

**SERVICES FOR PEOPLE WITH
DISABILITIES**

2005 GENERAL SESSION
STATE OF UTAH

Sponsor: Rebecca D. Lockhart

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



28 62A-5-402, as last amended by Chapter 332, Laws of Utah 1996

29 63A-9-808.1, as enacted by Chapter 342, Laws of Utah 2004

30 77-16a-203, as last amended by Chapter 256, Laws of Utah 2000

31 77-16a-304, as last amended by Chapter 285, Laws of Utah 1993

32 REPEALS:

33 62A-5-301, as last amended by Chapter 114, Laws of Utah 2004



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

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

37 **62A-5-101. Definitions.**

38 As used in this chapter:

39 ~~[(8)]~~ (1) "Approved provider" means a person who has been approved by the division
40 to provide home-based services ~~[and who has agreed to be compensated by voucher under Part~~
41 ~~4].~~

42 ~~[(1)]~~ (2) "Board" means the Board of Services for People with Disabilities established
43 in accordance with Section 62A-1-105.

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

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

47 (4) "Designated mental retardation professional" means:

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

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

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

52 and

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

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

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

58 and

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

61 (5) "Deteriorating disease" includes:

62 (a) multiple sclerosis;

63 (b) muscular dystrophy;

64 (c) Huntington's chorea;

65 (d) Alzheimer's disease;

66 (e) ataxia; or

67 (f) cancer.

68 ~~[(2)]~~ (6) "Developmental center" means the Utah State Developmental Center,
69 established in accordance with Part 2 [of this chapter], Utah State Developmental Center.

70 ~~[(3)]~~ (7) "Director" means the director of the Division of Services for People with
71 Disabilities.

72 ~~[(4)]~~ (8) (a) "Disability" means a severe, chronic disability that:

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

75 (A) mental retardation;

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

78 (C) a brain injury; or

79 (D) a physical disability;

80 (ii) is likely to continue indefinitely;

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

83 ~~[(A) self-care;]~~

84 ~~[(B) receptive and expressive language;]~~

85 ~~[(C) learning;]~~

86 ~~[(D) mobility;]~~

87 ~~[(E) self-direction;]~~

88 ~~[(F) capacity for independent living; or]~~

89 ~~[(G) economic self-sufficiency; and]~~

90 ~~[(iv)]~~ (iii) requires a combination or sequence of special interdisciplinary or generic
91 care, treatment, or other services that:

92 (A) may continue throughout life; and

93 (B) must be individually planned and coordinated.

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

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

96 (i) mental illness;

97 (ii) personality disorder;

98 (iii) hearing impairment;

99 (iv) visual impairment;

100 (v) learning disability;

101 (vi) behavior disorder;

102 (vii) substance abuse; or

103 (viii) the aging process.

104 ~~[(5)]~~ (9) "Division" means the Division of Services for People with Disabilities.

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

108 (11) "Licensed physician" means:

109 (a) an individual licensed to practice medicine under:

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

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

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

114 ~~[(6)]~~ (12) "Mental retardation" means a significant, subaverage general intellectual
115 functioning, ~~[existing]~~ that:

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

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

120 ~~[(7)]~~ (13) "Mental retardation facility" means a residential facility for ~~[persons]~~ a

121 person with mental retardation, that receives state or federal funds under Title XIX of the
 122 federal Social Security Act, for the purpose of serving [~~the population of~~] a mentally retarded
 123 [~~persons~~] person in this state.

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

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

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

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

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

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

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

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

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

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

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

140 **62A-5-102. Division of Services for People with Disabilities -- Creation --**

141 **Authority -- Direction -- Provision of services.**

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

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

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

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

151 (a) severity of the disability;

152 (b) urgency of the need for services;

153 [~~(c)~~ length of time without services from the division, regardless of whether that person

154 has formally applied for services and support from the division; and]

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

156 supervision.];

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

158 supervision; and

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

160 [~~(4)~~ (5) The division:

161 (a) has the functions, powers, duties, rights, and responsibilities described in Section

162 62A-5-103; and

163 (b) is authorized to work in cooperation with other state, governmental, and private

164 agencies to carry out [~~those~~] the responsibilities described in Subsection (5)(a).

165 [~~(5)~~ (6) Within appropriations authorized by the Legislature, and to the extent allowed

166 under Title XIX of the Social Security Act, the division shall ensure that the services and

167 support [~~it~~] that the division provides to [persons with disabilities] any person with a disability:

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

169 (b) ensure opportunities to access employment; and

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

171 (i) best meet individual needs; and

172 (ii) promote:

173 (A) independence[;];

174 (B) productivity[;]; and

175 (C) integration in community life.

176 [~~(6)~~ (7) (a) Appropriations to the division are nonlapsing.

177 (b) Funds unexpended by the division at the end of the fiscal year may be used only for

178 one-time expenditures unless otherwise authorized by the Legislature.

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

180 **62A-5-402. Scope of services -- Principles.**

181 (1) (a) To enable a person with a disability and [~~his~~] the person's family to select

182 services and supports that best suit their needs and preferences, the division shall, within

183 appropriations from the Legislature, provide services and supports under this part by giving
184 [~~ouchers or~~] direct financial assistance to the parent or guardian of a person with a disability
185 who resides at home.

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

188 (i) appropriations from the Legislature; and

189 (ii) the needs of the person with a disability.

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

192 (i) the family's preference; and

193 (ii) the availability of [~~qualified~~] approved providers in the area where the family
194 resides.

195 (d) If the division provides direct financial assistance, [~~it~~] the division:

196 (i) may require the family to account for the use of that financial assistance[-]; and

197 [~~(e) When the division provides a voucher or direct financial assistance, the division]~~

198 (ii) shall tell the person with a disability or [~~his~~] the person's parent or guardian how
199 long the [~~voucher or~~] direct financial assistance is intended to provide services and supports
200 before [~~the next voucher or~~] additional direct financial assistance is issued.

201 [~~(f)~~] (e) Except for eligibility determination services directly connected to the provision
202 of [~~the voucher or~~] direct financial assistance, service coordination is not provided under this
203 part by the division unless the person with a disability or [~~his~~] the person's parent or guardian
204 uses the [~~voucher or~~] direct financial assistance to purchase such services.

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

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

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

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

210 (c) services should:

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

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

213 [~~(d) services should~~] (iii) be sensitive to the unique needs, preferences, and strengths

214 of individual families; and

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

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

218 **63A-9-808.1. Transfer of information technology equipment for persons with a**
219 **disability.**

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

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

225 (b) is likely to continue indefinitely.

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

229 (3) Interagency transfers and sales of surplus property to state and local agencies within
230 the 30-day period under Section 63A-9-808 shall have priority over transfers under Subsection
231 (2).

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

234 (a) names of the nonprofit entities receiving transfers under Subsection (2); and [the]

235 (b) types and amounts of equipment received.

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

237 **77-16a-203. Review of offenders with a mental illness committed to department --**
238 **Recommendations for transfer to Department of Corrections.**

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

243 (b) If the offender is mentally retarded, the review team shall include at least one
244 individual who is a designated mental retardation professional, as defined in Section

245 [~~62A-5-301~~] 62A-5-101.

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

248 (a) regarding the offender's;

249 (i) current mental condition~~[-his]~~;

250 (ii) progress since commitment~~[-]~~; and

251 (iii) prognosis~~[-]~~; and

252 (b) that includes a recommendation regarding whether the mentally ill offender should
253 be;

254 (i) transferred to UDC; or

255 (ii) remain in the custody of the department.

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

259 (i) is no longer mentally ill; or

260 (ii) is still mentally ill and may continue to be a danger to himself or others, but can be
261 controlled if adequate care, medication, and treatment are provided by UDC; and

262 (iii) the offender's condition has been stabilized to the point that commitment to the
263 department and admission to the Utah State Hospital are no longer necessary to ensure
264 adequate mental health treatment.

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

268 (i) all available clinical facts;

269 (ii) the diagnosis;

270 (iii) the course of treatment received at the mental health facility;

271 (iv) the prognosis for remission of symptoms;

272 (v) the potential for recidivism;

273 (vi) an estimation of the offender's dangerousness, either to himself or others; and

274 (vii) recommendations for future treatment.

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

276 **77-16a-304. Review after commitment.**

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

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

281 (i) at least one psychiatrist; and~~;~~

282 (ii) if the defendant is mentally retarded, at least one staff member who is a designated
283 mental retardation professional, as defined in Section ~~[62A-5-30+]~~ 62A-5-101.

284 (2) If the review team described in Subsection (1) finds that the defendant has
285 recovered from ~~[his]~~ the defendant's mental illness, or, that the defendant is still mentally ill but
286 does not present a substantial danger to himself or others, the executive director, or ~~[his]~~ the
287 executive director's designee, shall:

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

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

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

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

295 (i) the prosecuting attorney~~;~~;

296 (ii) the defendant's attorney~~;~~;

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

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

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

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

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

306 (i) is still mentally ill ~~[and]~~;

307 (ii) is a substantial danger to himself or others~~[, but]; and~~
 308 (iii) can be controlled adequately if conditionally released with treatment as a condition
 309 of release~~[, it shall order the person conditionally released in accordance with Section~~
 310 ~~77-16a-305].~~

311 (c) ~~[H]~~ The court shall order that the commitment be continued if the court finds that
 312 the defendant;

313 (i) has not recovered from his mental illness ~~[and];~~
 314 (ii) is a substantial danger to himself or others; and
 315 (iii) cannot adequately be controlled if conditionally released on supervision~~[, the court~~
 316 ~~shall order that the commitment be continued].~~

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

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

324 Section 7. **Repealer.**

325 This bill repeals:

326 Section **62A-5-301, Definitions.**

Legislative Review Note
 as of 1-18-05 10:45 AM

Based on a limited legal review, this legislation has not been determined to have a high probability of being held unconstitutional.

Office of Legislative Research and General Counsel

Fiscal Note
Bill Number HB0080

Services for People with Disabilities

26-Jan-05

8:43 AM

State Impact

No fiscal impact as this bill codifies existing practice.

Individual and Business Impact

No fiscal impact.

Office of the Legislative Fiscal Analyst