

**SUBSTANCE ABUSE AND MENTAL HEALTH
AMENDMENTS**

2003 GENERAL SESSION

STATE OF UTAH

Sponsor: Loraine T. Pace

This act modifies the Substance Abuse and Mental Health Act and provisions relating to local substance abuse and mental health authorities. The act rearranges provisions relating to state and local substance abuse and mental health services and programs and makes other technical changes. The act provides a coordination clause.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

62A-15-103, as renumbered and amended by Chapter 8, Laws of Utah 2002, Fifth Special Session

62A-15-107, as renumbered and amended by Chapter 8, Laws of Utah 2002, Fifth Special Session

62A-15-108, as renumbered and amended by Chapter 8, Laws of Utah 2002, Fifth Special Session

62A-15-110, as renumbered and amended by Chapter 8, Laws of Utah 2002, Fifth Special Session

ENACTS:

17A-3-608, Utah Code Annotated 1953

17A-3-704, Utah Code Annotated 1953

REPEALS:

62A-15-109, as renumbered and amended by Chapter 8, Laws of Utah 2002, Fifth Special Session

62A-15-111, as renumbered and amended by Chapter 8, Laws of Utah 2002, Fifth Special Session

62A-15-112, as renumbered and amended by Chapter 8, Laws of Utah 2002, Fifth Special Session

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **17A-3-608** is enacted to read:

17A-3-608. Fees for mental health services -- Responsibility for cost of service if rendered by authority to nonresident -- Authority may receive funds from other sources.

(1) Each local mental health authority shall charge a fee for mental health services, except that mental health services may not be refused to any person because of inability to pay.

(2) If a local mental health authority, through its designated provider, provides a service described in Section 17A-3-602 to a person who resides within the jurisdiction of another local mental health authority, the local mental health authority in whose jurisdiction the person resides is responsible for the cost of that service if its designated provider has authorized the provision of that service.

(3) A local mental health authority and entities that contract with a local mental health authority to provide mental health services may receive funds made available by federal, state, or local health, substance abuse, mental health, education, welfare, or other agencies, in accordance with the provisions of this part and Title 62A, Chapter 15, Substance Abuse and Mental Health Act.

Section 2. Section **17A-3-704** is enacted to read:

17A-3-704. Fees for substance abuse services -- Responsibility for cost of service if rendered by authority to nonresident -- Authority may receive funds from other sources.

(1) Each local substance abuse authority shall charge a fee for substance abuse services, except that substance abuse services may not be refused to any person because of inability to pay.

(2) If a local substance abuse authority, through its designated provider, provides a service described in Subsection 17A-3-701(3) to a person who resides within the jurisdiction of another local substance abuse authority, the local substance abuse authority in whose jurisdiction the person resides is responsible for the cost of that service if its designated provider has authorized the provision of that service.

(3) A local substance abuse authority and entities that contract with a local substance abuse authority to provide substance abuse services may receive funds made available by federal,

state, or local health, substance abuse, mental health, education, welfare, or other agencies, in accordance with the provisions of this part and Title 62A, Chapter 15, Substance Abuse and Mental Health Act.

Section 3. Section **62A-15-103** is amended to read:

62A-15-103. Division -- Creation -- Responsibilities.

(1) There is created the Division of Substance Abuse and Mental Health within the department, under the administration and general supervision of the executive director, and, with regard to its programs, under the policy direction of the board. 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 and assist other organizations and private treatment centers for substance abusers, by providing them with essential materials for furthering programs of prevention and rehabilitation of actual and potential substance abusers; and

(v) promote or establish programs for education and certification of instructors to educate persons 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; and

(ii) provide direction over the state hospital including approval of its budget, administrative policy, and coordination of services with local service plans; ~~and~~

(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 any 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, the 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 authorities;

(ix) contract with local substance abuse authorities and local mental health authorities to provide a comprehensive continuum of services in accordance with board and division policy, contract provisions, and the local plan;

(x) contract with private and public entities for special statewide or nonclinical services according to board and division policy;

(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; and

(C) appropriate expenditure of public funds;

(xii) review and make recommendations regarding each local substance abuse authority's contract with its provider of substance abuse programs and services and each local mental health authority's contract with its provider of mental health programs and services to ensure compliance with state and federal law and policy;

(xiii) monitor and ensure compliance with board and division policy 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 monies[-];

(d) assure 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 to submit its plan to the division by May 1 of each year;

(f) conduct an annual program audit and review of each local substance abuse authority in the state and its contract provider and each local mental health authority in the state and its contract provider, including:

(i) a review and determination regarding whether:

(A) public funds allocated to local substance abuse authorities and local mental health authorities are consistent with services rendered and outcomes reported by them or their contract providers; 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 abuse and mental health programs and services; and

(ii) items determined by the division to be necessary and appropriate;

(g) by July 1 of each year, provide to the Health and Human Services Interim Committee and the Health and Human Services Appropriations Subcommittee a written report that includes:

(i) the annual audit and review;

(ii) the financial expenditures of each local substance abuse authority and its contract

provider and each local mental health authority and its contract provider:

(iii) the status of the compliance of each local authority and its contract provider with its plan, state statutes, and the provisions of the contract awarded; and

(iv) whether audit guidelines established under Section 62A-15-110 and Subsection 67-3-1(2)(o) provide the division with sufficient criteria and assurances of appropriate expenditures of public funds; and

(h) if requested by the Health and Human Services Interim Committee or the Health and Human Services Appropriations Subcommittee, provide an oral report as requested.

(3) (a) The division may refuse to contract with and may pursue its 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 with its provider of substance abuse or mental health programs or services fails to comply with state and federal law or policy.

(4) 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 its oversight and management responsibilities described in Sections 17A-3-601, 17A-3-603.5, 17A-3-701 and 17A-3-703. Nothing in this Subsection (4) may be used as a defense to the responsibility and liability described in Section 17A-3-603.5 and to the responsibility and liability described in Section 17A-3-703.

(5) In carrying out its 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.

(6) (a) 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.

(b) Those donations, gifts, devises, or bequests shall be used by the division in performing its powers and duties. Any money so obtained shall be considered private nonlapsing funds and shall be deposited into an interest-bearing restricted special revenue fund to be used by the division for substance abuse or mental health services. The state treasurer may invest the fund and all interest shall remain with the fund.

(7) 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) the use of public funds;
- (b) oversight responsibilities regarding public funds; and
- (c) governance of substance abuse and mental health programs and services.

(8) The Legislature may refuse to appropriate funds to the division upon the division's failure to comply with the provisions of this part.

Section 4. Section **62A-15-107** is amended to read:

62A-15-107. Authority to assess fees.

[(+) The division may, with the approval of the Legislature, the executive director, and the board, establish fee schedules and assess fees for services rendered by the division.

~~[(2) Fees shall be charged for substance abuse and mental health treatment services, but services may not be refused to any person because of inability to pay.]~~

Section 5. Section **62A-15-108** is amended to read:

62A-15-108. Formula for allocation of funds to local substance abuse authorities and local mental health authorities.

(1) The board 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 17A, Chapter 3, Part 7, Local Substance Abuse Authorities, and mental health services in accordance with the provisions of this chapter and Title 17A, Chapter 3, Part 6, 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 board 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.

~~[(3) Contracts with local substance abuse authorities and local mental health authorities shall provide that the division may withhold funds otherwise allocated pursuant to this section to cover the costs of audits, attorneys' 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.]~~

Section 6. Section **62A-15-110** is amended to read:

62A-15-110. Contracts for substance abuse and mental health services -- Provisions -- Responsibilities.

~~[When]~~ (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 provision of this chapter and Title 17A, Chapter 3, Part 7, Local Substance

Abuse Authorities, or Title 17A, Chapter 3, Part 6, Local Mental Health Authorities, it shall ensure that those contracts include at least the following provisions:

~~[(1)]~~ (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 2, Audits of Political Subdivisions, Interlocal Organizations and Other Local Entities;

~~[(2)]~~ (b) in addition to the requirements described in Title 51, Chapter 2, Audits of Political Subdivisions, Interlocal Organizations and Other Local Entities the division:

~~[(a)]~~ (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

~~[(b)]~~ (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;

~~[(3)]~~ (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;

~~[(4)]~~ (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;

~~[(5)]~~ (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

~~[(6)]~~ (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.

Section 7. Repealer.

This act repeals:

Section 62A-15-109, Responsibilities of the Division of Substance Abuse and Mental health.

Section 62A-15-111, Responsibility for cost of services provided by local substance abuse or mental health authority.

Section 62A-15-112, Receipt of funds.

Section 8. Coordination clause.

(1) If this bill and S.B. 24, Local Human Services Authorities Amendments, both pass, it is the intent of the Legislature that the Office of Legislative Research and General Counsel, in preparing the Utah Code database for publication, shall:

(a) renumber Sections 17A-3-608 and 17A-3-704, as enacted in this bill, as Sections 17-43-306 and 17-43-204, respectively;

(b) renumber Sections 17-43-306, 17-43-307, and 17-43-308, as renumbered and amended in S.B. 24, as Sections 17-43-307, 17-43-308, and 17-43-309, respectively; and

(c) change the reference to Section 17-43-308 in Subsection 62A-15-103(4), as amended in S.B. 24, to Section 17-43-309.

(2) If this bill, S.B. 24, Local Human Services Authorities Amendments, and 1st Substitute S.B. 191, County Oversight of Local Authorities For Human Services, all pass, it is

the intent of the Legislature that the Office of Legislative Research and General Counsel, in preparing the Utah Code database for publication, shall modify Subsection 62A-2-101(17)(b)(i), as amended in S.B. 24, to read:

'(i) [~~a county governing body designated as~~] a local mental health authority under Section [~~17A-3-602~~] 17-43-301 or [as] a local substance abuse authority under Section [~~17A-3-701~~] 17-43-201; or'.