, or other persons.

(2)

(a) Subject to appropriations by the Legislature and any contributions to the account described in Subsection (1)(b), the division shall disburse funds in the account only for the purpose of support or implementation of services or enhancements of those services in order to rapidly, efficiently, and effectively deliver 988 services in the state.
(b) Funds distributed from the account to county local mental health and substance abuse authorities for the provision of crisis services are not subject to the 20% county match described in Sections 17-43-201 and 17-43-301.
(c) Except as provided in Subsection (2)(d), the division shall prioritize expending funds from the account as follows:
(i) the Statewide Mental Health Crisis Line, as defined in Section 62A-15-1301, including coordination with 911 emergency service, as defined in Section 69-2-102, and coordination with local substance abuse authorities as described in Section 17-43-201, and local mental health authorities, described in Section 17-43-301;
(ii) mitigation of any negative impacts on 911 emergency service from 988 services;
(iii) mobile crisis outreach teams as defined in Section 62A-15-1401, distributed in accordance with rules made by the division in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;
(iv) behavioral health receiving centers as defined in Section 62A-15-118;
(v) stabilization services as described in Section 62A-1-104; and
(vi) mental health crisis services provided by local substance abuse authorities as described in Section 17-43-201 and local mental health authorities described in Section 17-43-301 to provide prolonged mental health services for up to 90 days after the day on which an individual experiences a mental health crisis.
(d) If the Legislature appropriates money to the account for a purpose described in Subsection (2)(c), the division shall use the appropriation for that purpose.

(3) Subject to appropriations by the Legislature and any contributions to the account described in Subsection (1)(b), the division may expend funds in the account for administrative costs that the division incurs related to administering the account.

(4) The division director shall submit and make available to the public a report before December of each year to the Behavioral Health Crisis Response Commission, as defined in Section 63C-18-202, the Social Services Appropriations Subcommittee, and the Legislative Management Committee that includes:
(a) the amount of each disbursement from the account;
(b) the recipient of each disbursement, the goods and services received, and a description of the project funded by the disbursement;
(c) any conditions placed by the division on the disbursements from the account;
(d) the anticipated expenditures from the account for the next fiscal year;
(e) the amount of any unexpended funds carried forward;
(f) the number of Statewide Mental Health Crisis Line calls received;
(g) the progress towards accomplishing the goals of providing statewide mental health crisis service; and
(h) other relevant justification for ongoing support from the account.

Amended by Chapter 187, 2022 General Session

62A-15-124 Collaborative care grant program.

(1) As used in this section:

(a) "Applicant" means a small primary health care practice that applies for a grant under this section.

(b) "Care manager" means an individual who plans, directs, and coordinates health care services for a patient.

(c) "Collaborative care model" means a formal collaborative arrangement between a primary care physician, a mental health professional, and a care manager, to provide integrated physical and behavioral health services.

(d) "Mental health professional" means an individual licensed under Title 58, Chapter 60, Mental Health Professional Practice Act, or Title 58, Chapter 61, Psychologist Licensing Act, or a psychiatrist.

(e) "Physician" means an individual licensed to practice as a physician or osteopath under Title 58, Chapter 67, Utah Medical Practice Act, or Title 58, Chapter 68, Utah Osteopathic Medical Practice Act.

(f) "Primary care physician" means a physician that provides health services related to family medicine, internal medicine, pediatrics, obstetrics, gynecology, or geriatrics.

(g) "Program" means a program described in Subsection (2)(a).

(h) "Psychiatrist" means a physician who is board eligible for a psychiatry specialization recognized by the American Board of Medical Specialists or the American Osteopathic Association's Bureau of Osteopathic Specialists.

(i) "Small primary health care practice" means a medical practice of primary health care physicians that:

(i) includes 10 or fewer primary care physicians; or

(ii) is primarily based in a county of the third through sixth class, as classified in Section 17-50-501.

(2)

(a) Before July 1, 2022, the division shall solicit applications from small primary health care practices for a grant to support or implement a program to provide integrated physical and behavioral health services under a collaborative care model.

(b) A grant under this section may be used to:

(i) hire and train staff to administer a program;

(ii) identify and formalize contractual relationships with mental health professionals and case managers to implement a program; or

(iii) purchase or upgrade software and other resources necessary to support or implement a program.

(c) The division shall approve at least one but not more than six applications each year.

(d) The division shall determine which applicants receive a grant under this section before December 31, 2022.

(3) An application for a grant under this section shall:

(a) identify the population to whom the applicant will provide services under a program;

(b) identify the small primary health care practice's current resources that are used to provide integrated physical and behavioral health services;

(c) explain how the population described in Subsection (3)(a) will benefit from the program;

(d) provide details regarding:

(i) how the applicant will provide timely and effective services under the program;

(ii) any existing or planned contracts or partnerships between the applicant and other persons that are related to a collaborative care model;
(iii) the methods the applicant will use to:
(A) protect the privacy of each individual to whom the applicant provides services under the program; and
(B) collect non-identifying data; and
(e) provide other information requested by the division for the division to evaluate the application.
(4) In evaluating an application for a grant under this section, the division shall consider:
(a) the extent to which providing the grant to the applicant will fulfill the purpose of providing increased integrated physical and behavioral health services; and
(b) the extent to which the population described in Subsection (3)(a) is likely to benefit from the applicant receiving the grant.
(5) Before July 1, 2023, the division shall submit a written report to the Health and Human Services Interim Committee regarding each applicant the division provided a grant to in the preceding year under this section.
(6) Before July 1, 2024, the division shall submit a written report to the Health and Human Services Interim Committee regarding:
(a) data gathered and knowledge gained in relation to providing grants to an applicant; and
(b) recommendations for how the state can better implement integrated physical and behavioral health services.

Enacted by Chapter 149, 2022 General Session

Part 2
Teen Substance Abuse Intervention and Prevention Act

62A-15-201 Title.

This part is known as the "Teen Substance Abuse Intervention and Prevention Act."

Renumbered and Amended by Chapter 8, 2002 Special Session 5
Renumbered and Amended by Chapter 8, 2002 Special Session 5

62A-15-202 Definitions.

As used in this part:
(1) "Juvenile substance abuse offender" means any minor who has committed a drug or alcohol related offense under the jurisdiction of the juvenile court in accordance with Section 78A-6-103.
(2) "Local substance abuse authority" means a county legislative body designated to provide substance abuse services in accordance with Section 17-43-201.
(3) "Minor" means the same as that term is defined in Section 80-1-102.
(4) "Teen substance abuse school" means any school established by the local substance abuse authority, in cooperation with the Board of Juvenile Court Judges, that provides an educational, interpersonal, skill-building experience for juvenile substance abuse offenders and their parents or legal guardians.

Amended by Chapter 155, 2022 General Session

62A-15-203 Teen substance abuse schools -- Establishment.

The division or a local substance abuse authority, in cooperation with the Board of Juvenile Court Judges, may establish teen substance abuse schools in the districts of the juvenile court.

Renumbered and Amended by Chapter 8, 2002 Special Session 5
Renumbered and Amended by Chapter 8, 2002 Special Session 5

62A-15-204 Court order to attend substance abuse school -- Assessments.

(1) In addition to any other disposition ordered by the juvenile court under Section 80-6-701, the court may order:
  (a) a minor and the minor's parent or legal guardian to attend a teen substance abuse school; and
  (b) payment of an assessment in addition to any other fine imposed.
(2) All assessments collected shall be forwarded to the county treasurer of the county where the minor resides, to be used exclusively for the operation of a teen substance abuse program.

Amended by Chapter 155, 2022 General Session

Part 3
Commitment of Minors to Drug or Alcohol Programs or Facilities

62A-15-301 Commitment of minor to secure drug or alcohol facility or program -- Procedures -- Review.

(1) For purposes of this part:
  (a) "Approved treatment facility or program" means a public or private secure, inpatient facility or program that is licensed or operated by the department or by the Department of Health to provide drug or alcohol treatment or rehabilitation.
  (b) "Drug or alcohol addiction" means that the person has a physical or psychological dependence on drugs or alcohol in a manner not prescribed by a physician.
(2) The parent or legal guardian of a minor under the age of 18 years may submit that child, without the child's consent, to an approved treatment facility or program for treatment or rehabilitation of drug or alcohol addiction, upon application to a facility or program, and after a careful diagnostic inquiry is made by a neutral and detached fact finder, in accordance with the requirements of this section.
(3) The neutral fact finder who conducts the inquiry:
  (a) shall be either a physician, psychologist, marriage and family therapist, psychiatric and mental health nurse specialist, or social worker licensed to practice in this state, who is trained and practicing in the area of substance abuse; and
  (b) may not profit, financially or otherwise, from the commitment of the child and may not be employed by the proposed facility or program.
(4) The review by a neutral fact finder may be conducted on the premises of the proposed treatment facility or program.
(5) The inquiry conducted by the neutral fact finder shall include a private interview with the child, and an evaluation of the child's background and need for treatment.

(6) The child may be committed to the approved treatment facility or program if it is determined by the neutral fact finder that:
(a) the child is addicted to drugs or alcohol and because of that addiction poses a serious risk of harm to himself or others;
(b) the proposed treatment or rehabilitation is in the child's best interest; and
(c) there is no less restrictive alternative that would be equally as effective, from a clinical standpoint, as the proposed treatment facility or program.
(7) Any approved treatment facility or program that receives a child under this section shall conduct a periodic review, at intervals not to exceed 30 days, to determine whether the criteria described in Subsection (6) continue to exist.
(8) A minor committed under this section shall be released from the facility or program upon the request of his parent or legal guardian.
(9) Commitment of a minor under this section terminates when the minor reaches the age of 18 years.
(10) Nothing in this section requires a program or facility to accept any person for treatment or rehabilitation.
(11) The parent or legal guardian who requests commitment of a minor under this section is responsible to pay any fee associated with the review required by this section and any necessary charges for commitment, treatment, or rehabilitation for a minor committed under this section.
(12) The child shall be released from commitment unless the report of the neutral fact finder is submitted to the juvenile court within 72 hours of commitment and approved by the court.

Renumbered and Amended by Chapter 8, 2002 Special Session 5
Renumbered and Amended by Chapter 8, 2002 Special Session 5

Part 4
Alcohol Training and Education

62A-15-401 Alcohol training and education seminar.

(1) As used in this part:
(a) "Instructor" means a person that directly provides the instruction during an alcohol training and education seminar for a seminar provider.
(b) "Licensee" means a person who is:
(i)
(A) a new or renewing licensee under Title 32B, Alcoholic Beverage Control Act; and
(B) engaged in the retail sale of an alcoholic product for consumption on the premises of the licensee; or
(ii) a business that is:
(A) a new or renewing licensee licensed by a city, town, or county; and
(B) engaged in the retail sale of beer for consumption off the premises of the licensee.
(c) "Off-premise beer retailer" is as defined in Section 32B-1-102.
(d) "Seminar provider" means a person other than the division who provides an alcohol training and education seminar meeting the requirements of this section.
(2)
(a) This section applies to:

(i) a retail manager as defined in Section 32B-1-701;
(ii) retail staff as defined in Section 32B-1-701; and
(iii) an individual who, as defined by division rule:
(A) directly supervises the sale of beer to a customer for consumption off the premises of an off-premise beer retailer; or
(B) sells beer to a customer for consumption off the premises of an off-premise beer retailer.
(b) If the individual does not have a valid record that the individual has completed an alcohol training and education seminar, an individual described in Subsection (2)(a) shall:
(i)
(A) complete an alcohol training and education seminar within 30 days of the following if the individual is described in Subsection (2)(a)(i) or (ii):
(I) if the individual is an employee, the day the individual begins employment;
(II) if the individual is an independent contractor, the day the individual is first hired; or
(III) if the individual holds an ownership interest in the licensee, the day that the individual first engages in an activity that would result in that individual being required to complete an alcohol training and education seminar; or
(B) complete an alcohol training and education seminar within the time periods specified in Subsection 32B-1-703(1) if the individual is described in Subsection (2)(a)(iii)(A) or (B); and
(ii) pay a fee:
(A) to the seminar provider; and
(B) that is equal to or greater than the amount established under Subsection (4)(h).
(c) An individual shall have a valid record that the individual completed an alcohol training and education seminar within the time period provided in this Subsection (2) to engage in an activity described in Subsection (2)(a).
(d) A record that an individual has completed an alcohol training and education seminar is valid for:
(i) three years from the day on which the record is issued for an individual described in Subsection (2)(a)(i) or (ii); and
(ii) five years from the day on which the record is issued for an individual described in Subsection (2)(a)(iii)(A) or (B).
(e) On and after July 1, 2011, to be considered as having completed an alcohol training and education seminar, an individual shall:
(i) attend the alcohol training and education seminar and take any test required to demonstrate completion of the alcohol training and education seminar in the physical presence of an instructor of the seminar provider; or
(ii) complete the alcohol training and education seminar and take any test required to demonstrate completion of the alcohol training and education seminar through an online course or testing program that meets the requirements described in Subsection (2)(f).
(f) The division shall by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, establish one or more requirements for an online course or testing program described in Subsection (2)(e) that are designed to inhibit fraud in the use of the online course or testing program. In developing the requirements by rule the division shall consider whether to require:
(i) authentication that the an individual accurately identifies the individual as taking the online course or test;
(ii) measures to ensure that an individual taking the online course or test is focused on training material throughout the entire training period;

(iii) measures to track the actual time an individual taking the online course or test is actively engaged online;
(iv) a seminar provider to provide technical support, such as requiring a telephone number, email, or other method of communication that allows an individual taking the online course or test to receive assistance if the individual is unable to participate online because of technical difficulties;
(v) a test to meet quality standards, including randomization of test questions and maximum time limits to take a test;
(vi) a seminar provider to have a system to reduce fraud as to who completes an online course or test, such as requiring a distinct online certificate with information printed on the certificate that identifies the person taking the online course or test, or requiring measures to inhibit duplication of a certificate;
(vii) measures for the division to audit online courses or tests;
(viii) measures to allow an individual taking an online course or test to provide an evaluation of the online course or test;
(ix) a seminar provider to track the Internet protocol address or similar electronic location of an individual who takes an online course or test;
(x) an individual who takes an online course or test to use an e-signature; or
(xi) a seminar provider to invalidate a certificate if the seminar provider learns that the certificate does not accurately reflect the individual who took the online course or test.
(3)
(a) A licensee may not permit an individual who is not in compliance with Subsection (2) to:
(i) serve or supervise the serving of an alcoholic product to a customer for consumption on the premises of the licensee;
(ii) engage in any activity that would constitute managing operations at the premises of a licensee that engages in the retail sale of an alcoholic product for consumption on the premises of the licensee;
(iii) directly supervise the sale of beer to a customer for consumption off the premises of an off-premise beer retailer; or
(iv) sell beer to a customer for consumption off the premises of an off-premise beer retailer.
(b) A licensee that violates Subsection (3)(a) is subject to Section 32B-1-702.
(4) The division shall:
(a)
(i) provide alcohol training and education seminars; or
(ii) certify one or more seminar providers;
(b) establish the curriculum for an alcohol training and education seminar that includes the following subjects:
(i)
(A) alcohol as a drug; and
(B) alcohol's effect on the body and behavior;
(ii) recognizing the problem drinker or signs of intoxication;
(iii) an overview of state alcohol laws related to responsible beverage sale or service, as determined in consultation with the Department of Alcoholic Beverage Services;
(iv) dealing with the problem customer, including ways to terminate sale or service; and
(v) for those supervising or engaging in the retail sale of an alcoholic product for consumption on the premises of a licensee, alternative means of transportation to get the customer safely home;
(c) recertify each seminar provider every three years;

(d) monitor compliance with the curriculum described in Subsection (4)(b);
(e) maintain for at least five years a record of every person who has completed an alcohol training and education seminar;
(f) provide the information described in Subsection (4)(e) on request to:
(i) the Department of Alcoholic Beverage Services;
(ii) law enforcement; or
(iii) a person licensed by the state or a local government to sell an alcoholic product;
(g) provide the Department of Alcoholic Beverage Services on request a list of any seminar provider certified by the division; and
(h) establish a fee amount for each person attending an alcohol training and education seminar that is sufficient to offset the division's cost of administering this section.
(5) The division shall by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act:
(a) define what constitutes under this section an individual who:
(i) manages operations at the premises of a licensee engaged in the retail sale of an alcoholic product for consumption on the premises of the licensee;
(ii) supervises the serving of an alcoholic product to a customer for consumption on the premises of a licensee;
(iii) serves an alcoholic product to a customer for consumption on the premises of a licensee;
(iv) directly supervises the sale of beer to a customer for consumption off the premises of an off-premise beer retailer; or
(v) sells beer to a customer for consumption off the premises of an off-premise beer retailer;
(b) establish criteria for certifying and recertifying a seminar provider; and
(c) establish guidelines for the manner in which an instructor provides an alcohol education and training seminar.
(6) A seminar provider shall:
(a) obtain recertification by the division every three years;
(b) ensure that an instructor used by the seminar provider:
(i) follows the curriculum established under this section; and
(ii) conducts an alcohol training and education seminar in accordance with the guidelines established by rule;
(c) ensure that any information provided by the seminar provider or instructor of a seminar provider is consistent with:
(i) the curriculum established under this section; and
(ii) this section;
(d) provide the division with the names of all persons who complete an alcohol training and education seminar provided by the seminar provider;
(e)
(i) collect a fee for each person attending an alcohol training and education seminar in accordance with Subsection (2); and
(ii) forward to the division the portion of the fee that is equal to the amount described in Subsection (4)(h); and
(f) issue a record to an individual that completes an alcohol training and education seminar provided by the seminar provider.
(7)
(a) If after a hearing conducted in accordance with Title 63G, Chapter 4, Administrative Procedures Act, the division finds that a seminar provider violates this section or that an instructor of the seminar provider violates this section, the division may:

(i) suspend the certification of the seminar provider for a period not to exceed 90 days;
(ii) revoke the certification of the seminar provider;
(iii) require the seminar provider to take corrective action regarding an instructor; or
(iv) prohibit the seminar provider from using an instructor until such time that the seminar provider establishes to the satisfaction of the division that the instructor is in compliance with Subsection (6)(b).

(b) The division may certify a seminar provider whose certification is revoked:
(i) no sooner than 90 days from the date the certification is revoked; and
(ii) if the seminar provider establishes to the satisfaction of the division that the seminar provider will comply with this section.

Amended by Chapter 447, 2022 General Session

62A-15-403 Drinking while pregnant prevention media and education campaign.

(1) As used in this section:
(a) "Advisory council" means the Utah Substance Use and Mental Health Advisory Council created in Section 63M-7-301.
(b) "Restricted account" means the Drinking While Pregnant Prevention Media and Education Campaign Restricted Account created in Section 32B-2-308.

(2) The advisory council shall:
(a) provide ongoing oversight of each media and education campaign funded through the restricted account;
(b) create a drinking while pregnant prevention workgroup consistent with guidelines the advisory council proposes related to the workgroup's membership and duties;
(c) create guidelines for how money appropriated for a media and education campaign can be used;
(d) include in the guidelines created under this Subsection (2) that a media and education campaign funded through the restricted account shall be:
(i) carefully researched;
(ii) developed for target groups; and
(iii) appropriate for target groups; and
(e) approve or deny each plan the division submits in accordance with Subsection (3).

(3)
(a) Subject to appropriation from the Legislature and in accordance with this section, the division shall expend money from the restricted account to direct and fund one or more media and education campaigns designed to reduce the consumption of alcohol while pregnant.
(b) Before the division expends money from the restricted account for a media and education campaign, the division shall, in cooperation with the drinking while pregnant prevention workgroup created in accordance with Subsection (2), prepare and submit a plan to the advisory council that:
(i) describes the media and education campaign; and
(ii) details how the division intends to use money from the restricted account to fund the media and education campaign.
(c) If the advisory council approves the plan described in Subsection (3)(b), the division shall conduct the media and education campaign in accordance with the guidelines described in Subsection (2).

(4) The division shall submit to the Health and Human Services Interim Committee and the advisory council annually by no later than October 1, a written report detailing:

(a) the use of the money for the media and education campaigns conducted in accordance with Subsection (3); and
(b) the impact and result of the use of the money during the previous fiscal year ending June 30.

Renumbered and Amended by Chapter 211, 2022 General Session

Part 5
Programs for DUI Drivers

62A-15-501 DUI -- Legislative policy -- Rehabilitation treatment and evaluation -- Use of victim impact panels.

The Legislature finds that drivers impaired by alcohol or drugs constitute a major problem in this state and that the problem demands a comprehensive detection, intervention, education, and treatment program including emergency services, outpatient treatment, detoxification, residential care, inpatient care, medical and psychological care, social service care, vocational rehabilitation, and career counseling through public and private agencies. It is the policy of this state to provide those programs at the expense of persons convicted of driving while under the influence of intoxicating liquor or drugs. It is also the policy of this state to utilize victim impact panels to assist persons convicted of driving under the influence of intoxicating liquor or drugs to gain a full understanding of the severity of their offense.

Amended by Chapter 81, 2009 General Session

62A-15-502 Penalty for DUI conviction -- Amounts.

(1) Courts of record and not of record may at sentencing assess against the defendant, in addition to any fine, an amount that will fully compensate agencies that treat the defendant for their costs in each case where a defendant is convicted of violating:
(a) Section 41-6a-502 or 41-6a-517;
(b) a criminal prohibition resulting from a plea bargain after an original charge of violating Section 41-6a-502; or
(c) an ordinance that complies with the requirements of Subsection 41-6a-510(1).
(2) The fee assessed shall be collected by the court or an entity appointed by the court.

Amended by Chapter 2, 2005 General Session

62A-15-503 Assessments for DUI -- Use of money for rehabilitation programs, including victim impact panels -- Rulemaking power granted.

(1)
(a) Assessments imposed under Section 62A-15-502 may, pursuant to court order:
(i) be collected by the clerk of the court in which the person was convicted; or
(ii) be paid directly to the licensed alcohol or drug treatment program.
(b) Assessments collected by the court under Subsection (1)(a)(i) shall be forwarded to a special nonlapsing account created by the county treasurer of the county in which the fee is collected.
(2) Assessments under Subsection (1) shall be used exclusively for the operation of licensed alcohol or drug rehabilitation programs and education, assessment, supervision, and other activities related to and supporting the rehabilitation of persons convicted of driving while under

the influence of intoxicating liquor or drugs. A requirement of the rehabilitation program shall be participation with a victim impact panel or program providing a forum for victims of alcohol or drug related offenses and defendants to share experiences on the impact of alcohol or drug related incidents in their lives. The Division of Substance Abuse and Mental Health shall establish guidelines to implement victim impact panels where, in the judgment of the licensed alcohol or drug program, appropriate victims are available, and shall establish guidelines for other programs where such victims are not available.

(3) None of the assessments shall be maintained for administrative costs by the division.

Amended by Chapter 230, 2020 General Session

62A-15-504 Policy -- Alternatives to incarceration.

It is the policy of this state to provide adequate and appropriate health and social services as alternatives to incarceration for public intoxication.

Renumbered and Amended by Chapter 8, 2002 Special Session 5
Renumbered and Amended by Chapter 8, 2002 Special Session 5

Part 6
Utah State Hospital and Other Mental Health Facilities

62A-15-601 Utah State Hospital.

The Utah State Hospital is established and located in Provo, in Utah county. For purposes of this part it is referred to as the "state hospital."

Renumbered and Amended by Chapter 8, 2002 Special Session 5
Renumbered and Amended by Chapter 8, 2002 Special Session 5

62A-15-602 Definitions.

As used in this part, Part 7, Commitment of Persons Under Age 18 to Division of Substance Abuse and Mental Health, Part 8, Interstate Compact on Mental Health, Part 9, Utah Forensic Mental Health Facility, Part 10, Declaration for Mental Health Treatment, and Part 12, Essential Treatment and Intervention Act:

(1) "Adult" means an individual 18 years old or older.
(2) "Approved treatment facility or program" means a mental health or substance use treatment provider that meets the goals and measurements described in Subsection 62A-15-103(2)(j).
(3) "Assisted outpatient treatment" means involuntary outpatient mental health treatment ordered under Section 62A-15-630.5.
(4) "Commitment to the custody of a local mental health authority" means that an adult is committed to the custody of the local mental health authority that governs the mental health catchment area where the adult resides or is found.
(5) "Community mental health center" means an entity that provides treatment and services to a resident of a designated geographical area, that operates by or under contract with a local mental health authority, and that complies with state standards for community mental health centers.
(6) "Designated examiner" means:

(a) a licensed physician, preferably a psychiatrist, who is designated by the division as specially qualified by training or experience in the diagnosis of mental or related illness; or
(b) a licensed mental health professional designated by the division as specially qualified by training and who has at least five years' continual experience in the treatment of mental illness.
(7) "Designee" means a physician who has responsibility for medical functions including admission and discharge, an employee of a local mental health authority, or an employee of a person that has contracted with a local mental health authority to provide mental health services under Section 17-43-304.
(8) "Essential treatment" and "essential treatment and intervention" mean court-ordered treatment at a local substance abuse authority or an approved treatment facility or program for the treatment of an adult's substance use disorder.
(9) "Harmful sexual conduct" means the following conduct upon an individual without the individual's consent, including the nonconsensual circumstances described in Subsections 76-5-406(2)(a) through (l):
(a) sexual intercourse;
(b) penetration, however slight, of the genital or anal opening of the individual;
(c) any sexual act involving the genitals or anus of the actor or the individual and the mouth or anus of either individual, regardless of the gender of either participant; or
(d) any sexual act causing substantial emotional injury or bodily pain.
(10) "Informed waiver" means the patient was informed of a right and, after being informed of that right and the patient's right to waive the right, expressly communicated his or her intention to waive that right.
(11) "Institution" means a hospital or a health facility licensed under Section 26-21-8.
(12) "Local substance abuse authority" means the same as that term is defined in Section 62A-15-102 and described in Section 17-43-201.
(13) "Mental health facility" means the Utah State Hospital or other facility that provides mental health services under contract with the division, a local mental health authority, a person that contracts with a local mental health authority, or a person that provides acute inpatient psychiatric services to a patient.
(14) "Mental health officer" means an individual who is designated by a local mental health authority as qualified by training and experience in the recognition and identification of mental illness, to:
(a) apply for and provide certification for a temporary commitment; or
(b) assist in the arrangement of transportation to a designated mental health facility.
(15) "Mental illness" means:
(a) a psychiatric disorder that substantially impairs an individual's mental, emotional, behavioral, or related functioning; or
(b) the same as that term is defined in:
(i) the current edition of the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association; or
(ii) the current edition of the International Statistical Classification of Diseases and Related Health Problems.
(16) "Patient" means an individual who is:
(a) under commitment to the custody or to the treatment services of a local mental health authority; or
(b) undergoing essential treatment and intervention.
(17) "Physician" means an individual who is:

(a) licensed as a physician under Title 58, Chapter 67, Utah Medical Practice Act; or
(b) licensed as a physician under Title 58, Chapter 68, Utah Osteopathic Medical Practice Act.
(18) "Serious bodily injury" means bodily injury that involves a substantial risk of death, unconsciousness, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ, or mental faculty.
(19) "Substantial danger" means that due to mental illness, an individual is at serious risk of:
(a) suicide;
(b) serious bodily self-injury;
(c) serious bodily injury because the individual is incapable of providing the basic necessities of life, including food, clothing, or shelter;
(d) causing or attempting to cause serious bodily injury to another individual;
(e) engaging in harmful sexual conduct; or
(f) if not treated, suffering severe and abnormal mental, emotional, or physical distress that:
(i) is associated with significant impairment of judgment, reason, or behavior; and
(ii) causes a substantial deterioration of the individual's previous ability to function independently.
(20) "Treatment" means psychotherapy, medication, including the administration of psychotropic medication, or other medical treatments that are generally accepted medical or psychosocial interventions for the purpose of restoring the patient to an optimal level of functioning in the least restrictive environment.

Amended by Chapter 187, 2022 General Session
Amended by Chapter 374, 2022 General Session

62A-15-603 Administration of state hospital -- Division -- Authority.
(1) The division shall administer the state hospital as part of the state's comprehensive mental health program and, to the fullest extent possible, shall, as the state hospital's administrator, coordinate with local mental health authority programs.
(2) The division has the same powers, duties, rights, and responsibilities as, and shall perform the same functions that by law are conferred or required to be discharged or performed by, the state hospital.
(3) Supervision and administration of security responsibilities for the state hospital is vested in the division. The executive director shall designate, as special function officers, individuals with peace officer authority to perform special security functions for the state hospital.
(4) A director of a mental health facility that houses an involuntary patient or a patient committed by judicial order may establish secure areas, as provided in Section 76-8-311.1, within the mental health facility for the patient.

Amended by Chapter 322, 2018 General Session

62A-15-604 Receipt of gift -- Transfer of persons from other institutions.
(1) The division may take and hold by gift, devise, or bequest real and personal property required for the use of the state hospital. With the approval of the governor the division may convert that property that is not suitable for the state hospital's use into money or property that is suitable for the state hospital's use.
(2) The state hospital is authorized to receive from any other institution within the department an individual committed to that institution, when a careful evaluation of the treatment needs of

the individual and of the treatment programs available at the state hospital indicates that the transfer would be in the interest of that individual.

(3)

(a) For the purposes of this Subsection (3), "contributions" means gifts, grants, devises, and donations.

(b) Notwithstanding the provisions of Subsection 62A-1-111(10), the state hospital is authorized to receive contributions and deposit the contributions into an interest-bearing restricted special revenue fund. The state treasurer may invest the fund, and all interest will remain in the fund.

(c)

(i) Single expenditures from the fund in amounts of $5,000 or less shall be approved by the superintendent.

(ii) Single expenditures exceeding $5,000 must be preapproved by the superintendent and the division director.

(iii) Expenditures described in this Subsection (3) shall be used for the benefit of patients at the state hospital.

(d) Money and interest in the fund may not be used for items normally paid for by operating revenues or for items related to personnel costs without specific legislative authorization.

Amended by Chapter 121, 2015 General Session

62A-15-605 Forensic Mental Health Coordinating Council -- Establishment and purpose.

(1) There is established the Forensic Mental Health Coordinating Council composed of the following members:

(a) the director of the Division of Substance Abuse and Mental Health or the director's appointee;

(b) the superintendent of the state hospital or the superintendent's appointee;

(c) the executive director of the Department of Corrections or the executive director's appointee;

(d) a member of the Board of Pardons and Parole or its appointee;

(e) the attorney general or the attorney general's appointee;

(f) the director of the Division of Services for People with Disabilities or the director's appointee;

(g) the director of the Division of Juvenile Justice Services or the director's appointee;

(h) the director of the Commission on Criminal and Juvenile Justice or the director's appointee;

(i) the state court administrator or the administrator's appointee;

(j) the state juvenile court administrator or the administrator's appointee;

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

(l) the executive director of the Utah Developmental Disabilities Council or the director's appointee; and

(m) other individuals, including individuals from appropriate advocacy organizations with an interest in the mission described in Subsection (3), as appointed by the members described in Subsections (1)(a) through (l).

(2) A member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:

(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.

(3) The purpose of the Forensic Mental Health Coordinating Council is to:
(a) advise the director regarding the state hospital admissions policy for individuals in the custody of the Department of Corrections;
(b) develop policies for coordination between the division and the Department of Corrections;
(c) advise the executive director of the Department of Corrections regarding department policy related to the care of individuals in the custody of the Department of Corrections who are mentally ill;
(d) promote communication between and coordination among all agencies dealing with individuals with an intellectual disability or mental illness who become involved in the civil commitment system or in the criminal or juvenile justice system;
(e) study, evaluate, and recommend changes to laws and procedures relating to individuals with an intellectual disability or mental illness who become involved in the civil commitment system or in the criminal or juvenile justice system;
(f) identify and promote the implementation of specific policies and programs to deal fairly and efficiently with individuals with an intellectual disability or mental illness who become involved in the civil commitment system or in the criminal or juvenile justice system;
(g) promote judicial education relating to individuals with an intellectual disability or mental illness who become involved in the civil commitment system or in the criminal or juvenile justice system; and
(h) in consultation with the Utah Substance Abuse Advisory Council created in Section 63M-7-301, study the long-term need for adult patient beds at the state hospital, including:
(i) the total number of beds currently in use in the adult general psychiatric unit of the state hospital;
(ii) the current bed capacity at the state hospital;
(iii) the projected total number of beds needed in the adult general psychiatric unit of the state hospital over the next three, five, and 10 years based on:
(A) the state's current and projected population growth;
(B) current access to mental health resources in the community; and
(C) any other factors the Forensic Mental Health Coordinating Council finds relevant to projecting the total number of beds; and
(iv) the cost associated with the projected total number of beds described in Subsection (3)(h)(iii).
(4) The Forensic Mental Health Coordinating Council shall report the results of the study described in Subsection (3)(h) and any recommended changes to laws or procedures based on the results to the Health and Human Services Interim Committee before November 30 of each year.

Amended by Chapter 304, 2020 General Session

62A-15-605.5 Admission of person in custody of Department of Corrections to state hospital -- Retransfer of person to Department of Corrections.
(1) The executive director of the Department of Corrections may request the director to admit a person who is in the custody of the Department of Corrections to the state hospital, if the clinical director within the Department of Corrections finds that the inmate has mentally deteriorated to the point that admission to the state hospital is necessary to ensure adequate mental health treatment. In determining whether that inmate should be placed in the state hospital, the director of the division shall consider:
(a) the mental health treatment needs of the inmate;

(b) the treatment programs available at the state hospital; and
(c) whether the inmate meets the requirements of Subsection 62A-15-610(2).
(2) If the director denies the admission of an inmate as requested by the clinical director within the Department of Corrections, the Board of Pardons and Parole shall determine whether the inmate will be admitted to the state hospital. The Board of Pardons and Parole shall consider:
(a) the mental health treatment needs of the inmate;
(b) the treatment programs available at the state hospital; and
(c) whether the inmate meets the requirements of Subsection 62A-15-610(2).
(3) The state hospital shall receive any person in the custody of the Department of Corrections when ordered by either the director or the Board of Pardons and Parole, pursuant to Subsection (1) or (2). Any person so transferred to the state hospital shall remain in the custody of the Department of Corrections, and the state hospital shall act solely as the agent of the Department of Corrections.
(4) Inmates transferred to the state hospital pursuant to this section shall be transferred back to the Department of Corrections through negotiations between the director and the director of the Department of Corrections. If agreement between the director and the director of the Department of Corrections cannot be reached, the Board of Pardons and Parole shall have final authority in determining whether a person will be transferred back to the Department of Corrections. In making that determination, that board shall consider:
(a) the mental health treatment needs of the inmate;
(b) the treatment programs available at the state hospital;
(c) whether the person continues to meet the requirements of Subsection 62A-15-610(2);
(d) the ability of the state hospital to provide adequate treatment to the person, as well as safety and security to the public; and
(e) whether, in the opinion of the director, in consultation with the clinical director of the state hospital, the person's treatment needs have been met.

Renumbered and Amended by Chapter 8, 2002 Special Session 5
Renumbered and Amended by Chapter 8, 2002 Special Session 5

62A-15-607 Responsibility for cost of care.
(1) The division shall estimate and determine, as nearly as possible, the actual expense per annum of caring for and maintaining a patient in the state hospital, and that amount or portion of that amount shall be assessed to and paid by the applicant, patient, spouse, parents, child or children who are of sufficient financial ability to do so, or by the guardian of the patient who has funds of the patient that may be used for that purpose.
(2) In addition to the expenses described in Subsection (1), parents are responsible for the support of their child while the child is in the care of the state hospital pursuant to Title 78B, Chapter 12, Utah Child Support Act, and Title 62A, Chapter 11, Recovery Services.

Amended by Chapter 3, 2008 General Session

62A-15-608 Local mental health authority -- Supervision and treatment of persons with a mental illness.
(1) Each local mental health authority has responsibility for supervision and treatment of persons with a mental illness who have been committed to its custody under the provisions of this part, whether residing in the state hospital or elsewhere.

(2) The division, in administering and supervising the security responsibilities of the state hospital under its authority provided by Section 62A-15-603, shall enforce Sections 62A-15-620 through 62A-15-624 to the extent they pertain to the state hospital.

Amended by Chapter 366, 2011 General Session

62A-15-609 Responsibility for education of school-aged children at the hospital -- Responsibility for noninstructional services.

(1) The State Board of Education is responsible for the education of school-aged children committed to the division.
(2) In order to fulfill its responsibility under Subsection (1), the board may contract with local school districts or other appropriate agencies to provide educational and related administrative services.
(3) Medical, residential, and other noninstructional services at the state hospital are the responsibility of the division.

Renumbered and Amended by Chapter 8, 2002 Special Session 5
Renumbered and Amended by Chapter 8, 2002 Special Session 5

62A-15-610 Objectives of state hospital and other facilities -- Persons who may be admitted to state hospital.

(1) The objectives of the state hospital and other mental health facilities shall be to care for all persons within this state who are subject to the provisions of this chapter; and to furnish them with the proper attendance, medical treatment, seclusion, rest, restraint, amusement, occupation, and support that is conducive to their physical and mental well-being.
(2) Only the following persons may be admitted to the state hospital:
  (a) persons 18 years of age and older who meet the criteria necessary for commitment under this part and who have severe mental disorders for whom no appropriate, less restrictive treatment alternative is available;
  (b) persons under 18 years of age who meet the criteria necessary for commitment under Part 7, Commitment of Persons Under Age 18 to Division of Substance Abuse and Mental Health, and for whom no less restrictive alternative is available;
  (c) persons adjudicated and found to be guilty with a mental illness under Title 77, Chapter 16a, Commitment and Treatment of Persons with a Mental Illness;
  (d) persons adjudicated and found to be not guilty by reason of insanity who are under a subsequent commitment order because they have a mental illness and are a danger to themselves or others, under Section 77-16a-302;
  (e) persons found incompetent to proceed under Section 77-15-6;
  (f) persons who require an examination under Title 77, Utah Code of Criminal Procedure; and
  (g) persons in the custody of the Department of Corrections, admitted in accordance with Section 62A-15-605.5, giving priority to those persons with severe mental disorders.

Amended by Chapter 366, 2011 General Session

62A-15-611 Allocation of state hospital beds -- Formula.

(1) As used in this section:

(a) "Adult beds" means the total number of patient beds located in the adult general psychiatric unit and the geriatric unit at the state hospital, as determined by the superintendent of the state hospital.
(b) "Mental health catchment area" means a county or group of counties governed by a local mental health authority.
(2)
(a) The division shall establish by rule a formula to separately allocate to local mental health authorities adult beds for persons who meet the requirements of Subsection 62A-15-610(2)(a). Beginning on May 10, 2011, and ending on June 30, 2011, 152 beds shall be allocated to local mental health authorities under this section.
(b) The number of beds shall be reviewed and adjusted as necessary:
(i) on July 1, 2011, to restore the number of beds allocated to 212 beds as funding permits; and
(ii) on July 1, 2011, and every three years after July 1, 2011, according to the state's population.
(c) All population figures utilized shall reflect the most recent available population estimates from the Utah Population Committee.
(3) The formula established under Subsection (2) shall provide for allocation of beds based on:
(a) the percentage of the state's adult population located within a mental health catchment area; and
(b) a differential to compensate for the additional demand for hospital beds in mental health catchment areas that are located in urban areas.
(4) A local mental health authority may sell or loan its allocation of beds to another local mental health authority.
(5) The division shall allocate adult beds at the state hospital to local mental health authorities for their use in accordance with the formula established under this section. If a local mental health authority is unable to access a bed allocated to it under the formula established under Subsection (2), the division shall provide that local mental health authority with funding equal to the reasonable, average daily cost of an acute care bed purchased by the local mental health authority.
(6) The board shall periodically review and make changes in the formula established under Subsection (2) as necessary to accurately reflect changes in population.

Amended by Chapter 330, 2018 General Session

62A-15-612 Allocation of pediatric state hospital beds -- Formula.
(1) As used in this section:
(a) "Mental health catchment area" means a county or group of counties governed by a local mental health authority.
(b) "Pediatric beds" means the total number of patient beds located in the children's unit and the youth units at the state hospital, as determined by the superintendent of the state hospital.
(2) On July 1, 1996, 72 pediatric beds shall be allocated to local mental health authorities under this section. The division shall review and adjust the number of pediatric beds as necessary every three years according to the state's population of persons under 18 years of age. All population figures utilized shall reflect the most recent available population estimates from the Governor's Office of Planning and Budget.
(3) The allocation of beds shall be based on the percentage of the state's population of persons under the age of 18 located within a mental health catchment area. Each community mental health center shall be allocated at least one bed.

(4) A local mental health authority may sell or loan its allocation of beds to another local mental health authority.
(5) The division shall allocate 72 pediatric beds at the state hospital to local mental health authorities for their use in accordance with the formula established under this section. If a local mental health authority is unable to access a bed allocated to it under that formula, the division shall provide that local mental health authority with funding equal to the reasonable, average daily cost of an acute care bed purchased by the local mental health authority.

Amended by Chapter 382, 2021 General Session

62A-15-613 Appointment of superintendent -- Qualifications -- Powers and responsibilities.
(1) The director, with the consent of the executive director, shall appoint a superintendent of the state hospital, who shall hold office at the will of the director.
(2) The superintendent shall have a bachelor's degree from an accredited university or college, be experienced in administration, and be knowledgeable in matters concerning mental health.
(3) The superintendent has general responsibility for the buildings, grounds, and property of the state hospital. The superintendent shall appoint, with the approval of the director, as many employees as necessary for the efficient and economical care and management of the state hospital, and shall fix the employees' compensation and administer personnel functions according to the standards of the Division of Human Resource Management.

Amended by Chapter 344, 2021 General Session

62A-15-614 Clinical director -- Appointment -- Conditions and procedure -- Duties.
(1) Whenever the superintendent is not qualified to be the clinical director of the state hospital under this section, he shall, with the approval of the director of the division, appoint a clinical director who is licensed to practice medicine and surgery in this state, and who has had at least three years' training in a psychiatric residency program approved by the American Board of Psychiatry and Neurology, Inc., and who is eligible for certification by that board.
(2) The salary of the clinical director of the state hospital shall be fixed by the standards of the Division of Finance, to be paid in the same manner as the salaries of other employees. The clinical director shall perform such duties as directed by the superintendent and prescribed by the rules of the board, and shall prescribe and direct the treatment of patients and adopt sanitary measures for their welfare.
(3) If the superintendent is qualified to be the clinical director, he may assume the duties of the clinical director.

Renumbered and Amended by Chapter 8, 2002 Special Session 5
Renumbered and Amended by Chapter 8, 2002 Special Session 5

62A-15-615 Forms.

The division shall furnish the clerks of the district courts with forms, blanks, warrants, and certificates, to enable the district court judges, with regularity and facility, to comply with the provisions of this chapter.

Renumbered and Amended by Chapter 8, 2002 Special Session 5
Renumbered and Amended by Chapter 8, 2002 Special Session 5

62A-15-616 Persons entering state mentally ill.

(1) A person who enters this state while mentally ill may be returned by a local mental health authority to the home of relatives or friends of that person with a mental illness, if known, or to a hospital in the state where that person with a mental illness is domiciled, in accordance with Title 62A, Chapter 15, Part 8, Interstate Compact on Mental Health.

(2) This section does not prevent commitment of persons who are traveling through or temporarily residing in this state.

Amended by Chapter 366, 2011 General Session

62A-15-617 Expenses of voluntary patients.

The expense for the care and treatment of voluntary patients shall be assessed to and paid in the same manner and to the same extent as is provided for involuntary patients under the provisions of Section 62A-15-607.

Renumbered and Amended by Chapter 8, 2002 Special Session 5
Renumbered and Amended by Chapter 8, 2002 Special Session 5

62A-15-618 Designated examiners.

(1) A designated examiner shall consider a proposed patient's mental health history when evaluating a proposed patient.

(2) A designated examiner may request a court order to obtain a proposed patient's mental health records if a proposed patient refuses to share this information with the designated examiner.

(3) A designated examiner, when evaluating a proposed patient for civil commitment, shall consider whether:

  (a) a proposed patient has been under a court order for assisted outpatient treatment;

  (b) the proposed patient complied with the terms of the assisted outpatient treatment order, if any; and

  (c) whether assisted outpatient treatment is sufficient to meet the proposed patient's needs.

(4) A designated examiner shall be allowed a reasonable fee by the county legislative body of the county in which the proposed patient resides or is found, unless the designated examiner is otherwise paid.

Amended by Chapter 256, 2019 General Session
Amended by Chapter 419, 2019 General Session

62A-15-619 Liability of estate of person with a mental illness.

The provisions made in this part for the support of persons with a mental illness at public expense do not release the estates of those persons from liability for their care and treatment, and the division is authorized and empowered to collect from the estates of those persons any sums paid by the state in their behalf.

Amended by Chapter 366, 2011 General Session

62A-15-620 Attempt to commit person contrary to requirements -- Penalty.

Any person who attempts to place another person in the custody of a local mental health authority contrary to the provisions of this part is guilty of a class B misdemeanor, in addition to liability in an action for damages, or subject to other criminal charges.

Renumbered and Amended by Chapter 8, 2002 Special Session 5
Renumbered and Amended by Chapter 8, 2002 Special Session 5

62A-15-621 Trespass -- Disturbance -- Penalty.

Any person who, without permission, enters any of the buildings or enclosures appropriated to the use of patients, or makes any attempt to do so, or enters anywhere upon the premises belonging to or used by the division, a local mental health authority, or the state hospital and commits, or attempts to commit, any trespass or depredation thereon, or any person who, either from within or without the enclosures, willfully annoys or disturbs the peace or quiet of the premises or of any patient therein, is guilty of a class B misdemeanor.

Renumbered and Amended by Chapter 8, 2002 Special Session 5
Renumbered and Amended by Chapter 8, 2002 Special Session 5

62A-15-622 Abduction of patient -- Penalty.

Any person who abducts a patient who is in the custody of a local mental health authority, or induces any patient to elope or escape from that custody, or attempts to do so, or aids or assists therein, is guilty of a class B misdemeanor, in addition to liability for damages, or subject to other criminal charges.

Renumbered and Amended by Chapter 8, 2002 Special Session 5
Renumbered and Amended by Chapter 8, 2002 Special Session 5

62A-15-623 Criminal's escape -- Penalty.

Any person committed to the state hospital under the provisions of Title 77, Chapter 15, Inquiry into Sanity of Defendant, or Chapter 16a, Commitment and Treatment of Persons with a Mental Illness, who escapes or leaves the state hospital without proper legal authority is guilty of a class A misdemeanor.

Renumbered and Amended by Chapter 8, 2002 Special Session 5

62A-15-624 Violations of this part -- Penalty.

Any person who willfully and knowingly violates any provision of this part, except where another penalty is provided by law, is guilty of a class C misdemeanor.

Renumbered and Amended by Chapter 8, 2002 Special Session 5
Renumbered and Amended by Chapter 8, 2002 Special Session 5

62A-15-625 Voluntary admission of adults.

(1) A local mental health authority, a designee of a local mental health authority, or another mental health facility may admit for observation, diagnosis, care, and treatment an adult who applies for voluntary admission and who has a mental illness or exhibits the symptoms of a mental illness.
(2) No adult may be committed to a local mental health authority against that adult's will except as provided in this chapter.

(3) An adult may be voluntarily admitted to a local mental health authority for treatment at the Utah State Hospital as a condition of probation or stay of sentence only after the requirements of Section 77-18-106 have been met.

Amended by Chapter 260, 2021 General Session

62A-15-626 Release from commitment.

(1)

(a) Subject to Subsection (1)(b), a local mental health authority or the mental health authority's designee shall release from commitment any individual who, in the opinion of the local mental health authority or the mental health authority's designee, has recovered or no longer meets the criteria specified in Section 62A-15-631.

(b) A local mental health authority's inability to locate a committed individual may not be the basis for the individual's release, unless the court orders the release of the individual after a hearing.

(2) A local mental health authority or the mental health authority's designee may release from commitment any patient whose commitment is determined to be no longer advisable except as provided by Section 62A-15-705, but an effort shall be made to assure that any further supportive services required to meet the patient's needs upon release will be provided.

(3) When a patient has been committed to a local mental health authority by judicial process, the local mental health authority shall follow the procedures described in Sections 62A-15-636 and 62A-15-637.

Amended by Chapter 262, 2021 General Session

62A-15-627 Release of voluntary adult -- Exceptions.

(1) Except as provided in Subsection (2), a mental health facility shall immediately release an adult patient:

(a) who is voluntarily admitted, as described in Section 62A-15-625, and who requests release, verbally or in writing; or

(b) whose release is requested in writing by the patient's legal guardian, parent, spouse, or adult next of kin.

(2)

(a) An adult patient's release under Subsection (1) may be conditioned upon the agreement of the patient, if:

(i) the request for release is made by an individual other than the patient; or

(ii) the admitting local mental health authority, the designee of the local mental health authority, or the admitting mental health facility has cause to believe that release of the patient would be unsafe for the patient or others.

(b)

(i) An adult patient's release may be postponed for up to 48 hours, excluding weekends and holidays, if the admitting local mental health authority, the designee of the local mental health authority, or the admitting mental health facility causes involuntary commitment proceedings to be commenced with the district court within the specified time period.

(ii) The admitting local mental health authority, the designee of the local mental health authority, or the admitting mental health facility shall provide written notice of the postponement and the reasons for the postponement to the patient without undue delay.

(3) A judicial proceeding for involuntary commitment may not be commenced with respect to a voluntary patient unless the patient requests release.

Amended by Chapter 374, 2022 General Session

62A-15-628 Involuntary commitment -- Procedures.

(1) An adult may not be involuntarily committed to the custody of a local mental health authority except under the following provisions:

(a) emergency procedures for temporary commitment upon medical or designated examiner certification, as provided in Subsection 62A-15-629(1)(a);

(b) emergency procedures for temporary commitment without endorsement of medical or designated examiner certification, as provided in Subsection 62A-15-629(1)(b); or

(c) commitment on court order, as provided in Section 62A-15-631.

(2) A person under 18 years of age may be committed to the physical custody of a local mental health authority only in accordance with the provisions of Part 7, Commitment of Persons Under Age 18 to Division of Substance Abuse and Mental Health.

Amended by Chapter 322, 2018 General Session

62A-15-629 Temporary commitment -- Requirements and procedures -- Rights.

(1) An adult shall be temporarily, involuntarily committed to a local mental health authority upon:

(a) a written application that:

(i) is completed by a responsible individual who has reason to know, stating a belief that the adult, due to mental illness, is likely to pose substantial danger to self or others if not restrained and stating the personal knowledge of the adult's condition or circumstances that lead to the individual's belief; and

(ii) includes a certification by a licensed physician, licensed physician assistant, licensed nurse practitioner, or designated examiner stating that the physician, physician assistant, nurse practitioner, or designated examiner has examined the adult within a three-day period immediately preceding the certification, and that the physician, physician assistant, nurse practitioner, or designated examiner is of the opinion that, due to mental illness, the adult poses a substantial danger to self or others; or

(b) a peace officer or a mental health officer:

(i) observing an adult's conduct that gives the peace officer or mental health officer probable cause to believe that:

(A) the adult has a mental illness; and

(B) because of the adult's mental illness and conduct, the adult poses a substantial danger to self or others; and

(ii) completing a temporary commitment application that:

(A) is on a form prescribed by the division;

(B) states the peace officer's or mental health officer's belief that the adult poses a substantial danger to self or others;

(C) states the specific nature of the danger;

(D) provides a summary of the observations upon which the statement of danger is based; and

(E) provides a statement of the facts that called the adult to the peace officer's or mental health officer's attention.

(2) If at any time a patient committed under this section no longer meets the commitment criteria described in Subsection (1), the local mental health authority or the local mental health authority's designee shall document the change and release the patient.
(3)
(a) A patient committed under this section may be held for a maximum of 24 hours after commitment, excluding Saturdays, Sundays, and legal holidays, unless:
(i) as described in Section 62A-15-631, an application for involuntary commitment is commenced, which may be accompanied by an order of detention described in Subsection 62A-15-631(4);
(ii) the patient makes a voluntary application for admission; or
(iii) before expiration of the 24 hour period, a licensed physician, licensed physician assistant, licensed nurse practitioner, or designated examiner examines the patient and certifies in writing that:
(A) the patient, due to mental illness, poses a substantial danger to self or others;
(B) additional time is necessary for evaluation and treatment of the patient's mental illness; and
(C) there is no appropriate less-restrictive alternative to commitment to evaluate and treat the patient's mental illness.
(b) A patient described in Subsection (3)(a)(iii) may be held for a maximum of 48 hours after the 24 hour period described in Subsection (3)(a) expires, excluding Saturdays, Sundays, and legal holidays.
(c) Subsection (3)(a)(iii) applies to an adult patient.
(4) Upon a written application described in Subsection (1)(a) or the observation and belief described in Subsection (1)(b)(i), the adult shall be:
(a) taken into a peace officer's protective custody, by reasonable means, if necessary for public safety; and
(b) transported for temporary commitment to a facility designated by the local mental health authority, by means of:
(i) an ambulance, if the adult meets any of the criteria described in Section 26-8a-305;
(ii) an ambulance, if a peace officer is not necessary for public safety, and transportation arrangements are made by a physician, physician assistant, nurse practitioner, designated examiner, or mental health officer;
(iii) the city, town, or municipal law enforcement authority with jurisdiction over the location where the adult is present, if the adult is not transported by ambulance;
(iv) the county sheriff, if the designated facility is outside of the jurisdiction of the law enforcement authority described in Subsection (4)(b)(iii) and the adult is not transported by ambulance; or
(v) nonemergency secured behavioral health transport as that term is defined in Section 26-8a-102.
(5) Notwithstanding Subsection (4):
(a) an individual shall be transported by ambulance to an appropriate medical facility for treatment if the individual requires physical medical attention;
(b) if an officer has probable cause to believe, based on the officer's experience and de-escalation training that taking an individual into protective custody or transporting an individual for temporary commitment would increase the risk of substantial danger to the individual or others, a peace officer may exercise discretion to not take the individual into custody or transport the individual, as permitted by policies and procedures established by the officer's law enforcement agency and any applicable federal or state statute, or case law; and

(c) if an officer exercises discretion under Subsection (4)(b) to not take an individual into protective custody or transport an individual, the officer shall document in the officer's report the details and circumstances that led to the officer's decision.

(6)

(a) The local mental health authority shall inform an adult patient committed under this section of the reason for commitment.

(b) An adult patient committed under this section has the right to:

(i) within three hours after arrival at the local mental health authority, make a telephone call, at the expense of the local mental health authority, to an individual of the patient's choice; and

(ii) see and communicate with an attorney.

(7)

(a)Title 63G, Chapter 7, Governmental Immunity Act of Utah, applies to this section.

(b) This section does not create a special duty of care.

Amended by Chapter 341, 2022 General Session
Amended by Chapter 374, 2022 General Session

62A-15-630 Mental health commissioners.

The court may appoint a mental health commissioner to assist in conducting commitment proceedings in accordance with Section 78A-5-107.

Amended by Chapter 3, 2008 General Session

62A-15-630.4 Assisted outpatient treatment services.

(1) The local mental health authority or its designee shall provide assisted outpatient treatment, which shall include:

(a) case management; and

(b) an individualized treatment plan, created with input from the proposed patient when possible.

(2) A court order for assisted outpatient treatment does not create independent authority to forcibly medicate a patient.

Enacted by Chapter 256, 2019 General Session

62A-15-630.5 Assisted outpatient treatment proceedings.

(1) A responsible individual who has credible knowledge of an adult's mental illness and the condition or circumstances that have led to the adult's need for assisted outpatient treatment may file, in the district court in the county where the proposed patient resides or is found, a written application that includes:

(a) unless the court finds that the information is not reasonably available, the proposed patient's:

(i) name;

(ii) date of birth; and

(iii) social security number; and

(b)

(i) a certificate of a licensed physician or a designated examiner stating that within the seven-day period immediately preceding the certification, the physician or designated examiner examined the proposed patient and is of the opinion that the proposed patient has a mental illness and should be involuntarily committed; or

(ii) a written statement by the applicant that:

(A) the proposed patient has been requested to, but has refused to, submit to an examination of mental condition by a licensed physician or designated examiner;
(B) is sworn to under oath; and
(C) states the facts upon which the application is based.
(2)
(a) Subject to Subsection (2)(b), before issuing a judicial order, the court may require the applicant to consult with the appropriate local mental health authority, and the court may direct a mental health professional from that local mental health authority to interview the applicant and the proposed patient to determine the existing facts and report them to the court.
(b) The consultation described in Subsection (2)(a):
(i) may take place at or before the hearing; and
(ii) is required if the local mental health authority appears at the hearing.
(3) If the proposed patient refuses to submit to an interview described in Subsection (2)(a) or an examination described in Subsection (8), the court may issue an order, directed to a mental health officer or peace officer, to immediately place the proposed patient into the custody of a local mental health authority or in a temporary emergency facility, as provided in Section 62A-15-634, to be detained for the purpose of examination.
(4) Notice of commencement of proceedings for assisted outpatient treatment, setting forth the allegations of the application and any reported facts, together with a copy of any official order of detention, shall:
(a) be provided by the court to a proposed patient before, or upon, placement into the custody of a local mental health authority or, with respect to any proposed patient presently in the custody of a local mental health authority;
(b) be maintained at the proposed patient's place of detention, if any;
(c) be provided by the court as soon as practicable to the applicant, any legal guardian, any immediate adult family members, legal counsel for the parties involved, the local mental health authority or its designee, and any other person whom the proposed patient or the court shall designate; and
(d) advise that a hearing may be held within the time provided by law.
(5) The district court may, in its discretion, transfer the case to any other district court within this state, provided that the transfer will not be adverse to the interest of the proposed patient.
(6) Within 24 hours, excluding Saturdays, Sundays, and legal holidays, of the issuance of a judicial order, or after commitment of a proposed patient to a local mental health authority or its designee under court order for detention in order to complete an examination, the court shall appoint two designated examiners:
(a) who did not sign the assisted outpatient treatment application nor the certification described in Subsection (1);
(b) one of whom is a licensed physician; and
(c) one of whom may be designated by the proposed patient or the proposed patient's counsel, if that designated examiner is reasonably available.
(7) The court shall schedule a hearing to be held within 10 calendar days of the day on which the designated examiners are appointed.
(8) The designated examiners shall:
(a) conduct their examinations separately;
(b) conduct the examinations at the home of the proposed patient, at a hospital or other medical facility, or at any other suitable place that is not likely to have a harmful effect on the proposed patient's health;

(c) inform the proposed patient, if not represented by an attorney:
(i) that the proposed patient does not have to say anything;
(ii) of the nature and reasons for the examination;
(iii) that the examination was ordered by the court;
(iv) that any information volunteered could form part of the basis for the proposed patient to be ordered to receive assisted outpatient treatment; and
(v) that findings resulting from the examination will be made available to the court; and
(d) within 24 hours of examining the proposed patient, report to the court, orally or in writing, whether the proposed patient is mentally ill. If the designated examiner reports orally, the designated examiner shall immediately send a written report to the clerk of the court.
(9) If a designated examiner is unable to complete an examination on the first attempt because the proposed patient refuses to submit to the examination, the court shall fix a reasonable compensation to be paid to the examiner.
(10) If the local mental health authority, its designee, or a medical examiner determines before the court hearing that the conditions justifying the findings leading to an assisted outpatient treatment hearing no longer exist, the local mental health authority, its designee, or the medical examiner shall immediately report that determination to the court.
(11) The court may terminate the proceedings and dismiss the application at any time, including prior to the hearing, if the designated examiners or the local mental health authority or its designee informs the court that the proposed patient does not meet the criteria in Subsection (14).
(12) Before the hearing, an opportunity to be represented by counsel shall be afforded to the proposed patient, and if neither the proposed patient nor others provide counsel, the court shall appoint counsel and allow counsel sufficient time to consult with the proposed patient before the hearing. In the case of an indigent proposed patient, the payment of reasonable attorney fees for counsel, as determined by the court, shall be made by the county in which the proposed patient resides or is found.
(13)
(a) All persons to whom notice is required to be given shall be afforded an opportunity to appear at the hearing, to testify, and to present and cross-examine witnesses. The court may, in its discretion, receive the testimony of any other individual. The court may allow a waiver of the proposed patient's right to appear for good cause, which cause shall be set forth in the record, or an informed waiver by the patient, which shall be included in the record.
(b) The court is authorized to exclude all individuals not necessary for the conduct of the proceedings and may, upon motion of counsel, require the testimony of each examiner to be given out of the presence of any other examiners.
(c) The hearing shall be conducted in as informal a manner as may be consistent with orderly procedure, and in a physical setting that is not likely to have a harmful effect on the mental health of the proposed patient.
(d) The court shall consider all relevant historical and material information that is offered, subject to the rules of evidence, including reliable hearsay under Rule 1102, Utah Rules of Evidence.
(e)
(i) A local mental health authority or its designee, or the physician in charge of the proposed patient's care shall, at the time of the hearing, provide the court with the following information:
(A) the detention order, if any;
(B) admission notes, if any;
(C) the diagnosis, if any;

(D) doctor's orders, if any;
(E) progress notes, if any;
(F) nursing notes, if any; and
(G) medication records, if any.
(ii) The information described in Subsection (13)(e)(i) shall also be provided to the proposed patient's counsel:
(A) at the time of the hearing; and
(B) at any time prior to the hearing, upon request.
(14) The court shall order a proposed patient to assisted outpatient treatment if, upon completion of the hearing and consideration of the information presented, the court finds by clear and convincing evidence that:
(a) the proposed patient has a mental illness;
(b) there is no appropriate less-restrictive alternative to a court order for assisted outpatient treatment; and
(c)
(i) the proposed patient lacks the ability to engage in a rational decision-making process regarding the acceptance of mental health treatment, as demonstrated by evidence of inability to weigh the possible risks of accepting or rejecting treatment; or
(ii) the proposed patient needs assisted outpatient treatment in order to prevent relapse or deterioration that is likely to result in the proposed patient posing a substantial danger to self or others.
(15) The court may order the applicant or a close relative of the patient to be the patient's personal representative, as described in 45 C.F.R. Sec. 164.502(g), for purposes of the patient's mental health treatment.
(16) In the absence of the findings described in Subsection (14), the court, after the hearing, shall dismiss the proceedings.
(17)
(a) The assisted outpatient treatment order shall designate the period for which the patient shall be treated, which may not exceed 12 months without a review hearing.
(b) At a review hearing, the court may extend the duration of an assisted outpatient treatment order by up to 12 months, if:
(i) the court finds by clear and convincing evidence that the patient meets the conditions described in Subsection (14); or
(ii)
(A) the patient does not appear at the review hearing;
(B) notice of the review hearing was provided to the patient's last known address by the applicant described in Subsection (1) or by a local mental health authority; and
(C) the patient has appeared in court or signed an informed waiver within the previous 18 months.
(c) The court shall maintain a current list of all patients under its order of assisted outpatient treatment.
(d) At least two weeks prior to the expiration of the designated period of any assisted outpatient treatment order still in effect, the court that entered the original order shall inform the appropriate local mental health authority or its designee.
(18) Costs of all proceedings under this section shall be paid by the county in which the proposed patient resides or is found.
(19) A court may not hold an individual in contempt for failure to comply with an assisted outpatient treatment order.

(20) As provided in Section 31A-22-651, a health insurance provider may not deny an insured the benefits of the insured's policy solely because the health care that the insured receives is provided under a court order for assisted outpatient treatment.

Amended by Chapter 122, 2021 General Session

62A-15-631 Involuntary commitment under court order -- Examination -- Hearing -- Power of court -- Findings required -- Costs.

(1) A responsible individual who has credible knowledge of an adult's mental illness and the condition or circumstances that have led to the adult's need to be involuntarily committed may initiate an involuntary commitment court proceeding by filing, in the district court in the county where the proposed patient resides or is found, a written application that includes:

(a) unless the court finds that the information is not reasonably available, the proposed patient's:

(i) name;

(ii) date of birth; and

(iii) social security number;

(b)

(i) a certificate of a licensed physician or a designated examiner stating that within the seven-day period immediately preceding the certification, the physician or designated examiner examined the proposed patient and is of the opinion that the proposed patient has a mental illness and should be involuntarily committed; or

(ii) a written statement by the applicant that:

(A) the proposed patient has been requested to, but has refused to, submit to an examination of mental condition by a licensed physician or designated examiner;

(B) is sworn to under oath; and

(C) states the facts upon which the application is based; and

(c) a statement whether the proposed patient has previously been under an assisted outpatient treatment order, if known by the applicant.

(2) Before issuing a judicial order, the court:

(a) shall require the applicant to consult with the appropriate local mental health authority at or before the hearing; and

(b) may direct a mental health professional from the local mental health authority to interview the applicant and the proposed patient to determine the existing facts and report the existing facts to the court.

(3) The court may issue an order, directed to a mental health officer or peace officer, to immediately place a proposed patient in the custody of a local mental health authority or in a temporary emergency facility, as described in Section 62A-15-634, to be detained for the purpose of examination if:

(a) the court finds from the application, any other statements under oath, or any reports from a mental health professional that there is a reasonable basis to believe that the proposed patient has a mental illness that poses a danger to self or others and requires involuntary commitment pending examination and hearing; or

(b) the proposed patient refuses to submit to an interview with a mental health professional as directed by the court or to go to a treatment facility voluntarily.

(4)

(a) The court shall provide notice of commencement of proceedings for involuntary commitment, setting forth the allegations of the application and any reported facts, together with a copy of any official order of detention, to a proposed patient before, or upon, placement of the

proposed patient in the custody of a local mental health authority or, with respect to any proposed patient presently in the custody of a local mental health authority whose status is being changed from voluntary to involuntary, upon the filing of an application for that purpose with the court.

(b) The place of detention shall maintain a copy of the order of detention.

(5)

(a) The court shall provide notice of commencement of proceedings for involuntary commitment as soon as practicable to the applicant, any legal guardian, any immediate adult family members, legal counsel for the parties involved, the local mental health authority or the local mental health authority's designee, and any other persons whom the proposed patient or the court designates.

(b) Except as provided in Subsection (5)(c), the notice under Subsection (5)(a) shall advise the persons that a hearing may be held within the time provided by law.

(c) If the proposed patient refuses to permit release of information necessary for provisions of notice under this subsection, the court shall determine the extent of notice.

(6) Proceedings for commitment of an individual under 18 years old to a local mental health authority may be commenced in accordance with Part 7, Commitment of Persons Under Age 18 to Division of Substance Abuse and Mental Health.

(7)

(a) The district court may, in the district court's discretion, transfer the case to any other district court within this state, if the transfer will not be adverse to the interest of the proposed patient.

(b) If a case is transferred under Subsection (7)(a), the parties to the case may be transferred and the local mental health authority may be substituted in accordance with Utah Rules of Civil Procedure, Rule 25.

(8) Within 24 hours, excluding Saturdays, Sundays, and legal holidays, of the issuance of a judicial order, or after commitment of a proposed patient to a local mental health authority or the local mental health authority's designee under court order for detention or examination, the court shall appoint two designated examiners:

(a) who did not sign the civil commitment application nor the civil commitment certification under Subsection (1);

(b) one of whom is a licensed physician; and

(c) one of whom may be designated by the proposed patient or the proposed patient's counsel, if that designated examiner is reasonably available.

(9) The court shall schedule a hearing to be held within 10 calendar days after the day on which the designated examiners are appointed.

(10)

(a) The designated examiners shall:

(i) conduct the examinations separately;

(ii) conduct the examinations at the home of the proposed patient, at a hospital or other medical facility, or at any other suitable place, including through telehealth, that is not likely to have a harmful effect on the proposed patient's health;

(iii) inform the proposed patient, if not represented by an attorney:

(A) that the proposed patient does not have to say anything;

(B) of the nature and reasons for the examination;

(C) that the examination was ordered by the court;

(D) that any information volunteered could form part of the basis for the proposed patient's involuntary commitment;

(E) that findings resulting from the examination will be made available to the court; and

(F) that the designated examiner may, under court order, obtain the proposed patient's mental health records; and

(iv) within 24 hours of examining the proposed patient, report to the court, orally or in writing, whether the proposed patient is mentally ill, has agreed to voluntary commitment, as described in Section 62A-15-625, or has acceptable programs available to the proposed patient without court proceedings.

(b) If a designated examiner reports orally under Subsection (10)(a), the designated examiner shall immediately send a written report to the clerk of the court.

(11) If a designated examiner is unable to complete an examination on the first attempt because the proposed patient refuses to submit to the examination, the court shall fix a reasonable compensation to be paid to the examiner.

(12) If the local mental health authority, the local mental health authority's designee, or a medical examiner determines before the court hearing that the conditions justifying the findings leading to a commitment hearing no longer exist, the local mental health authority, the local mental health authority's designee, or the medical examiner shall immediately report the determination to the court.

(13) The court may terminate the proceedings and dismiss the application at any time, including before the hearing, if the designated examiners or the local mental health authority or the local mental health authority's designee informs the court that the proposed patient:

(a) does not meet the criteria in Subsection (16);

(b) has agreed to voluntary commitment, as described in Section 62A-15-625;

(c) has acceptable options for treatment programs that are available without court proceedings; or

(d) meets the criteria for assisted outpatient treatment described in Section 62A-15-630.5.

(14)

(a) Before the hearing, the court shall provide the proposed patient an opportunity to be represented by counsel, and if neither the proposed patient nor others provide counsel, the court shall appoint counsel and allow counsel sufficient time to consult with the proposed patient before the hearing.

(b) In the case of an indigent proposed patient, the county in which the proposed patient resides or is found shall make payment of reasonable attorney fees for counsel, as determined by the court.

(15)

(a)

(i) The court shall afford the proposed patient, the applicant, and any other person to whom notice is required to be given an opportunity to appear at the hearing, to testify, and to present and cross-examine witnesses.

(ii) The court may, in the court's discretion, receive the testimony of any other person.

(iii) The court may allow a waiver of the proposed patient's right to appear for good cause, which cause shall be set forth in the record, or an informed waiver by the patient, which shall be included in the record.

(b) The court is authorized to exclude any person not necessary for the conduct of the proceedings and may, upon motion of counsel, require the testimony of each designated examiner to be given out of the presence of any other designated examiners.

(c) The court shall conduct the hearing in as informal a manner as may be consistent with orderly procedure, and in a physical setting that is not likely to have a harmful effect on the mental health of the proposed patient, while preserving the due process rights of the proposed patient.

(d) The court shall consider any relevant historical and material information that is offered, subject to the rules of evidence, including reliable hearsay under Rule 1102, Utah Rules of Evidence.

(e)

(i) A local mental health authority or the local mental health authority's designee or the physician in charge of the proposed patient's care shall, at the time of the hearing, provide the court with the following information:

(A) the detention order;

(B) admission notes;

(C) the diagnosis;

(D) any doctors' orders;

(E) progress notes;

(F) nursing notes;

(G) medication records pertaining to the current commitment; and

(H) whether the proposed patient has previously been civilly committed or under an order for assisted outpatient treatment.

(ii) The information described in Subsection (15)(e)(i) shall also be supplied to the proposed patient's counsel at the time of the hearing, and at any time prior to the hearing upon request.

(16)

(a) The court shall order commitment of an adult proposed patient to a local mental health authority if, upon completion of the hearing and consideration of the information presented, the court finds by clear and convincing evidence that:

(i) the proposed patient has a mental illness;

(ii) because of the proposed patient's mental illness the proposed patient poses a substantial danger to self or others;

(iii) the proposed patient lacks the ability to engage in a rational decision-making process regarding the acceptance of mental treatment as demonstrated by evidence of inability to weigh the possible risks of accepting or rejecting treatment;

(iv) there is no appropriate less-restrictive alternative to a court order of commitment; and

(v) the local mental health authority can provide the proposed patient with treatment that is adequate and appropriate to the proposed patient's conditions and needs.

(b)

(i) If, at the hearing, the court determines that the proposed patient has a mental illness but does not meet the other criteria described in Subsection (16)(a), the court may consider whether the proposed patient meets the criteria for assisted outpatient treatment under Section 62A-15-630.5.

(ii) The court may order the proposed patient to receive assisted outpatient treatment in accordance with Section 62A-15-630.5 if, at the hearing, the court finds the proposed patient meets the criteria for assisted outpatient treatment under Section 62A-15-630.5.

(iii) If the court determines that neither the criteria for commitment under Subsection (16)(a) nor the criteria for assisted outpatient treatment under Section 62A-15-630.5 are met, the court shall dismiss the proceedings after the hearing.

(17)

(a)

(i) The order of commitment shall designate the period for which the patient shall be treated.

(ii) If the patient is not under an order of commitment at the time of the hearing, the patient's treatment period may not exceed six months without a review hearing.

(iii) Upon a review hearing, to be commenced before the expiration of the previous order of commitment, an order for commitment may be for an indeterminate period, if the court finds by clear and convincing evidence that the criteria described in Subsection (16) will last for an indeterminate period.

(b)

(i) The court shall maintain a current list of all patients under the court's order of commitment and review the list to determine those patients who have been under an order of commitment for the court designated period.

(ii) At least two weeks before the expiration of the designated period of any order of commitment still in effect, the court that entered the original order of commitment shall inform the appropriate local mental health authority or the local mental health authority's designee of the expiration.

(iii) Upon receipt of the information described in Subsection (17)(b)(ii), the local mental health authority or the local mental health authority's designee shall immediately reexamine the reasons upon which the order of commitment was based.

(iv) If, after reexamination under Subsection (17)(b)(iii), the local mental health authority or the local mental health authority's designee determines that the conditions justifying commitment no longer exist, the local mental health authority or the local mental health authority's designee shall discharge the patient from involuntary commitment and immediately report the discharge to the court.

(v) If, after reexamination under Subsection (17)(b)(iii), the local mental health authority or the local mental health authority's designee determines that the conditions justifying commitment continue to exist, the court shall immediately appoint two designated examiners and proceed under Subsections (8) through (14).

(c)

(i) The local mental health authority or the local mental health authority's designee responsible for the care of a patient under an order of commitment for an indeterminate period shall, at six-month intervals, reexamine the reasons upon which the order of indeterminate commitment was based.

(ii) If the local mental health authority or the local mental health authority's designee determines that the conditions justifying commitment no longer exist, the local mental health authority or the local mental health authority's designee shall discharge the patient from the local mental health authority's or the local mental health authority designee's custody and immediately report the discharge to the court.

(iii) If the local mental health authority or the local mental health authority's designee determines that the conditions justifying commitment continue to exist, the local mental health authority or the local mental health authority's designee shall send a written report of the findings to the court.

(iv) A patient and the patient's counsel of record shall be notified in writing that the involuntary commitment will be continued under Subsection (17)(c)(iii), the reasons for the decision to continue, and that the patient has the right to a review hearing by making a request to the court.

(v) Upon receiving a request under Subsection (17)(c)(iv), the court shall immediately appoint two designated examiners and proceed under Subsections (8) through (14).

(18)

(a) Any patient committed as a result of an original hearing or a patient's legally designated representative who is aggrieved by the findings, conclusions, and order of the court entered in

the original hearing has the right to a new hearing upon a petition filed with the court within 30 days after the day on which the court order is entered.
(b) The petition shall allege error or mistake in the findings, in which case the court shall appoint three impartial designated examiners previously unrelated to the case to conduct an additional examination of the patient.
(c) Except as provided in Subsection (18)(b), the court shall, in all other respects, conduct the new hearing in the manner otherwise permitted.
(19) The county in which the proposed patient resides or is found shall pay the costs of all proceedings under this section.

Amended by Chapter 374, 2022 General Session

62A-15-632 Circumstances under which conditions justifying initial involuntary commitment shall be considered to continue to exist.

(1) When an individual is involuntarily committed to the custody of a local mental health authority under Subsection 62A-15-631(16), the conditions justifying commitment under that Subsection shall be considered to continue to exist for purposes of continued treatment under Subsection 62A-15-631(17) or conditional release under Section 62A-15-637 if the court finds that:
(a) the patient is still mentally ill;
(b) there is no appropriate less restrictive alternative to a court order of involuntary commitment; and
(c) absent an order of involuntary commitment, the patient will likely pose a substantial danger to self or others.
(2) When an individual has been ordered to assisted outpatient treatment under Subsection 62A-15-630.5(14), the individual may be involuntarily committed to the custody of a local mental health authority under Subsection 62A-15-631(16) for purposes of continued treatment under Subsection 62A-15-631(17) or conditional release under Section 62A-15-637, if the court finds that:
(a) the patient is still mentally ill;
(b) there is no appropriate less-restrictive alternative to a court order of involuntary commitment; and
(c) based upon the patient's conduct and statements during the preceding six months, or the patient's failure to comply with treatment recommendations during the preceding six months, the court finds that absent an order of involuntary commitment, the patient is likely to pose a substantial danger to self or others.
(3) A patient whose treatment is continued or who is conditionally released under the terms of this section shall be maintained in the least restrictive environment available that can provide the patient with treatment that is adequate and appropriate.

Repealed and Re-enacted by Chapter 122, 2021 General Session

62A-15-633 Persons eligible for care or treatment by federal agency -- Continuing jurisdiction of state courts.

(1) If an individual committed pursuant to Section 62A-15-631 is eligible for care or treatment by any agency of the United States, the court, upon receipt of a certificate from a United States agency, showing that facilities are available and that the individual is eligible for care or treatment therein, may order the individual to be placed in the custody of that agency for care.

(2) When admitted to any facility or institution operated by a United States agency, within or without this state, the individual shall be subject to the rules and regulations of that agency.
(3) The chief officer of any facility or institution operated by a United States agency and in which the individual is hospitalized, shall, with respect to that individual, be vested with the same powers as the superintendent or director of a mental health facility, regarding detention, custody, transfer, conditional release, or discharge of patients. Jurisdiction is retained in appropriate courts of this state at any time to inquire into the mental condition of an individual so hospitalized, and to determine the necessity for continuance of hospitalization, and every order of hospitalization issued pursuant to this section is so conditioned.

Renumbered and Amended by Chapter 8, 2002 Special Session 5
Renumbered and Amended by Chapter 8, 2002 Special Session 5

62A-15-634 Detention pending placement in custody.

Pending commitment to a local mental health authority, a patient taken into custody or ordered to be committed pursuant to this part may be detained in the patient's home, a licensed foster home, or any other suitable facility under reasonable conditions prescribed by the local mental health authority. Except in an extreme emergency, the patient may not be detained in a nonmedical facility used for the detention of individuals charged with or convicted of criminal offenses. The local mental health authority shall take reasonable measures, including provision of medical care, as may be necessary to assure proper care of an individual temporarily detained pursuant to this section.

Renumbered and Amended by Chapter 8, 2002 Special Session 5
Renumbered and Amended by Chapter 8, 2002 Special Session 5

62A-15-635 Notice of commitment.

Whenever a patient has been temporarily, involuntarily committed to a local mental health authority under Section 62A-15-629 on the application of an individual other than the patient's legal guardian, spouse, or next of kin, the local mental health authority or a designee of the local mental health authority shall immediately notify the patient's legal guardian, spouse, or next of kin, if known.

Amended by Chapter 322, 2018 General Session

62A-15-636 Periodic review -- Discharge.

Each local mental health authority or its designee shall, as frequently as practicable, examine or cause to be examined every person who has been committed to it. Whenever the local mental health authority or its designee determines that the conditions justifying involuntary commitment no longer exist, it shall discharge the patient. If the patient has been committed through judicial proceedings, a report describing that determination shall be sent to the clerk of the court where the proceedings were held.

Renumbered and Amended by Chapter 8, 2002 Special Session 5
Renumbered and Amended by Chapter 8, 2002 Special Session 5

62A-15-637 Release of patient to receive other treatment -- Placement in more restrictive environment -- Procedures.

(1) A local mental health authority or a designee of a local mental health authority may conditionally release an improved patient to less restrictive treatment when:
(a) the authority specifies the less restrictive treatment; and
(b) the patient agrees in writing to the less restrictive treatment.
(2)
(a) Whenever a local mental health authority or a designee of a local mental health authority determines that the conditions justifying commitment no longer exist, the local mental health authority or the designee shall discharge the patient.
(b) If the discharged patient has been committed through judicial proceedings, the local mental health authority or the designee shall prepare a report describing the determination and shall send the report to the clerk of the court where the proceedings were held.
(3)
(a) A local mental health authority or a designee of a local mental health authority is authorized to issue an order for the immediate placement of a current patient into a more restrictive environment, if:
(i) the local mental health authority or a designee of a local mental health authority has reason to believe that the patient's current environment is aggravating the patient's mental illness; or
(ii) the patient has failed to comply with the specified treatment plan to which the patient agreed in writing.
(b) An order for a more restrictive environment shall:
(i) state the reasons for the order;
(ii) authorize any peace officer to take the patient into physical custody and transport the patient to a facility designated by the local mental health authority;
(iii) inform the patient of the right to a hearing, the right to appointed counsel, and the other procedures described in Subsection 62A-15-631(14); and
(iv) prior to or upon admission to the more restrictive environment, or upon imposition of additional or different requirements as conditions for continued conditional release from inpatient care, copies of the order shall be delivered to:
(A) the patient;
(B) the person in whose care the patient is placed;
(C) the patient's counsel of record; and
(D) the court that entered the original order of commitment.
(c) If the patient was in a less restrictive environment for more than 30 days and is aggrieved by the change to a more restrictive environment, the patient or the patient's representative may request a hearing within 30 days of the change. Upon receiving the request, the court shall immediately appoint two designated examiners and proceed pursuant to Section 62A-15-631, with the exception of Subsection 62A-15-631(16), unless, by the time set for the hearing, the patient is returned to the less restrictive environment or the patient withdraws the request for a hearing, in writing.
(d) The court shall:
(i) make findings regarding whether the conditions described in Subsections (3)(a) and (b) were met and whether the patient is in the least restrictive environment that is appropriate for the patient's needs; and
(ii) designate, by order, the environment for the patient's care and the period for which the patient shall be treated, which may not extend beyond expiration of the original order of commitment.

(4) Nothing contained in this section prevents a local mental health authority or its designee, pursuant to Section 62A-15-636, from discharging a patient from commitment or from placing a patient in an environment that is less restrictive than that ordered by the court.

Amended by Chapter 419, 2019 General Session

62A-15-638 Reexamination of court order for commitment -- Procedures -- Costs.

(1) Any patient committed pursuant to Section 62A-15-631 is entitled to a reexamination of the order for commitment on the patient's own petition, or on that of the legal guardian, parent, spouse, relative, or friend, to the district court of the county in which the patient resides or is detained.

(2) Upon receipt of the petition, the court shall conduct or cause to be conducted by a mental health commissioner proceedings in accordance with Section 62A-15-631, except that those proceedings shall not be required to be conducted if the petition is filed sooner than six months after the issuance of the order of commitment or the filing of a previous petition under this section, provided that the court may hold a hearing within a shorter period of time if good cause appears. The costs of proceedings for such judicial determination shall be paid by the county in which the patient resided or was found prior to commitment, upon certification, by the clerk of the district court in the county where the proceedings are held, to the county legislative body that those proceedings were held and the costs incurred.

Renumbered and Amended by Chapter 8, 2002 Special Session 5
Renumbered and Amended by Chapter 8, 2002 Special Session 5

62A-15-639 Standards for care and treatment.

Every patient is entitled to humane care and treatment and to medical care and treatment in accordance with the prevailing standards accepted in medical practice, psychiatric nursing practice, social work practice, and the practice of clinical psychology.

Renumbered and Amended by Chapter 8, 2002 Special Session 5
Renumbered and Amended by Chapter 8, 2002 Special Session 5

62A-15-640 Mechanical restraints and medication -- Clinical record.

(1) Mechanical restraints may not be applied to a patient unless it is determined by the director or his designee to be required by the needs of the patient. Every use of a mechanical restraint and the reasons therefor shall be made a part of the patient's clinical record, under the signature of the director or his designee, and shall be reviewed regularly.

(2) In no event shall medication be prescribed for a patient unless it is determined by a physician to be required by the patient's medical needs. Every use of a medication and the reasons therefor shall be made a part of the patient's clinical record.

Renumbered and Amended by Chapter 8, 2002 Special Session 5
Renumbered and Amended by Chapter 8, 2002 Special Session 5

62A-15-641 Restrictions and limitations -- Civil rights and privileges.

(1) Subject to the general rules of the division, and except to the extent that the director or his designee determines that it is necessary for the welfare of the patient to impose restrictions, every patient is entitled to:

(a) communicate, by sealed mail or otherwise, with persons, including official agencies, inside or outside the facility;
(b) receive visitors; and
(c) exercise all civil rights, including the right to dispose of property, execute instruments, make purchases, enter contractual relationships, and vote, unless the patient has been adjudicated to be incompetent and has not been restored to legal capacity.

(2) When any right of a patient is limited or denied, the nature, extent, and reason for that limitation or denial shall be entered in the patient's treatment record. Any continuing denial or limitation shall be reviewed every 30 days and shall also be entered in that treatment record. Notice of that continuing denial in excess of 30 days shall be sent to the division, the appropriate local mental health authority, the appropriate local substance abuse authority, or an approved treatment facility or program, whichever is most applicable to the patient.

(3) Notwithstanding any limitations authorized under this section on the right of communication, each patient is entitled to communicate by sealed mail with the appropriate local mental health authority, the appropriate local substance abuse authority, an approved treatment facility or program, the division, the patient's attorney, and the court, if any, that ordered the patient's commitment or essential treatment. In no case may the patient be denied a visit with the legal counsel or clergy of the patient's choice.

(4) Local mental health authorities, local substance abuse authorities, and approved treatment facilities or programs shall provide reasonable means and arrangements for informing involuntary patients of their right to release as provided in this chapter, and for assisting them in making and presenting requests for release.

(5) Mental health facilities, local substance abuse authorities, and approved treatment facilities or programs shall post a statement, created by the division, describing a patient's rights under Utah law.

(6) Notwithstanding Section 53B-17-303, an individual committed under this chapter has the right to determine the final disposition of that individual's body after death.

Amended by Chapter 408, 2017 General Session

62A-15-642 Habeas corpus.

Any individual detained pursuant to this part is entitled to the writ of habeas corpus upon proper petition by himself or a friend, to the district court in the county in which he is detained.

Renumbered and Amended by Chapter 8, 2002 Special Session 5
Renumbered and Amended by Chapter 8, 2002 Special Session 5

62A-15-643 Confidentiality of information and records -- Exceptions -- Penalty.

(1) All certificates, applications, records, and reports made for the purpose of this part, including those made on judicial proceedings for involuntary commitment, that directly or indirectly identify a patient or former patient or an individual whose commitment has been sought under this part, shall be kept confidential and may not be disclosed by any person except insofar as:
(a) the individual identified or his legal guardian, if any, or, if a minor, his parent or legal guardian shall consent;
(b) disclosure may be necessary to carry out the provisions of:
(i) this part; or
(ii) Section 53-10-208.1; or

(c) a court may direct, upon its determination that disclosure is necessary for the conduct of proceedings before it, and that failure to make the disclosure would be contrary to the public interest.

(2) A person who knowingly or intentionally discloses any information not authorized by this section is guilty of a class B misdemeanor.

Renumbered and Amended by Chapter 8, 2002 Special Session 5
Renumbered and Amended by Chapter 8, 2002 Special Session 5

62A-15-644 Additional powers of director -- Reports and records of division.

(1) In addition to specific authority granted by other provisions of this part, the director has authority to prescribe the form of applications, records, reports, and medical certificates provided for under this part, and the information required to be contained therein, and to adopt rules that are not inconsistent with the provisions of this part that the director finds to be reasonably necessary for the proper and efficient commitment of persons with a mental illness.

(2) The division shall require reports relating to the admission, examination, diagnosis, release, or discharge of any patient and investigate complaints made by any patient or by any person on behalf of a patient.

(3) A local mental health authority shall keep a record of the names and current status of all persons involuntarily committed to it under this chapter.

Amended by Chapter 366, 2011 General Session

62A-15-645 Retrospective effect of provisions.

Patients who were in a mental health facility on May 8, 1951, shall be deemed to have been admitted under the provisions of this part appropriate in each instance, and their care, custody, and rights shall be governed by this part.

Renumbered and Amended by Chapter 8, 2002 Special Session 5
Renumbered and Amended by Chapter 8, 2002 Special Session 5

62A-15-646 Commitment and care of criminally insane.

Nothing contained in this part may be construed to alter or change the method presently employed for the commitment and care of the criminally insane as provided in Title 77, Chapter 15, Inquiry into Sanity of Defendant.

Renumbered and Amended by Chapter 8, 2002 Special Session 5
Renumbered and Amended by Chapter 8, 2002 Special Session 5

62A-15-647 Severability.

If any one or more provision, section, subsection, sentence, clause, phrase, or word of this part, or the application thereof to any person or circumstance, is found to be unconstitutional the same is hereby declared to be severable and the balance of this part shall remain effective notwithstanding that unconstitutionality. The Legislature hereby declares that it would have passed this part, and each provision, section, subsection, sentence, clause, phrase, or word thereof, irrespective of the fact that any one or more provision, section, subsection, sentence, clause, phrase, or word be declared unconstitutional.

Renumbered and Amended by Chapter 8, 2002 Special Session 5
Renumbered and Amended by Chapter 8, 2002 Special Session 5

Part 7
Commitment of Persons Under Age 18 to Division of Substance Abuse and Mental Health

62A-15-701 Definitions.

As used in this part:

(1) "Child" means a person under 18 years of age.
(2) "Commit" and "commitment" mean the transfer of physical custody in accordance with the requirements of this part.
(3) "Legal custody" means:
  (a) the right to determine where and with whom the child shall live;
  (b) the right to participate in all treatment decisions and to consent or withhold consent for treatment in which a constitutionally protected liberty or privacy interest may be affected, including antipsychotic medication, electroshock therapy, and psychosurgery; and
  (c) the right to authorize surgery or other extraordinary medical care.
(4) "Physical custody" means:
  (a) placement of a child in any residential or inpatient setting;
  (b) the right to physical custody of a child;
  (c) the right and duty to protect the child; and
  (d) the duty to provide, or insure that the child is provided with, adequate food, clothing, shelter, and ordinary medical care.
(5) "Residential" means any out-of-home placement made by a local mental health authority, but does not include out-of-home respite care.
(6) "Respite care" means temporary, periodic relief provided to parents or guardians from the daily care of children with serious emotional disorders for the limited time periods designated by the division.

Amended by Chapter 195, 2003 General Session

62A-15-702 Treatment and commitment of minors in the public mental health system.

A child is entitled to due process proceedings, in accordance with the requirements of this part, whenever the child:

(1) may receive or receives services through the public mental health system and is placed, by a local mental health authority, in a physical setting where his liberty interests are restricted, including residential and inpatient placements; or
(2) receives treatment in which a constitutionally protected privacy or liberty interest may be affected, including the administration of antipsychotic medication, electroshock therapy, and psychosurgery.

Renumbered and Amended by Chapter 8, 2002 Special Session 5
Renumbered and Amended by Chapter 8, 2002 Special Session 5

62A-15-703 Residential and inpatient settings -- Commitment proceeding -- Child in physical custody of local mental health authority.

(1) A child may receive services from a local mental health authority in an inpatient or residential setting only after a commitment proceeding, for the purpose of transferring physical custody, has been conducted in accordance with the requirements of this section.

(2) That commitment proceeding shall be initiated by a petition for commitment, and shall be a careful, diagnostic inquiry, conducted by a neutral and detached fact finder, pursuant to the procedures and requirements of this section. If the findings described in Subsection (4) exist, the proceeding shall result in the transfer of physical custody to the appropriate local mental health authority, and the child may be placed in an inpatient or residential setting.

(3) The neutral and detached fact finder who conducts the inquiry:

(a) shall be a designated examiner, as defined in Section 62A-15-602; and

(b) may not profit, financially or otherwise, from the commitment or physical placement of the child in that setting.

(4) Upon determination by a fact finder that the following circumstances clearly exist, the fact finder may order that the child be committed to the physical custody of a local mental health authority:

(a) the child has a mental illness, as defined in Section 62A-15-602;

(b) the child demonstrates a reasonable fear of the risk of substantial danger to self or others;

(c) the child will benefit from care and treatment by the local mental health authority; and

(d) there is no appropriate less-restrictive alternative.

(5)

(a) The commitment proceeding before the neutral and detached fact finder shall be conducted in as informal manner as possible and in a physical setting that is not likely to have a harmful effect on the child.

(b) The child, the child's parent or legal guardian, the petitioner, and a representative of the appropriate local mental health authority:

(i) shall receive informal notice of the date and time of the proceeding; and

(ii) may appear and address the petition for commitment.

(c) The neutral and detached fact finder may, in the fact finder's discretion, receive the testimony of any other person.

(d) The fact finder may allow a child to waive the child's right to be present at the commitment proceeding, for good cause shown. If that right is waived, the purpose of the waiver shall be made a matter of record at the proceeding.

(e) At the time of the commitment proceeding, the appropriate local mental health authority, its designee, or the psychiatrist who has been in charge of the child's care prior to the commitment proceeding, shall provide the neutral and detached fact finder with the following information, as it relates to the period of current admission:

(i) the petition for commitment;

(ii) the admission notes;

(iii) the child's diagnosis;

(iv) physicians' orders;

(v) progress notes;

(vi) nursing notes; and

(vii) medication records.

(f) The information described in Subsection (5)(e) shall also be provided to the child's parent or legal guardian upon written request.

(g)

(i) The neutral and detached fact finder's decision of commitment shall state the duration of the commitment. Any commitment to the physical custody of a local mental health authority may not exceed 180 days. Prior to expiration of the commitment, and if further commitment is sought, a hearing shall be conducted in the same manner as the initial commitment proceeding, in accordance with the requirements of this section.
(ii) At the conclusion of the hearing and subsequently in writing, when a decision for commitment is made, the neutral and detached fact finder shall inform the child and the child's parent or legal guardian of that decision and of the reasons for ordering commitment.
(iii) The neutral and detached fact finder shall state in writing the basis of the decision, with specific reference to each of the criteria described in Subsection (4), as a matter of record.
(6) A child may be temporarily committed for a maximum of 72 hours, excluding Saturdays, Sundays, and legal holidays, to the physical custody of a local mental health authority in accordance with the procedures described in Section 62A-15-629 and upon satisfaction of the risk factors described in Subsection (4). A child who is temporarily committed shall be released at the expiration of the 72 hours unless the procedures and findings required by this section for the commitment of a child are satisfied.
(7) A local mental health authority shall have physical custody of each child committed to it under this section. The parent or legal guardian of a child committed to the physical custody of a local mental health authority under this section, retains legal custody of the child, unless legal custody has been otherwise modified by a court of competent jurisdiction. In cases when the Division of Child and Family Services or the Division of Juvenile Justice Services has legal custody of a child, that division shall retain legal custody for purposes of this part.
(8) The cost of caring for and maintaining a child in the physical custody of a local mental health authority shall be assessed to and paid by the child's parents, according to their ability to pay. For purposes of this section, the Division of Child and Family Services or the Division of Juvenile Justice Services shall be financially responsible, in addition to the child's parents, if the child is in the legal custody of either of those divisions at the time the child is committed to the physical custody of a local mental health authority under this section, unless Medicaid regulation or contract provisions specify otherwise. The Office of Recovery Services shall assist those divisions in collecting the costs assessed pursuant to this section.
(9) Whenever application is made for commitment of a minor to a local mental health authority under any provision of this section by a person other than the child's parent or guardian, the local mental health authority or its designee shall notify the child's parent or guardian. The parents shall be provided sufficient time to prepare and appear at any scheduled proceeding.
(10)
(a) Each child committed pursuant to this section is entitled to an appeal within 30 days after any order for commitment. The appeal may be brought on the child's own petition or on petition of the child's parent or legal guardian, to the juvenile court in the district where the child resides or is currently physically located. With regard to a child in the custody of the Division of Child and Family Services or the Division of Juvenile Justice Services, the attorney general's office shall handle the appeal, otherwise the appropriate county attorney's office is responsible for appeals brought pursuant to this Subsection (10)(a).
(b) Upon receipt of the petition for appeal, the court shall appoint a designated examiner previously unrelated to the case, to conduct an examination of the child in accordance with the criteria described in Subsection (4), and file a written report with the court. The court shall then conduct an appeal hearing to determine whether the findings described in Subsection (4) exist by clear and convincing evidence.

(c) Prior to the time of the appeal hearing, the appropriate local mental health authority, its designee, or the mental health professional who has been in charge of the child's care prior to commitment, shall provide the court and the designated examiner for the appeal hearing with the following information, as it relates to the period of current admission:

(i) the original petition for commitment;

(ii) admission notes;

(iii) diagnosis;

(iv) physicians' orders;

(v) progress notes;

(vi) nursing notes; and

(vii) medication records.

(d) Both the neutral and detached fact finder and the designated examiner appointed for the appeal hearing shall be provided with an opportunity to review the most current information described in Subsection (10)(c) prior to the appeal hearing.

(e) The child, the child's parent or legal guardian, the person who submitted the original petition for commitment, and a representative of the appropriate local mental health authority shall be notified by the court of the date and time of the appeal hearing. Those persons shall be afforded an opportunity to appear at the hearing. In reaching its decision, the court shall review the record and findings of the neutral and detached fact finder, the report of the designated examiner appointed pursuant to Subsection (10)(b), and may, in its discretion, allow or require the testimony of the neutral and detached fact finder, the designated examiner, the child, the child's parent or legal guardian, the person who brought the initial petition for commitment, or any other person whose testimony the court deems relevant. The court may allow the child to waive the right to appear at the appeal hearing, for good cause shown. If that waiver is granted, the purpose shall be made a part of the court's record.

(11) Each local mental health authority has an affirmative duty to conduct periodic evaluations of the mental health and treatment progress of every child committed to its physical custody under this section, and to release any child who has sufficiently improved so that the criteria justifying commitment no longer exist.

(12)

(a) A local mental health authority or its designee, in conjunction with the child's current treating mental health professional may release an improved child to a less restrictive environment, as they determine appropriate. Whenever the local mental health authority or its designee, and the child's current treating mental health professional, determine that the conditions justifying commitment no longer exist, the child shall be discharged and released to the child's parent or legal guardian. With regard to a child who is in the physical custody of the State Hospital, the treating psychiatrist or clinical director of the State Hospital shall be the child's current treating mental health professional.

(b) A local mental health authority or its designee, in conjunction with the child's current treating mental health professional, is authorized to issue a written order for the immediate placement of a child not previously released from an order of commitment into a more restrictive environment, if the local authority or its designee and the child's current treating mental health professional has reason to believe that the less restrictive environment in which the child has been placed is exacerbating the child's mental illness, or increasing the risk of harm to self or others.

(c) The written order described in Subsection (12)(b) shall include the reasons for placement in a more restrictive environment and shall authorize any peace officer to take the child into physical custody and transport the child to a facility designated by the appropriate

local mental health authority in conjunction with the child's current treating mental health professional. Prior to admission to the more restrictive environment, copies of the order shall be personally delivered to the child, the child's parent or legal guardian, the administrator of the more restrictive environment, or the administrator's designee, and the child's former treatment provider or facility.

(d) If the child has been in a less restrictive environment for more than 30 days and is aggrieved by the change to a more restrictive environment, the child or the child's representative may request a review within 30 days of the change, by a neutral and detached fact finder as described in Subsection (3). The fact finder shall determine whether:

(i) the less restrictive environment in which the child has been placed is exacerbating the child's mental illness or increasing the risk of harm to self or others; or

(ii) the less restrictive environment in which the child has been placed is not exacerbating the child's mental illness or increasing the risk of harm to self or others, in which case the fact finder shall designate that the child remain in the less restrictive environment.

(e) Nothing in this section prevents a local mental health authority or its designee, in conjunction with the child's current mental health professional, from discharging a child from commitment or from placing a child in an environment that is less restrictive than that designated by the neutral and detached fact finder.

(13) Each local mental health authority or its designee, in conjunction with the child's current treating mental health professional shall discharge any child who, in the opinion of that local authority, or its designee, and the child's current treating mental health professional, no longer meets the criteria specified in Subsection (4), except as provided by Section 62A-15-705. The local authority and the mental health professional shall assure that any further supportive services required to meet the child's needs upon release will be provided.

(14) Even though a child has been committed to the physical custody of a local mental health authority under this section, the child is still entitled to additional due process proceedings, in accordance with Section 62A-15-704, before any treatment that may affect a constitutionally protected liberty or privacy interest is administered. Those treatments include, but are not limited to, antipsychotic medication, electroshock therapy, and psychosurgery.

Amended by Chapter 262, 2021 General Session

62A-15-704 Invasive treatment -- Due process proceedings.

(1) For purposes of this section, "invasive treatment" means treatment in which a constitutionally protected liberty or privacy interest may be affected, including antipsychotic medication, electroshock therapy, and psychosurgery.

(2) The requirements of this section apply to all children receiving services or treatment from a local mental health authority, its designee, or its provider regardless of whether a local mental health authority has physical custody of the child or the child is receiving outpatient treatment from the local authority, its designee, or provider.

(3)

(a) The division shall promulgate rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, establishing due process procedures for children prior to any invasive treatment as follows:

(i) with regard to antipsychotic medications, if either the parent or child disagrees with that treatment, a due process proceeding shall be held in compliance with the procedures established under this Subsection (3);

(ii) with regard to psychosurgery and electroshock therapy, a due process proceeding shall be conducted pursuant to the procedures established under this Subsection (3), regardless of whether the parent or child agree or disagree with the treatment; and
(iii) other possible invasive treatments may be conducted unless either the parent or child disagrees with the treatment, in which case a due process proceeding shall be conducted pursuant to the procedures established under this Subsection (3).
(b) In promulgating the rules required by Subsection (3)(a), the division shall consider the advisability of utilizing an administrative law judge, court proceedings, a neutral and detached fact finder, and other methods of providing due process for the purposes of this section. The division shall also establish the criteria and basis for determining when invasive treatment should be administered.

Amended by Chapter 382, 2008 General Session

62A-15-705 Commitment proceedings in juvenile court -- Criteria -- Custody.
(1)
(a) Subject to Subsection (1)(b), a commitment proceeding for a child may be commenced by filing a written application with the juvenile court of the county in which the child resides or is found, in accordance with the procedures described in Section 62A-15-631.
(b) A commitment proceeding under this section may be commenced only after a commitment proceeding under Section 62A-15-703 has concluded without the child being committed.
(2) The juvenile court shall order commitment to the physical custody of a local mental health authority if, upon completion of the hearing and consideration of the record, the juvenile court finds by clear and convincing evidence that:
(a) the child has a mental illness, as defined in Section 62A-15-602;
(b) the child demonstrates a risk of harm to the child or others;
(c) the child is experiencing significant impairment in the child's ability to perform socially;
(d) the child will benefit from the proposed care and treatment; and
(e) there is no appropriate less restrictive alternative.
(3) The juvenile court may not commit a child under Subsection (1) directly to the Utah State Hospital.
(4) The local mental health authority has an affirmative duty to:
(a) conduct periodic reviews of children committed to the local mental health authority's custody in accordance with this section; and
(b) release any child who has sufficiently improved so that the local mental health authority, or the local mental authority's designee, determines that commitment is no longer appropriate.
(5) If a child is committed to the custody of a local mental health authority, or the local mental health authority's designee, by the juvenile court, the local mental health authority, or the local mental health authority's designee, shall give the juvenile court written notice of the intention to release the child not fewer than five days before the day on which the child is released.

Amended by Chapter 261, 2021 General Session

62A-15-706 Parent advocate.
The division shall establish the position of a parent advocate to assist parents of children with a mental illness who are subject to the procedures required by this part.

Amended by Chapter 366, 2011 General Session

62A-15-707 Confidentiality of information and records -- Exceptions -- Penalty.

(1) Notwithstanding the provisions of Title 63G, Chapter 2, Government Records Access and Management Act, all certificates, applications, records, and reports made for the purpose of this part that directly or indirectly identify a patient or former patient or an individual whose commitment has been sought under this part, shall be kept confidential and may not be disclosed by any person except as follows:
  (a) the individual identified consents after reaching 18 years of age;
  (b) the child's parent or legal guardian consents;
  (c) disclosure is necessary to carry out any of the provisions of this part; or
  (d) a court may direct, upon its determination that disclosure is necessary for the conduct of proceedings before it, and that failure to make the disclosure would be contrary to the public interest.
(2) A person who violates any provision of this section is guilty of a class B misdemeanor.

Amended by Chapter 382, 2008 General Session

62A-15-708 Mechanical restraints -- Clinical record.

Mechanical restraints may not be applied to a child unless it is determined, by the local mental health authority or its designee in conjunction with the child's current treating mental health professional, that they are required by the needs of that child. Every use of a mechanical restraint and the reasons for that use shall be made a part of the child's clinical record, under the signature of the local mental health authority, its designee, and the child's current treating mental health professional.

Renumbered and Amended by Chapter 8, 2002 Special Session 5
Renumbered and Amended by Chapter 8, 2002 Special Session 5

62A-15-709 Habeas corpus.

Any child committed in accordance with Section 62A-15-703 is entitled to a writ of habeas corpus upon proper petition by himself or next of friend to the district court in the district in which he is detained.

Renumbered and Amended by Chapter 8, 2002 Special Session 5
Renumbered and Amended by Chapter 8, 2002 Special Session 5

62A-15-710 Restrictions and limitations -- Civil rights and privileges.

(1) Subject to the specific rules of the division, and except to the extent that the local mental health authority or its designee, in conjunction with the child's current treating mental health professional, determines that it is necessary for the welfare of the person to impose restrictions, every child committed to the physical custody of a local mental health authority under Section 62A-15-703 is entitled to:
  (a) communicate, by sealed mail or otherwise, with persons, including official agencies, inside or outside of the facility;
  (b) receive visitors; and
  (c) exercise his civil rights.
(2) When any right of a child is limited or denied, the nature, extent, and reason for that limitation or denial shall be entered in the child's treatment record. Any continuing denial or limitation shall

be reviewed every 30 days and shall also be entered in that treatment record. Notice of that continuing denial in excess of 30 days shall be sent to the division.

(3) Notwithstanding any limitations authorized under this section on the right of communication, each child committed to the physical custody of a local mental health authority is entitled to communicate by sealed mail with his attorney, the local mental health authority, its designee, his current treating mental health professional, and the court, if commitment was court ordered. In no case may the child be denied a visit with the legal counsel or clergy of his choice.

(4) Each local mental health authority shall provide appropriate and reasonable means and arrangements for informing children and their parents or legal guardians of their rights as provided in this part, and for assisting them in making and presenting requests for release.

(5) All local mental health facilities shall post a statement, promulgated by the division, describing patient's rights under Utah law.

Renumbered and Amended by Chapter 8, 2002 Special Session 5
Renumbered and Amended by Chapter 8, 2002 Special Session 5

62A-15-711 Standards for care and treatment.

Every child is entitled to humane care and treatment and to medical care and treatment in accordance with the prevailing standards accepted in medical practice, psychiatric nursing practice, social work practice, and the practice of clinical psychology.

Renumbered and Amended by Chapter 8, 2002 Special Session 5
Renumbered and Amended by Chapter 8, 2002 Special Session 5

62A-15-712 Responsibilities of the Division of Substance Abuse and Mental Health.

(1) The division shall ensure that the requirements of this part are met and applied uniformly by local mental health authorities across the state.

(2) Because the division must, under Section 62A-15-103, contract with, review, approve, and oversee local mental health authority plans, and withhold funds from local mental health authorities and public and private providers for contract noncompliance or misuse of public funds, the division shall:

  (a) require each local mental health authority to submit its plan to the division by May 1 of each year; and

  (b) conduct an annual program audit and review of each local mental health authority in the state, and its contract provider.

(3) The annual audit and review described in Subsection (2)(b) shall, in addition to items determined by the division to be necessary and appropriate, include a review and determination regarding whether or not:

  (a) public funds allocated to local mental health authorities are consistent with services rendered and outcomes reported by it or its contract provider; and

  (b) each local mental health authority is exercising sufficient oversight and control over public funds allocated for mental health programs and services.

(4) The Legislature may refuse to appropriate funds to the division if the division fails to comply with the procedures and requirements of this section.

Amended by Chapter 167, 2013 General Session

62A-15-713 Contracts with local mental health authorities -- Provisions.

When the division contracts with a local mental health authority to provide mental health programs and services in accordance with the provisions of this chapter and Title 17, Chapter 43, Part 3, Local Mental Health Authorities, it shall ensure that those contracts include at least the following provisions:

(1) that an independent auditor shall conduct any audit of the local mental health authority or its contract provider's programs or services, pursuant to the provisions of Title 51, Chapter 2a, Accounting Reports from Political Subdivisions, Interlocal Organizations, and Other Local Entities Act;
(2) in addition to the requirements described in Title 51, Chapter 2a, Accounting Reports from Political Subdivisions, Interlocal Organizations, and Other Local Entities Act, the division:
  (a) shall prescribe guidelines and procedures, in accordance with those formulated by the state auditor pursuant to Section 67-3-1, for auditing the compensation and expenses of officers, directors, and specified employees of the private contract provider, to assure the state that no personal benefit is gained from travel or other expenses; and
  (b) may prescribe specific items to be addressed by that audit, depending upon the particular needs or concerns relating to the local mental health authority or contract provider at issue;
(3) the local mental health authority or its contract provider shall invite and include all funding partners in its auditor's pre- and exit conferences;
(4) each member of the local mental health authority shall annually certify that he has received and reviewed the independent audit and has participated in a formal interview with the provider's executive officers;
(5) requested information and outcome data will be provided to the division in the manner and within the timelines defined by the division;
(6) all audit reports by state or county persons or entities concerning the local mental health authority or its contract provider shall be provided to the executive director of the department, the local mental health authority, and members of the contract provider's governing board; and
(7) the local mental health authority or its contract provider will offer and provide mental health services to residents who are indigent and who meet state criteria for serious and persistent mental illness or severe emotional disturbance.

Amended by Chapter 71, 2005 General Session

Part 8
Interstate Compact on Mental Health

62A-15-801 Interstate compact on mental health -- Compact provisions.

The Interstate Compact on Mental Health is hereby enacted and entered into with all other jurisdictions that legally join in the compact, which is, in form, substantially as follows:

INTERSTATE COMPACT ON MENTAL HEALTH

The contracting states solemnly agree that:

Article I

The proper and expeditious treatment of the mentally ill can be facilitated by cooperative action, to the benefit of the patients, their families, and society as a whole. Further, the party states find that the necessity of and desirability of furnishing that care and treatment bears no primary relation to the residence or citizenship of the patient but that the controlling factors of community safety and humanitarianism require that facilities and services be made available for all

who are in need of them. Consequently, it is the purpose of this compact and of the party states to provide the necessary legal and constitutional basis for commitment or other appropriate care and treatment of the mentally ill under a system that recognizes the paramount importance of patient welfare and to establish the responsibilities of the party states.

The appropriate authority in this state for making determinations under this compact is the director of the division or his designee.

Article II

As used in this compact:

(1) "After-care" means care, treatment, and services provided to a patient on convalescent status or conditional release.

(2) "Institution" means any hospital, program, or facility maintained by a party state or political subdivision for the care and treatment of persons with a mental illness.

(3) "Mental illness" means a psychiatric disorder as defined by the current Diagnostic and Statistical Manual of Mental Disorders, that substantially impairs a person's mental, emotional, behavioral, or related functioning to such an extent that he requires care and treatment for his own welfare, the welfare of others, or the community.

(4) "Patient" means any person subject to or eligible, as determined by the laws of the sending state, for institutionalization or other care, treatment, or supervision pursuant to the provisions of this compact and constitutional due process requirements.

(5) "Receiving state" means a party state to which a patient is transported pursuant to the provisions of the compact or to which it is contemplated that a patient may be sent.

(6) "Sending state" means a party state from which a patient is transported pursuant to the provisions of the compact or from which it is contemplated that a patient may be sent.

(7) "State" means any state, territory, or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

Article III

(1) Whenever a person physically present in any party state is in need of institutionalization because of mental illness, he shall be eligible for care and treatment in an institution in that state, regardless of his residence, settlement, or citizenship qualifications.

(2) Notwithstanding the provisions of Subsection (1) of this article, any patient may be transferred to an institution in another state whenever there are factors, based upon clinical determinations, indicating that the care and treatment of that patient would be facilitated or improved by that action. Any such institutionalization may be for the entire period of care and treatment or for any portion or portions thereof. The factors to be considered include the patient's full record with due regard for the location of the patient's family, the character of his illness and its probable duration, and other factors considered appropriate by authorities in the party state and the director of the division, or his designee.

(3) No state is obliged to receive any patient pursuant to the provisions of Subsection (2) of this article unless the sending state has:

(a) given advance notice of its intent to send the patient;

(b) furnished all available medical and other pertinent records concerning the patient;

(c) given the qualified medical or other appropriate clinical authorities of the receiving state an opportunity to examine the patient; and

(d) determined that the receiving state agrees to accept the patient.

(4) In the event that the laws of the receiving state establish a system of priorities for the admission of patients, an interstate patient under this compact shall receive the same priority as a local patient and shall be taken in the same order and at the same time that he would be taken if he were a local patient.

(5) Pursuant to this compact, the determination as to the suitable place of institutionalization for a patient may be reviewed at any time and further transfer of the patient may be made as is deemed to be in the best interest of the patient, as determined by appropriate authorities in the receiving and sending states.

Article IV

(1) Whenever, pursuant to the laws of the state in which a patient is physically present, it is determined that the patient should receive after-care or supervision, that care or supervision may be provided in the receiving state. If the medical or other appropriate clinical authorities who have responsibility for the care and treatment of the patient in the sending state believe that after-care in another state would be in the best interest of the patient and would not jeopardize the public safety, they shall request the appropriate authorities in the receiving state to investigate the desirability of providing the patient with after-care in the receiving state. That request for investigation shall be accompanied by complete information concerning the patient's intended place of residence and the identity of the person in whose charge the patient would be placed, the complete medical history of the patient, and other pertinent documents.

(2) If the medical or other appropriate clinical authorities who have responsibility for the care and treatment of the patient in the sending state, and the appropriate authorities in the receiving state find that the best interest of the patient would be served, and if the public safety would not be jeopardized, the patient may receive after-care or supervision in the receiving state.

(3) In supervising, treating, or caring for a patient on after-care pursuant to the terms of this article, a receiving state shall employ the same standards of visitation, examination, care, and treatment as for similar local patients.

Article V

Whenever a dangerous or potentially dangerous patient escapes from an institution in any party state, that state shall promptly notify all appropriate authorities both within and without the jurisdiction of the escape in a manner reasonably calculated to facilitate the speedy apprehension of the escapee. Immediately upon the apprehension and identification of that patient, he shall be detained in the state where found, pending disposition in accordance with the laws of that state.

Article VI

Accredited officers of any party state, upon the establishment of their authority and the identity of the patient, shall be permitted to transport any patient being moved pursuant to this compact through any and all states party to this compact, without interference.

Article VII

(1) No person may be deemed a patient of more than one institution at any given time. Completion of transfer of any patient to an institution in a receiving state has the effect of making the person a patient of the institution in the receiving state.

(2) The sending state shall pay all costs of and incidental to the transportation of any patient pursuant to this compact, but any two or more party states may, by making a specific agreement for that purpose, arrange for a different allocation of costs among themselves.

(3) No provision of this compact may be construed to alter or affect any internal relationships among the departments, agencies, and officers of a party state, or between a party state and its subdivisions, as to the payment of costs or responsibilities.

(4) Nothing in this compact may be construed to prevent any party state or any of its subdivisions from asserting any right against any person, agency, or other entity with regard to costs for which that party state or its subdivision may be responsible under this compact.

(5) Nothing in this compact may be construed to invalidate any reciprocal agreement between a party state and a nonparty state relating to institutionalization, care, or treatment of the mentally ill, or any statutory authority under which those agreements are made.

Article VIII

(1) Nothing in this compact may be construed to abridge, diminish, or in any way impair the rights, duties, and responsibilities of any patient's guardian on his own behalf or with respect to any patient for whom he serves, except that when the transfer of a patient to another jurisdiction makes advisable the appointment of a supplemental or substitute guardian, a court of competent jurisdiction in the receiving state may make supplemental or substitute appointments. In that case, the court that appointed the previous guardian shall, upon being advised of the new appointment and upon the satisfactory completion of accounting and other acts as the court may require, relieve the previous guardian of power and responsibility to whatever extent is appropriate in the circumstances.

However, in the case of any patient having settlement in the sending state, a court of competent jurisdiction in the sending state has the sole discretion to relieve a guardian appointed by it or to continue his power and responsibility, as it deems advisable. The court in the receiving state may, in its discretion, confirm or reappoint the person or persons previously serving as guardian in the sending state in lieu of making a supplemental or substitute appointment.

(2) The term "guardian" as used in Subsection (1) of this article includes any guardian, trustee, legal committee, conservator, or other person or agency however denominated, who is charged by law with power to act for the person or property of a patient.

Article IX

(1) No provision of this compact except Article V applies to any person institutionalized while under sentence in a penal or correctional institution, while subject to trial on a criminal charge, or whose institutionalization is due to the commission of an offense for which, in the absence of mental illness, he would be subject to incarceration in a penal or correctional institution.

(2) To every extent possible, it shall be the policy of party states that no patient be placed or detained in any prison, jail, or lockup, but shall, with all expedition, be taken to a suitable institutional facility for mental illness.

Article X

(1) Each party state shall appoint a "compact administrator" who, on behalf of his state, shall act as general coordinator of activities under the compact in his state and receive copies of all reports, correspondence, and other documents relating to any patient processed under the compact by his state, either in the capacity of sending or receiving state. The compact administrator, or his designee, shall deal with all matters relating to the compact and patients processed under the compact. In this state the director of the division, or his designee shall act as the "compact administrator."

(2) The compact administrators of the respective party states have power to promulgate reasonable rules and regulations as are necessary to carry out the terms and provisions of this compact. In this state, the division has authority to establish those rules in accordance with the Utah Administrative Rulemaking Act.

(3) The compact administrator shall cooperate with all governmental departments, agencies, and officers in this state and its subdivisions in facilitating the proper administration of the compact and any supplementary agreement or agreements entered into by this state under the compact.

(4) The compact administrator is hereby authorized and empowered to enter into supplementary agreements with appropriate officials of other states pursuant to Articles VII and XI of this compact. In the event that supplementary agreements require or contemplate the use of any institution or facility of this state or require or contemplate the provision of any service by this state, that agreement shall have no force unless approved by the director of the department or agency under whose jurisdiction the institution or facility is operated, or whose department or agency will be charged with the rendering of services.

(5) The compact administrator may make or arrange for any payments necessary to discharge financial obligations imposed upon this state by the compact or by any supplementary agreement entered into under the compact.

Article XI

Administrative authorities of any two or more party states may enter into supplementary agreements for the provision of any service or facility, or for the maintenance of any institution on a joint or cooperative basis whenever the states concerned find that those agreements will improve services, facilities, or institutional care and treatment of persons who are mentally ill. A supplementary agreement may not be construed to relieve a party state of any obligation that it otherwise would have under other provisions of this compact.

Article XII

This compact has full force and effect in any state when it is enacted into law in that state. Thereafter, that state is a party to the compact with any and all states that have legally joined.

Article XIII

A party state may withdraw from the compact by enacting a statute repealing the compact. Withdrawal takes effect one year after notice has been communicated officially and in writing to the compact administrators of all other party states. However, the withdrawal of a state does not change the status of any patient who has been sent to that state or sent out of that state pursuant to the compact.

Article XIV

This compact shall be liberally construed so as to effectuate its purposes. The provisions of this compact are severable, and if any phrase, clause, sentence or provision is declared to be contrary to the constitution of the United States or the applicability to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this compact and its applicability to any government, agency, person, or circumstance shall not be affected thereby. If this compact is held to be contrary to the constitution of any party state the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

Renumbered and Amended by Chapter 8, 2002 Special Session 5
Renumbered and Amended by Chapter 8, 2002 Special Session 5

62A-15-802 Requirement of conformity with this chapter.

All actions and proceedings taken under authority of this compact shall be in accordance with the procedures and constitutional requirements described in Part 6, Utah State Hospital and Other Mental Health Facilities.

Renumbered and Amended by Chapter 8, 2002 Special Session 5

Part 9
Utah Forensic Mental Health Facility

62A-15-901 Establishment.

The Utah Forensic Mental Health Facility is hereby established and shall be located on state land on the campus of the Utah State Hospital in Provo, Utah County.

Renumbered and Amended by Chapter 8, 2002 Special Session 5
Renumbered and Amended by Chapter 8, 2002 Special Session 5

62A-15-902 Design and operation -- Security.

(1) The forensic mental health facility is a secure treatment facility.

(2)

(a) The forensic mental health facility accommodates the following populations:

(i) prison inmates displaying mental illness, as defined in Section 62A-15-602, necessitating treatment in a secure mental health facility;

(ii) criminally adjudicated persons found guilty with a mental illness or guilty with a mental illness at the time of the offense undergoing evaluation for mental illness under Title 77, Chapter 16a, Commitment and Treatment of Persons with a Mental Illness;

(iii) criminally adjudicated persons undergoing evaluation for competency or found guilty with a mental illness or guilty with a mental illness at the time of the offense under Title 77, Chapter 16a, Commitment and Treatment of Persons with a Mental Illness, who also have an intellectual disability;

(iv) persons undergoing evaluation for competency or found by a court to be incompetent to proceed in accordance with Title 77, Chapter 15, Inquiry into Sanity of Defendant, or not guilty by reason of insanity under Title 77, Chapter 14, Defenses;

(v) persons who are civilly committed to the custody of a local mental health authority in accordance with Title 62A, Chapter 15, Part 6, Utah State Hospital and Other Mental Health Facilities, and who may not be properly supervised by the Utah State Hospital because of a lack of necessary security, as determined by the superintendent or the superintendent's designee; and

(vi) persons ordered to commit themselves to the custody of the Division of Substance Abuse and Mental Health for treatment at the Utah State Hospital as a condition of probation or stay of sentence pursuant to Title 77, Chapter 18, The Judgment.

(b) Placement of an offender in the forensic mental health facility under any category described in Subsection (2)(a)(ii), (iii), (iv), or (vi) shall be made on the basis of the offender's status as established by the court at the time of adjudication.

(c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the department shall make rules providing for the allocation of beds to the categories described in Subsection (2)(a).

(3) The department shall:

(a) own and operate the forensic mental health facility;

(b) provide and supervise administrative and clinical staff; and

(c) provide security staff who are trained as psychiatric technicians.

(4) Pursuant to Subsection 62A-15-603(3) the executive director shall designate individuals to perform security functions for the state hospital.

Amended by Chapter 366, 2011 General Session

Part 10
Declaration for Mental Health Treatment

62A-15-1001 Definitions.

As used in this part:
(1) "Attending physician" means a physician licensed to practice medicine in this state who has primary responsibility for the care and treatment of the declarant.
(2) "Attorney-in-fact" means an adult properly appointed under this part to make mental health treatment decisions for a declarant under a declaration for mental health treatment.
(3) "Incapable" means that, in the opinion of the court in a guardianship proceeding under Title 75, Utah Uniform Probate Code, or in the opinion of two physicians, a person's ability to receive and evaluate information effectively or communicate decisions is impaired to such an extent that the person currently lacks the capacity to make mental health treatment decisions.
(4) "Mental health facility" means the same as that term is defined in Section 62A-15-602.
(5) "Mental health treatment" means convulsive treatment, treatment with psychoactive medication, or admission to and retention in a facility for a period not to exceed 17 days.

Renumbered and Amended by Chapter 8, 2002 Special Session 5
Renumbered and Amended by Chapter 8, 2002 Special Session 5

62A-15-1002 Declaration for mental health treatment.
(1) An adult who is not incapable may make a declaration of preferences or instructions regarding his mental health treatment. The declaration may include, but is not limited to, consent to or refusal of specified mental health treatment.
(2) A declaration for mental health treatment shall designate a capable adult to act as attorney-in-fact to make decisions about mental health treatment for the declarant. An alternative attorney-in-fact may also be designated to act as attorney-in-fact if the original designee is unable or unwilling to act at any time. An attorney-in-fact who has accepted the appointment in writing may make decisions about mental health treatment on behalf of the declarant only when the declarant is incapable. The decisions shall be consistent with any instructions or desires the declarant has expressed in the declaration.
(3) A declaration is effective only if it is signed by the declarant and two capable adult witnesses. The witnesses shall attest that the declarant is known to them, signed the declaration in their presence, appears to be of sound mind and is not under duress, fraud, or undue influence. Persons specified in Subsection 62A-15-1003(6) may not act as witnesses.
(4) A declaration becomes operative when it is delivered to the declarant's physician or other mental health treatment provider and remains valid until it expires or is revoked by the declarant. The physician or provider is authorized to act in accordance with an operative declaration when the declarant has been found to be incapable. The physician or provider shall continue to obtain the declarant's informed consent to all mental health treatment decisions if the declarant is capable of providing informed consent or refusal.
(5)
(a) An attorney-in-fact does not have authority to make mental health treatment decisions unless the declarant is incapable.
(b) An attorney-in-fact is not, solely as a result of acting in that capacity, personally liable for the cost of treatment provided to the declarant.
(c) Except to the extent that a right is limited by a declaration or by any federal law, an attorney-in-fact has the same right as the declarant to receive information regarding the proposed mental health treatment and to receive, review, and consent to disclosure of medical records relating to that treatment. This right of access does not waive any evidentiary privilege.
(d) In exercising authority under the declaration, the attorney-in-fact shall act consistently with the instructions and desires of the declarant, as expressed in the declaration. If the declarant's

desires are unknown, the attorney-in-fact shall act in what he, in good faith, believes to be the best interest of the declarant.

(e) An attorney-in-fact is not subject to criminal prosecution, civil liability, or professional disciplinary action for any action taken in good faith pursuant to a declaration for mental health treatment.

(6)

(a) A declaration for mental health treatment remains effective for a period of three years or until revoked by the declarant. If a declaration for mental health treatment has been invoked and is in effect at the expiration of three years after its execution, the declaration remains effective until the declarant is no longer incapable.

(b) The authority of a named attorney-in-fact and any alternative attorney-in-fact continues in effect as long as the declaration appointing the attorney-in-fact is in effect or until the attorney-in-fact has withdrawn.

(7) A person may not be required to execute or to refrain from executing a declaration as a criterion for insurance, as a condition for receiving mental or physical health services, or as a condition of discharge from a facility.

Renumbered and Amended by Chapter 8, 2002 Special Session 5
Renumbered and Amended by Chapter 8, 2002 Special Session 5

62A-15-1003 Physician and provider responsibilities -- Provision of services contrary to declaration -- Revocation.

(1) Upon being presented with a declaration, a physician shall make the declaration a part of the declarant's medical record. When acting under authority of a declaration, a physician shall comply with it to the fullest extent possible, consistent with reasonable medical practice, the availability of treatments requested, and applicable law. If the physician or other provider is unwilling at any time to comply with the declaration, the physician or provider shall promptly notify the declarant and the attorney-in-fact, and document the notification in the declarant's medical record.

(2) A physician or provider may subject a declarant to intrusive treatment in a manner contrary to the declarant's wishes, as expressed in a declaration for mental health treatment if:

(a) the declarant has been committed to the custody of a local mental health authority in accordance with Part 6, Utah State Hospital and Other Mental Health Facilities; or

(b) in cases of emergency endangering life or health.

(3) A declaration does not limit any authority provided in Part 6, Utah State Hospital and Other Mental Health Facilities, to take a person into custody, or admit or retain a person in the custody of a local mental health authority.

(4) A declaration may be revoked in whole or in part by the declarant at any time so long as the declarant is not incapable. That revocation is effective when the declarant communicates the revocation to the attending physician or other provider. The attending physician or other provider shall note the revocation as part of the declarant's medical record.

(5) A physician who administers or does not administer mental health treatment according to and in good faith reliance upon the validity of a declaration is not subject to criminal prosecution, civil liability, or professional disciplinary action resulting from a subsequent finding that a declaration is invalid.

(6) None of the following persons may serve as an attorney-in-fact or as witnesses to the signing of a declaration:

(a) the declarant's attending physician or mental health treatment provider, or an employee of that physician or provider;
(b) an employee of the division; or
(c) an employee of a local mental health authority or any organization that contracts with a local mental health authority.

(7) An attorney-in-fact may withdraw by giving notice to the declarant. If a declarant is incapable, the attorney-in-fact may withdraw by giving notice to the attending physician or provider. The attending physician shall note the withdrawal as part of the declarant's medical record.

Renumbered and Amended by Chapter 8, 2002 Special Session 5
Renumbered and Amended by Chapter 8, 2002 Special Session 5

62A-15-1004 Declaration for mental health treatment -- Form.

A declaration for mental health treatment shall be in substantially the following form:

DECLARATION FOR MENTAL HEALTH TREATMENT

I, ________________________________, being an adult of sound mind, willfully and voluntarily make this declaration for mental health treatment, to be followed if it is determined by a court or by two physicians that my ability to receive and evaluate information effectively or to communicate my decisions is impaired to such an extent that I lack the capacity to refuse or consent to mental health treatment. "Mental health treatment" means convulsive treatment, treatment with psychoactive medication, and admission to and retention in a mental health facility for a period up to 17 days.

I understand that I may become incapable of giving or withholding informed consent for mental health treatment due to the symptoms of a diagnosed mental disorder. These symptoms may include:

____

____

PSYCHOACTIVE MEDICATIONS

If I become incapable of giving or withholding informed consent for mental health treatment, my wishes regarding psychoactive medications are as follows:

__________ I consent to the administration of the following medications:

____

in the dosages:

__________ considered appropriate by my attending physician.

__________ approved by ____

__________ as I hereby direct: ____________________________________

__________ I do not consent to the administration of the following medications:

____

____

____

CONVULSIVE TREATMENT

If I become incapable of giving or withholding informed consent for mental health treatment, my wishes regarding convulsive treatment are as follows:

__________ I consent to the administration of convulsive treatment of the following type:

____, the number of treatments to be:

__________ determined by my attending physician.

__________ approved by ____

__________ as follows: ____

__________ I do not consent to the administration of convulsive treatment.

My reasons for consenting to or refusing convulsive treatment are as follows;

____

____

____

ADMISSION TO AND RETENTION IN A MENTAL HEALTH FACILITY

If I become incapable of giving or withholding informed consent for mental health treatment, my wishes regarding admission to and retention in a mental health facility are as follows:

__________ I consent to being admitted to the following mental health facilities:

____

I may be retained in the facility for a period of time:

__________ determined by my attending physician.

__________ approved by ______________________________________

__________ no longer than ____________________________________

This directive cannot, by law, provide consent to retain me in a facility for more than 17 days.

ADDITIONAL REFERENCES OR INSTRUCTIONS

____

____

____

ATTORNEY-IN-FACT

I hereby appoint:

NAME ____

ADDRESS ____

TELEPHONE # _______________________________________

to act as my attorney-in-fact to make decisions regarding my mental health treatment if I become incapable of giving or withholding informed consent for that treatment.

If the person named above refuses or is unable to act on my behalf, or if I revoke that person's authority to act as my attorney-in-fact, I authorize the following person to act as my alternative attorney-in-fact:

NAME ____

ADDRESS ____

TELEPHONE # _______________________________________

My attorney-in-fact is authorized to make decisions which are consistent with the wishes I have expressed in this declaration. If my wishes are not expressed, my attorney-in-fact is to act in good faith according to what he or she believes to be in my best interest.

____

(Signature of Declarant/Date)

AFFIRMATION OF WITNESSES

We affirm that the declarant is personally known to us, that the declarant signed or acknowledged the declarant's signature on this declaration for mental health treatment in our presence, that the declarant appears to be of sound mind and does not appear to be under duress, fraud, or undue influence. Neither of us is the person appointed as attorney-in-fact by this document, the attending physician, an employee of the attending physician, an employee of the Division of Substance Abuse and Mental Health within the Department of Human Services, an employee of a local mental health authority, or an employee of any organization that contracts with a local mental health authority.

Witnessed By:

_____________________________________ _____________________________________

(Signature of Witness/Date) (Printed Name of Witness)

__________________________________ ____________________________________

(Signature of Witness/Date) (Printed Name of Witness)

ACCEPTANCE OF APPOINTMENT AS ATTORNEY-IN-FACT

I accept this appointment and agree to serve as attorney-in-fact to make decisions about mental health treatment for the declarant. I understand that I have a duty to act consistently with the desires of the declarant as expressed in the declaration. I understand that this document gives me authority to make decisions about mental health treatment only while the declarant is incapable as determined by a court or two physicians. I understand that the declarant may revoke this appointment, or the declaration, in whole or in part, at any time and in any manner, when the declarant is not incapable.

__________________________________ ____________________________________

(Signature of Attorney-in-fact/Date) (Printed name)

__________________________________ ____________________________________

(Signature of Alternate Attorney-in-fact/Date) (Printed name)

NOTICE TO PERSON MAKING A
DECLARATION FOR MENTAL HEALTH TREATMENT

This is an important legal document. It is a declaration that allows, or disallows, mental health treatment. Before signing this document, you should know that:

(1) this document allows you to make decisions in advance about three types of mental health treatment: psychoactive medication, convulsive therapy, and short-term (up to 17 days) admission to a mental health facility;

(2) the instructions that you include in this declaration will be followed only if a court or two physicians believe that you are incapable of otherwise making treatment decisions. Otherwise, you will be considered capable to give or withhold consent for treatment;

(3) you may also appoint a person as your attorney-in-fact to make these treatment decisions for you if you become incapable. The person you appoint has a duty to act consistently with your desires as stated in this document or, if not stated, to make decisions in accordance with what that person believes, in good faith, to be in your best interest. For the appointment to be effective, the person you appoint must accept the appointment in writing. The person also has the right to withdraw from acting as your attorney-in-fact at any time;

(4) this document will continue in effect for a period of three years unless you become incapable of participating in mental health treatment decisions. If this occurs, the directive will continue in effect until you are no longer incapable;

(5) you have the right to revoke this document in whole or in part, or the appointment of an attorney-in-fact, at any time you have not been determined to be incapable. YOU MAY NOT REVOKE THE DECLARATION OR APPOINTMENT WHEN YOU ARE CONSIDERED INCAPABLE BY A COURT OR TWO PHYSICIANS. A revocation is effective when it is communicated to your attending physician or other provider; and

(6) if there is anything in this document that you do not understand, you should ask an attorney to explain it to you. This declaration is not valid unless it is signed by two qualified witnesses who are personally known to you and who are present when you sign or acknowledge your signature.

Renumbered and Amended by Chapter 8, 2002 Special Session 5
Renumbered and Amended by Chapter 8, 2002 Special Session 5

Part 11
Suicide Prevention Programs

62A-15-1100 Definitions.

As used in this part:

(1) "Advisory Council" means the Utah Substance Use and Mental Health Advisory Council created in Section 63M-7-301.
(2) "Bureau" means the Bureau of Criminal Identification created in Section 53-10-201 within the Department of Public Safety.
(3) "Coalition" means the Statewide Suicide Prevention Coalition created under Subsection 62A-15-1101(2).
(4) "Coordinator" means the state suicide prevention coordinator appointed under Subsection 62A-15-1101(1).
(5) "Division" means the Division of Substance Abuse and Mental Health.
(6) "Fund" means the Governor's Suicide Prevention Fund created in Section 62A-15-1103.
(7) "Intervention" means an effort to prevent a person from attempting suicide.
(8) "Legal intervention" means an incident in which an individual is shot by another individual who has legal authority to use deadly force.
(9) "Postvention" means intervention after a suicide attempt or a suicide death to reduce risk and promote healing.
(10) "Shooter" means an individual who uses a gun in an act that results in the death of the actor or another individual, whether the act was a suicide, homicide, legal intervention, act of self-defense, or accident.

Enacted by Chapter 414, 2018 General Session

62A-15-1101 Suicide prevention -- Reporting requirements.

(1) The division shall appoint a state suicide prevention coordinator to administer a state suicide prevention program composed of suicide prevention, intervention, and postvention programs, services, and efforts.
(2) The coordinator shall:
  (a) establish a Statewide Suicide Prevention Coalition with membership from public and private organizations and Utah citizens; and
  (b) appoint a chair and co-chair from among the membership of the coalition to lead the coalition.
(3) The state suicide prevention program may include the following components:
  (a) delivery of resources, tools, and training to community-based coalitions;
  (b) evidence-based suicide risk assessment tools and training;
  (c) town hall meetings for building community-based suicide prevention strategies;
  (d) suicide prevention gatekeeper training;
  (e) training to identify warning signs and to manage an at-risk individual's crisis;
  (f) evidence-based intervention training;
  (g) intervention skills training;
  (h) postvention training; or
  (i) a public education campaign to improve public awareness about warning signs of suicide and suicide prevention resources.
(4) The coordinator shall coordinate with the following to gather statistics, among other duties:
  (a) local mental health and substance abuse authorities;

(b) the State Board of Education, including the public education suicide prevention coordinator described in Section 53G-9-702;
(c) the Department of Health;
(d) health care providers, including emergency rooms;
(e) federal agencies, including the Federal Bureau of Investigation;
(f) other unbiased sources; and
(g) other public health suicide prevention efforts.
(5) The coordinator shall provide a written report to the Health and Human Services Interim Committee, at or before the October meeting every year, on:
(a) implementation of the state suicide prevention program, as described in Subsections (1) and (3);
(b) data measuring the effectiveness of each component of the state suicide prevention program;
(c) funds appropriated for each component of the state suicide prevention program; and
(d) five-year trends of suicides in Utah, including subgroups of youths and adults and other subgroups identified by the state suicide prevention coordinator.
(6) The coordinator shall, in consultation with the bureau, implement and manage the operation of the firearm safety program described in Subsection 62A-15-103(3).
(7) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the division shall make rules:
(a) governing the implementation of the state suicide prevention program, consistent with this section; and
(b) in conjunction with the bureau, defining the criteria for employers to apply for grants under the Suicide Prevention Education Program described in Section 62A-15-103.1, which shall include:
(i) attendance at the suicide prevention education course described in Subsection 62A-15-103(3); and
(ii) distribution of the firearm safety brochures or packets created in Subsection 62A-15-103(3), but does not require the distribution of a cable-style gun lock with a firearm if the firearm already has a trigger lock or comparable safety mechanism.
(8) As funding by the Legislature allows, the coordinator shall award grants, not to exceed a total of $100,000 per fiscal year, to suicide prevention programs that focus on the needs of children who have been served by the Division of Juvenile Justice Services.
(9) The coordinator and the coalition shall submit to the advisory council, no later than October 1 each year, a written report detailing the previous fiscal year's activities to fund, implement, and evaluate suicide prevention activities described in this section.

Amended by Chapter 149, 2022 General Session

62A-15-1103 Governor's Suicide Prevention Fund.
(1) There is created an expendable special revenue fund known as the Governor's Suicide Prevention Fund.
(2) The fund shall consist of donations described in Section 41-1a-422, gifts, grants, and bequests of real property or personal property made to the fund.
(3) A donor to the fund may designate a specific purpose for the use of the donor's donation, if the designated purpose is described in Subsection (4).
(4)
(a) Subject to Subsection (3), money in the fund shall be used for the following activities:
(i) efforts to directly improve mental health crisis response;

(ii) efforts that directly reduce risk factors associated with suicide; and
(iii) efforts that directly enhance known protective factors associated with suicide reduction.
(b) Efforts described in Subsections (4)(a)(ii) and (iii) include the components of the state suicide prevention program described in Subsection 62A-15-1101(3).
(5) The division shall establish a grant application and review process for the expenditure of money from the fund.
(6) The grant application and review process shall describe:
(a) requirements to complete a grant application;
(b) requirements to receive funding;
(c) criteria for the approval of a grant application;
(d) standards for evaluating the effectiveness of a project proposed in a grant application; and
(e) support offered by the division to complete a grant application.
(7) The division shall:
(a) review a grant application for completeness;
(b) make a recommendation to the governor or the governor's designee regarding a grant application;
(c) send a grant application to the governor or the governor's designee for evaluation and approval or rejection;
(d) inform a grant applicant of the governor or the governor's designee's determination regarding the grant application; and
(e) direct the fund administrator to release funding for grant applications approved by the governor or the governor's designee.
(8) The state treasurer shall invest the money in the fund under Title 51, Chapter 7, State Money Management Act, except that all interest or other earnings derived from money in the fund shall be deposited into the fund.
(9) Money in the fund may not be used for the Office of the Governor's administrative expenses that are normally provided for by legislative appropriation.
(10) The governor or the governor's designee may authorize the expenditure of fund money in accordance with this section.
(11) The governor shall make an annual report to the Legislature regarding the status of the fund, including a report on the contributions received, expenditures made, and programs and services funded.

Amended by Chapter 19, 2022 General Session
Amended by Chapter 149, 2022 General Session

62A-15-1104 Suicide Prevention and Education Fund.
(1) There is created an expendable special revenue fund known as the Suicide Prevention and Education Fund.
(2) The fund shall consist of funds transferred from the Concealed Weapons Account in accordance with Subsection 53-5-707(5)(d).
(3) Money in the fund shall be used for suicide prevention efforts that include a focus on firearm safety as related to suicide prevention.
(4) The division shall establish a process by rule in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, for the expenditure of money from the fund.
(5) The division shall make an annual report to the Legislature regarding the status of the fund, including a report detailing amounts received, expenditures made, and programs and services funded.

Enacted by Chapter 12, 2021 General Session

Part 12
Essential Treatment and Intervention Act

62A-15-1201 Statement of legislative intent.

To address the serious public health crisis of substance use disorder related deaths and life-threatening opioid addiction, and to allow and enable caring relatives to seek essential treatment and intervention, as may be necessary, on behalf of a sufferer of a substance use disorder, the Legislature enacts the Essential Treatment and Intervention Act.

Enacted by Chapter 408, 2017 General Session

62A-15-1202 Definitions.

As used in this part:

(1) "Emergency, life saving treatment" means treatment that is:
  (a) provided at a licensed health care facility or licensed human services program;
  (b) provided by a licensed health care professional;
  (c) necessary to save the life of the patient; and
  (d) required due to the patient's:
    (i) use of an illegal substance; or
    (ii) excessive use or misuse of a prescribed medication.
(2) "Essential treatment examiner" means:
  (a) a licensed physician, preferably a psychiatrist, who is designated by the division as specifically qualified by training or experience in the diagnosis of substance use disorder; or
  (b) a licensed mental health professional designated by the division as specially qualified by training and who has at least five years' continual experience in the treatment of substance use disorder.
(3) "Relative" means an adult who is a spouse, parent, stepparent, grandparent, child, or sibling of an individual.
(4) "Serious harm" means the individual, due to substance use disorder, is at serious risk of:
  (a) drug overdose;
  (b) suicide;
  (c) serious bodily self-injury;
  (d) serious bodily injury because the individual is incapable of providing the basic necessities of life, including food, clothing, or shelter; or
  (e) causing or attempting to cause serious bodily injury to another individual.
(5) "Substance use disorder" means the same as that term is defined in the current edition of the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association.

Amended by Chapter 77, 2018 General Session

62A-15-1203 Petition for essential treatment -- Contents -- Commitment to pay.

(1) A relative seeking essential treatment and intervention for a sufferer of a substance use disorder may file a petition with the district court of the county in which the sufferer of the substance use disorder resides or is found.
(2) The petition shall include:
(a) the respondent's:
(i) legal name;
(ii) date of birth, if known;
(iii) social security number, if known; and
(iv) residence and current location, if known;
(b) the petitioner's relationship to the respondent;
(c) the name and residence of the respondent's legal guardian, if any and if known;
(d) a statement that the respondent:
(i) is suffering from a substance use disorder; and
(ii) if not treated for the substance use disorder presents a serious harm to self or others;
(e) the factual basis for the statement described in Subsection (2)(d); and
(f) at least one specified local substance abuse authority or approved treatment facility or program where the respondent may receive essential treatment.
(3) Any petition filed under this section:
(a) may be accompanied by proof of health insurance to provide for the respondent's essential treatment;
(b) shall be accompanied by a binding commitment to pay, signed by the petitioner or another individual, obligating the petitioner or other individual to pay all treatment costs beyond those covered by the respondent's health insurance policy for court-ordered essential treatment for the respondent; and
(c) may be accompanied by documentation of emergency, life saving treatment provided to the respondent.
(4) Nothing in this section alters the contractual relationship between a health insurer and an insured individual.

Amended by Chapter 77, 2018 General Session

62A-15-1204 Criteria for essential treatment and intervention.

A district court shall order an individual to undergo essential treatment for a substance use disorder when the district court determines by clear and convincing evidence that the individual:
(1) suffers from a substance use disorder;
(2) can reasonably benefit from the essential treatment;
(3) is unlikely to substantially benefit from a less-restrictive alternative treatment; and
(4) presents a serious harm to self or others.

Enacted by Chapter 408, 2017 General Session

62A-15-1205 Proceeding for essential treatment -- Duties of court -- Disposition.

(1) A district court shall review the assertions contained in the verified petition described in Section 62A-15-1203.
(2) If the court determines that the assertions, if true, are sufficient to order the respondent to undergo essential treatment, the court shall:
(a) set an expedited date for a time-sensitive hearing to determine whether the court should order the respondent to undergo essential treatment for a substance use disorder;

(b) provide notice of:
(i) the contents of the petition, including all assertions made;
(ii) a copy of any order for detention or examination;
(iii) the date of the hearing;
(iv) the purpose of the hearing;
(v) the right of the respondent to be represented by legal counsel; and
(vi) the right of the respondent to request a preliminary hearing before submitting to an order for examination;
(c) provide notice to:
(i) the respondent;
(ii) the respondent's guardian, if any; and
(iii) the petitioner; and
(d) subject to the right described in Subsection (2)(b)(vi), order the respondent to be examined before the hearing date:
(i) by two essential treatment examiners; or
(ii) by one essential treatment examiner, if documentation before the court demonstrates that the respondent received emergency, life saving treatment:
(A) within 30 days before the day on which the petition for essential treatment and intervention was filed; or
(B) during the pendency of the petition for essential treatment and intervention.
(3) An essential treatment examiner shall examine the respondent to determine:
(a) whether the respondent meets each of the criteria described in Section 62A-15-1204;
(b) the severity of the respondent's substance use disorder, if any;
(c) what forms of treatment would substantially benefit the respondent, if the examiner determines that the respondent has a substance use disorder; and
(d) the appropriate duration for essential treatment, if essential treatment is recommended.
(4) An essential treatment examiner shall certify the examiner's findings to the court within 24 hours after completion of the examination.
(5) The court may, based upon the findings of an essential treatment examiner, terminate the proceedings and dismiss the petition.
(6) The parties may, at any time, make a binding stipulation to an essential treatment plan and submit that plan to the court for court order.
(7) At the hearing, the petitioner and the respondent may testify and may cross-examine witnesses.
(8) If, upon completion of the hearing, the court finds that the criteria in Section 62A-15-1204 are met, the court shall order essential treatment for an initial period that:
(a) does not exceed 360 days, subject to periodic review as provided in Section 62A-15-1206; and
(b)
(i) is recommended by an essential treatment examiner; or
(ii) is otherwise agreed to at the hearing.
(9) The court shall designate the facility for the essential treatment, as:
(a) described in the petition;
(b) recommended by an essential treatment examiner; or
(c) agreed to at the hearing.
(10) The court shall issue an order that includes the court's findings and the reasons for the court's determination.

(11) The court may order the petitioner to be the respondent's personal representative, as described in 45 C.F.R. Sec. 164.502(g), for purposes of the respondent's essential treatment.

Amended by Chapter 77, 2018 General Session

62A-15-1205.5 Failure to comply with court order.

(1) The provisions of this section apply after a respondent has been afforded full due process rights, as provided in this Essential Treatment and Intervention Act, including notice, an opportunity to respond and appear at a hearing, and, as applicable, the court's finding that the evidence meets the clear and convincing standard, as described in Section 62A-15-1204, for a court to order essential treatment and intervention.

(2) When a respondent fails to comply with a court order issued under Subsection 62A-15-1205(2)(d) or (10), the court may:

(a) find the respondent in contempt under Subsection 78B-6-301(5); and

(b) issue a warrant of commitment under Section 78B-6-312.

(3) When a peace officer executes a warrant issued under this section, the officer shall take the respondent into protective custody and transport the respondent to the location specified by the court.

(4) Notwithstanding Subsection (3), if a peace officer determines through the peace officer's experience and training that taking the respondent into protective custody or transporting the respondent would increase the risk of substantial danger to the respondent or others, a peace officer may exercise discretion to not take the respondent into custody or transport the respondent, as permitted by policies and procedures established by the peace officer's law enforcement agency and any applicable federal or state statute, or case law.

Enacted by Chapter 77, 2018 General Session

62A-15-1206 Periodic review -- Discharge.

A local substance abuse authority or an approved treatment facility or program that provides essential treatment shall:

(1) at least every 90 days after the day on which a patient is admitted, unless a court orders otherwise, examine or cause to be examined a patient who has been ordered to receive essential treatment;

(2) notify the patient and the patient's personal representative or guardian, if any, of the substance and results of the examination;

(3) discharge an essential treatment patient if the examination determines that the conditions justifying essential treatment and intervention no longer exist; and

(4) after discharging an essential treatment patient, send a report describing the reasons for discharge to the clerk of the court where the proceeding for essential treatment was held and to the patient's personal representative or guardian, if any.

Enacted by Chapter 408, 2017 General Session

62A-15-1207 Seventy-two-hour emergency treatment pending a final court order.

(1) A court may order a respondent to be hospitalized for up to 72 hours if:

(a) an essential treatment examiner has examined the respondent and certified that the respondent meets the criteria described in Section 62A-15-1204; and

(b) the court finds by clear and convincing evidence that the respondent presents an imminent threat of serious harm to self or others as a result of a substance use disorder.
(2) An individual who is admitted to a hospital under this section shall be released from the hospital within 72 hours after admittance, unless a treating physician or essential treatment examiner determines that the individual continues to pose an imminent threat of serious harm to self or others.
(3) If a treating physician or essential treatment examiner makes the determination described in Subsection (2), the individual may be detained for as long as the threat of serious harm remains imminent, but not more than 10 days after the day on which the individual was hospitalized, unless a court orders otherwise.
(4) A treating physician or an essential treatment examiner shall, as frequently as practicable, examine an individual hospitalized under this section and release the individual if it is determined that a threat of imminent serious harm no longer exists.

Amended by Chapter 77, 2018 General Session

62A-15-1207.5 Emergency, life saving treatment -- Temporary personal representative.
(1) When an individual receives emergency, life saving treatment:
(a) a licensed health care professional, at the health care facility where the emergency, life saving treatment is provided, may ask the individual who, if anyone, may be contacted and informed regarding the individual's treatment;
(b) a treating physician may hold the individual in the health care facility for up to 48 hours, if the treating physician determines that the individual poses a serious harm to self or others; and
(c) a relative of the individual may petition a court to be designated as the individual's personal representative, described in 45 C.F.R. Sec. 164.502(g), for the limited purposes of the individual's medical and mental health care related to a substance use disorder.
(2) The petition described in Subsection (1)(c) shall include:
(a) the respondent's:
(i) legal name;
(ii) date of birth, if known;
(iii) social security number, if known; and
(iv) residence and current location, if known;
(b) the petitioner's relationship to the respondent;
(c) the name and residence of the respondent's legal guardian, if any and if known;
(d) a statement that the respondent:
(i) is suffering from a substance use disorder; and
(ii) has received, within the last 72 hours, emergency, life saving treatment;
(e) the factual basis for the statement described in Subsection (2)(d); and
(f) the name of any other individual, if any, who may be designated as the respondent's personal representative.
(3) A court shall grant a petition for designation as a personal representative, ex parte, if it appears from the petition for designation as a court-designated personal representative that:
(a) the respondent is suffering from a substance use disorder;
(b) the respondent received emergency, life saving treatment within 10 days before the day on which the petition for designation as a personal representative is filed;
(c) the petitioner is a relative of the respondent; and
(d) no other individual is otherwise designated as the respondent's personal representative.
(4) When a court grants, ex parte, a petition for designation as a personal representative, the court:

(a) shall provide notice to the respondent;
(b) shall order the petitioner to be the respondent's personal representative for 10 days after the day on which the court designates the petitioner as the respondent's personal representative; and
(c) may extend the duration of the order:
(i) for good cause shown, after the respondent has been notified and given a proper and sufficient opportunity to respond; or
(ii) if the respondent consents to an extension.

Enacted by Chapter 77, 2018 General Session

62A-15-1208 Confidentiality.
(1) The purpose of Part 12, Essential Treatment and Intervention Act, is to provide a process for essential treatment and intervention to save lives, preserve families, and reduce substance use disorder, including opioid addiction.
(2) An essential treatment petition and any other document filed in connection with the petition for essential treatment is confidential and protected.
(3) A hearing on an essential treatment petition is closed to the public, and only the following individuals and their legal counsel may be admitted to the hearing:
(a) parties to the petition;
(b) the essential treatment examiners who completed the court-ordered examination under Subsection 62A-15-1205(3);
(c) individuals who have been asked to give testimony; and
(d) individuals to whom notice of the hearing is required to be given under Subsection 62A-15-1205(2)(c).
(4) Testimony, medical evaluations, the petition, and other documents directly related to the adjudication of the petition and presented to the court in the interest of the respondent may not be construed or applied as an admission of guilt to a criminal offense.
(5) A court may, if applicable, enforce a previously existing warrant for a respondent or a warrant for a charge that is unrelated to the essential treatment petition filed under this part.

Enacted by Chapter 408, 2017 General Session

62A-15-1209 Essential treatment for substance use disorder -- Rights of patient.
All applicable rights guaranteed to a patient by Sections 62A-15-641 and 62A-15-642 shall be guaranteed to an individual who is ordered to undergo essential treatment for a substance use disorder.

Enacted by Chapter 408, 2017 General Session

Part 13
Statewide Mental Health Crisis Line and Statewide Warm Line

62A-15-1301 Definitions.
As used in this part:
(1) "Certified peer support specialist" means an individual who:

(a) meets the standards of qualification or certification that the division sets, in accordance with Section 62A-15-1302; and
(b) staffs the statewide warm line under the supervision of at least one mental health therapist.
(2) "Commission" means the Behavioral Health Crisis Response Commission created in Section 63C-18-202.
(3) "Crisis worker" means an individual who:
(a) meets the standards of qualification or certification that the division sets, in accordance with Section 62A-15-1302; and
(b) staffs the statewide mental health crisis line, the statewide warm line, or a local mental health crisis line under the supervision of at least one mental health therapist.
(4) "Local mental health crisis line" means a phone number or other response system that is:
(a) accessible within a particular geographic area of the state; and
(b) intended to allow an individual to contact and interact with a qualified mental or behavioral health professional.
(5) "Mental health crisis" means the same as that term is defined in Section 62A-15-1401.
(6) "Mental health therapist" means the same as that term is defined in Section 58-60-102.
(7) "Statewide mental health crisis line" means a statewide phone number or other response system that allows an individual to contact and interact with a qualified mental or behavioral health professional 24 hours per day, 365 days per year.
(8) "Statewide warm line" means a statewide phone number or other response system that allows an individual to contact and interact with a qualified mental or behavioral health professional or a certified peer support specialist.

Amended by Chapter 303, 2020 General Session

62A-15-1302 Contracts for statewide mental health crisis line and statewide warm line -- Crisis worker and certified peer support specialist qualification or certification.
(1)
(a) The division shall enter into a new contract or modify an existing contract to manage and operate, in accordance with this part, the statewide mental health crisis line and the statewide warm line.
(b) Through the contracts described in Subsection (1)(a) and in consultation with the commission, the division shall set standards of care and practice for:
(i) the mental health therapists and crisis workers who staff the statewide mental health crisis line; and
(ii) the mental health therapists, crisis workers, and certified peer support specialists who staff the statewide warm line.
(2)
(a) The division shall establish training and minimum standards for the qualification or certification of:
(i) crisis workers who staff the statewide mental health crisis line, the statewide warm line, and local mental health crisis lines; and
(ii) certified peer support specialists who staff the statewide warm line.
(b) The division may make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, necessary to establish the training and minimum standards described in Subsection (2)(a).

Amended by Chapter 303, 2020 General Session

62A-15-1303 Statewide mental health crisis line and statewide warm line operational standards.

(1) In consultation with the commission, the division shall ensure that:
(a) the following individuals are available to staff and answer calls to the statewide mental health crisis line 24 hours per day, 365 days per calendar year:
(i) mental health therapists; or
(ii) crisis workers;
(b) a sufficient amount of staff is available to ensure that when an individual calls the statewide mental health crisis line, regardless of the time, date, or number of individuals trying to simultaneously access the statewide mental health crisis line, an individual described in Subsection (1)(a) answers the call without the caller first:
(i) waiting on hold; or
(ii) being screened by an individual other than a mental health therapist or crisis worker;
(c) the statewide mental health crisis line has capacity to accept all calls that local mental health crisis lines route to the statewide mental health crisis line;
(d) the following individuals are available to staff and answer calls to the statewide warm line during the hours and days of operation set by the division under Subsection (2):
(i) mental health therapists;
(ii) crisis workers; or
(iii) certified peer support specialists;
(e) when an individual calls the statewide mental health crisis line, the individual's call may be transferred to the statewide warm line if the individual is not experiencing a mental health crisis; and
(f) when an individual calls the statewide warm line, the individual's call may be transferred to the statewide mental health crisis line if the individual is experiencing a mental health crisis.
(2) The division shall make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to establish the hours and days of operation for the statewide warm line.

Amended by Chapter 303, 2020 General Session

Part 14
Utah Mobile Crisis Outreach Team Act

62A-15-1401 Definitions.

As used in this part:
(1) "Commission" means the Behavioral Health Crisis Response Commission created in Section 63C-18-202.
(2) "Emergency medical service personnel" means the same as that term is defined in Section 26-8a-102.
(3) "Emergency medical services" means the same as that term is defined in Section 26-8a-102.
(4) "MCOT certification" means the certification created in this part for MCOT personnel and mental health crisis outreach services.
(5) "MCOT personnel" means a licensed mental health therapist or other mental health professional, as determined by the division, who is a part of a mobile crisis outreach team.

(6) "Mental health crisis" means a mental health condition that manifests itself by symptoms of sufficient severity that a prudent layperson who possesses an average knowledge of mental health issues could reasonably expect the absence of immediate attention or intervention to result in:
(a) serious jeopardy to the individual's health or well-being; or
(b) a danger to others.
(7)
(a) "Mental health crisis services" means mental health services and on-site intervention that a person renders to an individual suffering from a mental health crisis.
(b) "Mental health crisis services" includes the provision of safety and care plans, stabilization services offered for a minimum of 60 days, and referrals to other community resources.
(8) "Mental health therapist" means the same as that term is defined in Section 58-60-102.
(9) "Mobile crisis outreach team" or "MCOT" means a mobile team of medical and mental health professionals that provides mental health crisis services and, based on the individual circumstances of each case, coordinates with local law enforcement, emergency medical service personnel, and other appropriate state or local resources.

Amended by Chapter 303, 2020 General Session

62A-15-1402 Department and division duties -- MCOT license creation.
(1) To promote the availability of comprehensive mental health crisis services throughout the state, the division shall make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, that create a certificate for MCOT personnel and MCOTs, including:
(a) the standards the division establishes under Subsection (2); and
(b) guidelines for:
(i) credit for training and experience; and
(ii) the coordination of:
(A) emergency medical services and mental health crisis services;
(B) law enforcement, emergency medical service personnel, and mobile crisis outreach teams; and
(C) temporary commitment in accordance with Section 62A-15-629.
(2)
(a) With recommendations from the commission, the division shall:
(i) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, make rules that establish standards that an applicant is required to meet to qualify for the MCOT certification described in Subsection (1); and
(ii) create a statewide MCOT plan that:
(A) identifies statewide mental health crisis services needs, objectives, and priorities; and
(B) identifies the equipment, facilities, personnel training, and other resources necessary to provide mental health crisis services.
(b) The division may delegate the MCOT plan requirement described in Subsection (2)(a)(ii) to a contractor with which the division contracts to provide mental health crisis services.

Enacted by Chapter 84, 2018 General Session

Part 15

Survivors of Suicide Loss Program

62A-15-1501 Definitions.

As used in this part:

(1) "Account" means the Survivors of Suicide Loss Account created in Section 62A-15-1502.

(2)

(a) "Cohabitant" means an individual who lives with another individual.

(b) "Cohabitant" does not include a relative.

(3) "Relative" means father, mother, husband, wife, son, daughter, sister, brother, grandfather, grandmother, uncle, aunt, nephew, niece, grandson, granddaughter, first cousin, mother-in-law, father-in-law, brother-in-law, sister-in-law, son-in-law, or daughter-in-law.

Amended by Chapter 277, 2021 General Session

62A-15-1502 Survivors of Suicide Loss Account.

(1) There is created a restricted account within the General Fund known as the "Survivors of Suicide Loss Account."

(2) The division shall administer the account in accordance with this part.

(3) The account shall consist of:

(a) money appropriated to the account by the Legislature; and

(b) interest earned on money in the account.

(4) Upon appropriation, the division shall award grants from the account to a person who provides, for no or minimal cost:

(a) clean-up of property affected or damaged by an individual's suicide, as reimbursement for the costs incurred for the clean-up; and

(b) bereavement services to a relative, legal guardian, or cohabitant of an individual who dies by suicide.

(5) Before November 30 of each year, the division shall report to the Health and Human Services Interim Committee regarding the status of the account and expenditures made from the account.

Amended by Chapter 277, 2021 General Session

Part 16
Psychiatric and Psychotherapeutic Consultation Program Account

62A-15-1601 Definitions.

As used in this part:

(1) "Account" means the Psychiatric and Psychotherapeutic Consultation Program Account created in Section 62A-15-1602.

(2) "Child care" means the child care services defined in Section 35A-3-102 for a child during early childhood.

(3) "Child care provider" means a person who provides child care or mental health support or interventions to a child during early childhood.

(4) "Child mental health therapist" means a mental health therapist who:

(a) is knowledgeable and trained in early childhood mental health; and

(b) provides mental health services to children during early childhood.
(5) "Child mental health care facility" means a facility that provides licensed mental health care programs and services to children and families and employs a child mental health therapist.
(6) "Early childhood" means the time during which a child is zero to six years old.
(7) "Early childhood psychotherapeutic telehealth consultation" means a consultation regarding a child's mental health care during the child's early childhood between a child care provider or a mental health therapist and a child mental health therapist that is focused on psychotherapeutic and psychosocial interventions and is completed through the use of electronic or telephonic communication.
(8) "Health care facility" means a facility that provides licensed health care programs and services and employs at least two psychiatrists, at least one of whom is a child psychiatrist.
(9) "Mental health therapist" means the same as that term is defined in Section 58-60-102.
(10) "Nurse practitioner" means an individual who is licensed to practice as an advanced practice registered nurse under Title 58, Chapter 31b, Nurse Practice Act.
(11) "Physician" means an individual licensed to practice as a physician or osteopath under Title 58, Chapter 67, Utah Medical Practice Act, or Title 58, Chapter 68, Utah Osteopathic Medical Practice Act.
(12) "Physician assistant" means an individual who is licensed to practice as a physician assistant under Title 58, Chapter 70a, Utah Physician Assistant Act.
(13) "Primary care provider" means a nurse practitioner, physician, or physician assistant.
(14) "Psychiatrist" means an individual who:
(a) is licensed as a physician under Title 58, Chapter 67, Utah Medical Practice Act, or Title 58, Chapter 68, Utah Osteopathic Medical Practice Act; and
(b) is board eligible for a psychiatry specialization recognized by the American Board of Medical Specialists or the American Osteopathic Association's Bureau of Osteopathic Specialists.
(15) "Telehealth psychiatric consultation" means a consultation regarding a patient's mental health care, including diagnostic clarification, medication adjustment, or treatment planning, between a primary care provider and a psychiatrist that is completed through the use of electronic or telephonic communication.

Amended by Chapter 278, 2021 General Session

62A-15-1602 Psychiatric and Psychotherapeutic Consultation Program Account.
(1) There is created a restricted account within the General Fund known as the "Psychiatric and Psychotherapeutic Consultation Program Account."
(2) The division shall administer the account in accordance with this part.
(3) The account shall consist of:
(a) money appropriated to the account by the Legislature; and
(b) interest earned on money in the account.
(4) Upon appropriation, the division shall award grants from the account to:
(a) at least one health care facility to implement a program that provides a primary care provider access to a telehealth psychiatric consultation when the primary care provider is evaluating a patient for or providing a patient mental health treatment; and
(b) at least one child mental health care facility to implement a program that provides access to an early childhood psychotherapeutic telehealth consultation to:
(i) a mental health therapist when the mental health therapist is evaluating a child for or providing a child mental health treatment; or
(ii) a child care provider when the child care provider is providing child care to a child.

(5) The division may award and distribute grant money to a health care facility or child mental health care facility only if the health care facility or child mental health care facility:
(a) is located in the state; and
(b) submits an application in accordance with Subsection (6).
(6) An application for a grant under this section shall include:
(a) the number of psychiatrists employed by the health care facility or the number of child mental health therapists employed by the child mental health care facility;
(b) the health care facility's or child mental health care facility's plan to implement the telehealth psychiatric consultation program or the early childhood psychotherapeutic telehealth consultation program described in Subsection (4);
(c) the estimated cost to implement the telehealth psychiatric consultation program or the early childhood psychotherapeutic telehealth consultation program described in Subsection (4);
(d) any plan to use one or more funding sources in addition to a grant under this section to implement the telehealth psychiatric consultation program or the early childhood psychotherapeutic telehealth consultation program described in Subsection (4);
(e) the amount of grant money requested to fund the telehealth psychiatric consultation program or the early childhood psychotherapeutic telehealth consultation program described in Subsection (4); and
(f) any existing or planned contract or partnership between the health care facility and another person to implement the telehealth psychiatric consultation program or the early childhood psychotherapeutic telehealth consultation program described in Subsection (4).
(7) A health care facility or child mental health care facility that receives grant money under this section shall file a report with the division before October 1 of each year that details for the immediately preceding calendar year:
(a) the type and effectiveness of each service provided in the telehealth psychiatric program or the early childhood psychotherapeutic telehealth consultation program;
(b) the utilization of the telehealth psychiatric program or the early childhood psychotherapeutic telehealth consultation program based on metrics or categories determined by the division;
(c) the total amount expended from the grant money; and
(d) the intended use for grant money that has not been expended.
(8) Before November 30 of each year, the division shall report to the Health and Human Services Interim Committee regarding:
(a) the status of the account and expenditures made from the account; and
(b) a summary of any report provided to the division under Subsection (7).

Amended by Chapter 278, 2021 General Session

Part 17
Mental Health Services Donation Fund

62A-15-1701 Definitions.

As used in this part:
(1) "Fund" means the Mental Health Services Donation Fund created in Section 62A-15-1702.
(2) "Local mental health crisis line" means the same as that term is defined in Section 62A-15-1301.
(3) "Mental health therapist" means the same as that term is defined in Section 58-60-102.

(4) "Mental health therapy" means treatment or prevention of a mental illness, including:
(a) conducting a professional evaluation of an individual's condition of mental health, mental illness, or emotional disorder consistent with standards generally recognized by mental health therapists;
(b) establishing a diagnosis in accordance with established written standards generally recognized by mental health therapists;
(c) prescribing a plan or medication for the prevention or treatment of a condition of a mental illness or an emotional disorder; and
(d) engaging in the conduct of professional intervention, including psychotherapy by the application of established methods and procedures generally recognized by mental health therapists.
(5) "Qualified individual" means an individual who:
(a) is experiencing a mental health crisis; and
(b) calls a local mental health crisis line or the statewide mental health crisis line.
(6) "Statewide mental health crisis line" means the same as that term is defined in Section 62A-15-1301.

Enacted by Chapter 358, 2020 General Session

62A-15-1702 Mental Health Services Donation Fund.
(1) There is created an expendable special revenue fund known as the "Mental Health Services Donation Fund."
(2) The fund shall consist of:
(a) gifts, grants, donations, or any other conveyance of money that may be made to the fund from public or private individuals or entities; and
(b) interest earned on money in the fund.
(3) The division shall administer the fund in accordance with this section.
(4) The division shall award fund money to an entity in the state that provides mental health and substance abuse treatment for the purpose of:
(a) providing through telehealth or in-person services, mental health therapy to qualified individuals;
(b) providing access to evaluations and coordination of short-term care to assist a qualified individual in identifying services or support needs, resources, or benefits for which the qualified individual may be eligible; and
(c) developing a system for a qualified individual and a qualified individual's family to access information and referrals for mental health therapy.
(5) Fund money may only be used for the purposes described in Subsection (4).
(6) The division shall provide an annual report to the Behavioral Health Crisis Response Commission, created in Section 63C-18-202, regarding:
(a) the entity that is awarded a grant under Subsection (4);
(b) the number of qualified individuals served by the entity with fund money; and
(c) any costs or benefits as a result of the award of the grant.

Enacted by Chapter 358, 2020 General Session
Amended by Chapter 358, 2020 General Session, (Coordination Clause)

Part 18
Utah Assertive Community Treatment Act

62A-15-1801 Definitions.

As used in this part:

(1) "ACT team personnel" means a licensed psychiatrist or mental health therapist, or another individual, as determined by the division, who is part of an ACT team.

(2) "Assertive community treatment team" or "ACT team" means a mobile team of medical and mental health professionals that provides assertive community outreach treatment and, based on the individual circumstances of each case, coordinates with other medical providers and appropriate community resources.

(3)

(a) "Assertive community treatment" means mental health services and on-site intervention that a person renders to an individual with a mental illness.

(b) "Assertive community treatment" includes the provision of assessment and treatment plans, rehabilitation, support services, and referrals to other community resources.

(4) "Mental health therapist" means the same as that term is defined in Section 58-60-102.

(5) "Mental illness" means the same as that term is defined in Section 62A-15-602.

(6) "Psychiatrist" means the same as that term is defined in Section 62A-15-1601.

Enacted by Chapter 304, 2020 General Session

62A-15-1802 Division duties -- ACT team license creation.

(1) To promote the availability of assertive community treatment, the division shall make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, that create a certificate for ACT team personnel and ACT teams, that includes:

(a) the standards the division establishes under Subsection (2); and

(b) guidelines for:

(i) required training and experience of ACT team personnel; and

(ii) the coordination of assertive community treatment and other community resources.

(2)

(a) The division shall:

(i) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, make rules that establish standards that an applicant is required to meet to qualify for the certifications described in Subsection (1); and

(ii) create a statewide ACT team plan that:

(A) identifies statewide assertive community treatment needs, objectives, and priorities; and

(B) identifies the equipment, facilities, personnel training, and other resources necessary to provide assertive community treatment.

(b) The division may delegate the ACT team plan requirement described in Subsection (2)(a)(ii) to a contractor with whom the division contracts to provide assertive community outreach treatment.

Enacted by Chapter 304, 2020 General Session

62A-15-1803 Grants for development of an ACT team.

(1) The division shall award grants for the development of one ACT team to provide assertive community treatment to individuals in the state.
(2) The division shall prioritize the award of a grant described in Subsection (1) to entities, based on:
  (a) the number of individuals the proposed ACT team will serve; and
  (b) the percentage of matching funds the entity will provide to develop the proposed ACT team.
(3) An entity does not need to have resources already in place to be awarded a grant described in Subsection (1).
(4) The division shall make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, for the application and award of the grants described in Subsection (1).

Enacted by Chapter 304, 2020 General Session

62A-15-1804 Housing assistance program for individuals discharged from the Utah State Hospital and receiving assertive community treatment.
(1)
  (a) The division shall, within funds appropriated by the Legislature for this purpose, implement and manage the operation of a housing assistance program in consultation with the Utah State Hospital, established in Section 62A-15-601, and one or more housing authorities, associations of governments, or nonprofit entities.
  (b) The housing assistance program shall provide the housing assistance described in Subsection (1)(c) to individuals:
    (i) who are discharged from the Utah State Hospital; and
    (ii) who the division determines would benefit from assertive community treatment.
  (c) The housing assistance provided under the housing assistance program may include:
    (i) subsidizing rent payments for housing;
    (ii) subsidizing the provision of temporary or transitional housing; or
    (iii) providing money for one-time housing barrier assistance, including rental housing application fees, utility hookup fees, or rental housing security deposits.
(2) The division shall make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to establish procedures for the operation of the housing assistance program described in Subsection (1).
(3) The division shall report to the Health and Human Services Interim Committee each year before November 30 regarding:
  (a) the entities the division consulted with under Subsection (1)(a);
  (b) the number of individuals who are benefitting from the housing assistance program described in Subsection (1);
  (c) the type of housing assistance provided under the housing assistance program described in Subsection (1);
  (d) the average monthly dollar amount provided to individuals under the housing assistance program described in Subsection (1); and
  (e) recommendations regarding improvements or changes to the housing assistance program described in Subsection (1).

Enacted by Chapter 304, 2020 General Session

Chapter 16
Fatality Review Act

Part 1
General Provisions

62A-16-101 Title.

This chapter is known as the "Fatality Review Act."

Enacted by Chapter 239, 2010 General Session

62A-16-102 Definitions.

(1) "Abuse" means the same as that term is defined in Section 80-1-102.
(2) "Child" means the same as that term is defined in Section 80-1-102.
(3) "Committee" means a fatality review committee that is formed under Section 62A-16-202 or 62A-16-203.
(4) "Dependency" means the same as that term is defined in Section 80-1-102.
(5) "Formal review" means a review of a death or a near fatality that is ordered under Subsection 62A-16-201(6).
(6) "Near fatality" means alleged abuse or neglect that, as certified by a physician, places a child in serious or critical condition.
(7) "Qualified individual" means an individual who:
  (a) at the time that the individual dies, is a resident of a facility or program that is owned or operated by the department or a division of the department;
  (b)
    (i) is in the custody of the department or a division of the department; and
    (ii) is placed in a residential placement by the department or a division of the department;
  (c) at the time that the individual dies, has an open case for the receipt of child welfare services, including:
    (i) an investigation for abuse, neglect, or dependency;
    (ii) foster care;
    (iii) in-home services; or
    (iv) substitute care;
  (d) had an open case for the receipt of child welfare services within one year before the day on which the individual dies;
  (e) was the subject of an accepted referral received by Adult Protective Services within one year before the day on which the individual dies, if:
    (i) the department or a division of the department is aware of the death; and
    (ii) the death is reported as a homicide, suicide, or an undetermined cause;
  (f) received services from, or under the direction of, the Division of Services for People with Disabilities within one year before the day on which the individual dies, unless the individual:
    (i) lived in the individual's home at the time of death; and
    (ii) the director of the Office of Quality and Design determines that the death was not in any way related to services that were provided by, or under the direction of, the department or a division of the department;
  (g) dies within 60 days after the day on which the individual is discharged from the Utah State Hospital, if the department is aware of the death;

(h) is a child who:
(i) suffers a near fatality; and
(ii) is the subject of an open case for the receipt of child welfare services within one year before the day on which the child suffered the near fatality, including:
(A) an investigation for abuse, neglect, or dependency;
(B) foster care;
(C) in-home services; or
(D) substitute care; or
(i) is designated as a qualified individual by the executive director.
(8) "Neglect" means the same as that term is defined in Section 80-1-102.
(9) "Substitute care" means the same as that term is defined in Section 80-1-102.

Amended by Chapter 335, 2022 General Session

Part 2
Fatality Review

62A-16-201 Initial review.

(1) Within seven days after the day on which the department knows that a qualified individual has died or is an individual described in Subsection 62A-16-102(7)(h), a person designated by the department shall:
(a)
(i) for a death, complete a deceased client report form, created by the department; or
(ii) for an individual described in Subsection 62A-16-102(7)(h), complete a near fatality client report form, created by the department; and
(b) forward the completed client report form to the director of the office or division that has jurisdiction over the region or facility.
(2) The director of the office or division described in Subsection (1) shall, upon receipt of a near fatality client report form or a deceased client report form, immediately provide a copy of the form to:
(a) the executive director; and
(b) the fatality review coordinator or the fatality review coordinator's designee.
(3) Within 10 days after the day on which the fatality review coordinator or the fatality review coordinator's designee receives a copy of the near fatality client report form or the deceased client report form, the fatality review coordinator or the fatality review coordinator's designee shall request a copy of all relevant department case records regarding the individual who is the subject of the client report form.
(4) Each person who receives a request for a record described in Subsection (3) shall provide a copy of the record to the fatality review coordinator or the fatality review coordinator's designee, by a secure method, within seven days after the day on which the request is made.
(5) Within 30 days after the day on which the fatality review coordinator or the fatality review coordinator's designee receives the case records requested under Subsection (3), the fatality review coordinator, or the fatality review coordinator's designee, shall:
(a) review the client report form, the case files, and other relevant information received by the fatality review coordinator; and

(b) make a recommendation to the director of the Office of Quality and Design regarding whether a formal review of the death or near fatality should be conducted.

(6)

(a) In accordance with Subsection (6)(b), within seven days after the day on which the fatality review coordinator or the fatality review coordinator's designee makes the recommendation described in Subsection (5)(b), the director of the Office of Quality and Design or the director's designee shall determine whether to order that a review of the death or near fatality be conducted.

(b) The director of the Office of Quality and Design or the director's designee shall order that a formal review of the death or near fatality be conducted if:

(i) at the time of the near fatality or the death, the qualified individual is:

(A) an individual described in Subsection 62A-16-102(6)(a) or (b), unless:

(I) the near fatality or the death is due to a natural cause; or

(II) the director of the Office of Quality and Design or the director's designee determines that the near fatality or the death was not in any way related to services that were provided by, or under the direction of, the department or a division of the department; or

(B) a child in foster care or substitute care, unless the near fatality or the death is due to:

(I) a natural cause; or

(II) an accident;

(ii) it appears, based on the information provided to the director of the Office of Quality and Design or the director's designee, that:

(A) a provision of law, rule, policy, or procedure relating to the qualified individual or the individual's family may not have been complied with;

(B) the near fatality or the fatality was not responded to properly;

(C) a law, rule, policy, or procedure may need to be changed; or

(D) additional training is needed;

(iii)

(A) the death is caused by suicide; or

(B) the near fatality is caused by attempted suicide; or

(iv) the director of the Office of Quality and Design or the director's designee determines that another reason exists to order that a review of the near fatality or the death be conducted.

Amended by Chapter 231, 2021 General Session

62A-16-202 Fatality review committee for a qualified individual who was not a resident of the Utah State Hospital or the Utah State Developmental Center.

(1) Except for a fatality review committee described in Section 62A-16-203, the fatality review coordinator shall organize a fatality review committee for each formal review.

(2) Except as provided in Subsection (5), a committee described in Subsection (1):

(a) shall include the following members:

(i) the department's fatality review coordinator, who shall designate a member of the committee to serve as chair of the committee;

(ii) a member of the board, if there is a board, of the relevant division or office;

(iii) the attorney general or the attorney general's designee;

(iv)

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

(B) a person who is a supervisor, or a higher level position, from a region that did not have jurisdiction over the qualified individual; and

(v) a member of the department's risk management services; and
(b) may include the following members:
(i) a health care professional;
(ii) a law enforcement officer; or
(iii) a representative of the Office of Public Guardian.
(3) If a death that is subject to formal review involves a qualified individual described in Subsection 62A-16-102(7)(c), (d), or (h), the committee may also include:
(a) a health care professional;
(b) a law enforcement officer;
(c) the director of the Office of Guardian ad Litem;
(d) an employee of the division who may be able to provide information or expertise that would be helpful to the formal review; or
(e) a professional whose knowledge or expertise may significantly contribute to the formal review.
(4) A committee described in Subsection (1) may also include a person whose knowledge or expertise may significantly contribute to the formal review.
(5) A committee described in this section may not include an individual who was involved in, or who supervises a person who was involved in, the near fatality or the death.
(6) Each member of a committee described in this section who is not an employee of the department shall sign a form, created by the department, indicating that the member agrees to:
(a) keep all information relating to the formal review confidential; and
(b) not release any information relating to a formal review, unless required or permitted by law to release the information.

Amended by Chapter 231, 2021 General Session

62A-16-203 Fatality review committees for a resident of the Utah State Hospital or the Utah State Developmental Center.
(1) If a qualified individual who is the subject of a formal review was a resident of the Utah State Hospital or the Utah State Developmental Center, the fatality review coordinator of that facility shall organize a fatality review committee to review the near fatality or the death.
(2) Except as provided in Subsection (4), a committee described in Subsection (1) shall include the following members:
(a) the fatality review coordinator for the facility, who shall serve as chair of the committee;
(b) a member of the management staff of the facility;
(c) a supervisor of a unit other than the one in which the qualified individual resided;
(d) a physician;
(e) a representative from the administration of the division that oversees the facility;
(f) the department's fatality review coordinator;
(g) a member of the department's risk management services; and
(h) a citizen who is not an employee of the department.
(3) A committee described in Subsection (1) may also include a person whose knowledge or expertise may significantly contribute to the formal review.
(4) A committee described in this section may not include an individual who:
(a) was involved in, or who supervises a person who was involved in, the near fatality or the death; or
(b) has a conflict with the fatality review.

Amended by Chapter 231, 2021 General Session

62A-16-204 Fatality review committee proceedings.

(1) A majority vote of committee members present constitutes the action of the committee.
(2) The department shall give the committee access to all reports, records, and other documents that are relevant to the near fatality or the death under investigation, including:
  (a) narrative reports;
  (b) case files;
  (c) autopsy reports; and
  (d) police reports, unless the report is protected from disclosure under Subsection 63G-2-305(10) or (11).
(3) The Utah State Hospital and the Utah State Developmental Center shall provide protected health information to the committee if requested by a fatality review coordinator.
(4) A committee shall convene its first meeting within 14 days after the day on which a formal review is ordered, unless this time is extended, for good cause, by the director of the Office of Quality and Design.
(5) A committee may interview a staff member, a provider, or any other person who may have knowledge or expertise that is relevant to the formal review.
(6) A committee shall render an advisory opinion regarding:
  (a) whether the provisions of law, rule, policy, and procedure relating to the qualified individual and the individual's family were complied with;
  (b) whether the near fatality or the death was responded to properly;
  (c) whether to recommend that a law, rule, policy, or procedure be changed; and
  (d) whether additional training is needed.

Amended by Chapter 231, 2021 General Session

Part 3
Reporting and Review

62A-16-301 Fatality review committee report -- Response to report.

(1) Within 20 days after the day on which the committee proceedings described in Section 62A-16-204 end, the committee shall submit:
  (a) a written report to the executive director that includes:
    (i) the advisory opinions made under Subsection 62A-16-204(6); and
    (ii) any recommendations regarding action that should be taken in relation to an employee of the department or a person who contracts with the department;
  (b) a copy of the report described in Subsection (1)(a) to:
    (i) the director, or the director's designee, of the office or division to which the near fatality or the death relates; and
    (ii) the regional director, or the regional director's designee, of the region to which the near fatality or the death relates; and
  (c) a copy of the report described in Subsection (1)(a), with only identifying information redacted, to the Office of Legislative Research and General Counsel.
(2) Within 20 days after the day on which the director described in Subsection (1)(b)(i) receives a copy of the report described in Subsection (1)(a), the director shall provide a written response to the director of the Office of Quality and Design and a copy of the response, with only

identifying information redacted, to the Office of Legislative Research and General Counsel, if the report:
(a) indicates that a law, rule, policy, or procedure was not complied with;
(b) indicates that the near fatality or the death was not responded to properly;
(c) recommends that a law, rule, policy, or procedure be changed; or
(d) indicates that additional training is needed.
(3) The response described in Subsection (2) shall include a plan of action to implement any recommended improvements within the office or division.
(4) Within 30 days after the day on which the executive director receives the response described in Subsection (2), the executive director, or the executive director's designee shall:
(a) review the plan of action described in Subsection (3);
(b) make any written response that the executive director or the executive director's designee determines is necessary;
(c) provide a copy of the written response described in Subsection (4)(b), with only identifying information redacted, to the Office of Legislative Research and General Counsel; and
(d) provide an unredacted copy of the response described in Subsection (4)(b) to the director of the Office of Quality and Design.
(5) A report described in Subsection (1) and each response described in this section is a protected record.
(6)
(a) As used in this Subsection (6), "fatality review document" means any document created in connection with, or as a result of, a formal review of a near fatality or a death, or a decision whether to conduct a formal review of a near fatality or a death, including:
(i) a report described in Subsection (1);
(ii) a response described in this section;
(iii) a recommendation regarding whether a formal review should be conducted;
(iv) a decision to conduct a formal review;
(v) notes of a person who participates in a formal review;
(vi) notes of a person who reviews a formal review report;
(vii) minutes of a formal review;
(viii) minutes of a meeting where a formal review report is reviewed; and
(ix) minutes of, documents received in relation to, and documents generated in relation to, the portion of a meeting of the Health and Human Services Interim Committee or the Child Welfare Legislative Oversight Panel that a formal review report or a document described in this Subsection (6)(a) is reviewed or discussed.
(b) A fatality review document is not subject to discovery, subpoena, or similar compulsory process in any civil, judicial, or administrative proceeding, nor shall any individual or organization with lawful access to the data be compelled to testify with regard to a report described in Subsection (1) or a response described in this section.
(c) The following are not admissible as evidence in a civil, judicial, or administrative proceeding:
(i) a fatality review document; and
(ii) an executive summary described in Subsection 62A-16-302(4).

Amended by Chapter 231, 2021 General Session

62A-16-302 Reporting to, and review by, legislative committees.

(1) The Office of Legislative Research and General Counsel shall provide a copy of the report described in Subsection 62A-16-301(1)(c), and the responses described in Subsections 62A-16-301(2) and (4)(c) to the chairs of:
(a) the Health and Human Services Interim Committee; or
(b) if the qualified individual who is the subject of the report is an individual described in Subsection 62A-16-102(7)(c), (d), or (h), the Child Welfare Legislative Oversight Panel.
(2)
(a) The Health and Human Services Interim Committee may, in a closed meeting, review a report described in Subsection 62A-16-301(1)(b).
(b) The Child Welfare Legislative Oversight Panel shall, in a closed meeting, review a report described in Subsection (1)(b).
(3)
(a) The Health and Human Services Interim Committee and the Child Welfare Legislative Oversight Panel may not interfere with, or make recommendations regarding, the resolution of a particular case.
(b) The purpose of a review described in Subsection (2) is to assist a committee or panel described in Subsection (2) in determining whether to recommend a change in the law.
(c) Any recommendation, described in Subsection (3)(b), by a committee or panel for a change in the law shall be made in an open meeting.
(4)
(a) On or before September 1 of each year, the department shall provide an executive summary of all formal review reports for the preceding state fiscal year to the Office of Legislative Research and General Counsel.
(b) The Office of Legislative Research and General Counsel shall forward a copy of the executive summary described in Subsection (4)(a) to:
(i) the Health and Human Services Interim Committee; and
(ii) the Child Welfare Legislative Oversight Panel.
(5) The executive summary described in Subsection (4):
(a) may not include any names or identifying information;
(b) shall include:
(i) all recommendations regarding changes to the law that were made during the preceding fiscal year under Subsection 62A-16-204(6);
(ii) all changes made, or in the process of being made, to a law, rule, policy, or procedure in response to a formal review that occurred during the preceding fiscal year;
(iii) a description of the training that has been completed in response to a formal review that occurred during the preceding fiscal year;
(iv) statistics for the preceding fiscal year regarding:
(A) the number of qualified individuals and the type of deaths and near fatalities that are known to the department;
(B) the number of formal reviews conducted;
(C) the categories described in Subsection 62A-16-102(7) of qualified individuals;
(D) the gender, age, race, and other significant categories of qualified individuals; and
(E) the number of fatalities of qualified individuals known to the department that are identified as suicides; and
(v) action taken by the Office of Licensing and the Bureau of Internal Review and Audits in response to the near fatality or the death of a qualified individual; and
(c) is a public document.

(6) The Division of Child and Family Services shall, to the extent required by the federal Child Abuse Prevention and Treatment Act, as amended, allow public disclosure of the findings or information relating to a case of child abuse or neglect that results in a child fatality or a near fatality.

Amended by Chapter 274, 2022 General Session

Chapter 17
Utah Referral Information Network

62A-17-101 Title.

This chapter is known as "Utah Referral Information Network."

Enacted by Chapter 24, 2013 General Session

62A-17-102 Definitions.

As used in this chapter:

(1) "211" means the abbreviated dialing code assigned by the Federal Communications Commission for consumer access to community information and referral services.

(2) "Approved 211 service provider" means a public or nonprofit agency or organization designated by the department to provide 211 services.

(3)

(a) "Utah 211" means an information and referral system that:

(i) maintains a database of:

(A) providers of health and human services; and

(B) volunteer opportunities and coordinators throughout the state;

(ii) assists individuals, families, and communities at no cost in identifying, understanding, and accessing the providers of health and human services; and

(iii) works collaboratively with state agencies, local governments, community-based organizations, not-for-profit organizations, organizations active in disaster relief, and faith-based organizations.

(b) "Utah 211" does not mean service provided by 911 and first responders.

Enacted by Chapter 24, 2013 General Session

62A-17-103 Designated approved 211 service provider -- Department responsibilities.

(1) The department shall designate an approved 211 service provider to provide information to Utah citizens about health and human services available in the citizen's community.

(2) Only a service provider approved by the department may provide 211 telephone services in this state.

(3) The department shall approve a 211 service provider after considering the following:

(a) the ability of the proposed 211 service provider to meet the national 211 standards recommended by the Alliance of Information and Referral Systems;

(b) the financial stability of the proposed 211 service provider;

(c) the community support for the proposed 211 service provider;

(d) the relationship between the proposed 211 service provider and other information and referral services; and
(e) other criteria as the department considers appropriate.
(4) The department shall coordinate with the approved 211 service provider and other state and local agencies to ensure the joint development and maintenance of a statewide information database for use by the approved 211 service provider.

Amended by Chapter 22, 2017 General Session

62A-17-104 Utah 211 created -- Responsibilities.
(1) The designated 211 service provider described in Section 62A-17-102 shall be known as Utah 211.
(2) Utah 211 shall, as appropriations allow:
(a) by 2014:
(i) provide the services described in this Subsection (2) 24 hours a day, seven days a week;
(ii) abide by the key standards for 211 programs, as specified in the Standards for Professional Information and Referral Requirements for Alliance of Information Systems Accreditation and Operating 211 systems; and
(iii) be a point of entry for disaster-related information and referral;
(b) track types of calls received and referrals made;
(c) develop, coordinate, and implement a statewide information and referral system that integrates existing community-based structures with state and local agencies;
(d) provide information relating to:
(i) health and human services; and
(ii) volunteer opportunities;
(e) create an online, searchable database to provide information to the public about the health and human services provided by public or private entities throughout the state, and ensure that:
(i) the material on the searchable database is indexed:
(A) geographically to inform an individual about the health and human services provided in the area where the individual lives; and
(B) by type of service provided; and
(ii) the searchable database contains links to the Internet sites of any local provider of health and human services, if possible, and include:
(A) the name, address, and phone number of organizations providing health and human services in a county; and
(B) a description of the type of services provided;
(f) be responsible, in collaboration with state agencies, for raising community awareness about available health and human services; and
(g) host meetings on a quarterly basis until calendar year 2014, and on a biannual basis beginning in 2014, to seek input and guidance from state agencies, local governments, community-based organizations, not-for-profit organizations, and faith-based organizations.

Enacted by Chapter 24, 2013 General Session

62A-17-105 Other state agencies and local governments.
(1) A state agency or local government institution that provides health and human services, or a public or private entity receiving state-appropriated funds to provide health and human services,

shall provide Utah 211 with information, in a form determined by Utah 211, about the services the agency or entity provides for inclusion in the statewide information and referral system.
(2) A state agency or local government institution that provides health and human services may not establish a new public telephone line or hotline, other than an emergency first responder hotline, to provide information or referrals unless the agency or institution first:
(a) consults with Utah 211 about using the existing 211 to provide access to the information or referrals; and
(b) assesses whether a new line or the existing 211 program would be more cost effective.
(3) Nothing in this section prohibits a state agency or local government institution from starting a public telephone line or hotline in an emergency situation.
(4) State agencies, local governments, community-based organizations, not-for-profit organizations, faith-based organizations, and businesses that engage in providing human services may contract with Utah 211 to provide specialized projects, including:
(a) public health campaigns;
(b) seasonal community services; and
(c) expanded point of entry services.

Enacted by Chapter 24, 2013 General Session

62A-17-106 Immunity from liability.
(1) Except as provided in Subsection (2), Utah 211, its employees, directors, officers, and information specialists are not liable to any person in a civil action for injury or loss as a result of an act or omission of Utah 211, its employees, directors, officers, or information specialists, in connection with:
(a) developing, adopting, implementing, maintaining, or operating the Utah 211 system;
(b) making Utah 211 available for use by the public; or
(c) providing 211 services.
(2) Utah 211, its employees, directors, officers, and information specialists shall be liable to any person in a civil action for an injury or loss resulting from willful or wanton misconduct.

Enacted by Chapter 24, 2013 General Session

Chapter 18
Office of Quality and Design

62A-18-101 Title.
This chapter is known as the "Office of Quality and Design."

Enacted by Chapter 139, 2019 General Session

62A-18-102 Definitions.
As used in this chapter:
(1) "Director" means the director of the office.
(2) "Office" means the Office of Quality and Design.

Enacted by Chapter 139, 2019 General Session

62A-18-103 Office of Quality and Design -- Creation.

(1) There is created within the department the Office of Quality and Design.
(2) The office is under the administrative and general supervision of the executive director.

Enacted by Chapter 139, 2019 General Session

62A-18-104 Director of the office -- Appointment -- Qualifications.

(1) The executive director shall appoint a director of the office.
(2) The director shall have a bachelor's degree from an accredited university or college, be experienced in administration, and be knowledgeable about human services programs.
(3) The director is the administrative head of the office.

Enacted by Chapter 139, 2019 General Session

62A-18-105 Powers and duties of the office.

The office shall:

(1) monitor and evaluate the quality of services provided by the department including:
 (a) in accordance with Title 62A, Chapter 16, Fatality Review Act, monitoring, reviewing, and making recommendations relating to a fatality review;
 (b) overseeing the duties of the child protection ombudsman appointed under Section 80-2-1104; and
 (c) conducting internal evaluations of the quality of services provided by the department and service providers contracted with the department;
(2) conduct investigations described in Section 80-2-703; and
(3) assist the department in developing an integrated human services system and implementing a system of care by:
 (a) designing and implementing a comprehensive continuum of services for individuals who receive services from the department or a service provider contracted with the department;
 (b) establishing and maintaining department contracts with public and private service providers;
 (c) establishing standards for the use of service providers who contract with the department;
 (d) coordinating a service provider network to be used within the department to ensure individuals receive the appropriate type of services;
 (e) centralizing the department's administrative operations; and
 (f) integrating, analyzing, and applying department-wide data and research to monitor the quality, effectiveness, and outcomes of services provided by the department.

Amended by Chapter 335, 2022 General Session