

**COUNTY MENTAL HEALTH AMENDMENTS**

2004 GENERAL SESSION

STATE OF UTAH

**Sponsor: Gene Davis**

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**LONG TITLE**

**General Description:**

This bill amends provisions related to the Local Mental Health and Local Substance Abuse Authority.

**Highlighted Provisions:**

This bill:

- ▶ adds a representative of the legislative body of each participating county to the advisory council;
- ▶ requires the county legislative body to approve the funding and service delivery plan for the local authority; and
- ▶ restricts use of public funds to purposes authorized in the mental health or substance abuse plan.

**Monies Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**17-43-201**, as renumbered and amended by Chapter 22 and last amended by Chapter 262, Laws of Utah 2003

**17-43-203**, as renumbered and amended by Chapter 22 and last amended by Chapter 262, Laws of Utah 2003

**17-43-301**, as renumbered and amended by Chapter 22 and last amended by Chapters 195 and 262, Laws of Utah 2003

**17-43-303**, as renumbered and amended by Chapter 22 and last amended by Chapter 262, Laws of Utah 2003

**17-43-309**, as renumbered and amended by Chapter 22, Laws of Utah 2003

**62A-15-102**, as renumbered and amended by Chapter 8, Laws of Utah 2002, Fifth Special Session

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

Section 1. Section **17-43-201** is amended to read:

**17-43-201. 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~~] legislative body is the local substance abuse authority, provided however that any contract for plan services shall be administered by the county executive.

(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.

(iii) In each county other than a county described in Subsection (1)(a)(i) or (ii), the county legislative body is the local substance abuse authority.

(b) Within legislative appropriations and county matching funds required by this section, and under the policy direction of the board and the administrative direction of the division, each local substance abuse authority shall:

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

(ii) provide substance abuse services to residents of the county.

(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.

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

(c) Each agreement for joint substance abuse services 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 the joint services; and

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

(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) Each local substance abuse authority is accountable to the 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) Each local substance abuse authority shall comply, and require compliance by its contract provider, with all directives issued by the 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 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) Each local substance abuse 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 to the division a plan approved by the county legislative body for funding and service delivery 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 the director's duties;

(e) provide input and comment on new and revised policies established by the 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 board, and state and federal law;

(g) establish mechanisms allowing for direct citizen input;

(h) annually contract with the 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 authority shall require that each entity that receives any public funds from the local substance abuse authority agrees in writing that:

(a) 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) A local substance abuse 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) As used in this section, "public funds" means the same as that term is defined in Section 17-43-203.

~~[(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.]~~

(b) Public funds received for the provision of services pursuant to the local substance abuse plan may not be used for any other purpose except those authorized in the contract between the local substance abuse authority and the provider for the provision of plan services.

Section 2. Section **17-43-203** is amended to read:

**17-43-203. 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 money received from the department or the Department of Health; and

(ii) state money appropriated by the Legislature to the 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; and

(b) includes that federal and state 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; and

(ii) while in the possession of the private 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 and the Department of Health, and the provisions of any contract between the local substance abuse authority and the 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 any applicable rule or policy of the department or Department of Health, or any provision of contract between the local substance abuse authority and the 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)]~~ (3) Each local substance abuse authority that knows or reasonably should 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)]~~ (4) Any public funds required to be repaid to the state by a local substance abuse authority under Subsection ~~[(4)]~~ (3), 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 3. Section **17-43-301** is amended to read:

**17-43-301. 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]~~ legislative body is the local mental health authority, provided however that any contract for plan services shall be administered by the county executive.

(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.

(iii) In each county other than a county described in Subsection (1)(a)(i) or (ii), the county legislative body is the local mental health authority.

(b) Within legislative appropriations and county matching funds required by this section, under the policy direction of the board and the administrative direction of the division, each local mental health authority shall provide mental health services to persons within the county.

(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.

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

(c) Each agreement for joint mental health services 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 the joint services; and

(B) provide that the designated treasurer, or other disbursing officer authorized by the

treasurer, may make payments from the moneys available for the joint services upon audit of the appropriate auditing officer or officers representing the participating counties;

(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:

(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

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

(3) (a) Each local mental health authority is accountable to the 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) Each local mental health authority shall comply, and require compliance by its contract provider, with all directives issued by the 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 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) (a) Each local mental health authority shall:

(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;

(ii) as provided in Subsection (4)(b), annually prepare and submit to the division a plan approved by the county legislative body for mental health funding and service delivery, either directly by the local mental health authority or by contract;

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

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

(v) provide input and comment on new and revised policies established by the board;

(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 board and state and federal law;

(vii) establish mechanisms allowing for direct citizen input;

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

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

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

(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; and

(xii) take and retain physical custody of minors committed to the physical custody of local mental health authorities by a judicial proceeding under Title 62A, Chapter 15, Part 7, Commitment of Persons Under Age 18 to Division of Substance Abuse and Mental Health.

(b) Each plan under Subsection (4)(a)(ii) shall include services for adults, youth, and children, which ~~may~~ shall 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 authority shall require that each entity that receives any public funds from a local mental health authority agrees in writing that:

(a) 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) A local mental health 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) As used in this section, "public funds" means the same as that term is defined in Section 17-43-303.

~~[(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.]~~

(b) Public funds received for the provision of services pursuant to the local mental health plan may not be used for any other purpose except those authorized in the contract between the local mental health authority and the provider for the provision of plan services.

Section 4. Section **17-43-303** is amended to read:

**17-43-303. 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 money received from the department or the Department of Health; and  
(ii) state money appropriated by the Legislature to the 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; and  
(b) includes that federal and state 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; and

(ii) while in the possession of the private 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 and the Department of Health, and the provisions of any contract between the local mental health authority and the 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 any applicable rule or policy of the department or Department of Health, or any provision of contract between the local mental health authority and the 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)]~~ (3) 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)]~~ (4) Any public funds required to be repaid to the state by a local mental health authority pursuant to Subsection ~~[(4)]~~ (3), 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 5. Section **17-43-309** is amended to read:

**17-43-309. Local mental health advisory councils -- Powers and responsibilities.**

(1) A county legislative body may, separately or in conjunction with one or more other counties, establish a local mental health advisory council.

(2) Mental health advisory council members shall be appointed by their respective county legislative bodies. Initially one-fourth of the members shall be appointed for one year, one-fourth for two years, one-fourth for three years, and one-fourth for four years. After the initial appointment, the term of each member shall be for four years. Vacancies shall be filled in the same manner as for unexpired terms. Council members may be removed for cause.

(3) Each mental health advisory council shall be responsible and advisory to local mental health authorities in planning, organizing, and operating community mental health programs.

(4) Council members shall be selected from persons representative of interested groups in the community, including, if possible:

- (a) an officer or employee of the school district within the city or county;
- (b) one or more persons familiar with problems in mental health, as these are involved in proceedings in criminal, domestic, or juvenile courts;
- (c) one or more members of voluntary health, welfare, or mental health associations or agencies; ~~and~~

(d) a member of the legislative body of each participating county; and

~~[(d)]~~ (e) at least one person licensed in this state to practice medicine and surgery in all their branches and engaged in the private practice of medicine.

(5) Council members may be reimbursed for actual and necessary expenses incurred in the performance of official duties, from funds made available to local mental health authorities.

(6) Each mental health advisory council shall be an agent of the local mental health authority, and is subject to laws and requirements relating to the local mental health authority.

Section 6. Section **62A-15-102** is amended to read:

**62A-15-102. Definitions.**

As used in this chapter:

(1) "Board" means the Board of Substance Abuse and Mental Health established in accordance with Sections 62A-1-105 and 62A-15-106.

(2) "Director" means the director of the Division of Substance Abuse and Mental Health.

(3) "Division" means the Division of Substance Abuse and Mental Health established in Section 62A-15-103.

(4) "Local mental health authority" means a county legislative body.

(5) "Local substance abuse authority" means a county legislative body.

(6) (a) "Public funds" means federal monies received from the Department of Human Services or the Department of Health, and state monies appropriated by the Legislature to the Department of Human Services, the Department of Health, 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" includes those federal and state monies that have 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. Those monies maintain 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.

~~[(b) This definition of "public funds" does not limit or prohibit 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.]~~

(c) Public funds received for the provision of services pursuant to 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.

(7) "Severe mental disorder" means schizophrenia, major depression, bipolar disorders, delusional disorders, psychotic disorders, and other mental disorders as defined by the board.