

Representative Katherine M. Bryson proposes the following substitute bill:

**INFORMED CONSENT FOR
ELECTROCONVULSIVE TREATMENT AND
REPORTING REQUIREMENTS**

2003 GENERAL SESSION
STATE OF UTAH

Sponsor: Katherine M. Bryson

This act amends the Local Mental Health Authority Act and the Substance Abuse and Mental Health Act. The act applies to physicians, hospitals, and mental health facilities.

The act prohibits the use of electroconvulsive treatment on children younger than 14 years old. The act requires approval by a panel of physicians before administering electric shock treatment on a child between 14 and 18 years of age. The act requires informed consent for the use of electroconvulsive treatment on adults. The act establishes the elements of informed consent. The act prohibits anyone other than a physician from performing electroconvulsive treatment. The act requires quarterly reporting of electroconvulsive treatment to the division and the Health Data Committee in the Department of Health. The act requires the division to enforce the reporting requirements and annually report statistical data regarding the use of electroconvulsive treatment to the governor and the Legislature. The act has an effective date of July 1, 2003. The reporting requirements sunset in 2008.

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

AMENDS:

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

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

Special Session

ENACTS:



- 26 **62A-15-1101**, Utah Code Annotated 1953
- 27 **62A-15-1102**, Utah Code Annotated 1953
- 28 **62A-15-1103**, Utah Code Annotated 1953
- 29 **62A-15-1104**, Utah Code Annotated 1953
- 30 **62A-15-1105**, Utah Code Annotated 1953
- 31 **62A-15-1106**, Utah Code Annotated 1953
- 32 **62A-15-1107**, Utah Code Annotated 1953
- 33 **62A-15-1108**, Utah Code Annotated 1953
- 34 **63-55b-162**, Utah Code Annotated 1953

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

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

37 **17A-3-611. Specified treatments prohibited -- Criminal penalties.**

38 (1) It is a misdemeanor to:

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

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

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

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

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

50 **62A-15-704. Invasive treatment -- Due process proceedings.**

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

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

57 physical custody of the child or the child is receiving outpatient treatment from the local
58 authority, its designee, or provider.

59 (3) (a) The division shall promulgate rules, in accordance with Title 63, Chapter 46a,
60 Utah Administrative Rulemaking Act, establishing due process procedures for children prior to
61 any invasive treatment as follows:

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

65 (ii) with regard to psychosurgery and electroshock therapy administered to a child age
66 14 or older, a due process proceeding shall be conducted pursuant to the procedures established
67 under this Subsection (3), regardless of whether the parent or child agree or disagree with the
68 treatment; and

69 [~~(iii)~~] (ii) other possible invasive treatments may be conducted unless either the parent
70 or child disagrees with the treatment, in which case a due process proceeding shall be
71 conducted pursuant to the procedures established under this Subsection (3).

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

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

78 **Part 11. Electroconvulsive Treatment Regulations**

79 **62A-15-1101. Application.**

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

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

85 (a) a physician licensed under Title 58, Chapter 67, Utah Medical Practice Act, or Title
86 58, Chapter 68, Utah Osteopathic Medical Practice Act;

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

- 88 (c) a local mental health authority subject to this title, its designee or providers; and
- 89 (d) the Utah State Hospital and other mental health facilities.

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

91 **62A-15-1102. Use of electroconvulsive treatment.**

92 Electroconvulsive treatment may not be used on:

- 93 (1) a person who is younger than 14 years of age;
- 94 (2) a person who is between 14 and 18 years of age, unless the provisions of
- 95 Subsection 62A-15-1103(5) are met; or

- 96 (3) a person who is 18 years of age or older, unless the person consents to the use of
- 97 the treatment in accordance with Section 62A-15-1103.

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

99 **62A-15-1103. Consent to treatment.**

100 (1) The division shall adopt administrative rules which establish a standard written

101 consent form to be used when electroconvulsive treatment is considered. The rule shall

102 prescribe the information that must be contained in the written consent for electroconvulsive

103 treatment.

104 (2) The written consent form must clearly state at a minimum:

- 105 (a) the nature and purpose of the procedure;
- 106 (b) the nature, potential, and probability of the side effects and significant risks of the
- 107 treatment commonly known by the medical profession, especially noting the possible degree
- 108 and duration of memory loss, the possibility of permanent irrevocable memory loss, and the
- 109 possibility of death; and

110 (c) the probable degree and duration of improvement or remission expected with or

111 without the procedure.

112 (3) Before each treatment series begins the physician administering the treatment shall

113 ensure that:

114 (a) the person receives a written copy of the consent form that is:

- 115 (i) in English; or
- 116 (ii) in the person's primary language, if not in English and if provided by the division;

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

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

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

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

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

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

126 (a) ensure that a physician has conducted a physical examination of the person and has
127 determined that the procedure is appropriate and is medically necessary;

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

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

131 (5) For a person between the age of 14 and 18 years of age, before each treatment
132 series begins, the physician administering the procedure shall ensure that:

133 (a) the due process provisions of Section 62A-15-704 have been met, if applicable; or

134 (b) if Section 62A-15-704 is not applicable:

135 (i) the parent or legal guardian of the child has been given the form described by
136 Subsection (1); and

137 (ii) three physicians have signed an appropriate form that states the procedure is
138 medically necessary.

139 (6) (a) A person who consents to the administration of electroconvulsive treatment may
140 revoke the consent for any reason and at any time.

141 (b) Revocation of consent is effective immediately.

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

143 **62A-15-1104. Physician requirement.**

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

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

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

151 **62A-15-1105. Reports.**

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

156 (2) A report must state semiannually:

157 (a) the name of each physician who has privileges in the facility to perform
158 electroconvulsive treatment and the number of electroconvulsive treatments performed by each
159 physician;

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

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

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

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

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

166 (g) the average number of maintenance electroconvulsive treatments administered per
167 month;

168 (h) the number of fractures, reported complaints of memory losses, incidents of apnea,
169 and cardiac arrests without death;

170 (i) autopsy findings, including investigation of petichial hemorrhages and other small
171 blood vessel hemorrhages in the brain tissue, if an autopsy was performed and if death
172 followed within 14 days after the date of the administration of the treatment; and

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

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

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

178 **62A-15-1106. Use of information -- Report.**

179 (1) The division shall use the information received under Section 62A-15-1105 to
180 analyze and monitor the use of electroconvulsive treatment administered to treat mental illness.

181 (2) (a) The division shall annually file with the governor and the Health and Human
182 Services Interim Committee of the Legislature a written report summarizing the information
183 received under Section 62A-15-1105. The information in the report shall be summarized by
184 facility and by physician.

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

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

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

190 **62A-15-1107. Enforcement.**

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

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

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

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

198 **62A-15-1108. Consent to healthcare.**

199 A health care provider who obtains informed consent in accordance with this part has
200 also met the requirements for informed consent under Section 78-14-5.

201 Section 11. Section **63-55b-162** is enacted to read:

202 **63-55b-162. Repeal dates -- Title 62A.**

203 Sections 62A-15-1105 and 62A-15-1106 regarding reporting requirements for
204 electroconvulsive shock treatments are repealed on July 1, 2008.

205 Section 12. **Effective date.**

206 This act takes effect on July 1, 2003.