

1 **INFORMED CONSENT FOR**
2 **ELECTROCONVULSIVE TREATMENT AND**
3 **REPORTING REQUIREMENTS**

4 2003 GENERAL SESSION

5 STATE OF UTAH

6 **Sponsor: Katherine M. Bryson**

7 **This act amends the Local Mental Health Authority Act and the Substance Abuse and**
8 **Mental Health Act. The act applies to physicians, hospitals, and mental health facilities.**
9 **The act prohibits the use of electroconvulsive treatment on children and pregnant**
10 **women. The act requires informed consent for the use of electroconvulsive treatment on**
11 **adults. The act establishes the elements of informed consent. The act prohibits anyone**
12 **other than a physician from performing electroconvulsive treatment. The act requires**
13 **registration of equipment with the Division of Substance Abuse and Mental Health. The**
14 **act requires quarterly reporting of electroconvulsive treatment to the division and the**
15 **Health Data Committee in the Department of Health. The act requires the division to**
16 **enforce the reporting requirements and annually report statistical data regarding the use**
17 **of electroconvulsive treatment to the governor and the Legislature. The act has an**
18 **effective date of July 1, 2003.**

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

20 AMENDS:

21 **17A-3-611**, as renumbered and amended by Chapter 186, Laws of Utah 1990

22 **62A-15-704**, as renumbered and amended by Chapter 8, Laws of Utah 2002, Fifth

23 Special Session

24 ENACTS:

25 **62A-15-1101**, Utah Code Annotated 1953

26 **62A-15-1102**, Utah Code Annotated 1953

27 **62A-15-1103**, Utah Code Annotated 1953



- 28 **62A-15-1104**, Utah Code Annotated 1953
- 29 **62A-15-1105**, Utah Code Annotated 1953
- 30 **62A-15-1106**, Utah Code Annotated 1953
- 31 **62A-15-1107**, Utah Code Annotated 1953
- 32 **62A-15-1108**, Utah Code Annotated 1953

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

34 Section 1. Section **17A-3-611** is amended to read:

35 **17A-3-611. Specified treatments prohibited -- Criminal penalties.**

36 (1) It is a misdemeanor to:

37 (a) give [~~shock treatment,~~] a lobotomy[;] or surgery to anyone without the written
38 consent of [his] the person or the person's next of kin or legal guardian; or

39 (b) give electroconvulsive treatment to a person without the written consent of the
40 person in accordance with Sections 62A-15-1102 and 62A-15-1103.

41 (2) Services provided under this part are governed by [~~the~~] Title 58, Chapter 67, Utah
42 Medical Practice Act.

43 [~~(2)~~] (3) It is a felony to give psychiatric treatment, nonvocational mental health
44 counseling, case-finding testing, psychoanalysis, drugs, [~~shock treatment~~] electroconvulsive
45 treatment, lobotomy, or surgery to any individual for the purpose of changing his concept of,
46 belief about, or faith in God.

47 Section 2. Section **62A-15-704** is amended to read:

48 **62A-15-704. Invasive treatment -- Due process proceedings.**

49 (1) For purposes of this section, "invasive treatment" means treatment in which a
50 constitutionally protected liberty or privacy interest may be affected, including antipsychotic
51 medication, electroshock therapy, and psychosurgery.

52 (2) The requirements of this section, and Part 11, Electroconvulsive Treatment
53 Regulations, apply to all children receiving services or treatment from a local mental health
54 authority, its designee, or its provider regardless of whether a local mental health authority has
55 physical custody of the child or the child is receiving outpatient treatment from the local
56 authority, its designee, or provider.

57 (3) (a) The division shall promulgate rules, in accordance with Title 63, Chapter 46a,
58 Utah Administrative Rulemaking Act, establishing due process procedures for children prior to

59 any invasive treatment as follows:

60 (i) with regard to antipsychotic medications, if either the parent or child disagrees with
61 that treatment, a due process proceeding shall be held in compliance with the procedures
62 established under this Subsection (3); and

63 ~~[(ii) with regard to psychosurgery and electroshock therapy, a due process proceeding
64 shall be conducted pursuant to the procedures established under this Subsection (3), regardless
65 of whether the parent or child agree or disagree with the treatment; and]~~

66 ~~[(iii)]~~ (ii) other possible invasive treatments, except electroconvulsive treatment as
67 defined in Section 62A-15-1101, may be conducted unless either the parent or child disagrees
68 with the treatment, in which case a due process proceeding shall be conducted pursuant to the
69 procedures established under this Subsection (3).

70 (b) In promulgating the rules required by Subsection (3)(a), the division shall consider
71 the advisability of utilizing an administrative law judge, court proceedings, a neutral and
72 detached fact finder, and other methods of providing due process for the purposes of this
73 section. The division shall also establish the criteria and basis for determining when invasive
74 treatment should be administered.

75 Section 3. Section **62A-15-1101** is enacted to read:

76 **Part 11. Electroconvulsive Treatment Regulations**

77 **62A-15-1101. Application.**

78 (1) For purposes of this part, "electroconvulsive treatment" includes prefrontal sonic
79 sound treatment, or applied electrical voltage to the brain through electrodes which results in a
80 gran mal seizure or epileptic seizure and which is administered to treat mental illness.

81 (2) This part applies to the use of electroconvulsive treatment by any person who uses
82 or administers electroconvulsive treatment, including:

83 (a) a physician licensed under Title 58, Chapter 67, Utah Medical Practice Act, or Title
84 58, Chapter 68, Utah Osteopathic Medical Practice Act;

85 (b) a hospital or facility licensed under Section 26-21-9;

86 (c) a local mental health authority subject to this title, its designee or providers; and

87 (d) the Utah State Hospital and other mental health facilities.

88 Section 4. Section **62A-15-1102** is enacted to read:

89 **62A-15-1102. Use of electroconvulsive treatment.**

90 Electroconvulsive treatment may not be used on:
91 (1) a person who is younger than 18 years of age;
92 (2) a person who is pregnant; or
93 (3) a person who is 18 years of age or older, unless the person consents to the use of
94 the treatment in accordance with Section 62A-15-1103.

95 Section 5. Section **62A-15-1103** is enacted to read:

96 **62A-15-1103. Consent to treatment.**

97 (1) The division shall adopt administrative rules which establish a standard written
98 consent form to be used when electroconvulsive treatment is considered. The rule shall
99 prescribe the information that must be contained in the written consent for electroconvulsive
100 treatment.

101 (2) The written consent form must clearly state:

102 (a) the nature and purpose of the procedure;

103 (b) the nature, degree, duration, and probability of the side effects and significant risks
104 of the treatment commonly known by the medical profession, especially noting the possible
105 degree and duration of memory loss, the possibility of permanent irrevocable memory loss, and
106 the possibility of death;

107 (c) that there is a division of opinion as to the efficacy of the procedure; and

108 (d) the probable degree and duration of improvement or remission expected with or
109 without the procedure.

110 (3) Before a person receives each electroconvulsive treatment, the physician
111 administering the treatment shall ensure that:

112 (a) the person receives a written copy of the consent form that is in the person's
113 primary language, if possible;

114 (b) the contents of the consent form are explained to the person:

115 (i) orally, in simple, nontechnical terms in the person's primary language, if possible; or

116 (ii) through the use of a means reasonably calculated to communicate with a hearing
117 impaired or visually impaired person, if applicable;

118 (c) the person signs a copy of the consent form stating that the person has read the
119 consent form and understands the information included in the documents; and

120 (d) the signed copy of the consent form is made a part of the person's clinical record.

121 (4) For a person 65 years of age or older, before each treatment series begins, the
122 physician administering the procedure shall:

123 (a) ensure that two physicians have signed an appropriate form that states the procedure
124 is medically necessary;

125 (b) make the form described by Subsection (1) available to the person; and

126 (c) inform the person of any known current medical condition that may increase the
127 possibility of injury or death as a result of the treatment.

128 (5) (a) A person who consents to the administration of electroconvulsive treatment may
129 revoke the consent for any reason and at any time.

130 (b) Revocation of consent is effective immediately.

131 Section 6. Section **62A-15-1104** is enacted to read:

132 **62A-15-1104. Physician requirement.**

133 (1) Only a physician licensed under Title 58, Chapter 67, Utah Medical Practice Act, or
134 Title 58, Chapter 68, Utah Osteopathic Medical Practice Act, may administer electroconvulsive
135 treatment.

136 (2) A physician may not delegate the act of administering the treatment. A
137 nonphysician who administers electroconvulsive treatment is considered to be practicing
138 medicine in violation of Title 58, Chapter 67, Utah Medical Practice Act.

139 Section 7. Section **62A-15-1105** is enacted to read:

140 **62A-15-1105. Registration of equipment.**

141 (1) A physician may not administer electroconvulsive treatment unless the equipment
142 used to administer the treatment is registered with the division.

143 (2) A hospital or facility where electroconvulsive treatment is administered, or a
144 physician administering the treatment on an outpatient basis must file an application for
145 registration under this section. The applicant must submit the application to the division.

146 (3) The application must be accompanied by a nonrefundable application fee. The
147 division shall set the fee in accordance with Section 63-38-3.2 in a reasonable amount not to
148 exceed the cost to administer the registration, reporting, enforcement, and monitoring required
149 by this part.

150 (4) The application must contain:

151 (a) the model, manufacturer, and age of each piece of equipment used to administer the

152 treatment; and

153 (b) any other information required by the division.

154 (5) The division by rule may prohibit the registration and use of equipment of a type,
155 model, or age the division determines is dangerous.

156 Section 8. Section **62A-15-1106** is enacted to read:

157 **62A-15-1106. Reports.**

158 (1) A hospital or facility where electroconvulsive treatment is administered or a
159 physician administering the treatment on an outpatient basis shall submit to the division and to
160 the Health Data Committee created in Section 26-1-7, quarterly reports relating to the
161 administration of the treatment in the hospital or facility or by the physician.

162 (2) A report must state for each quarter:

163 (a) the name of each physician who has privileges in the facility to perform
164 electroconvulsive treatment and the number of electroconvulsive treatments performed by each
165 physician;

166 (b) the total number of persons who received the treatment;

167 (c) the age, sex, and race of each person receiving the treatment;

168 (d) the diagnosis for each person receiving the treatment;

169 (e) the source of the payment for the treatment;

170 (f) the average number of electroconvulsive treatments administered for each complete
171 series of treatments, but not including maintenance treatments;

172 (g) the average number of maintenance electroconvulsive treatments administered per
173 month;

174 (h) the number of fractures, reported memory losses, incidents of apnea, and cardiac
175 arrests without death;

176 (i) autopsy findings, including investigation of petichial hemorrhages and other small
177 blood vessel hemorrhages in the brain tissue, if death followed within 14 days after the date of
178 the administration of the treatment; and

179 (j) any other information required by the division.

180 (3) The information required by Subsections (2)(h) and (2)(i) must include the name of
181 the physician who administered the treatment for each occurrence listed in Subsections (2)(h)
182 and (2)(i).

183 Section 9. Section **62A-15-1107** is enacted to read:

184 **62A-15-1107. Use of information -- Report.**

185 (1) The division shall use the information received under Sections 62A-15-1105 and
186 62A-15-1106 to analyze and monitor the use of electroconvulsive treatment administered to
187 treat mental illness.

188 (2) (a) The division shall file annually with the governor and the Health and Human
189 Services Interim Committee of the Legislature a written report summarizing the information
190 received under Sections 62A-15-1105 and 62A-15-1106. The information in the report shall be
191 summarized by facility and by physician.

192 (b) The division may not directly or indirectly identify in a report issued under this
193 section a patient who received the treatment.

194 (c) The report prepared in accordance with this Subsection (2) is a public document
195 under the provisions of Title 63, Chapter 2, Government Records Access and Management Act.

196 Section 10. Section **62A-15-1108** is enacted to read:

197 **62A-15-1108. Enforcement.**

198 The division shall enforce the provisions of this part and may, as the division considers
199 appropriate:

200 (1) issue a warning to any physician, hospital, or facility who fails to obtain consent or
201 file a report required by this part; and

202 (2) report violations of this part to the appropriate licensing authority for the physician,
203 hospital, or facility.

204 Section 11. **Effective date.**

205 This act takes effect on July 1, 2003.

Legislative Review Note**as of 1-20-03 1:46 PM**

This legislation requires health care providers to disclose protected health information about a patient. This type of disclosure is generally prohibited under the federal Standards for Privacy of Individually Identifiable Health Information, 45 C.F.R. Parts 160 and 164. However, the federal privacy standards have an exception to the general prohibition if the disclosure is required by law. This bill appears to fall within the exception and would be a disclosure of protected health information required by law.

Office of Legislative Research and General Counsel

State Impact

Passage of this bill would require an appropriation of \$63,600 to the Department of Human Services to administer the provisions of the bill.

	<u>FY 04 Approp.</u>	<u>FY 05 Approp.</u>	<u>FY 04 Revenue</u>	<u>FY 05 Revenue</u>
General Fund	\$63,600	\$0	\$0	\$0
Dedicated Credits Revenue	\$0	\$62,100	\$0	\$62,100
TOTAL	<u><u>\$63,600</u></u>	<u><u>\$62,100</u></u>	<u><u>\$0</u></u>	<u><u>\$62,100</u></u>

Individual and Business Impact

There will be additional cost to physicians and hospitals that provide electroconvulsive treatment.
