

**COUNTY OVERSIGHT OF LOCAL AUTHORITIES
FOR HUMAN SERVICES**

2003 GENERAL SESSION

STATE OF UTAH

Sponsor: Carlene M. Walker

This act modifies provisions related to Special Districts. The act shifts, in certain counties, the responsibilities associated with local mental health authorities and local substance abuse authorities from the county legislative body to the county executive. The act clarifies that counties may jointly provide mental health services and substance abuse services through an interlocal agreement. The act provides for the designation of officers for combined local mental health or substance abuse authorities and for the adoption of policies for the combined authorities. The act expands the records that a contract provider is required to make available for inspection and expands those who may inspect those records. The act expands mental health and substance abuse services to include those for incarcerated persons. The act modifies the oversight responsibility of a local mental health or substance abuse authority over contract providers and their employees. The act provides a coordination clause.

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

AMENDS:

17A-3-602, as last amended by Chapter 8, Laws of Utah 2002, Fifth Special Session

17A-3-603.5, as enacted by Chapter 106, Laws of Utah 1999

17A-3-701, as last amended by Chapter 8, Laws of Utah 2002, Fifth Special Session

17A-3-703, as enacted by Chapter 106, Laws of Utah 1999

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

Section 1. Section **17A-3-602** is amended to read:

17A-3-602. Local mental health authorities -- Responsibilities.

(1) (a) (i) In each county operating under a county executive-council form of government under Section 17-52-504, the county executive is the local mental health authority.

(ii) In each county operating under a council-manager form of government under

Section 17-52-505, the county manager is the local mental health authority.

~~[(1) AH]~~ (iii) In each county other than a county described in Subsection (1)(a)(i) or (ii), the county legislative [bodies in this state are] body is the local mental health [authorities] authority.

(b) Within legislative appropriations and county matching funds required by this section, under the policy direction of the [state Board of Substance Abuse and Mental Health] board and the administrative direction of the [Division of Substance Abuse and Mental Health within the Department of Human Services,] division, each local mental health [authorities] authority shall provide mental health services to persons within [their respective counties] the county. [Two]

(2) (a) By executing an interlocal agreement under Title 11, Chapter 13, Interlocal Cooperation Act, two or more counties may join to provide mental health prevention and treatment services.

~~[(2)]~~ (b) The legislative bodies of counties joining to provide services may establish acceptable ways of apportioning the cost of mental health services. [Any]

(c) Each agreement for joint mental health services [may] shall:

(i) (A) designate the treasurer of one of the participating counties or another person as the treasurer for the combined mental health authorities and as the custodian of moneys available for [those] the joint services[;]; and

(B) provide that the designated treasurer, or other disbursing officer authorized by the treasurer, may make payments from [those] the moneys available for [such purposes] the joint services upon audit of the appropriate auditing officer or officers representing the participating counties[; The];

(ii) provide for the appointment of an independent auditor or a county auditor of one of the participating counties as the designated auditing officer for the combined mental health authorities;

(iii) (A) provide for the appointment of the county or district attorney of one of the participating counties as the designated legal officer for the combined mental health authorities; and

(B) authorize the designated legal officer to request and receive the assistance of the county or district attorneys of the other participating counties in defending or prosecuting actions within their counties relating to the combined mental health authorities; and

(iv) provide for the adoption of management, clinical, financial, procurement, personnel, and administrative policies as already established by one of the participating counties or as approved by the legislative body of each participating county or interlocal board.

(d) An agreement for joint mental health services may provide for:

~~(a)~~ (i) joint operation of services and facilities or for operation of services and facilities under contract by one participating local mental health authority for other participating local mental health authorities; and

~~(b)~~ (ii) allocation of appointments of members of the mental health advisory council between or among participating counties.

(3) (a) ~~[All county legislative bodies, as]~~ Each local mental health ~~[authorities, are]~~ authority is accountable to the ~~[Department of Human Services]~~ department, the Department of Health, and the state with regard to the use of state and federal funds received from those departments for mental health services, regardless of whether the services are provided by a private contract provider.

(b) ~~[A]~~ Each local mental health authority shall comply, and require compliance by its contract provider, with all directives issued by the ~~[Department of Human Services]~~ department and the Department of Health regarding the use and expenditure of state and federal funds received from those departments for the purpose of providing mental health programs and services. The ~~[Department of Human Services]~~ department and Department of Health shall ensure that those directives are not duplicative or conflicting, and shall consult and coordinate with local mental health authorities with regard to programs and services.

(4) ~~[Local]~~ (a) Each local mental health ~~[authorities]~~ authority shall:

~~(a)~~ (i) review and evaluate mental health needs and services, including mental health needs and services for persons incarcerated in a county jail or other county correctional facility;

~~(b)~~ (ii) as provided in Subsection (4)(b), annually prepare and submit to the division a

plan for mental health funding and service delivery[. ~~The plan shall include services for adults, youth, and children, including, but not limited to, the following:~~], either directly by the local mental health authority or by contract:

~~[(i) inpatient care and services;]~~

~~[(ii) residential care and services;]~~

~~[(iii) outpatient care and services;]~~

~~[(iv) 24-hour crisis care and services;]~~

~~[(v) psychotropic medication management;]~~

~~[(vi) psychosocial rehabilitation including vocational training and skills development;]~~

~~[(vii) case management;]~~

~~[(viii) community supports including in-home services, housing, family support services, and respite services; and]~~

~~[(ix) consultation and education services, including but not limited to, case consultation, collaboration with other service agencies, public education, and public information;]~~

~~[(e)] (iii) establish and maintain, either directly or by contract, programs licensed under Title 62A, Chapter 2, Licensure of Programs and Facilities;~~

~~[(d)] (iv) appoint, directly or by contract, a full-time or part-time director for mental health programs and prescribe [his] the director's duties;~~

~~[(e)] (v) provide input and comment on new and revised policies established by the [state Board of Substance Abuse and Mental Health] board;~~

~~[(f)] (vi) establish and require contract providers to establish administrative, clinical, personnel, financial, procurement, and management policies regarding mental health services and facilities, in accordance with the policies of the [state Board of Substance Abuse and Mental Health] board and state and federal law;~~

~~[(g)] (vii) establish mechanisms allowing for direct citizen input;~~

~~[(h)] (viii) annually contract with the [Division of Substance Abuse and Mental Health] division to provide mental health programs and services in accordance with the provisions of Title 62A, Chapter 15, Substance Abuse and Mental Health Act;~~

~~[(i)]~~ (ix) comply with all applicable state and federal statutes, policies, audit requirements, contract requirements, and any directives resulting from those audits and contract requirements;

~~[(j)]~~ (x) provide funding equal to at least 20% of the state funds that it receives to fund services described in the plan; and

~~[(k)]~~ (xi) comply with the requirements and procedures of Title 11, Chapter 13, Interlocal Cooperation Act, Title 17A, Chapter 1, Part 4, Uniform Fiscal Procedures for Special Districts Act, and Title 51, Chapter 2, Audits of Political Subdivisions, Interlocal Organizations and Other Local Entities.

(b) Each plan under Subsection (4)(a)(ii) shall include services for adults, youth, and children, which may include:

(i) inpatient care and services;

(ii) residential care and services;

(iii) outpatient care and services;

(iv) 24-hour crisis care and services;

(v) psychotropic medication management;

(vi) psychosocial rehabilitation, including vocational training and skills development;

(vii) case management;

(viii) community supports, including in-home services, housing, family support services, and respite services;

(ix) consultation and education services, including case consultation, collaboration with other county service agencies, public education, and public information; and

(x) services to persons incarcerated in a county jail or other county correctional facility.

(5) Before disbursing any public funds, each local mental health ~~[authorities]~~ authority shall require that ~~[all entities]~~ each entity that ~~[receive]~~ receives any public funds from a local mental health authority ~~[agree]~~ agrees in writing that:

(a) ~~[the division may examine]~~ the entity's financial records~~[:]~~ and other records relevant to the entity's performance of the services provided to the mental health authority, except patient

identifying information, shall be subject to examination by:

(i) the division;

(ii) the local mental health authority director;

(iii) (A) the county treasurer and county or district attorney; or

(B) if two or more counties jointly provide mental health services under an agreement under Subsection (2), the designated treasurer and the designated legal officer;

(iv) the county legislative body; and

(v) in a county with a county executive that is separate from the county legislative body, the county executive;

(b) the county auditor may examine and audit the entity's financial and other records relevant to the entity's performance of the services provided to the local mental health authority; and

(c) the entity will comply with the provisions of Subsection (3)(b).

(6) ~~[Local]~~ A local mental health ~~[authorities]~~ authority may receive property, grants, gifts, supplies, materials, contributions, and any benefit derived therefrom, for mental health services. If those gifts are conditioned upon their use for a specified service or program, they shall be so used.

(7) (a) ~~[For purposes of]~~ As used in this section, "public funds" means the same as that term is defined in Section 17A-3-603.5.

(b) Nothing in this section limits or prohibits an organization exempt under Section 501(c)(3), Internal Revenue Code, from using public funds for any business purpose or in any financial arrangement that is otherwise lawful for that organization.

Section 2. Section **17A-3-603.5** is amended to read:

17A-3-603.5. Definition of "public funds" -- Responsibility for oversight of public funds -- Mental health programs and services.

(1) As used in this section, "public funds":

(a) means:

(i) federal [monies] money received from the [Department of Human Services]

department or the Department of Health~~;~~; and

(ii) state ~~[monies]~~ money appropriated by the Legislature to the ~~[Department of Human Services]~~ department, the Department of Health, a county governing body, or a local mental health authority for the purposes of providing mental health programs or services~~["Public funds"]~~; and

(b) includes ~~[those]~~ that federal and state ~~[monies that have]~~ money:

(i) even after the money has been transferred by a local mental health authority to a private provider under an annual or otherwise ongoing contract to provide comprehensive mental health programs or services for the local mental health authority~~["Those monies maintain the nature of "public funds"]~~; and

(ii) while in the possession of the private ~~[entity that has an annual or otherwise ongoing contract with a local mental health authority to provide comprehensive mental health programs or services for the local mental health authority]~~ provider.

(2) Each local mental health authority is responsible for oversight of all public funds received by it, to determine that those public funds are utilized in accordance with federal and state law, the rules and policies of the ~~[Department of Human Services]~~ department and the Department of Health, and the provisions of any contract between the local mental health authority and the ~~[Department of Human Services]~~ department, the Department of Health, or a private provider. That oversight includes requiring that neither the contract provider, as described in Subsection (1), nor any of its employees:

(a) violate any applicable federal or state criminal law;

(b) knowingly violate~~["on more than one occasion,"]~~ any applicable rule or policy of the ~~[Department of Human Services]~~ department or Department of Health, or any provision of contract between the local mental health authority and the ~~[Department of Human Services]~~ department, the Department of Health, or the private provider;

(c) knowingly keep any false account or make any false entry or erasure in any account of or relating to the public funds;

(d) fraudulently alter, falsify, conceal, destroy, or obliterate any account of or relating to

public funds;

(e) fail to ensure competent oversight for lawful disbursement of public funds;

(f) appropriate public funds for an unlawful use or for a use that is not in compliance with contract provisions; or

(g) knowingly or intentionally use public funds unlawfully or in violation of a governmental contract provision, or in violation of state policy.

(3) Nothing in this section limits or prohibits an organization exempt under Section 501(c)(3), Internal Revenue Code, from using public funds for any business purpose or in any financial arrangement that is otherwise lawful for that organization.

(4) A local mental health authority that knew or reasonably should have known of any of the circumstances described in Subsection (2), and that fails or refuses to take timely corrective action in good faith shall, in addition to any other penalties provided by law, be required to make full and complete repayment to the state of all public funds improperly used or expended.

(5) Any public funds required to be repaid to the state by a local mental health authority pursuant to Subsection (4), based upon the actions or failure of the contract provider, may be recovered by the local mental health authority from its contract provider, in addition to the local mental health authority's costs and attorney's fees.

Section 3. Section **17A-3-701** is amended to read:

17A-3-701. Local substance abuse authorities -- Responsibilities.

(1) (a) (i) In each county operating under a county executive-council form of government under Section 17-52-504, the county executive is the local substance abuse authority.

(ii) In each county operating under a council-manager form of government under Section 17-52-505, the county manager is the local substance abuse authority.

~~[(1) AH] (iii) In each county other than a county described in Subsection (1)(a)(i) or (ii),~~
the county legislative [bodies in this state are] body is the local substance abuse [authorities]
authority.

(b) Within legislative appropriations and county matching funds required by this section, and under the policy direction of the [state Board of Substance Abuse and Mental Health] board

and the administrative direction of the ~~[Division of Substance Abuse and Mental Health within the Department of Human Services,]~~ division, each local substance abuse ~~[authorities]~~ authority shall:

(i) develop substance abuse prevention and treatment services plans; and

(ii) provide substance abuse services to residents of [their respective counties] the county. [Two]

(2) (a) By executing an interlocal agreement under Title 11, Chapter 13, Interlocal Cooperation Act, two or more counties may join to provide substance abuse prevention and treatment services.

~~[(2)]~~ (b) The legislative bodies of counties joining to provide services may establish acceptable ways of apportioning the cost of substance abuse services. [Any]

(c) Each agreement for joint substance abuse services [may] shall:

(i) (A) designate the treasurer of one of the participating counties or another person as the treasurer for the combined substance abuse authorities and as the custodian of moneys available for [those] the joint services[;]; and

(B) provide that the designated treasurer, or other disbursing officer authorized by the treasurer, may make payments from [those] the moneys for [such purposes] the joint services upon audit of the appropriate auditing officer or officers representing the participating counties[-The];

(ii) provide for the appointment of an independent auditor or a county auditor of one of the participating counties as the designated auditing officer for the combined substance abuse authorities;

(iii) (A) provide for the appointment of the county or district attorney of one of the participating counties as the designated legal officer for the combined substance abuse authorities; and

(B) authorize the designated legal officer to request and receive the assistance of the county or district attorneys of the other participating counties in defending or prosecuting actions within their counties relating to the combined substance abuse authorities; and

(iv) provide for the adoption of management, clinical, financial, procurement, personnel, and administrative policies as already established by one of the participating counties or as approved by the legislative body of each participating county or interlocal board.

(d) An agreement for joint substance abuse services may provide for joint operation of services and facilities or for operation of services and facilities under contract by one participating local substance abuse authority for other participating local substance abuse authorities.

(3) (a) ~~[All county legislative bodies, as]~~ Each local substance abuse ~~[authorities, are]~~ authority is accountable to the ~~[Department of Human Services]~~ department, the Department of Health, and the state with regard to the use of state and federal funds received from those departments for substance abuse services, regardless of whether the services are provided by a private contract provider.

(b) ~~[A]~~ Each local substance abuse authority shall comply, and require compliance by its contract provider, with all directives issued by the ~~[Department of Human Services]~~ department and the Department of Health regarding the use and expenditure of state and federal funds received from those departments for the purpose of providing substance abuse programs and services. The ~~[Department of Human Services]~~ department and Department of Health shall ensure that those directives are not duplicative or conflicting, and shall consult and coordinate with local substance abuse authorities with regard to programs and services.

(4) ~~[Local]~~ Each local substance abuse ~~[authorities]~~ authority shall:

(a) review and evaluate substance abuse prevention and treatment needs and services, including substance abuse needs and services for individuals incarcerated in a county jail or other county correctional facility;

(b) annually prepare and submit ~~[a plan]~~ to the division a plan for funding and service delivery~~[- the plan shall include, but is not limited to,]~~ that includes:

(i) provisions for services, either directly by the substance abuse authority or by contract, for adults, youth, and children, including those incarcerated in a county jail or other county correctional facility; and

- (ii) primary prevention, targeted prevention, early intervention, and treatment services;
- (c) establish and maintain, either directly or by contract, programs licensed under Title 62A, Chapter 2, Licensure of Programs and Facilities;
- (d) appoint directly or by contract a full or part time director for substance abuse programs, and prescribe ~~[his]~~ the director's duties;
- (e) provide input and comment on new and revised policies established by the ~~[state Board of Substance Abuse and Mental Health]~~ board;
- (f) establish and require contract providers to establish administrative, clinical, procurement, personnel, financial, and management policies regarding substance abuse services and facilities, in accordance with the policies of the ~~[state Board of Substance Abuse and Mental Health]~~ board, and state and federal law;
- (g) establish mechanisms allowing for direct citizen input;
- (h) annually contract with the ~~[Division of Substance Abuse and Mental Health]~~ division to provide substance abuse programs and services in accordance with the provisions of Title 62A, Chapter 15, Substance Abuse and Mental Health Act;
- (i) comply with all applicable state and federal statutes, policies, audit requirements, contract requirements, and any directives resulting from those audits and contract requirements;
- (j) promote or establish programs for the prevention of substance abuse within the community setting through community-based prevention programs;
- (k) provide funding equal to at least 20% of the state funds that it receives to fund services described in the plan;
- (l) comply with the requirements and procedures of Title 11, Chapter 13, Interlocal Cooperation Act, Title 17A, Chapter 1, Part 4, Uniform Fiscal Procedures for Special Districts Act, and Title 51, Chapter 2, Audits of Political Subdivisions, Interlocal Organizations and Other Local Entities;
- (m) for persons convicted of driving under the influence in violation of Subsection 41-6-44(2) or Section 41-6-44.6, conduct the following as defined in Section 41-6-44:
 - (i) a screening and assessment;

(ii) an educational series; and

(iii) substance abuse treatment; and

(n) utilize proceeds of the accounts described in Subsection 62A-15-503(1) to supplement the cost of providing the services described in Subsection (4)(m).

(5) Before disbursing any public funds, each local substance abuse [authorities] authority shall require that [all entities] each entity that [receive] receives any public funds from [a] the local substance abuse authority [agree] agrees in writing that:

(a) [the division may examine] the entity's financial records[;] and other records relevant to the entity's performance of the services provided to the local substance abuse authority, except patient identifying information, shall be subject to examination by:

(i) the division;

(ii) the local substance abuse authority director;

(iii) (A) the county treasurer and county or district attorney; or

(B) if two or more counties jointly provide substance abuse services under an agreement under Subsection (2), the designated treasurer and the designated legal officer;

(iv) the county legislative body; and

(v) in a county with a county executive that is separate from the county legislative body, the county executive;

(b) the county auditor may examine and audit the entity's financial and other records relevant to the entity's performance of the services provided to the local substance abuse authority; and

(c) the entity will comply with the provisions of Subsection (3)(b).

(6) ~~[Local]~~ A local substance abuse ~~[authorities]~~ authority may receive property, grants, gifts, supplies, materials, contributions, and any benefit derived therefrom, for substance abuse services. If those gifts are conditioned upon their use for a specified service or program, they shall be so used.

(7) (a) ~~[For purposes of]~~ As used in this section, "public funds" means the same as that term is defined in Section 17A-3-703.

(b) Nothing in this section limits or prohibits an organization exempt under Section 501(c)(3), Internal Revenue Code, from using public funds for any business purpose or in any financial arrangement that is otherwise lawful for that organization.

Section 4. Section 17A-3-703 is amended to read:

17A-3-703. Definition of "public funds" -- Responsibility for oversight of public funds -- Substance abuse programs and services.

(1) As used in this section, "public funds":

(a) means:

(i) federal [~~monies~~] money received from the [~~Department of Human Services~~] department or the Department of Health[~~;~~]; and

(ii) state [~~monies~~] money appropriated by the Legislature to the [~~Department of Human Services~~] department, the Department of Health, a county governing body, or a local substance abuse authority for the purposes of providing substance abuse programs or services[~~."Public funds"~~]; and

(b) includes [~~those~~] that federal and state [~~monies that have~~] money:

(i) even after the money has been transferred by a local substance abuse authority to a private provider under an annual or otherwise ongoing contract to provide comprehensive substance abuse programs or services for the local substance abuse authority[~~."Those monies maintain the nature of "public funds"~~]; and

(ii) while in the possession of the private [~~entity that has an annual or otherwise ongoing contract with a local substance abuse authority to provide comprehensive substance abuse programs or services for the local substance abuse authority~~] provider.

(2) Each local substance abuse authority is responsible for oversight of all public funds received by it, to determine that those public funds are utilized in accordance with federal and state law, the rules and policies of the [~~Department of Human Services~~] department and the Department of Health, and the provisions of any contract between the local substance abuse authority and the [~~Department of Human Services~~] department, the Department of Health, or a private provider. That oversight includes requiring that neither the contract provider, as

described in Subsection (1), nor any of its employees:

- (a) violate any applicable federal or state criminal law;
- (b) knowingly violate~~[, on more than one occasion,]~~ any applicable rule or policy of the ~~[Department of Human Services]~~ department or Department of Health, or any provision of contract between the local substance abuse authority and the ~~[Department of Human Services]~~ department, the Department of Health, or the private provider;
- (c) knowingly keep any false account or make any false entry or erasure in any account of or relating to the public funds;
- (d) fraudulently alter, falsify, conceal, destroy, or obliterate any account of or relating to public funds;
- (e) fail to ensure competent oversight for lawful disbursement of public funds;
- (f) appropriate public funds for an unlawful use or for a use that is not in compliance with contract provisions; or
- (g) knowingly or intentionally use public funds unlawfully or in violation of a governmental contract provision, or in violation of state policy.

(3) Nothing in this section limits or prohibits an organization exempt under Section 501(c)(3), Internal Revenue Code, from using public funds for any business purpose or in any financial arrangement that is otherwise lawful for that organization.

(4) ~~[A]~~ Each local substance abuse authority that ~~[knew]~~ knows or reasonably should ~~[have known]~~ know of any of the circumstances described in Subsection (2), and that fails or refuses to take timely corrective action in good faith shall, in addition to any other penalties provided by law, be required to make full and complete repayment to the state of all public funds improperly used or expended.

(5) Any public funds required to be repaid to the state by a local substance abuse authority ~~[pursuant to]~~ under Subsection (4), based upon the actions or failure of the contract provider, may be recovered by the local substance abuse authority from its contract provider, in addition to the local substance abuse authority's costs and attorney's fees.

Section 5. **Coordination clause.**

If this bill and S.B. 24, Local Human Services Authorities Amendments, both pass, it is the intent of the Legislature that:

(1) except as provided in Subsection (2), the amendments in this bill to Sections 17A-3-602, 17A-3-603.5, 17A-3-701, and 17A-3-703 supercede the amendments in S.B. 24 to those sections; and

(2) in preparing the Utah Code database for publication, the Office of Legislative Research and General Counsel shall:

(a) renumber Sections 17A-3-602, 17A-3-603.5, 17A-3-701, and 17A-3-703 as those sections are renumbered in S.B. 24;

(b) change the reference to Section 17A-3-603.5 in Subsection 17A-3-602(7)(a) of this bill to Section 17-43-303; and

(c) change the reference to Section 17A-3-703 in Subsection 17A-3-701(7)(a) of this bill to Section 17-43-203.