

**SERVICES FOR PEOPLE WITH
DISABILITIES**

2005 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Rebecca D. Lockhart

Senate Sponsor: Sheldon L. Killpack

LONG TITLE

General Description:

This bill amends the portion of the Utah Human Services Code relating to services for people with disabilities and amends related provisions.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ removes all references to the obsolete voucher system for obtaining services;
- ▶ describes when a person is eligible to receive services from the Division of Services

for People with Disabilities;

- ▶ establishes principles to be followed by the division when providing services to families who care for family members with disabilities; and

- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

62A-5-101, as last amended by Chapter 332, Laws of Utah 1996

62A-5-102, as last amended by Chapter 150, Laws of Utah 2003

62A-5-402, as last amended by Chapter 332, Laws of Utah 1996

63A-9-808.1, as enacted by Chapter 342, Laws of Utah 2004

77-16a-203, as last amended by Chapter 256, Laws of Utah 2000

77-16a-304, as last amended by Chapter 285, Laws of Utah 1993

REPEALS:

62A-5-301, as last amended by Chapter 114, Laws of Utah 2004

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

Section 1. Section 62A-5-101 is amended to read:

62A-5-101. Definitions.

As used in this chapter:

~~[(8)]~~ (1) "Approved provider" means a person who has been approved by the division to provide home-based services ~~[and who has agreed to be compensated by voucher under Part 4].~~

~~[(1)]~~ (2) "Board" means the Board of Services for People with Disabilities established in accordance with Section 62A-1-105.

(3) (a) "Brain injury" means an acquired injury to the brain that is neurological in nature, including a cerebral vascular accident.

(b) "Brain injury" does not include a deteriorating disease.

(4) "Designated mental retardation professional" means:

(a) a psychologist licensed under Title 58, Chapter 61, who:

(i) (A) has at least one year of specialized training in working with persons with mental retardation; or

(B) has at least one year of clinical experience with persons with mental retardation; and

(ii) is designated by the division as specially qualified, by training and experience, in the treatment of mental retardation; or

(b) a clinical or certified social worker licensed under Title 58, Chapter 60, Mental Health Professional Practice Act, who:

(i) has at least two years of clinical experience with persons with mental retardation; and

(ii) is designated by the division as specially qualified, by training and experience, in the

treatment of mental retardation.

(5) "Deteriorating disease" includes:

- (a) multiple sclerosis;
- (b) muscular dystrophy;
- (c) Huntington's chorea;
- (d) Alzheimer's disease;
- (e) ataxia; or
- (f) cancer.

[~~(2)~~] (6) "Developmental center" means the Utah State Developmental Center, established in accordance with Part 2 [~~of this chapter~~], Utah State Developmental Center.

[~~(3)~~] (7) "Director" means the director of the Division of Services for People with Disabilities.

[~~(4)~~] (8) (a) "Disability" means a severe, chronic disability that:

(i) is attributable to [~~a mental or physical impairment or a combination of mental and physical impairments;~~];

(A) mental retardation;

(B) a condition that qualifies a person as a person with a related condition, as defined in 42 C.F.R. 435.1009;

(C) a brain injury; or

(D) a physical disability;

(ii) is likely to continue indefinitely;

(iii) results in a substantial functional limitation in three or more of the following areas of major life activity:

(A) self-care;

(B) receptive and expressive language;

(C) learning;

(D) mobility;

(E) self-direction;

(F) capacity for independent living; or

(G) economic self-sufficiency; and

(iv) requires a combination or sequence of special interdisciplinary or generic care, treatment, or other services that:

(A) may continue throughout life; and

(B) must be individually planned and coordinated.

~~[(b) For purposes of this chapter mental illness alone does not constitute a "disability."]~~

(b) "Disability" does not include a condition due solely to:

(i) mental illness;

(ii) personality disorder;

(iii) hearing impairment;

(iv) visual impairment;

(v) learning disability;

(vi) behavior disorder;

(vii) substance abuse; or

(viii) the aging process.

~~[(5)]~~ (9) "Division" means the Division of Services for People with Disabilities.

(10) "Eligible to receive division services" or "eligibility" means qualification, based on criteria established by the division in accordance with Subsection 62A-5-102(3), to receive services that are administered by the division.

(11) "Licensed physician" means:

(a) an individual licensed to practice medicine under:

(i) Title 58, Chapter 67, Utah Medical Practice Act; or

(ii) Title 58, Chapter 68, Utah Osteopathic Medical Practice Act; or

(b) a medical officer of the United States Government while in this state in the performance of official duties.

~~[(6)]~~ (12) "Mental retardation" means a significant, subaverage general intellectual functioning, ~~[existing]~~ that:

(a) exists concurrently with deficits in adaptive behavior[-]; and

(b) is manifested during the developmental period as defined in the current edition of the Diagnostic and Statistical Manual of Mental Disorders, published by the American Psychiatric Association.

~~[(7)]~~ (13) "Mental retardation facility" means a residential facility for ~~[persons]~~ a person with mental retardation, that receives state or federal funds under Title XIX of the federal Social Security Act, for the purpose of serving ~~[the population of]~~ a mentally retarded ~~[persons]~~ person in this state.

(14) "Physical disability" means a medically determinable physical impairment that has resulted in the functional loss of two or more of a person's limbs.

(15) "Resident" means an individual under observation, care, or treatment in a mental retardation facility.

~~[(9) "Voucher" means a document that:]~~

~~[(a) is issued by the division to a person with a disability or to his parent or guardian;]~~

~~[(b) describes the services and supports that may be received with the voucher;]~~

~~[(c) lists approved providers;]~~

~~[(d) may be used by a person with a disability or his parent or guardian to purchase services and supports from an approved provider;]~~

~~[(e) includes a maximum dollar value;]~~

~~[(f) states the period of time within which the voucher must be used by the person with a disability or his parent or guardian to purchase services and supports; and]~~

~~[(g) is redeemable by an approved provider for payment by the division up to the dollar value of the voucher.]~~

Section 2. Section **62A-5-102** is amended to read:

62A-5-102. Division of Services for People with Disabilities -- Creation -- Authority -- Direction -- Provision of services.

(1) There is created within the department the Division of Services for People with Disabilities, under the administrative direction of the executive director of the department.

(2) In accordance with this chapter, the division has the responsibility to plan and deliver an appropriate array of services and supports to persons with disabilities and their families in this state.

(3) Within appropriations from the Legislature, the division shall provide services to ~~[persons with disabilities who are waiting for services and support from the division, based on the following criteria:]~~ any person with a disability who is eligible to receive division services.

(4) The needs of a person described in Subsection (3) shall be evaluated based on the:

(a) severity of the disability;

(b) urgency of the need for services;

~~[(c) length of time without services from the division, regardless of whether that person has formally applied for services and support from the division; and]~~

~~[(d) ability of parents or guardians to provide them with appropriate care and supervision:]~~

(c) ability of a parent or guardian to provide the person with appropriate care and supervision; and

(d) length of time during which the person has not received services from the division.

~~[(4)]~~ (5) The division:

(a) has the functions, powers, duties, rights, and responsibilities described in Section 62A-5-103; and

(b) is authorized to work in cooperation with other state, governmental, and private agencies to carry out ~~[those]~~ the responsibilities described in Subsection (5)(a).

~~[(5)]~~ (6) Within appropriations authorized by the Legislature, and to the extent allowed under Title XIX of the Social Security Act, the division shall ensure that the services and support ~~[it] that the division~~ provides to ~~[persons with disabilities]~~ any person with a disability:

(a) are provided in the least restrictive and most enabling environment;

(b) ensure opportunities to access employment; and

(c) enable reasonable personal choice in selecting services and support that:

(i) best meet individual needs; and

- (ii) promote;
- (A) independence[-];
- (B) productivity[-]; and
- (C) integration in community life.

~~[(6)]~~ (7) (a) Appropriations to the division are nonlapsing.

(b) Funds unexpended by the division at the end of the fiscal year may be used only for one-time expenditures unless otherwise authorized by the Legislature.

Section 3. Section **62A-5-402** is amended to read:

62A-5-402. Scope of services -- Principles.

(1) (a) To enable a person with a disability and ~~[his]~~ the person's family to select services and supports that best suit their needs and preferences, the division shall, within appropriations from the Legislature, provide services and supports under this part by giving ~~[vouchers or]~~ direct financial assistance to the parent or guardian of a person with a disability who resides at home.

(b) The dollar value of ~~[a voucher or]~~ direct financial assistance is determined by the division based on:

- (i) appropriations from the Legislature; and
- (ii) the needs of the person with a disability.

(c) In determining whether to provide ~~[either a voucher or]~~ direct financial assistance to the family, the division shall consider:

- (i) the family's preference; and
 - (ii) the availability of ~~[qualified]~~ approved providers in the area where the family resides.
- (d) If the division provides direct financial assistance, ~~[it]~~ the division:

- (i) ~~[may]~~ shall require the family to account for the use of that financial assistance[-]; and ~~[(e) When the division provides a voucher or direct financial assistance, the division]~~
- (ii) shall tell the person with a disability or ~~[his]~~ the person's parent or guardian how long the ~~[voucher or]~~ direct financial assistance is intended to provide services and supports before ~~[the next voucher or]~~ additional direct financial assistance is issued.

~~[(f)]~~ (e) Except for eligibility determination services directly connected to the provision

of ~~[the voucher or]~~ direct financial assistance, service coordination is not provided under this part by the division unless the person with a disability or ~~[his]~~ the person's parent or guardian uses the ~~[voucher or]~~ direct financial assistance to purchase such services.

~~[(g) A voucher may only be redeemed with a qualified provider.]~~

(2) The following principles shall be used as the basis for supporting families who care for family members with disabilities:

(a) all children, regardless of disability, should reside in a family-like environment;

(b) families should receive the support they need to care for their children at home;

(c) services should:

(i) focus on the person with a disability ~~[but should also consider the entire family];~~

(ii) take into consideration the family of the person described in Subsection (2)(c)(i);

~~[(d) services should]~~ (iii) be sensitive to the unique needs, preferences, and strengths of individual families; and

~~[(e) services should]~~ (iv) complement and reinforce existing sources of help and support that are available to each family.

Section 4. Section **63A-9-808.1** is amended to read:

63A-9-808.1. Transfer of information technology equipment for persons with a disability.

(1) As used in this section, "~~[persons]~~ a person with a disability" means ~~[persons who meet the criteria in Subsections 62A-5-101(4)(a)(i) and (ii).]~~ a person with a severe, chronic disability that:

(a) is attributable to a mental or physical impairment or a combination of mental and physical impairments; and

(b) is likely to continue indefinitely.

(2) The division may transfer information technology equipment, or authorize the transfer of technology equipment by an agency, to a nonprofit entity for distribution to and use by ~~[persons]~~ a person with a disability.

(3) Interagency transfers and sales of surplus property to state and local agencies within

the 30-day period under Section 63A-9-808 shall have priority over transfers under Subsection (2).

(4) The division shall annually report to the Division of Services for People With Disabilities the:

- (a) names of the nonprofit entities receiving transfers under Subsection (2); and [the]
- (b) types and amounts of equipment received.

Section 5. Section **77-16a-203** is amended to read:

77-16a-203. Review of offenders with a mental illness committed to department -- Recommendations for transfer to Department of Corrections.

(1) (a) The executive director shall designate a review team of at least three qualified staff members, including at least one licensed psychiatrist, to evaluate the mental condition of each mentally ill offender committed to it in accordance with Section 77-16a-202, at least once every six months.

(b) If the offender is mentally retarded, the review team shall include at least one individual who is a designated mental retardation professional, as defined in Section [62A-5-30+] 62A-5-101.

(2) At the conclusion of its evaluation, the review team described in Subsection (1) shall make a report to the executive director:

- (a) regarding the offender's:
 - (i) current mental condition[~~;~~his];
 - (ii) progress since commitment[~~;~~]; and
 - (iii) prognosis[~~;~~]; and

(b) that includes a recommendation regarding whether the mentally ill offender should be:

- (i) transferred to UDC; or
- (ii) remain in the custody of the department.

(3) (a) The executive director shall notify the UDC medical administrator, and the board's mental health adviser that a mentally ill offender is eligible for transfer to UDC if the

review team finds that the offender:

- (i) is no longer mentally ill; or
- (ii) is still mentally ill and may continue to be a danger to himself or others, but can be controlled if adequate care, medication, and treatment are provided by UDC; and
- (iii) the offender's condition has been stabilized to the point that commitment to the department and admission to the Utah State Hospital are no longer necessary to ensure adequate mental health treatment.

(b) The administrator of the mental health facility where the offender is located shall provide the UDC medical administrator with a copy of the reviewing staff's recommendation and:

- (i) all available clinical facts;
- (ii) the diagnosis;
- (iii) the course of treatment received at the mental health facility;
- (iv) the prognosis for remission of symptoms;
- (v) the potential for recidivism;
- (vi) an estimation of the offender's dangerousness, either to himself or others; and
- (vii) recommendations for future treatment.

Section 6. Section **77-16a-304** is amended to read:

77-16a-304. Review after commitment.

(1) (a) The executive director, or ~~[his]~~ the executive director's designee, shall establish a review team of at least three qualified staff members to review the defendant's mental condition at least every six months. ~~[That team]~~

(b) The team described in Subsection (1)(a) shall include:

- (i) at least one psychiatrist; and[;]
- (ii) if the defendant is mentally retarded, at least one staff member who is a designated mental retardation professional, as defined in Section ~~[62A-5-301]~~ 62A-5-101.

(2) If the review team described in Subsection (1) finds that the defendant has recovered from ~~[his]~~ the defendant's mental illness, or, that the defendant is still mentally ill but does not

present a substantial danger to himself or others, the executive director, or ~~[his]~~ the executive director's designee, shall:

(a) notify the court that committed the defendant that the defendant is a candidate for discharge; and ~~[shall]~~

(b) provide the court with a report stating the facts that form the basis for the recommendation.

(3) (a) The court shall conduct a hearing within ten business days after receipt of the executive director's, or ~~[his]~~ the executive director's designee's, notification.

(b) The court clerk shall ~~[notify]~~ provide notice of the date and time of the hearing to:

(i) the prosecuting attorney[;];

(ii) the defendant's attorney[;]; and

(iii) any victim of the crime for which the defendant was found not guilty by reason of insanity[; of the date and time of hearing].

(4) (a) ~~[If]~~ The court shall order that the defendant be discharged from commitment if the court finds that the ~~[person]~~ defendant:

(i) is no longer mentally ill[;]; or [if]

(ii) is mentally ill, but no longer presents a substantial danger to himself or others[; it shall order the defendant to be discharged from commitment].

(b) ~~[If]~~ The court shall order the person conditionally released in accordance with Section 77-16a-305 if the court finds that the [person] defendant:

(i) is still mentally ill [and];

(ii) is a substantial danger to himself or others[; but]; and

(iii) can be controlled adequately if conditionally released with treatment as a condition of release[; it shall order the person conditionally released in accordance with Section 77-16a-305].

(c) ~~[If]~~ The court shall order that the commitment be continued if the court finds that the defendant:

(i) has not recovered from his mental illness [and];

(ii) is a substantial danger to himself or others; and

(iii) cannot adequately be controlled if conditionally released on supervision~~[, the court shall order that the commitment be continued].~~

(d) ~~[The]~~ (i) Except as provided in Subsection (4)(d)(i), the court may not discharge ~~[an individual]~~ a defendant whose mental illness is in remission as a result of medication or hospitalization if it can be determined within reasonable medical probability that without continued medication or hospitalization the defendant's mental illness will reoccur, making ~~[him]~~ the defendant a substantial danger to himself or others. ~~[That person may, however,]~~

(ii) Notwithstanding Subsection (4)(d)(i), the defendant described in Subsection (4)(d)(i) may be a candidate for conditional release, in accordance with Section 77-16a-305.

Section 7. Repealer.

This bill repeals:

Section 62A-5-301, Definitions.