

1 **HEALTH AND HUMAN SERVICES-RELATED**
2 **COMMISSION, COMMITTEE, AND COUNCIL**
3 **AMENDMENTS**

4 2009 GENERAL SESSION

5 STATE OF UTAH

6 **Chief Sponsor: Ron Bigelow**

7 Senate Sponsor: Lyle W. Hillyard

8
9 **LONG TITLE**

10 **General Description:**

11 This bill modifies provisions relating to the compensation for board members of certain
12 health-related commissions, committees, and councils.

13 **Highlighted Provisions:**

14 This bill:

- 15 ▶ eliminates the following boards and transfers those board powers and
16 responsibilities to their associated division:
- 17 • Board of Child and Family Services;
 - 18 • Board of Services for People with Disabilities;
 - 19 • Board of Public Guardian Services;
 - 20 • Human Services Licensing Board; and
 - 21 • Board of Substance Abuse and Mental Health; and
- 22 ▶ makes the per diem and expenses for members of specified commissions,
23 committees, and councils subject to the discretion of the executive director of the
24 Department of Health or the executive director of the Department of Human
25 Services.

26 **Monies Appropriated in this Bill:**

27 None



28 **Other Special Clauses:**

29 None

30 **Utah Code Sections Affected:**

31 **AMENDS:**

- 32 **17-43-102**, as enacted by Laws of Utah 2003, Chapter 22
- 33 **17-43-201**, as last amended by Laws of Utah 2008, Chapter 194
- 34 **17-43-301**, as last amended by Laws of Utah 2007, Chapter 329
- 35 **17-43-304**, as last amended by Laws of Utah 2003, Chapter 131 and renumbered and
- 36 amended by Laws of Utah 2003, Chapter 22
- 37 **26-1-7.5**, as last amended by Laws of Utah 1996, Chapters 194 and 243
- 38 **26-9f-103**, as last amended by Laws of Utah 2008, Chapter 46
- 39 **26-18a-2**, as last amended by Laws of Utah 1997, Chapters 1 and 276
- 40 **26-50-202**, as enacted by Laws of Utah 2008, Chapter 325
- 41 **41-6a-501**, as last amended by Laws of Utah 2008, Chapter 226
- 42 **62A-1-105**, as last amended by Laws of Utah 2003, Chapter 171
- 43 **62A-1-107**, as last amended by Laws of Utah 2003, Chapter 246
- 44 **62A-2-101**, as last amended by Laws of Utah 2005, Chapter 188
- 45 **62A-2-106**, as last amended by Laws of Utah 2008, Chapter 382
- 46 **62A-2-108**, as last amended by Laws of Utah 2005, Chapter 188
- 47 **62A-2-109**, as last amended by Laws of Utah 2008, Chapter 382
- 48 **62A-2-112**, as last amended by Laws of Utah 2005, Chapter 188
- 49 **62A-2-115**, as last amended by Laws of Utah 1998, Chapter 358
- 50 **62A-2-121**, as last amended by Laws of Utah 2008, Chapters 3 and 382
- 51 **62A-2-122**, as last amended by Laws of Utah 2008, Chapters 91 and 382
- 52 **62A-3-107**, as last amended by Laws of Utah 1998, Chapter 254
- 53 **62A-3-204**, as last amended by Laws of Utah 1993, Chapter 176
- 54 **62A-4a-101**, as last amended by Laws of Utah 2008, Chapters 3 and 299
- 55 **62A-4a-102**, as last amended by Laws of Utah 2008, Chapters 3 and 382
- 56 **62A-4a-103**, as last amended by Laws of Utah 2008, Chapter 3
- 57 **62A-4a-104**, as renumbered and amended by Laws of Utah 1994, Chapter 260
- 58 **62A-4a-109**, as renumbered and amended by Laws of Utah 1994, Chapter 260

- 59 **62A-4a-110**, as last amended by Laws of Utah 2006, Chapter 281
60 **62A-4a-112**, as last amended by Laws of Utah 2008, Chapter 382
61 **62A-4a-115**, as last amended by Laws of Utah 2008, Chapter 382
62 **62A-4a-117**, as last amended by Laws of Utah 2006, Chapters 46 and 75
63 **62A-4a-119**, as last amended by Laws of Utah 2008, Chapter 382
64 **62A-4a-202.6**, as last amended by Laws of Utah 2008, Chapters 3 and 299
65 **62A-4a-208**, as last amended by Laws of Utah 2008, Chapters 3 and 382
66 **62A-4a-303**, as last amended by Laws of Utah 2008, Chapters 299 and 382
67 **62A-4a-305**, as last amended by Laws of Utah 2008, Chapter 299
68 **62A-4a-306**, as last amended by Laws of Utah 2008, Chapters 83 and 299
69 **62A-4a-309**, as last amended by Laws of Utah 2008, Chapters 83 and 299
70 **62A-4a-311**, as last amended by Laws of Utah 2008, Chapters 83 and 299
71 **62A-4a-903**, as enacted by Laws of Utah 2001, Chapter 115
72 **62A-4a-905**, as enacted by Laws of Utah 2001, Chapter 115
73 **62A-5-101**, as last amended by Laws of Utah 2007, Chapters 150 and 366
74 **62A-5-104**, as last amended by Laws of Utah 1992, Chapter 104
75 **62A-5-105**, as last amended by Laws of Utah 2008, Chapter 382
76 **62A-5-202**, as last amended by Laws of Utah 1991, Chapter 207
77 **62A-13-105**, as last amended by Laws of Utah 2008, Chapter 382
78 **62A-14-102**, as enacted by Laws of Utah 1999, Chapter 69
79 **62A-14-104**, as enacted by Laws of Utah 1999, Chapter 69
80 **62A-14-105**, as last amended by Laws of Utah 2008, Chapter 382
81 **62A-15-101**, as enacted by Laws of Utah 2002, Fifth Special Session, Chapter 8
82 **62A-15-102**, as last amended by Laws of Utah 2004, Chapter 80
83 **62A-15-103**, as last amended by Laws of Utah 2008, Chapters 194 and 382
84 **62A-15-104**, as renumbered and amended by Laws of Utah 2002, Fifth Special Session,
85 Chapter 8
86 **62A-15-105**, as last amended by Laws of Utah 2008, Chapter 382
87 **62A-15-107**, as last amended by Laws of Utah 2003, Chapter 100
88 **62A-15-108**, as last amended by Laws of Utah 2005, Chapter 71
89 **63A-5-220**, as last amended by Laws of Utah 2002, Chapter 226

90 78B-8-103, as renumbered and amended by Laws of Utah 2008, Chapter 3

91 REPEALS:

92 62A-2-104, as last amended by Laws of Utah 1998, Chapter 358

93 62A-2-105, as last amended by Laws of Utah 2008, Chapter 382

94 62A-14-106, as last amended by Laws of Utah 2008, Chapter 382

95 62A-14-112, as enacted by Laws of Utah 1999, Chapter 69

96 62A-15-106, as renumbered and amended by Laws of Utah 2002, Fifth Special Session,

97 Chapter 8



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

100 Section 1. Section 17-43-102 is amended to read:

101 **17-43-102. Definitions.**

102 As used in this chapter:

103 ~~[(1) "Board" means the Board of Substance Abuse and Mental Health created within~~
104 ~~the Department of Human Services in Section 62A-1-105.]~~

105 ~~[(2)]~~ (1) "Department" means the Department of Human Services created in Section
106 62A-1-102.

107 ~~[(3)]~~ (2) "Division" means the Division of Substance Abuse and Mental Health created
108 within the Department of Human Services in Section 62A-1-105.

109 Section 2. Section 17-43-201 is amended to read:

110 **17-43-201. Local substance abuse authorities -- Responsibilities.**

111 (1) (a) (i) In each county operating under a county executive-council form of
112 government under Section 17-52-504, the county legislative body is the local substance abuse
113 authority, provided however that any contract for plan services shall be administered by the
114 county executive.

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

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

119 (b) Within legislative appropriations and county matching funds required by this
120 section, and under the ~~[policy direction of the board and the administrative]~~ direction of the

121 division, each local substance abuse authority shall:

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

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

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

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

129 (c) Each agreement for joint substance abuse services shall:

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

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

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

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

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

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

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

152 (3) (a) Each local substance abuse authority is accountable to the department, the
153 Department of Health, and the state with regard to the use of state and federal funds received
154 from those departments for substance abuse services, regardless of whether the services are
155 provided by a private contract provider.

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

163 (4) Each local substance abuse authority shall:

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

167 (b) annually prepare and submit to the division a plan approved by the county
168 legislative body for funding and service delivery that includes:

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

172 (ii) primary prevention, targeted prevention, early intervention, and treatment services;

173 (c) establish and maintain, either directly or by contract, programs licensed under Title
174 62A, Chapter 2, Licensure of Programs and Facilities;

175 (d) appoint directly or by contract a full or part time director for substance abuse
176 programs, and prescribe the director's duties;

177 (e) provide input and comment on new and revised [~~policies~~] rules established by the
178 [~~board~~] division;

179 (f) establish and require contract providers to establish administrative, clinical,
180 procurement, personnel, financial, and management policies regarding substance abuse services
181 and facilities, in accordance with the [~~policies~~] rules of the [~~board~~] division, and state and
182 federal law;

- 183 (g) establish mechanisms allowing for direct citizen input;
- 184 (h) annually contract with the division to provide substance abuse programs and
185 services in accordance with the provisions of Title 62A, Chapter 15, Substance Abuse and
186 Mental Health Act;
- 187 (i) comply with all applicable state and federal statutes, policies, audit requirements,
188 contract requirements, and any directives resulting from those audits and contract requirements;
- 189 (j) promote or establish programs for the prevention of substance abuse within the
190 community setting through community-based prevention programs;
- 191 (k) provide funding equal to at least 20% of the state funds that it receives to fund
192 services described in the plan;
- 193 (l) comply with the requirements and procedures of Title 11, Chapter 13, Interlocal
194 Cooperation Act, Title 17B, Chapter 1, Part 6, Fiscal Procedures for Local Districts, and Title
195 51, Chapter 2a, Accounting Reports from Political Subdivisions, Interlocal Organizations, and
196 Other Local Entities Act;
- 197 (m) for persons convicted of driving under the influence in violation of Section
198 41-6a-502 or 41-6a-517, conduct the following as defined in Section 41-6a-501:
 - 199 (i) a screening;
 - 200 (ii) an assessment;
 - 201 (iii) an educational series; and
 - 202 (iv) substance abuse treatment; and
- 203 (n) utilize proceeds of the accounts described in Subsection 62A-15-503(1) to
204 supplement the cost of providing the services described in Subsection (4)(m).
- 205 (5) Before disbursing any public funds, each local substance abuse authority shall
206 require that each entity that receives any public funds from the local substance abuse authority
207 agrees in writing that:
 - 208 (a) the entity's financial records and other records relevant to the entity's performance
209 of the services provided to the local substance abuse authority shall be subject to examination
210 by:
 - 211 (i) the division;
 - 212 (ii) the local substance abuse authority director;
 - 213 (iii) (A) the county treasurer and county or district attorney; or

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

216 (iv) the county legislative body; and

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

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

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

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

227 (7) (a) As used in this section, "public funds" means the same as that term is defined in
228 Section 17-43-203.

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

232 (8) Subject to the requirements of the federal Substance Abuse Prevention and
233 Treatment Block Grant, Public Law 102-321, a local substance abuse authority shall ensure
234 that all substance abuse treatment programs that receive public funds:

235 (a) accept and provide priority for admission to a pregnant woman or a pregnant minor;
236 and

237 (b) if admission of a pregnant woman or a pregnant minor is not possible within 24
238 hours of the time that a request for admission is made, provide a comprehensive referral for
239 interim services that:

240 (i) are accessible to the pregnant woman or pregnant minor;

241 (ii) are best suited to provide services to the pregnant woman or pregnant minor;

242 (iii) may include:

243 (A) counseling;

244 (B) case management; or

245 (C) a support group; and
246 (iv) shall include a referral for:
247 (A) prenatal care; and
248 (B) counseling on the effects of alcohol and drug use during pregnancy.
249 (9) If a substance abuse treatment program described in Subsection (8) is not able to
250 accept and admit a pregnant woman or pregnant minor under Subsection (8) within 48 hours of
251 the time that request for admission is made, the local substance abuse authority shall contact
252 the Division of Substance Abuse and Mental Health for assistance in providing services to the
253 pregnant woman or pregnant minor.

254 Section 3. Section **17-43-301** is amended to read:

255 **17-43-301. Local mental health authorities -- Responsibilities.**

256 (1) (a) (i) In each county operating under a county executive-council form of
257 government under Section 17-52-504, the county legislative body is the local mental health
258 authority, provided however that any contract for plan services shall be administered by the
259 county executive.

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

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

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

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

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

273 (c) Each agreement for joint mental health services shall:

274 (i) (A) designate the treasurer of one of the participating counties or another person as
275 the treasurer for the combined mental health authorities and as the custodian of moneys

276 available for the joint services; and

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

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

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

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

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

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

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

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

298 (3) (a) Each local mental health authority is accountable to the department, the
299 Department of Health, and the state with regard to the use of state and federal funds received
300 from those departments for mental health services, regardless of whether the services are
301 provided by a private contract provider.

302 (b) Each local mental health authority shall comply, and require compliance by its
303 contract provider, with all directives issued by the department and the Department of Health
304 regarding the use and expenditure of state and federal funds received from those departments
305 for the purpose of providing mental health programs and services. The department and
306 Department of Health shall ensure that those directives are not duplicative or conflicting, and

307 shall consult and coordinate with local mental health authorities with regard to programs and
308 services.

309 (4) (a) Each local mental health authority shall:

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

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

315 (iii) establish and maintain, either directly or by contract, programs licensed under Title
316 62A, Chapter 2, Licensure of Programs and Facilities;

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

319 (v) provide input and comment on new and revised [~~policies~~] rules established by the
320 [~~board~~] division;

321 (vi) establish and require contract providers to establish administrative, clinical,
322 personnel, financial, procurement, and management policies regarding mental health services
323 and facilities, in accordance with the [~~policies~~] rules of the [~~board~~] division, and state and
324 federal law;

325 (vii) establish mechanisms allowing for direct citizen input;

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

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

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

333 (xi) comply with the requirements and procedures of Title 11, Chapter 13, Interlocal
334 Cooperation Act, Title 17B, Chapter 1, Part 6, Fiscal Procedures for Local Districts, and Title
335 51, Chapter 2a, Accounting Reports from Political Subdivisions, Interlocal Organizations, and
336 Other Local Entities Act; and

337 (xii) take and retain physical custody of minors committed to the physical custody of

338 local mental health authorities by a judicial proceeding under Title 62A, Chapter 15, Part 7,
339 Commitment of Persons Under Age 18 to Division of Substance Abuse and Mental Health.

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

- 342 (i) inpatient care and services;
- 343 (ii) residential care and services;
- 344 (iii) outpatient care and services;
- 345 (iv) 24-hour crisis care and services;
- 346 (v) psychotropic medication management;
- 347 (vi) psychosocial rehabilitation, including vocational training and skills development;
- 348 (vii) case management;
- 349 (viii) community supports, including in-home services, housing, family support
350 services, and respite services;
- 351 (ix) consultation and education services, including case consultation, collaboration
352 with other county service agencies, public education, and public information; and
- 353 (x) services to persons incarcerated in a county jail or other county correctional facility.

354 (5) Before disbursing any public funds, each local mental health authority shall require
355 that each entity that receives any public funds from a local mental health authority agrees in
356 writing that:

- 357 (a) the entity's financial records and other records relevant to the entity's performance
358 of the services provided to the mental health authority shall be subject to examination by:
 - 359 (i) the division;
 - 360 (ii) the local mental health authority director;
 - 361 (iii) (A) the county treasurer and county or district attorney; or
362 (B) if two or more counties jointly provide mental health services under an agreement
363 under Subsection (2), the designated treasurer and the designated legal officer;
 - 364 (iv) the county legislative body; and
 - 365 (v) in a county with a county executive that is separate from the county legislative
366 body, the county executive;
- 367 (b) the county auditor may examine and audit the entity's financial and other records
368 relevant to the entity's performance of the services provided to the local mental health

369 authority; and

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

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

374 (7) (a) As used in this section, "public funds" means the same as that term is defined in
375 Section 17-43-303.

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

379 Section 4. Section **17-43-304** is amended to read:

380 **17-43-304. Contracts for mental health services provided by local mental health**
381 **authorities.**

382 If a local mental health authority has established a plan to provide services authorized
383 by this part, and those services meet standards fixed by rules of the [~~board~~] division, the local
384 mental health authority may enter into a contract with the division for those services to be
385 furnished by that local mental health authority for an agreed compensation to be paid by the
386 division.

387 Section 5. Section **26-1-7.5** is amended to read:

388 **26-1-7.5. Health advisory council.**

389 (1) (a) There is created the Utah Health Advisory Council, comprised of nine persons
390 appointed by the governor.

391 (b) The governor shall ensure that:

392 (i) members of the council:

393 (A) broadly represent the public interest;

394 (B) have an interest in or knowledge of public health, environmental health, health
395 planning, health care financing, or health care delivery systems; and

396 (C) include health professionals;

397 (ii) the majority of the membership are nonhealth professionals;

398 (iii) no more than five persons are from the same political party; and

399 (iv) geography, sex, and ethnicity balance are considered when selecting the members.

400 (2) (a) Except as required by Subsection (2)(b), members of the council shall be
401 appointed to four-year terms.

402 (b) Notwithstanding the requirements of Subsection (2)(a), the governor shall, at the
403 time of appointment or reappointment, adjust the length of terms to ensure that the terms of
404 council members are staggered so that approximately half of the council is appointed every two
405 years.

406 (c) Terms of office for subsequent appointments shall commence on July 1 of the year
407 in which the appointment occurs.

408 (3) (a) When a vacancy occurs in the membership for any reason, the replacement
409 shall be appointed for the unexpired term.

410 (b) No person shall be appointed to the council for more than two consecutive terms.

411 (c) The chair of the council shall be appointed by the governor from the membership of
412 the council.

413 (4) The council shall meet at least quarterly or more frequently as determined necessary
414 by the chair. A quorum for conducting business shall consist of four members of the council.

415 (5) (a) Members shall receive no compensation or benefits for their services, but may,
416 at the executive director's discretion, receive per diem and expenses incurred in the
417 performance of the member's official duties at the rates established by the Division of Finance
418 under Sections 63A-3-106 and 63A-3-107.

419 (b) Members may decline to receive per diem and expenses for their service.

420 (6) The council shall be empowered to advise the department on any subject deemed to
421 be appropriate by the council except that the council shall not become involved in
422 administrative matters. The council shall also advise the department as requested by the
423 executive director.

424 (7) The executive director shall ensure that the council has adequate staff support and
425 shall provide any available information requested by the council necessary for their
426 deliberations. The council shall observe confidential requirements placed on the department in
427 the use of such information.

428 Section 6. Section **26-9f-103** is amended to read:

429 **26-9f-103. Utah Digital Health Service Commission.**

430 (1) There is created within the department the Utah Digital Health Service

431 Commission.

432 (2) The governor shall appoint 12 members to the commission with the consent of the
433 Senate, as follows:

434 (a) a physician who is involved in digital health service;

435 (b) a representative of a licensed health care facility or system as defined in Section
436 26-21-2;

437 (c) a representative of rural Utah, which may be a person nominated by an advisory
438 committee on rural health issues created pursuant to Section 26-1-20;

439 (d) a member of the public who is not involved with digital health service;

440 (e) a nurse who is involved in digital health service; and

441 (f) seven members who fall into one or more of the following categories:

442 (i) individuals who use digital health service in a public or private institution;

443 (ii) individuals who use digital health service in serving medically underserved
444 populations;

445 (iii) nonphysician health care providers involved in digital health service;

446 (iv) information technology professionals involved in digital health service;

447 (v) representatives of the health insurance industry; and

448 (vi) telehealth digital health service consumer advocates.

449 (3) (a) The commission shall annually elect a chairperson from its membership. The
450 chairperson shall report to the executive director of the department.

451 (b) The commission shall hold meetings at least once every three months. Meetings
452 may be held from time to time on the call of the chair or a majority of the board members.

453 (c) Six commission members are necessary to constitute a quorum at any meeting and,
454 if a quorum exists, the action of a majority of members present shall be the action of the
455 commission.

456 (4) (a) Except as provided in Subsection (4)(b), a commission member shall be
457 appointed for a three-year term and eligible for two reappointments.

458 (b) Notwithstanding Subsection (4)(a), the governor shall, at the time of appointment
459 or reappointment, adjust the length of terms to ensure that the terms of commission members
460 are staggered so that approximately 1/3 of the commission is appointed each year.

461 (c) A commission member shall continue in office until the expiration of the member's

462 term and until a successor is appointed, which may not exceed 90 days after the formal
463 expiration of the term.

464 (d) Notwithstanding Subsection (4)(c), a commission member who fails to attend 75%
465 of the scheduled meetings in a calendar year shall be disqualified from serving.

466 (e) When a vacancy occurs in membership for any reason, the replacement shall be
467 appointed for the unexpired term.

468 (5) (a) Board members who are not government employees may not receive
469 compensation or benefits for the services, but may, at the executive director's discretion,
470 receive per diem and expenses incurred in the performance of their official duties at rates
471 established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

472 (b) A commission member may decline to receive per diem and expenses for service to
473 the commission.

474 (6) The department shall provide informatics staff support to the commission.

475 (7) The funding of the commission shall be a separate line item to the department in
476 the annual appropriations act.

477 Section 7. Section **26-18a-2** is amended to read:

478 **26-18a-2. Creation and membership of Kurt Oscarson Children's Organ**
479 **Transplant Coordinating Committee -- Expenses.**

480 (1) There is created the Kurt Oscarson Children's Organ Transplant Coordinating
481 Committee.

482 (2) The committee shall have five members representing the following:

483 (a) the executive director of the Department of Health or his designee;

484 (b) two representatives from public or private agencies and organizations concerned
485 with providing support and financial assistance to the children and families of children who
486 need organ transplants; and

487 (c) two individuals who have had organ transplants, have children who have had organ
488 transplants, who work with families or children who have had or are awaiting organ
489 transplants, or community leaders or volunteers who have demonstrated an interest in working
490 with families or children in need of organ transplants.

491 (3) (a) The governor shall appoint the committee members and designate the chair
492 from among the committee members.

493 (b) (i) Except as required by Subsection (3)(b)(ii), each member shall serve a four-year
494 term.

495 (ii) Notwithstanding the requirements of Subsection (3)(b)(i), the governor shall, at the
496 time of appointment or reappointment, adjust the length of terms to ensure that the terms of the
497 committee members are staggered so that approximately half of the committee is appointed
498 every two years.

499 (4) (a) (i) Members who are not government employees receive no compensation or
500 benefits for their services, but may, at the executive director's discretion, receive per diem and
501 expenses incurred in the performance of the member's official duties at the rates established by
502 the Division of Finance under Sections 63A-3-106 and 63A-3-107.

503 (ii) Members may decline to receive per diem and expenses for their service.

504 (b) (i) State government officer and employee members who do not receive salary, per
505 diem, or expenses from their agency for their service may receive per diem and expenses
506 incurred in the performance of their official duties from the committee at the rates established
507 by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

508 (ii) State government officer and employee members may decline to receive per diem
509 and expenses for their service.

510 (5) The Department of Health shall provide support staff for the committee.

511 Section 8. Section **26-50-202** is amended to read:

512 **26-50-202. Traumatic Brain Injury Advisory Committee -- Membership -- Time**
513 **limit.**

514 (1) On or after July 1 of each year, the executive director may create a Traumatic Brain
515 Injury Advisory Committee of not more than nine members.

516 (2) The committee shall be composed of members of the community who are familiar
517 with traumatic brain injury, its causes, diagnosis, treatment, rehabilitation, and support
518 services, including:

519 (a) persons with a traumatic brain injury;

520 (b) family members of a person with a traumatic brain injury;

521 (c) representatives of an association which advocates for persons with traumatic brain
522 injuries;

523 (d) specialists in a profession that works with brain injury patients; and

- 524 (e) department representatives.
- 525 (3) The department shall provide staff support to the committee.
- 526 (4) (a) If a vacancy occurs in the committee membership for any reason, a replacement
- 527 may be appointed for the unexpired term.
- 528 (b) The committee shall elect a chairperson from the membership.
- 529 (c) A majority of the committee constitutes a quorum at any meeting, and, if a quorum
- 530 exists, the action of the majority of members present shall be the action of the committee.
- 531 (d) The committee may adopt bylaws governing the committee's activities.
- 532 (e) A committee member may be removed by the executive director:
- 533 (i) if the member is unable or unwilling to carry out the member's assigned
- 534 responsibilities; or
- 535 (ii) for good cause.
- 536 (5) The committee shall comply with the procedures and requirements of:
- 537 (a) Title 52, Chapter 4, Open and Public Meetings Act; and
- 538 (b) Title 63G, Chapter 2, Government Records Access and Management Act.
- 539 (6) (a) Members shall receive no compensation or benefits for their services, but may,
- 540 at the executive director's discretion, receive per diem and expenses incurred in the
- 541 performance of the members' official duties at the rates established by the Division of Finance
- 542 under Sections 63A-3-106 and 63A-3-107.
- 543 (b) Members may decline to receive per diem and expenses for their service.
- 544 (7) Not later than November 30 of each year the committee shall provide a written
- 545 report summarizing the activities of the committee to:
- 546 (a) the executive director of the department;
- 547 (b) the Health and Human Services Interim Committee; and
- 548 (c) the Health and Human Services Appropriations Subcommittee.
- 549 (8) The committee shall cease to exist on December 31 of each year, unless the
- 550 executive director determines it necessary to continue.

551 Section 9. Section **41-6a-501** is amended to read:

552 **41-6a-501. Definitions.**

553 (1) As used in this part:

- 554 (a) "Assessment" means an in-depth clinical interview with a licensed mental health

555 therapist:

556 (i) used to determine if a person is in need of:

557 (A) substance abuse treatment that is obtained at a substance abuse program;

558 (B) an educational series; or

559 (C) a combination of Subsections (1)(a)(i)(A) and (B); and

560 (ii) that is approved by the [Board] Division of Substance Abuse and Mental Health in
561 accordance with Section 62A-15-105.

562 (b) "Drug" or "drugs" means:

563 (i) a controlled substance as defined in Section 58-37-2;

564 (ii) a drug as defined in Section 58-17b-102; or

565 (iii) any substance that, when knowingly, intentionally, or recklessly taken into the
566 human body, can impair the ability of a person to safely operate a motor vehicle.

567 (c) "Educational series" means an educational series obtained at a substance abuse
568 program that is approved by the [Board] Division of Substance Abuse and Mental Health in
569 accordance with Section 62A-15-105.

570 (d) "Negligence" means simple negligence, the failure to exercise that degree of care
571 that an ordinarily reasonable and prudent person exercises under like or similar circumstances.

572 (e) "Screening" means a preliminary appraisal of a person:

573 (i) used to determine if the person is in need of:

574 (A) an assessment; or

575 (B) an educational series; and

576 (ii) that is approved by the [Board] Division of Substance Abuse and Mental Health in
577 accordance with Section 62A-15-105.

578 (f) "Serious bodily injury" means bodily injury that creates or causes:

579 (i) serious permanent disfigurement;

580 (ii) protracted loss or impairment of the function of any bodily member or organ; or

581 (iii) a substantial risk of death.

582 (g) "Substance abuse treatment" means treatment obtained at a substance abuse
583 program that is approved by the [Board] Division of Substance Abuse and Mental Health in
584 accordance with Section 62A-15-105.

585 (h) "Substance abuse treatment program" means a state licensed substance abuse

586 program.

587 (i) (i) "Vehicle" or "motor vehicle" means a vehicle or motor vehicle as defined in
588 Section 41-6a-102; and

589 (ii) "Vehicle" or "motor vehicle" includes:

590 (A) an off-highway vehicle as defined under Section 41-22-2; and

591 (B) a motorboat as defined in Section 73-18-2.

592 (2) As used in Section 41-6a-503:

593 (a) "Conviction" means any conviction for a violation of:

594 (i) driving under the influence under Section 41-6a-502;

595 (ii) (A) for an offense committed before July 1, 2008, alcohol, any drug, or a
596 combination of both-related reckless driving under:

597 (I) Section 41-6a-512; and

598 (II) Section 41-6a-528; or

599 (B) for an offense committed on or after July 1, 2008, impaired driving under Section
600 41-6a-502.5;

601 (iii) driving with any measurable controlled substance that is taken illegally in the body
602 under Section 41-6a-517;

603 (iv) local ordinances similar to Section 41-6a-502, alcohol, any drug, or a combination
604 of both-related reckless driving, or impaired driving under Section 41-6a-502.5 adopted in
605 compliance with Section 41-6a-510;

606 (v) automobile homicide under Section 76-5-207;

607 (vi) Subsection 58-37-8(2)(g);

608 (vii) a violation described in Subsections (2)(a)(i) through (vi), which judgment of
609 conviction is reduced under Section 76-3-402; or

610 (viii) statutes or ordinances previously in effect in this state or in effect in any other
611 state, the United States, or any district, possession, or territory of the United States which
612 would constitute a violation of Section 41-6a-502 or alcohol, any drug, or a combination of
613 both-related reckless driving if committed in this state, including punishments administered
614 under 10 U.S.C. Sec. 815.

615 (b) A plea of guilty or no contest to a violation described in Subsections (2)(a)(i)
616 through (viii) which plea was held in abeyance under Title 77, Chapter 2a, Pleas in Abeyance,

617 prior to July 1, 2008, is the equivalent of a conviction, even if the charge has been subsequently
 618 reduced or dismissed in accordance with the plea in abeyance agreement, for purposes of:

619 (i) enhancement of penalties under:

620 (A) this Chapter 6a, Part 5, Driving Under the Influence and Reckless Driving; and

621 (B) automobile homicide under Section 76-5-207; and

622 (ii) expungement under Section 77-18-12.

623 Section 10. Section **62A-1-105** is amended to read:

624 **62A-1-105. Creation of boards, divisions, and offices.**

625 (1) The following policymaking boards are created within the Department of Human
 626 Services:

627 (a) the Board of Aging and Adult Services; and

628 [~~(b) the Board of Child and Family Services;~~]

629 [~~(c) the Board of Public Guardian Services;~~]

630 [~~(d) the Board of Services for People with Disabilities;~~]

631 [~~(e) the Board of Substance Abuse and Mental Health; and~~]

632 [~~(f)~~] (b) the Board of Juvenile Justice Services.

633 (2) The following divisions are created within the Department of Human Services:

634 (a) the Division of Aging and Adult Services;

635 (b) the Division of Child and Family Services;

636 (c) the Division of Services for People with Disabilities;

637 (d) the Division of Substance Abuse and Mental Health; and

638 (e) the Division of Juvenile Justice Services.

639 (3) The following offices are created within the Department of Human Services:

640 (a) the Office of Licensing;

641 (b) the Office of Public Guardian; and

642 (c) the Office of Recovery Services.

643 Section 11. Section **62A-1-107** is amended to read:

644 **62A-1-107. Boards within department -- Members, appointment, terms,**

645 **vacancies, chairperson, compensation, meetings, quorum.**

646 (1) [~~Except as specifically provided in Sections 62A-4a-102, 62A-2-104, and~~

647 ~~62A-14-106 regarding the Board of Child and Family Services, the Human Services Licensing~~

648 ~~Board, and the Board of Public Guardian Services, each] Each~~ board described in Section
649 62A-1-105 shall have seven members who are appointed by the governor with the consent of
650 the Senate.

651 (2) (a) Except as required by Subsection (2)(b), each member shall be appointed for a
652 term of four years, and is eligible for one reappointment.

653 (b) Notwithstanding the requirements of Subsection (2)(a), the governor shall, at the
654 time of appointment or reappointment, adjust the length of terms to ensure that the terms of
655 board members are staggered so that approximately half of the board is appointed every two
656 years.

657 (c) Board members shall continue in office until the expiration of their terms and until
658 their successors are appointed, which may not exceed 90 days after the formal expiration of a
659 term.

660 (d) When a vacancy occurs in the membership for any reason, the replacement shall be
661 appointed for the unexpired term.

662 (3) ~~[Except for the Board of Child and Family Services, no] No~~ more than four
663 members of any board may be from the same political party. ~~[No more than six members of~~
664 ~~the Board of Child and Family Services may be from the same political party.]~~ Each board
665 shall have diversity of gender, ethnicity, and culture; and members shall be chosen on the basis
666 of their active interest, experience, and demonstrated ability to deal with issues related to their
667 specific boards.

668 (4) Each board shall annually elect a chairperson from its membership. Each board
669 shall hold meetings at least once every three months. Within budgetary constraints, meetings
670 may be held from time to time on the call of the chairperson or of the majority of the members
671 of any board. Four members of a board are necessary to constitute a quorum at any meeting,
672 and, if a quorum exists, the action of the majority of members present shall be the action of the
673 board.

674 (5) (a) Members shall receive no compensation or benefits for their services, but may,
675 at the executive director's discretion, receive per diem and expenses incurred in the
676 performance of the member's official duties at the rates established by the Division of Finance
677 under Sections 63A-3-106 and 63A-3-107.

678 (b) Members may decline to receive per diem and expenses for their service.

679 (6) Each board shall adopt bylaws governing its activities. Bylaws shall include
680 procedures for removal of a board member who is unable or unwilling to fulfill the
681 requirements of his appointment.

682 (7) ~~Each~~ The board has program policymaking authority for the division over which
683 it presides.

684 Section 12. Section **62A-2-101** is amended to read:

685 **62A-2-101. Definitions.**

686 As used in this chapter:

687 (1) "Adult day care" means nonresidential care and supervision:

688 (a) for three or more adults for at least four but less than 24 hours a day; and

689 (b) that meets the needs of functionally impaired adults through a comprehensive
690 program that provides a variety of health, social, recreational, and related support services in a
691 protective setting.

692 (2) (a) "Boarding school" means a private school that:

693 (i) uses a regionally accredited education program;

694 (ii) provides a residence to the school's students:

695 (A) for the purpose of enabling the school's students to attend classes at the school; and

696 (B) as an ancillary service to educating the students at the school;

697 (iii) has the primary purpose of providing the school's students with an education, as
698 defined in Subsection (2)(b)(i); and

699 (iv) (A) does not provide the treatment or services described in Subsection [~~(27)~~]
700 (26)(a); or

701 (B) provides the treatment or services described in Subsection [~~(27)~~] (26)(a) on a
702 limited basis, as described in Subsection (2)(b)(ii).

703 (b) (i) For purposes of Subsection (2)(a)(iii), "education" means a course of study for
704 one or more of grades kindergarten through 12th grade.

705 (ii) For purposes of Subsection (2)(a)(iv)(B), a private school provides the treatment or
706 services described in Subsection [~~(27)~~] (26)(a) on a limited basis if:

707 (A) the treatment or services described in Subsection [~~(27)~~] (26)(a) are provided only
708 as an incidental service to a student; and

709 (B) the school does not:

710 (I) specifically solicit a student for the purpose of providing the treatment or services
711 described in Subsection [~~(27)~~] (26)(a); or

712 (II) have a primary purpose of providing the services described in Subsection [~~(27)~~]
713 (26)(a).

714 (c) "Boarding school" does not include a therapeutic school.

715 (3) "Certified local inspector" means a person certified by the office, pursuant to
716 Subsection 62A-2-108.3(1), to conduct an inspection described in Subsection 62A-2-108.3(4).

717 (4) "Certified local inspector applicant" means a person for which designation as a
718 certified local inspector is sought under Section 62A-2-108.3.

719 (5) "Child" means a person under 18 years of age.

720 (6) "Child placing" means receiving, accepting, or providing custody or care for any
721 child, temporarily or permanently, for the purpose of:

722 (a) finding a person to adopt the child;

723 (b) placing the child in a home for adoption; or

724 (c) foster home placement.

725 (7) "Client" means an individual who receives or has received services from a licensee.

726 (8) "Day treatment" means specialized treatment that is provided to:

727 (a) a client less than 24 hours a day; and

728 (b) four or more persons who:

729 (i) are unrelated to the owner or provider; and

730 (ii) have emotional, psychological, developmental, physical, or behavioral
731 dysfunctions, impairments, or chemical dependencies.

732 (9) "Department" means the Department of Human Services.

733 (10) "Direct access" means that an individual has, or likely will have, contact with or
734 access to a child or vulnerable adult that provides the individual with an opportunity for
735 personal communication or touch.

736 (11) "Director" means the director of the Office of Licensing.

737 (12) "Domestic violence" is as defined in Section 77-36-1.

738 (13) "Domestic violence treatment program" means a nonresidential program designed
739 to provide psychological treatment and educational services to perpetrators and victims of
740 domestic violence.

- 741 (14) "Elder adult" means a person 65 years of age or older.
- 742 (15) "Executive director" means the executive director of the department.
- 743 (16) "Foster home" means a temporary residential living environment for the care of:
- 744 (a) fewer than four foster children in the home of a licensed or certified foster parent;
- 745 or
- 746 (b) four or more children in the home of a licensed or certified foster parent if the
- 747 children are siblings.
- 748 (17) (a) "Human services program" means a:
- 749 (i) foster home;
- 750 (ii) therapeutic school;
- 751 (iii) youth program;
- 752 (iv) resource family home; or
- 753 (v) facility or program that provides:
- 754 (A) secure treatment;
- 755 (B) inpatient treatment;
- 756 (C) residential treatment;
- 757 (D) residential support;
- 758 (E) adult day care;
- 759 (F) day treatment;
- 760 (G) outpatient treatment;
- 761 (H) domestic violence treatment;
- 762 (I) child placing services;
- 763 (J) social detoxification; or
- 764 (K) any other human services that are required by contract with the department to be
- 765 licensed with the department.
- 766 (b) "Human services program" does not include a boarding school.
- 767 (18) "Licensee" means a person or human services program licensed by the office.
- 768 [~~(19) "Licensing board" means the Human Services Licensing Board.~~]
- 769 [(~~20~~) (19) "Local government" means a:
- 770 (a) city; or
- 771 (b) county.

772 [~~(21)~~] (20) "Minor" has the same meaning as "child."

773 [~~(22)~~] (21) "Office" means the Office of Licensing within the Department of Human
774 Services.

775 [~~(23)~~] (22) "Outpatient treatment" means individual, family, or group therapy or
776 counseling designed to improve and enhance social or psychological functioning for those
777 whose physical and emotional status allows them to continue functioning in their usual living
778 environment.

779 [~~(24)~~] (23) (a) "Person associated with the licensee" means a person:

780 (i) affiliated with a licensee as an owner, director, member of the governing body,
781 employee, agent, provider of care, or volunteer; or

782 (ii) applying to become affiliated with a licensee in any capacity listed under
783 Subsection [~~(24)~~] (23)(a)(i).

784 (b) Notwithstanding Subsection [~~(24)~~] (23)(a), "person associated with the licensee"
785 does not include an individual serving on the following bodies unless that individual has direct
786 access to children or vulnerable adults:

787 (i) a local mental health authority under Section 17-43-301;

788 (ii) a local substance abuse authority under Section 17-43-201; or

789 (iii) a board of an organization operating under a contract to provide:

790 (A) mental health or substance abuse programs; or

791 (B) services for the local mental health authority or substance abuse authority.

792 (c) "Person associated with the licensee" does not include a guest or visitor whose
793 access to children or vulnerable adults is directly supervised by the licensee at all times.

794 [~~(25)~~] (24) "Regular business hours" means:

795 (a) the hours during which services of any kind are provided to a client; or

796 (b) the hours during which a client is present at the facility of a licensee.

797 [~~(26)~~] (25) (a) "Residential support" means arranging for or providing the necessities of
798 life as a protective service to individuals or families who are disabled or who are experiencing
799 a dislocation or emergency that prevents them from providing these services for themselves or
800 their families.

801 (b) "Residential support" includes providing a supervised living environment for
802 persons with:

- 803 (i) dysfunctions or impairments that are:
- 804 (A) emotional;
- 805 (B) psychological;
- 806 (C) developmental; or
- 807 (D) behavioral; or
- 808 (ii) chemical dependencies.
- 809 (c) Treatment is not a necessary component of residential support.
- 810 (d) "Residential support" does not include residential services that are performed:
- 811 (i) exclusively under contract with the Division of Services for People with
- 812 Disabilities; and
- 813 (ii) in a facility that serves less than four individuals.
- 814 [~~27~~] (26) (a) "Residential treatment" means a 24-hour group living environment for
- 815 four or more individuals unrelated to the owner or provider that offers room or board and
- 816 specialized treatment, behavior modification, rehabilitation, discipline, emotional growth, or
- 817 habilitation services for persons with emotional, psychological, developmental, or behavioral
- 818 dysfunctions, impairments, or chemical dependencies.
- 819 (b) "Residential treatment" does not include a:
- 820 (i) boarding school; or
- 821 (ii) foster home.
- 822 [~~28~~] (27) "Residential treatment program" means a human services program that
- 823 provides:
- 824 (a) residential treatment; or
- 825 (b) secure treatment.
- 826 [~~29~~] (28) (a) "Secure treatment" means 24-hour specialized residential treatment or
- 827 care for persons whose current functioning is such that they cannot live independently or in a
- 828 less restrictive environment.
- 829 (b) "Secure treatment" differs from residential treatment to the extent that it requires
- 830 intensive supervision, locked doors, and other security measures that are imposed on residents
- 831 with neither their consent nor control.
- 832 [~~30~~] (29) "Social detoxification" means short-term residential services for persons
- 833 who are experiencing or have recently experienced drug or alcohol intoxication, that are

834 provided outside of a health care facility licensed under Title 26, Chapter 21, Health Care
835 Facility Licensing and Inspection Act, and that include:

836 (a) room and board for persons who are unrelated to the owner or manager of the
837 facility;

838 (b) specialized rehabilitation to acquire sobriety; and

839 (c) aftercare services.

840 [~~(31)~~] (30) "Substance abuse treatment program" means a program:

841 (a) designed to provide:

842 (i) specialized drug or alcohol treatment;

843 (ii) rehabilitation; or

844 (iii) habilitation services; and

845 (b) that provides the treatment or services described in Subsection [~~(31)~~] (30)(a) to
846 persons with:

847 (i) a diagnosed substance abuse disorder; or

848 (ii) chemical dependency disorder.

849 [~~(32)~~] (31) "Therapeutic school" means a residential group living facility:

850 (a) for four or more individuals that are not related to:

851 (i) the owner of the facility; or

852 (ii) the primary service provider of the facility;

853 (b) that serves students who have a history of failing to function:

854 (i) at home;

855 (ii) in a public school; or

856 (iii) in a nonresidential private school; and

857 (c) that offers:

858 (i) room and board; and

859 (ii) an academic education integrated with:

860 (A) specialized structure and supervision; or

861 (B) services or treatment related to:

862 (I) a disability;

863 (II) emotional development;

864 (III) behavioral development;

865 (IV) familial development; or

866 (V) social development.

867 ~~[(33)]~~ (32) "Unrelated persons" means persons other than parents, legal guardians,
868 grandparents, brothers, sisters, uncles, or aunts.

869 ~~[(34)]~~ (33) "Vulnerable adult" means an elder adult or an adult who has a temporary or
870 permanent mental or physical impairment that substantially affects the person's ability to:

871 (a) provide personal protection;

872 (b) provide necessities such as food, shelter, clothing, or mental or other health care;

873 (c) obtain services necessary for health, safety, or welfare;

874 (d) carry out the activities of daily living;

875 (e) manage the adult's own resources; or

876 (f) comprehend the nature and consequences of remaining in a situation of abuse,
877 neglect, or exploitation.

878 ~~[(35)]~~ (34) (a) "Youth program" means a nonresidential program designed to provide
879 behavioral, substance abuse, or mental health services to minors that:

880 (i) serves adjudicated or nonadjudicated youth;

881 (ii) charges a fee for its services;

882 (iii) may or may not provide host homes or other arrangements for overnight
883 accommodation of the youth;

884 (iv) may or may not provide all or part of its services in the outdoors;

885 (v) may or may not limit or censor access to parents or guardians; and

886 (vi) prohibits or restricts a minor's ability to leave the program at any time of the
887 minor's own free will.

888 (b) "Youth program" does not include recreational programs such as Boy Scouts, Girl
889 Scouts, 4-H, and other such organizations.

890 Section 13. Section **62A-2-106** is amended to read:

891 **62A-2-106. Office responsibilities.**

892 (1) Subject to the requirements of federal and state law, the office shall:

893 (a) make rules in accordance with Title 63G, Chapter 3, Utah Administrative
894 Rulemaking Act, to establish:

895 (i) except as provided in Subsection (1)(a)(ii), basic health and safety standards for

896 licensees, that shall be limited to:

897 (A) fire safety;

898 (B) food safety;

899 (C) sanitation;

900 (D) infectious disease control;

901 (E) safety of the:

902 (I) physical facility and grounds; and

903 (II) area and community surrounding the physical facility;

904 (F) transportation safety;

905 (G) emergency preparedness and response;

906 (H) the administration of medical standards and procedures, consistent with the related

907 provisions of this title;

908 (I) staff and client safety and protection;

909 (J) the administration and maintenance of client and service records;

910 (K) staff qualifications and training, including standards for permitting experience to

911 be substituted for education, unless prohibited by law;

912 (L) staff to client ratios; and

913 (M) access to firearms;

914 (ii) basic health and safety standards for therapeutic schools, that shall be limited to:

915 (A) fire safety, except that the standards are limited to those required by law or rule

916 under Title 53, Chapter 7, Part 2, Fire Prevention and Fireworks Act;

917 (B) food safety;

918 (C) sanitation;

919 (D) infectious disease control, except that the standards are limited to:

920 (I) those required by law or rule under Title 26, Utah Health Code or Title 26A, Local

921 Health Authorities; and

922 (II) requiring a separate room for clients who are sick;

923 (E) safety of the physical facility and grounds, except that the standards are limited to

924 those required by law or rule under Title 53, Chapter 7, Part 2, Fire Prevention and Fireworks

925 Act;

926 (F) transportation safety;

- 927 (G) emergency preparedness and response;
- 928 (H) access to appropriate medical care, including:
- 929 (I) subject to the requirements of law, designation of a person who is authorized to
- 930 dispense medication; and
- 931 (II) storing, tracking, and securing medication;
- 932 (I) staff and client safety and protection that permits the school to provide for the direct
- 933 supervision of clients at all times;
- 934 (J) the administration and maintenance of client and service records;
- 935 (K) staff qualifications and training, including standards for permitting experience to
- 936 be substituted for education, unless prohibited by law;
- 937 (L) staff to client ratios; and
- 938 (M) access to firearms;
- 939 (iii) procedures and standards for permitting a licensee to:
- 940 (A) provide in the same facility and under the same conditions as children, residential
- 941 treatment services to a person 18 years old or older who:
- 942 (I) begins to reside at the licensee's residential treatment facility before the person's
- 943 18th birthday;
- 944 (II) has resided at the licensee's residential treatment facility continuously since the
- 945 time described in Subsection (1)(a)(iii)(A)(I);
- 946 (III) has not completed the course of treatment for which the person began residing at
- 947 the licensee's residential treatment facility; and
- 948 (IV) voluntarily consents to complete the course of treatment described in Subsection
- 949 (1)(a)(iii)(A)(III); or
- 950 (B) (I) provide residential treatment services to a child who is:
- 951 (Aa) 12 years old or older; and
- 952 (Bb) under the custody of the Division of Juvenile Justice Services; and
- 953 (II) provide, in the same facility as a child described in Subsection (1)(a)(iii)(B)(I),
- 954 residential treatment services to a person who is:
- 955 (Aa) at least 18 years old, but younger than 21 years old; and
- 956 (Bb) under the custody of the Division of Juvenile Justice Services;
- 957 (iv) minimum administration and financial requirements for licensees; and

- 958 (v) guidelines for variances from rules established under this Subsection (1);
- 959 (b) enforce rules [~~approved by the licensing board~~] relating to the office;
- 960 (c) issue licenses in accordance with this chapter;
- 961 (d) if the United States Department of State executes an agreement with the office that
- 962 designates the office to act as an accrediting entity in accordance with the Intercountry
- 963 Adoption Act of 2000, Pub. L. No. 106-279, accredit one or more agencies and persons to
- 964 provide intercountry adoption services pursuant to:
 - 965 (i) the Intercountry Adoption Act of 2000, Pub. L. No. 106-279; and
 - 966 (ii) the implementing regulations for the Intercountry Adoption Act of 2000, Pub. L.
 - 967 No. 106-279;
 - 968 (e) make rules to implement the provisions of Subsection (1)(d);
 - 969 (f) conduct surveys and inspections of licensees and facilities in accordance with
 - 970 Section 62A-2-118;
 - 971 (g) collect licensure fees;
 - 972 [~~(h) provide necessary administrative support to the licensing board;~~]
 - 973 [~~(h)~~] (h) notify licensees of the name of a person within the department to contact when
 - 974 filing a complaint;
 - 975 [~~(i)~~] (i) investigate complaints regarding any licensee or human services program;
 - 976 [~~(j)~~] (j) have access to all records, correspondence, and financial data required to be
 - 977 maintained by a licensee;
 - 978 [~~(k)~~] (k) have authority to interview any client, family member of a client, employee, or
 - 979 officer of a licensee; and
 - 980 [~~(l)~~] (l) have authority to deny, condition, revoke, suspend, or extend any license
 - 981 issued by the department under this chapter by following the procedures and requirements of
 - 982 Title 63G, Chapter 4, Administrative Procedures Act.
- 983 (2) In establishing rules under Subsection (1)(a)(ii)(G), the office shall require a
- 984 licensee to establish and comply with an emergency response plan that requires clients and staff
- 985 to:
 - 986 (a) immediately report to law enforcement any significant criminal activity, as defined
 - 987 by rule, committed:
 - 988 (i) on the premises where the licensee operates its human services program;

- 989 (ii) by or against its clients; or
990 (iii) by or against a staff member while the staff member is on duty;
991 (b) immediately report to emergency medical services any medical emergency, as
992 defined by rule:
993 (i) on the premises where the licensee operates its human services program;
994 (ii) involving its clients; or
995 (iii) involving a staff member while the staff member is on duty; and
996 (c) immediately report other emergencies that occur on the premises where the licensee
997 operates its human services program to the appropriate emergency services agency.

998 Section 14. Section **62A-2-108** is amended to read:

999 **62A-2-108. Licensure requirements -- Expiration -- Renewal.**

1000 (1) Except as provided in Section 62A-2-110, a person, agency, firm, corporation,
1001 association, or governmental unit, acting severally or jointly with any other person, agency,
1002 firm, corporation, association, or governmental unit, may not establish, conduct, or maintain a
1003 human services program in this state without a valid and current license issued by and under
1004 the authority of the office as provided by this chapter and the rules [~~of the licensing board~~]
1005 under the authority of this chapter.

1006 (2) (a) For purposes of this Subsection (2), "member" means a person or entity that is
1007 associated with another person or entity:

- 1008 (i) as a member;
1009 (ii) as a partner;
1010 (iii) as a shareholder; or
1011 (iv) as a person or entity involved in the ownership or management of a residential
1012 treatment program owned or managed by the other person or entity.

1013 (b) A license issued under this chapter may not be assigned or transferred.

1014 (c) An application for a license under this chapter shall be treated as an application for
1015 reinstatement of a revoked license if:

1016 (i) (A) the person or entity applying for the license had a license revoked under this
1017 chapter; and

1018 (B) the revoked license described in Subsection (2)(c)(i)(A) is not reinstated before the
1019 application described in this Subsection (2)(c) is made; or

1020 (ii) a member of an entity applying for the license:
1021 (A) (I) had a license revoked under this chapter; and
1022 (II) the revoked license described in Subsection (2)(c)(ii)(A)(I) is not reinstated before
1023 the application described in this Subsection (2)(c) is made; or
1024 (B) (I) was a member of an entity that had a license revoked under this chapter at any
1025 time before the license was revoked; and
1026 (II) the revoked license described in Subsection (2)(c)(ii)(B)(I) is not reinstated before
1027 the application described in this Subsection (2)(c) is made.
1028 (3) A current license shall at all times be posted in the facility where each human
1029 services program is operated, in a place that is visible and readily accessible to the public.
1030 (4) (a) Each license issued under this chapter expires at midnight 12 months from the
1031 date of issuance unless it has been:
1032 (i) previously revoked by the office; or
1033 (ii) voluntarily returned to the office by the licensee.
1034 (b) A license shall be renewed upon application and payment of the applicable fee,
1035 unless the office finds that the licensee:
1036 (i) is not in compliance with the:
1037 (A) provisions of this chapter; or
1038 (B) rules made under this chapter;
1039 (ii) has engaged in a pattern of noncompliance with the:
1040 (A) provisions of this chapter; or
1041 (B) rules made under this chapter;
1042 (iii) has engaged in conduct that is grounds for denying a license under Section
1043 62A-2-112; or
1044 (iv) has engaged in conduct that poses a substantial risk of harm to any person.
1045 (5) Any licensee that is in operation at the time rules are made in accordance with this
1046 chapter shall be given a reasonable time for compliance as determined by the rule.
1047 (6) (a) A license for a human services program issued under this section shall apply to
1048 a specific human services program site.
1049 (b) A human services program shall obtain a separate license for each site where the
1050 human services program is operated.

1051 Section 15. Section **62A-2-109** is amended to read:

1052 **62A-2-109. License application -- Classification of information.**

1053 (1) An application for a license under this chapter shall be made to the office and shall
1054 contain information that [~~the board determines~~] is necessary [~~in accordance~~] to comply with
1055 approved rules.

1056 (2) Information received by the office through reports and inspections shall be
1057 classified in accordance with Title 63G, Chapter 2, Government Records Access and
1058 Management Act.

1059 Section 16. Section **62A-2-112** is amended to read:

1060 **62A-2-112. Violations -- Penalties.**

1061 If the office finds that a violation has occurred under Section 62A-2-111, it may:

1062 (1) deny, place conditions on, suspend, or revoke a license, if it finds:

1063 (a) that there has been a failure to comply with the rules [~~approved by the board~~]
1064 established under this chapter; or

1065 (b) evidence of aiding, abetting, or permitting the commission of any illegal act; or

1066 (2) restrict or prohibit new admissions to a human services program or facility, if it
1067 finds:

1068 (a) that there has been a failure to comply with rules [~~approved by the board~~]
1069 established under this chapter; or

1070 (b) evidence of aiding, abetting, or permitting the commission of any illegal act in the
1071 human services program or facility.

1072 Section 17. Section **62A-2-115** is amended to read:

1073 **62A-2-115. Injunctive relief and other legal procedures.**

1074 In addition to, and notwithstanding, any other remedy provided by law the department
1075 may, in a manner provided by law and upon the advice of the attorney general, who shall
1076 represent the department in the proceedings, maintain an action in the name of the state for
1077 injunction or other process against any person or governmental unit to restrain or prevent the
1078 establishment, management, or operation of a human services program or facility in violation
1079 of this chapter or rules [~~approved by the board~~] established under this chapter.

1080 Section 18. Section **62A-2-121** is amended to read:

1081 **62A-2-121. Access to abuse and neglect information.**

- 1082 (1) For purposes of this section:
- 1083 (a) "Direct service worker" is as defined in Section 62A-5-101.
- 1084 (b) "Personal care attendant" is as defined in Section 62A-3-101.
- 1085 (2) With respect to a licensee, a certified local inspector applicant, a direct service
- 1086 worker, or a personal care attendant, the department may access only the Licensing Information
- 1087 System of the Division of Child and Family Services created by Section 62A-4a-1006 and
- 1088 juvenile court records under Subsection 78A-6-323(6), for the purpose of:
- 1089 (a) (i) determining whether a person associated with a licensee, with direct access to
- 1090 children:
- 1091 (A) is listed in the Licensing Information System; or
- 1092 (B) has a substantiated finding by a juvenile court of a severe type of child abuse or
- 1093 neglect under Subsections 78A-6-323(1) and (2); and
- 1094 (ii) informing a licensee that a person associated with the licensee:
- 1095 (A) is listed in the Licensing Information System; or
- 1096 (B) has a substantiated finding by a juvenile court of a severe type of child abuse or
- 1097 neglect under Subsections 78A-6-323(1) and (2);
- 1098 (b) (i) determining whether a certified local inspector applicant:
- 1099 (A) is listed in the Licensing Information System; or
- 1100 (B) has a substantiated finding by a juvenile court of a severe type of child abuse or
- 1101 neglect under Subsections 78A-6-323(1) and (2); and
- 1102 (ii) informing a local government that a certified local inspector applicant:
- 1103 (A) is listed in the Licensing Information System; or
- 1104 (B) has a substantiated finding by a juvenile court of a severe type of child abuse or
- 1105 neglect under Subsections 78A-6-323(1) and (2);
- 1106 (c) (i) determining whether a direct service worker:
- 1107 (A) is listed in the Licensing Information System; or
- 1108 (B) has a substantiated finding by a juvenile court of a severe type of child abuse or
- 1109 neglect under Subsections 78A-6-323(1) and (2); and
- 1110 (ii) informing a direct service worker or the direct service worker's employer that the
- 1111 direct service worker:
- 1112 (A) is listed in the Licensing Information System; or

- 1113 (B) has a substantiated finding by a juvenile court of a severe type of child abuse or
1114 neglect under Subsections 78A-6-323(1) and (2); or
- 1115 (d) (i) determining whether a personal care attendant:
- 1116 (A) is listed in the Licensing Information System; or
- 1117 (B) has a substantiated finding by a juvenile court of a severe type of child abuse or
1118 neglect under Subsections 78A-6-323(1) and (2); and
- 1119 (ii) informing a person described in Subsections 62A-3-101~~(9)~~(8)(a)(i) through (iv)
1120 that a personal care attendant:
- 1121 (A) is listed in the Licensing Information System; or
- 1122 (B) has a substantiated finding by a juvenile court of a severe type of child abuse or
1123 neglect under Subsections 78A-6-323(1) and (2).
- 1124 (3) Notwithstanding Subsection (2), the department may access the Division of Child
1125 and Family Service's Management Information System under Section 62A-4a-1003:
- 1126 (a) for the purpose of licensing and monitoring foster parents; and
- 1127 (b) for the purposes described in Subsection 62A-4a-1003(1)(d).
- 1128 (4) After receiving identifying information for a person under Subsection
1129 62A-2-120(1), the department shall process the information for the purposes described in
1130 Subsection (2).
- 1131 (5) The department shall adopt rules under Title 63G, Chapter 3, Utah Administrative
1132 Rulemaking Act, consistent with this chapter, defining the circumstances under which a person
1133 may have direct access or provide services to children when:
- 1134 (a) the person is listed in the Licensing Information System of the Division of Child
1135 and Family Services created by Section 62A-4a-1006; or
- 1136 (b) juvenile court records show that a court made a substantiated finding under Section
1137 78A-6-323, that the person committed a severe type of child abuse or neglect.
- 1138 Section 19. Section **62A-2-122** is amended to read:
- 1139 **62A-2-122. Access to vulnerable adult abuse and neglect information.**
- 1140 (1) For purposes of this section:
- 1141 (a) "Direct service worker" is as defined in Section 62A-5-101.
- 1142 (b) "Personal care attendant" is as defined in Section 62A-3-101.
- 1143 (2) With respect to a licensee, a certified local inspector applicant, a direct service

1144 worker, or a personal care attendant, the department may access the database created by Section
1145 62A-3-311.1 for the purpose of:

1146 (a) (i) determining whether a person associated with a licensee, with direct access to
1147 vulnerable adults, has a supported or substantiated finding of:

1148 (A) abuse;

1149 (B) neglect; or

1150 (C) exploitation; and

1151 (ii) informing a licensee that a person associated with the licensee has a supported or
1152 substantiated finding of:

1153 (A) abuse;

1154 (B) neglect; or

1155 (C) exploitation;

1156 (b) (i) determining whether a certified local inspector applicant has a supported or
1157 substantiated finding of:

1158 (A) abuse;

1159 (B) neglect; or

1160 (C) exploitation; and

1161 (ii) informing a local government that a certified local inspector applicant has a
1162 supported or substantiated finding of:

1163 (A) abuse;

1164 (B) neglect; or

1165 (C) exploitation;

1166 (c) (i) determining whether a direct service worker has a supported or substantiated
1167 finding of:

1168 (A) abuse;

1169 (B) neglect; or

1170 (C) exploitation; and

1171 (ii) informing a direct service worker or the direct service worker's employer that the
1172 direct service worker has a supported or substantiated finding of:

1173 (A) abuse;

1174 (B) neglect; or

1175 (C) exploitation; or
1176 (d) (i) determining whether a personal care attendant has a supported or substantiated
1177 finding of:

1178 (A) abuse;

1179 (B) neglect; or

1180 (C) exploitation; and

1181 (ii) informing a person described in Subsections 62A-3-101~~(9)~~(8)(a)(i) through (iv)
1182 that a personal care attendant has a supported or substantiated finding of:

1183 (A) abuse;

1184 (B) neglect; or

1185 (C) exploitation.

1186 (3) After receiving identifying information for a person under Subsection
1187 62A-2-120(1), the department shall process the information for the purposes described in
1188 Subsection (2).

1189 (4) The department shall adopt rules under Title 63G, Chapter 3, Utah Administrative
1190 Rulemaking Act, consistent with this chapter and Title 62A, Chapter 3, Part 3, Abuse, Neglect,
1191 or Exploitation of Vulnerable Adults, defining the circumstances under which a person may
1192 have direct access or provide services to vulnerable adults when the person is listed in the
1193 statewide database of the Division of Aging and Adult Services created by Section
1194 62A-3-311.1 as having a supported or substantiated finding of abuse, neglect, or exploitation.

1195 Section 20. Section **62A-3-107** is amended to read:

1196 **62A-3-107. Requirements for establishing division policy.**

1197 (1) The board is the program policymaking body for the division and for programs
1198 funded with state and federal money under Sections 62A-3-104.1 and 62A-3-104.2. In
1199 establishing policy and reviewing existing policy, the board shall seek input from local area
1200 agencies, consumers, providers, advocates, division staff, and other interested parties as
1201 determined by the board.

1202 (2) The board shall establish, by rule, procedures for developing its policies which
1203 ensure that local area agencies are given opportunity to comment and provide input on any new
1204 policy of the board and on any proposed changes in the board's existing policy. The board
1205 shall also provide a mechanism for review of its existing policy and for consideration of policy

1206 changes that are proposed by those local area agencies.

1207 (3) Members shall receive no compensation or benefits for their services, but may, at
1208 the executive director's discretion, receive per diem and expenses incurred in the performance
1209 of the member's official duties at the rates established by the Division of Finance under
1210 Sections 63A-3-106 and 63A-3-107.

1211 Section 21. Section **62A-3-204** is amended to read:

1212 **62A-3-204. Powers and responsibilities of ombudsman.**

1213 The long-term care ombudsman shall:

1214 (1) comply with Title VII of the federal Older Americans Act, 42 U.S.C. 3058 et seq.;

1215 (2) establish procedures for and engage in receiving complaints, conducting
1216 investigations, reporting findings, issuing findings and recommendations, promoting
1217 community contact and involvement with elderly residents of long-term care facilities through
1218 the use of volunteers, and publicizing its functions and activities;

1219 (3) investigate an administrative act or omission of any long-term care facility or
1220 governmental agency if the act or omission relates to the purposes of the ombudsman. The
1221 ombudsman may exercise its authority under this subsection without regard to the finality of
1222 the administrative act or omission, and it may make findings in order to resolve the subject
1223 matter of its investigation;

1224 (4) recommend to the ~~[board]~~ division rules that it ~~[deems]~~ considers necessary to carry
1225 out the purposes of the ombudsman;

1226 (5) cooperate and coordinate with governmental entities and voluntary assistance
1227 organizations in exercising its powers and responsibilities;

1228 (6) request and receive cooperation, assistance, services, and data from any
1229 governmental agency, to enable it to properly exercise its powers and responsibilities;

1230 (7) establish local ombudsman programs to assist in carrying out the purposes of this
1231 part, which shall meet the standards developed by the division, and possess all of the authority
1232 and power granted to the long-term care ombudsman program under this part; and

1233 (8) exercise other powers and responsibilities as reasonably required to carry out the
1234 purposes of this part.

1235 Section 22. Section **62A-4a-101** is amended to read:

1236 **62A-4a-101. Definitions.**

1237 As used in this chapter:

1238 (1) "Abuse" is as defined in Section 78A-6-105.

1239 (2) "Adoption services" means:

1240 (a) placing children for adoption;

1241 (b) subsidizing adoptions under Section 62A-4a-105;

1242 (c) supervising adoption placements until the adoption is finalized by the court;

1243 (d) conducting adoption studies;

1244 (e) preparing adoption reports upon request of the court; and

1245 (f) providing postadoptive placement services, upon request of a family, for the
1246 purpose of stabilizing a possible disruptive placement.

1247 [~~(3)~~] ~~"Board" means the Board of Child and Family Services established in accordance~~
1248 ~~with Sections 62A-1-105, 62A-1-107, and 62A-4a-102.~~]

1249 [~~(4)~~] (3) "Child" means, except as provided in Part 7, Interstate Compact on Placement
1250 of Children, a person under 18 years of age.

1251 [~~(5)~~] (4) "Consumer" means a person who receives services offered by the division in
1252 accordance with this chapter.

1253 [~~(6)~~] (5) "Chronic abuse" means repeated or patterned abuse.

1254 [~~(7)~~] (6) "Chronic neglect" means repeated or patterned neglect.

1255 [~~(8)~~] (7) "Custody," with regard to the division, means the custody of a minor in the
1256 division as of the date of disposition.

1257 [~~(9)~~] (8) "Day-care services" means care of a child for a portion of the day which is less
1258 than 24 hours:

1259 (a) in the child's own home by a responsible person; or

1260 (b) outside of the child's home in a:

1261 (i) day-care center;

1262 (ii) family group home; or

1263 (iii) family child care home.

1264 [~~(10)~~] (9) "Dependent child" or "dependency" means a child, or the condition of a
1265 child, who is homeless or without proper care through no fault of the child's parent, guardian,
1266 or custodian.

1267 [~~(11)~~] (10) "Director" means the director of the Division of Child and Family Services.

- 1268 [~~(12)~~] (11) "Division" means the Division of Child and Family Services.
- 1269 [~~(13)~~] (12) "Domestic violence services" means:
- 1270 (a) temporary shelter, treatment, and related services to:
- 1271 (i) a person who is a victim of abuse, as defined in Section 78B-7-102; and
- 1272 (ii) the dependent children of a person described in Subsection [~~(13)~~] (12)(a)(i); and
- 1273 (b) treatment services for a person who is alleged to have committed, has been
- 1274 convicted of, or has pled guilty to, an act of domestic violence as defined in Section 77-36-1.
- 1275 [~~(14)~~] (13) "Harm" is as defined in Section 78A-6-105.
- 1276 [~~(15)~~] (14) "Homemaking service" means the care of individuals in their domiciles, and
- 1277 help given to individual caretaker relatives to achieve improved household and family
- 1278 management through the services of a trained homemaker.
- 1279 [~~(16)~~] (15) "Incest" is as defined in Section 78A-6-105.
- 1280 [~~(17)~~] (16) "Minor" means, except as provided in Part 7, Interstate Compact on
- 1281 Placement of Children:
- 1282 (a) a child; or
- 1283 (b) a person:
- 1284 (i) who is at least 18 years of age and younger than 21 years of age; and
- 1285 (ii) for whom the division has been specifically ordered by the juvenile court to provide
- 1286 services.
- 1287 [~~(18)~~] (17) "Molestation" is as defined in Section 78A-6-105.
- 1288 [~~(19)~~] (18) "Natural parent" means a minor's biological or adoptive parent, and
- 1289 includes a minor's noncustodial parent.
- 1290 [~~(20)~~] (19) "Neglect" is as defined in Section 78A-6-105.
- 1291 [~~(21)~~] (20) "Protective custody," with regard to the division, means the shelter of a
- 1292 child by the division from the time the child is removed from the child's home until the earlier
- 1293 of:
- 1294 (a) the shelter hearing; or
- 1295 (b) the child's return home.
- 1296 [~~(22)~~] (21) "Protective services" means expedited services that are provided:
- 1297 (a) in response to evidence of neglect, abuse, or dependency of a child;
- 1298 (b) to a cohabitant who is neglecting or abusing a child, in order to:

- 1299 (i) help the cohabitant develop recognition of the cohabitant's duty of care and of the
1300 causes of neglect or abuse; and
- 1301 (ii) strengthen the cohabitant's ability to provide safe and acceptable care; and
- 1302 (c) in cases where the child's welfare is endangered:
- 1303 (i) to bring the situation to the attention of the appropriate juvenile court and law
1304 enforcement agency;
- 1305 (ii) to cause a protective order to be issued for the protection of the child, when
1306 appropriate; and
- 1307 (iii) to protect the child from the circumstances that endanger the child's welfare
1308 including, when appropriate:
- 1309 (A) removal from the child's home;
- 1310 (B) placement in substitute care; and
- 1311 (C) petitioning the court for termination of parental rights.
- 1312 [~~(23)~~] (22) "Severe abuse" is as defined in Section 78A-6-105.
- 1313 [~~(24)~~] (23) "Severe neglect" is as defined in Section 78A-6-105.
- 1314 [~~(25)~~] (24) "Sexual abuse" is as defined in Section 78A-6-105.
- 1315 [~~(26)~~] (25) "Sexual exploitation" is as defined in Section 78A-6-105.
- 1316 [~~(27)~~] (26) "Shelter care" means the temporary care of a minor in a nonsecure facility.
- 1317 [~~(28)~~] (27) "State" means:
- 1318 (a) a state of the United States;
- 1319 (b) the District of Columbia;
- 1320 (c) the Commonwealth of Puerto Rico;
- 1321 (d) the Virgin Islands;
- 1322 (e) Guam;
- 1323 (f) the Commonwealth of the Northern Mariana Islands; or
- 1324 (g) a territory or possession administered by the United States.
- 1325 [~~(29)~~] (28) "State plan" means the written description of the programs for children,
1326 youth, and family services administered by the division in accordance with federal law.
- 1327 [~~(30)~~] (29) "Status offense" means a violation of the law that would not be a violation
1328 but for the age of the offender.
- 1329 [~~(31)~~] (30) "Substance abuse" is as defined in Section 78A-6-105.

1330 [~~(32)~~] (31) "Substantiated" or "substantiation" means a judicial finding based on a
1331 preponderance of the evidence that abuse or neglect occurred. Each allegation made or
1332 identified in a given case shall be considered separately in determining whether there should be
1333 a finding of substantiated.

1334 [~~(33)~~] (32) "Substitute care" means:

1335 (a) the placement of a minor in a family home, group care facility, or other placement
1336 outside the minor's own home, either at the request of a parent or other responsible relative, or
1337 upon court order, when it is determined that continuation of care in the minor's own home
1338 would be contrary to the minor's welfare;

1339 (b) services provided for a minor awaiting placement; and

1340 (c) the licensing and supervision of a substitute care facility.

1341 [~~(34)~~] (33) "Supported" means a finding by the division based on the evidence
1342 available at the completion of an investigation that there is a reasonable basis to conclude that
1343 abuse, neglect, or dependency occurred. Each allegation made or identified during the course
1344 of the investigation shall be considered separately in determining whether there should be a
1345 finding of supported.

1346 [~~(35)~~] (34) "Temporary custody," with regard to the division, means the custody of a
1347 child in the division from the date of the shelter hearing until disposition.

1348 [~~(36)~~] (35) "Transportation services" means travel assistance given to an individual
1349 with escort service, if necessary, to and from community facilities and resources as part of a
1350 service plan.

1351 [~~(37)~~] (36) "Unsubstantiated" means a judicial finding that there is insufficient
1352 evidence to conclude that abuse or neglect occurred.

1353 [~~(38)~~] (37) "Unsupported" means a finding at the completion of an investigation that
1354 there is insufficient evidence to conclude that abuse, neglect, or dependency occurred.
1355 However, a finding of unsupported means also that the division worker did not conclude that
1356 the allegation was without merit.

1357 [~~(39)~~] (38) "Without merit" means a finding at the completion of an investigation by
1358 the division, or a judicial finding, that the alleged abuse, neglect, or dependency did not occur,
1359 or that the alleged perpetrator was not responsible for the abuse, neglect, or dependency.

1360 Section 23. Section **62A-4a-102** is amended to read:

1361 **62A-4a-102. Policy responsibilities of division.**

1362 (1) ~~[(a)]~~ The ~~[Board]~~ Division of Child and Family Services, created in ~~[accordance~~
1363 ~~with this section and with Sections 62A-1-105 and 62A-1-107]~~ Section 62A-4a-103, is
1364 responsible for establishing policies for the division, by rule, under Title 63G, Chapter 3, Utah
1365 Administrative Rulemaking Act, ~~[the policy of the division]~~ in accordance with the
1366 requirements of this chapter and Title 78A, Chapter 6, Juvenile Court Act of 1996, regarding
1367 abuse, neglect, and dependency proceedings, and domestic violence services. The ~~[board]~~
1368 division is responsible to see that the legislative purposes for the division are carried out.

1369 ~~[(b)(i) The governor shall appoint, with the consent of the Senate, 12 members to the~~
1370 ~~Board of Child and Family Services.]~~

1371 ~~[(ii) Except as required by Subsection (1)(b)(iii), as terms of current board members~~
1372 ~~expire, the governor shall appoint each new member or reappointed member to a four-year~~
1373 ~~term.]~~

1374 ~~[(iii) Notwithstanding the requirements of Subsection (1)(b)(ii), the governor shall, at~~
1375 ~~the time of appointment or reappointment, adjust the length of terms to ensure that the terms of~~
1376 ~~board members are staggered so that approximately half of the board is appointed every two~~
1377 ~~years.]~~

1378 ~~[(c) The board shall include:]~~

1379 ~~[(i) two members who are or have been consumers;]~~

1380 ~~[(ii) two members who are actively involved in children's issues specifically related to~~
1381 ~~abuse and neglect;]~~

1382 ~~[(iii) a licensed foster parent;]~~

1383 ~~[(iv) a recognized expert in the social, developmental, and mental health needs of~~
1384 ~~children;]~~

1385 ~~[(v) a physician licensed to practice medicine in this state who is:]~~

1386 ~~[(A) a board certified pediatrician; and]~~

1387 ~~[(B) an expert in child abuse and neglect;]~~

1388 ~~[(vi) a representative of private residential treatment facilities; and]~~

1389 ~~[(vii) an adult relative of a child who is or has been in the foster care system.]~~

1390 ~~[(d) Seven members of the board are necessary to constitute a quorum at any meeting.]~~

1391 ~~[(e) When a vacancy occurs in the membership for any reason, the replacement shall be~~

1392 appointed for the unexpired term.]

1393 ~~[(2) (a) A member shall receive no compensation or benefits for the member's services;~~
 1394 ~~but may receive per diem and expenses incurred in the performance of the member's official~~
 1395 ~~duties at the rates established by the Division of Finance under Sections 63A-3-106 and~~
 1396 ~~63A-3-107.]~~

1397 ~~[(b) A member may decline to receive per diem and expenses for the member's service.]~~

1398 ~~[(3)]~~ (2) The ~~[board]~~ division shall:

1399 (a) approve fee schedules for programs within the division;

1400 (b) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,
 1401 establish, by rule, policies to ensure that private citizens, consumers, foster parents, private
 1402 contract providers, allied state and local agencies, and others are provided with an opportunity
 1403 to comment and provide input regarding any new policy or proposed revision of an existing
 1404 policy; and

1405 (c) provide a mechanism for:

1406 (i) systematic and regular review of existing policy; and

1407 (ii) consideration of policy changes proposed by the persons and agencies described in
 1408 Subsection ~~[(3)]~~ (2)(b).

1409 ~~[(4)]~~ (3) (a) The ~~[board]~~ division shall establish ~~[policies]~~ rules for the determination of
 1410 eligibility for services offered by the division in accordance with this chapter.

1411 (b) The division may, by rule, establish eligibility standards for consumers.

1412 ~~[(5)]~~ (4) The ~~[board]~~ division shall adopt and maintain rules ~~[and policies]~~ regarding
 1413 placement for adoption or foster care that are consistent with, and no more restrictive than,
 1414 applicable statutory provisions.

1415 Section 24. Section **62A-4a-103** is amended to read:

1416 **62A-4a-103. Division -- Creation -- Purpose.**

1417 (1) (a) There is created the Division of Child and Family Services within the
 1418 department, under the administration and general supervision of the executive director~~;~~ ~~and~~
 1419 ~~under the policy direction of the board].~~

1420 (b) The division is the child, youth, and family services authority of the state and has
 1421 all functions, powers, duties, rights, and responsibilities created in accordance with this
 1422 chapter, except those assumed by ~~[the board and]~~ the department.

1423 (2) (a) The primary purpose of the division is to provide child welfare services.

1424 (b) The division shall, when possible and appropriate, provide preventive services and
1425 family preservation services in an effort to protect the child from the trauma of separation from
1426 his family, protect the integrity of the family, and the constitutional rights of parents. In
1427 keeping with its ultimate goal and purpose of protecting children, however, when a child's
1428 welfare is endangered or reasonable efforts to maintain or reunify a child with his family have
1429 failed, the division shall act in a timely fashion in accordance with the requirements of this
1430 chapter and Title 78A, Chapter 6, Part 3, Abuse, Neglect, and Dependency Proceedings, to
1431 provide the child with a stable, permanent environment.

1432 (3) The division shall also provide domestic violence services in accordance with
1433 federal law.

1434 Section 25. Section **62A-4a-104** is amended to read:

1435 **62A-4a-104. Director of division -- Qualifications.**

1436 (1) The director of the division shall be appointed by the executive director [~~with the~~
1437 ~~concurrence of the board~~].

1438 (2) The director shall have a bachelor's degree from an accredited university or college,
1439 be experienced in administration, and be knowledgeable in the areas of child and family
1440 services, including child protective services, family preservation, and foster care.

1441 (3) The director is the administrative head of the division.

1442 Section 26. Section **62A-4a-109** is amended to read:

1443 **62A-4a-109. Eligibility -- Fee schedules.**

1444 (1) The division may establish, by rule, eligibility standards for consumers.

1445 (2) The division shall assess a fee for services that it provides in accordance with this
1446 chapter, based on the fee schedule approved [~~by the board~~] in accordance with Section
1447 62A-4a-102.

1448 Section 27. Section **62A-4a-110** is amended to read:

1449 **62A-4a-110. Receipt of gifts -- Volunteer services.**

1450 (1) The division may receive gifts, grants, devises, and donations. These gifts, grants,
1451 devises, donations, or their proceeds shall be credited to the program which the donor
1452 designates and may be used for the purposes requested by the donor, if the request conforms to
1453 state and federal policy. If a donor makes no specific request, the division may use the gift,

1454 grant, devise, or donation for the best interest of the division.

1455 (2) The division may:

1456 (a) accept and use volunteer labor or services of applicants, recipients, and other
1457 members of the community. The division may reimburse volunteers for necessary expenses,
1458 including transportation, and provide recognition awards and recognition meals for services
1459 rendered. The division may cooperate with volunteer organizations in collecting funds to be
1460 used in the volunteer program. Those donated funds shall be considered as private, nonlapsing
1461 funds until used by the division, and may be invested under guidelines established by the state
1462 treasurer;

1463 (b) encourage merchants and providers of services to donate goods and services or to
1464 provide them at a nominal price or below cost;

1465 (c) distribute goods to applicants or consumers free or for a nominal charge and tax
1466 free; and

1467 (d) appeal to the public for funds to meet applicants' and consumers' needs which are
1468 not otherwise provided for by law. Those appeals may include Sub-for-Santa Programs,
1469 recreational programs for minors, and requests for household appliances and home repairs,
1470 under [~~policies~~] rules established by the [~~board~~] division.

1471 Section 28. Section **62A-4a-112** is amended to read:

1472 **62A-4a-112. Request to examine family services payment.**

1473 (1) An individual who is a taxpayer and resident of this state and who desires to
1474 examine a payment for services offered by the division in accordance with this chapter, shall
1475 sign a statement using a form prescribed by the division. That statement shall include the
1476 assertion that the individual is a taxpayer and a resident, and shall include a commitment that
1477 any information obtained will not be used for commercial or political purposes. No partial or
1478 complete list of names, addresses, or amounts of payment may be made by any individual
1479 under this subsection, and none of that information may be removed from the offices of the
1480 division.

1481 (2) The [~~board~~] division shall, after due consideration of the public interest, define the
1482 nature of confidential information to be safeguarded by the division and shall establish policies
1483 and rules to govern the custody and disclosure of confidential information, as well as to
1484 provide access to information regarding payments for services offered by the division.

1485 (3) This section does not prohibit the division or its agents, or individuals,
1486 commissions, or agencies duly authorized for the purpose, from making special studies or from
1487 issuing or publishing statistical material and reports of a general character. This section does
1488 not prohibit the division or its representatives or employees from conveying or providing to
1489 local, state, or federal governmental agencies written information that would affect an
1490 individual's eligibility or ineligibility for financial service, or other beneficial programs offered
1491 by that governmental agency. Access to the division's program plans, policies, and records, as
1492 well as consumer records and data, is governed by Title 63G, Chapter 2, Government Records
1493 Access and Management Act.

1494 [~~(4) This section does not apply to a board member while acting in the board member's~~
1495 ~~official capacity as a board member.]~~

1496 [~~(5)~~ (4) Violation of this section is a class B misdemeanor.

1497 Section 29. Section **62A-4a-115** is amended to read:

1498 **62A-4a-115. Administrative proceedings.**

1499 The department[~~, board,~~] and division shall comply with the procedures and
1500 requirements of Title 63G, Chapter 4, Administrative Procedures Act, in their adjudicative
1501 proceedings.

1502 Section 30. Section **62A-4a-117** is amended to read:

1503 **62A-4a-117. Performance monitoring system.**

1504 (1) As used in this section:

1505 (a) "Performance goals" means a target level of performance or an expected level of
1506 performance against which actual performance is compared.

1507 (b) "Performance indicators" means actual performance information regarding a
1508 program or activity.

1509 (c) "Performance monitoring system" means a process to regularly collect and analyze
1510 performance information including performance indicators and performance goals.

1511 (2) On or before May 1, 1996, the director[~~, in cooperation with the board,~~] shall
1512 develop a performance monitoring system of each area in the child welfare system, including
1513 foster care and other substitute care, child protective services, and adoption.

1514 (3) On or before June 1, 1996, the director shall submit a description of that monitoring
1515 system to the Child Welfare Legislative Oversight Panel for review.

1516 (4) The division shall fully implement a performance monitoring system on or before
1517 October 1, 1996.

1518 (5) Before January 1 each year the director shall submit a written report describing the
1519 difference between actual performance and performance goals for the prior fiscal year to the
1520 Child Welfare Legislative Oversight Panel and the Joint Health and Human Services
1521 Appropriations Subcommittee. The report shall include:

1522 (a) a summary of the division's efforts during the prior fiscal year to implement the
1523 Performance Milestone Plan;

1524 (b) a summary of how performance must be improved to achieve full implementation
1525 of the Performance Milestone Plan;

1526 (c) data on the extent to which new and experienced division employees have received
1527 training pursuant to statute and division policy; and

1528 (d) an analysis of the use and efficacy of family preservation services, both before and
1529 after removal of children from their homes.

1530 Section 31. Section **62A-4a-119** is amended to read:

1531 **62A-4a-119. Division required to produce "family impact statement" with regard**
1532 **to policies and rules.**

1533 Beginning May 1, 2000, whenever the division establishes a rule, in accordance with
1534 Title 63G, Chapter 3, Utah Administrative Rulemaking Act, [~~or the board establishes any~~
1535 ~~policy in accordance with its statutory authority;~~] those processes shall include an assessment
1536 of the impact of that rule [~~or policy~~] on families. Those assessments shall determine the impact
1537 of the rule [~~or policy~~] on the authority of parents to oversee the care, supervision, upbringing,
1538 and education of children in the parents' custody. The division shall publish a family impact
1539 statement describing those assessments and determinations, within 90 days of the establishment
1540 of each rule [~~or policy~~].

1541 Section 32. Section **62A-4a-202.6** is amended to read:

1542 **62A-4a-202.6. Child protective services investigators within the Office of**
1543 **Attorney General -- Authority.**

1544 (1) (a) [~~Pursuant to~~] In accordance with Section 67-5-16 the attorney general may
1545 employ, with the consent of the division, child protective services investigators to investigate
1546 reports of abuse or neglect of a child that occur while the child is in the custody of the division.

1547 (b) (i) [~~Under the direction of the Board of Child and Family Services, the~~] The
1548 division shall, in accordance with Subsection 62A-4a-409(5), contract with an independent
1549 child protective service investigator to investigate reports of abuse or neglect of a child that
1550 occur while the child is in the custody of the division.

1551 (ii) The executive director of the department shall designate an entity within the
1552 department, other than the division, to monitor the contract for the investigators described in
1553 Subsection (1)(b)(i).

1554 (2) The investigators described in Subsection (1) may also investigate allegations of
1555 abuse or neglect of a child by a department employee or a licensed substitute care provider.

1556 (3) The investigators described in Subsection (1), if not peace officers, shall have the
1557 same rights, duties, and authority of a child protective services investigator employed by the
1558 division to:

1559 (a) make a thorough investigation upon receiving either an oral or written report of
1560 alleged abuse or neglect of a child, with the primary purpose of that investigation being the
1561 protection of the child;

1562 (b) make an inquiry into the child's home environment, emotional, or mental health, the
1563 nature and extent of the child's injuries, and the child's physical safety;

1564 (c) make a written report of their investigation, including determination regarding
1565 whether the alleged abuse or neglect was substantiated, unsubstantiated, or without merit, and
1566 forward a copy of that report to the division within the time mandates for investigations
1567 established by the division;

1568 (d) immediately consult with school authorities to verify the child's status in
1569 accordance with Sections 53A-11-101 through 53A-11-103 when a report is based upon or
1570 includes an allegation of educational neglect;

1571 (e) enter upon public or private premises, using appropriate legal processes, to
1572 investigate reports of alleged abuse or neglect; and

1573 (f) take a child into protective custody, and deliver the child to a law enforcement
1574 officer, or to the division. Control and jurisdiction over the child shall be determined by the
1575 provisions of Title 62A, Chapter 4a, Part 2, Child Welfare Services, Title 78A, Chapter 6,
1576 Juvenile Court Act of 1996, and as otherwise provided by law.

1577 Section 33. Section ~~62A-4a-208~~ is amended to read:

1578 **62A-4a-208. Child protection ombudsman -- Responsibility -- Authority.**

1579 (1) As used in this section:

1580 (a) "Complainant" means a person who initiates a complaint with the ombudsman.

1581 (b) "Ombudsman" means the child protection ombudsman appointed pursuant to this
1582 section.

1583 (2) (a) There is created within the department the position of child protection
1584 ombudsman. The ombudsman shall be appointed by and serve at the pleasure of the executive
1585 director.

1586 (b) The ombudsman shall be:

1587 (i) an individual of recognized executive and administrative capacity;

1588 (ii) selected solely with regard to qualifications and fitness to discharge the duties of
1589 ombudsman; and

1590 (iii) have experience in child welfare, and in state laws and policies governing abused,
1591 neglected, and dependent children.

1592 (c) The ombudsman shall devote full time to the duties of office.

1593 (3) (a) Except as provided in Subsection (3)(b), the ombudsman shall, upon receipt of a
1594 complaint from any person, investigate whether an act or omission of the division with respect
1595 to a particular child:

1596 (i) is contrary to statute, rule, or policy;

1597 (ii) places a child's health or safety at risk;

1598 (iii) is made without an adequate statement of reason; or

1599 (iv) is based on irrelevant, immaterial, or erroneous grounds.

1600 (b) The ombudsman may decline to investigate any complaint. If the ombudsman
1601 declines to investigate a complaint or continue an investigation, the ombudsman shall notify
1602 the complainant and the division of the decision and of the reasons for that decision.

1603 (c) The ombudsman may conduct an investigation on the ombudsman's own initiative.

1604 (4) The ombudsman shall:

1605 (a) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,
1606 make rules that govern the following:

1607 (i) receiving and processing complaints;

1608 (ii) notifying complainants and the division regarding a decision to investigate or to

1609 decline to investigate a complaint;

1610 (iii) prioritizing workload;

1611 (iv) maximum time within which investigations shall be completed;

1612 (v) conducting investigations;

1613 (vi) notifying complainants and the division regarding the results of investigations; and

1614 (vii) making recommendations based on the findings and results of recommendations;

1615 (b) report findings and recommendations in writing to the complainant and the

1616 division, in accordance with the provisions of this section;

1617 (c) within appropriations from the Legislature, employ staff as may be necessary to

1618 carry out the ombudsman's duties under this part;

1619 (d) provide information regarding the role, duties, and functions of the ombudsman to

1620 public agencies, private entities, and individuals;

1621 (e) annually report to the:

1622 (i) Child Welfare Legislative Oversight Panel;

1623 (ii) governor;

1624 (iii) ~~Board~~ Division of Child and Family Services;

1625 (iv) executive director of the department; and

1626 (v) director of the division; and

1627 (f) as appropriate, make recommendations to the division regarding individual cases,

1628 and the rules, policies, and operations of the division.

1629 (5) (a) Upon rendering a decision to investigate a complaint, the ombudsman shall

1630 notify the complainant and the division of that decision.

1631 (b) The ombudsman may advise a complainant to pursue all administrative remedies or

1632 channels of complaint before pursuing a complaint with the ombudsman. Subsequent to

1633 processing a complaint, the ombudsman may conduct further investigations upon the request of

1634 the complainant or upon the ombudsman's own initiative. Nothing in this subsection precludes

1635 a complainant from making a complaint directly to the ombudsman before pursuing an

1636 administrative remedy.

1637 (c) If the ombudsman finds that an individual's act or omission violates state or federal

1638 criminal law, the ombudsman shall immediately report that finding to the appropriate county or

1639 district attorney or to the attorney general.

1640 (d) The ombudsman shall immediately notify the division if the ombudsman finds that
1641 a child needs protective custody, as that term is defined in Section 78A-6-105.

1642 (e) The ombudsman shall immediately comply with Part 4, Child Abuse or Neglect
1643 Reporting Requirements.

1644 (6) (a) All records of the ombudsman regarding individual cases shall be classified in
1645 accordance with federal law and the provisions of Title 63G, Chapter 2, Government Records
1646 Access and Management Act. The ombudsman may make public a report prepared pursuant to
1647 this section in accordance with the provisions of Title 63G, Chapter 2, Government Records
1648 Access and Management Act.

1649 (b) The ombudsman shall have access to all of the department's written and electronic
1650 records and databases, including those regarding individual cases. In accordance with Title
1651 63G, Chapter 2, Government Records Access and Management Act, all documents and
1652 information received by the ombudsman shall maintain the same classification that was
1653 designated by the department.

1654 (7) (a) The ombudsman shall prepare a written report of the findings and
1655 recommendations, if any, of each investigation.

1656 (b) The ombudsman shall make recommendations to the division if the ombudsman
1657 finds that:

- 1658 (i) a matter should be further considered by the division;
- 1659 (ii) an administrative act should be addressed, modified, or canceled;
- 1660 (iii) action should be taken by the division with regard to one of its employees; or
- 1661 (iv) any other action should be taken by the division.

1662 Section 34. Section **62A-4a-303** is amended to read:

1663 **62A-4a-303. Director's responsibility.**

1664 The director[~~, under the direction of the board,~~] shall:

1665 (1) contract with public or private nonprofit organizations, agencies, schools, or with
1666 qualified individuals to establish voluntary community-based educational and service programs
1667 designed to reduce the occurrence or recurrence of abuse and neglect;

1668 (2) facilitate the exchange of information between and among groups concerned with
1669 families and children;

1670 (3) consult with appropriate state agencies, commissions, and boards to help determine

1671 the probable effectiveness, fiscal soundness, and need for proposed education and service
1672 programs for the prevention and treatment of abuse and neglect;

1673 (4) develop policies to determine whether programs will be discontinued or will
1674 receive continuous funding;

1675 (5) establish flexible fees and fee schedules based on the recipient's ability to pay for
1676 part or all of the costs of service received; and

1677 (6) adopt rules under Title 63G, Chapter 3, Utah Administrative Rulemaking Act, as
1678 necessary to carry out the purposes of this part.

1679 Section 35. Section **62A-4a-305** is amended to read:

1680 **62A-4a-305. Prevention and treatment programs.**

1681 Programs contracted under this part shall be designed to provide voluntary primary
1682 abuse and neglect prevention, and voluntary or court-ordered treatment services, including,
1683 without limiting the generality of the foregoing, the following community-based programs:

1684 (1) those relating to prenatal care, perinatal bonding, child growth and development,
1685 basic child care, care of children with special needs, and coping with family stress;

1686 (2) those relating to crisis care, aid to parents, abuse counseling, support groups for
1687 abusive or potentially abusive parents and their children, and early identification of families
1688 where the potential for abuse and neglect exists;

1689 (3) those clearly designed to prevent the occurrence or recurrence of abuse, neglect,
1690 sexual abuse, sexual exploitation, medical or educational neglect, and such other programs as
1691 the [board] division and council may from time to time consider potentially effective in
1692 reducing the incidence of family problems leading to abuse or neglect; and

1693 (4) those designed to establish and assist community resources that prevent abuse and
1694 neglect.

1695 Section 36. Section **62A-4a-306** is amended to read:

1696 **62A-4a-306. Programs and services -- Public hearing requirements -- Review by**
1697 **local board of education.**

1698 (1) Before any abuse or neglect prevention or treatment program or service may be
1699 purchased or contracted for, the [board] division shall conduct a public hearing and the council
1700 shall conduct a public hearing, to receive public comment on the specific program or service.

1701 (2) Before any abuse or neglect prevention or treatment program or service which is

1702 intended for presentation in public schools may be purchased or contracted for, evidence shall
1703 be submitted to the division that the program or service has been approved by the local board
1704 of education of each school district which will be utilizing that program or service. The local
1705 board of education may grant the approval authority to the superintendent.

1706 Section 37. Section **62A-4a-309** is amended to read:

1707 **62A-4a-309. Children's Trust Account.**

1708 (1) There shall be a restricted account within the General Fund to be known as the
1709 Children's Trust Account. This account is for crediting of contributions from private sources
1710 and from appropriate revenues received under Section 26-2-12.5 for abuse and neglect
1711 prevention programs described in Section 62A-4a-305.

1712 (2) Money shall be appropriated from the account to the division by the Legislature
1713 under the Utah Budgetary Procedures Act, and shall be drawn upon by the director [~~under the~~
1714 ~~direction of the board~~] in consultation with the executive director of the department.

1715 (3) Except as provided in Subsection (4), the Children's Trust Account may be used
1716 only to implement prevention programs described in Section 62A-4a-305, and may only be
1717 allocated to entities that provide a one-to-one match, comprising a match from the community
1718 of at least 50% in cash and up to 50% in in-kind donations, which is 25% of the total funding
1719 received from the Children's Trust Account.

1720 (4) (a) The entity that receives the statewide evaluation contract is excepted from the
1721 cash-match provisions of Subsection (3).

1722 (b) Upon recommendation of the executive director and the council, the [~~board~~]
1723 division may reduce or waive the match requirements described in Subsection (3) for an entity,
1724 if the [~~board~~] division determines that imposing the requirements would prohibit or limit the
1725 provision of services needed in a particular geographic area.

1726 Section 38. Section **62A-4a-311** is amended to read:

1727 **62A-4a-311. Child Abuse Advisory Council -- Creation -- Membership --**
1728 **Expenses.**

1729 (1) (a) There is established the Child Abuse Advisory Council composed of no more
1730 than 25 members who are appointed by the [~~board~~] division.

1731 (b) Except as required by Subsection (1)(c), as terms of current council members
1732 expire, the [~~board~~] division shall appoint each new member or reappointed member to a

1733 four-year term.

1734 (c) Notwithstanding the requirements of Subsection (1)(b), the [board] division shall,
1735 at the time of appointment or reappointment, adjust the length of terms to ensure that the terms
1736 of council members are staggered so that approximately half of the council is appointed every
1737 two years.

1738 (d) The council shall have geographic, economic, gender, cultural, and philosophical
1739 diversity.

1740 (e) When a vacancy occurs in the membership for any reason, the replacement shall be
1741 appointed for the unexpired term.

1742 (2) The council shall elect a chairperson from its membership at least biannually.

1743 (3) (a) A member of the council who is not a government employee shall receive no
1744 compensation or benefits for the member's services, but may:

1745 (i) receive per diem and expenses incurred in the performance of the member's official
1746 duties at the rates established by the Division of Finance under Sections 63A-3-106 and
1747 63A-3-107; or

1748 (ii) decline to receive per diem and expenses for the member's service.

1749 (b) A member of the council who is a state government officer or employee and who
1750 does not receive salary, per diem, or expenses from the member's agency for the member's
1751 service may:

1752 (i) receive per diem and expenses incurred in the performance of the member's official
1753 duties from the commission at the rates established by the Division of Finance under Sections
1754 63A-3-106 and 63A-3-107; or

1755 (ii) decline to receive per diem and expenses for the member's service.

1756 (4) The council shall hold a public meeting quarterly. Within budgetary constraints,
1757 meetings may also be held on the call of the chair, or of a majority of the members. A majority
1758 of the members currently appointed to the council constitute a quorum at any meeting and the
1759 action of the majority of the members present shall be the action of the council.

1760 (5) The council shall:

1761 (a) advise the [board] division on matters relating to abuse and neglect; and

1762 (b) recommend to the [board] division how funds contained in the Children's Trust
1763 Account should be allocated.

1764 Section 39. Section **62A-4a-903** is amended to read:

1765 **62A-4a-903. Eligibility.**

1766 (1) The [~~Board~~] Division of Child and Family Services shall establish by rule,
1767 eligibility criteria for the receipt of adoption assistance and supplemental adoption assistance.

1768 (2) Eligibility determination shall be based upon:

1769 (a) the needs of the child;

1770 (b) the resources available to the child; and

1771 (c) the federal requirements of Section 473, Social Security Act.

1772 Section 40. Section **62A-4a-905** is amended to read:

1773 **62A-4a-905. Supplemental adoption assistance.**

1774 (1) The division may, based upon annual legislative appropriations for adoption
1775 assistance and [~~board policy~~] division rules, provide supplemental adoption assistance for
1776 children who have a special need. Supplemental adoption assistance shall be provided only
1777 after all other resources for which a child is eligible have been exhausted.

1778 (2) (a) The department shall, by rule, establish in each region at least one advisory
1779 committee to review and make recommendations to the division on individual requests for
1780 supplemental adoption assistance. The committee shall be comprised of the following
1781 members:

1782 (i) an adoption expert;

1783 (ii) an adoptive parent;

1784 (iii) a division representative;

1785 (iv) a foster parent; and

1786 (v) an adoption caseworker.

1787 (b) The [~~board~~] division policy required in Subsection (1) shall include a provision
1788 which establishes a threshold amount for requests for supplemental adoption assistance that
1789 require review by the committee established in this Subsection (2).

1790 Section 41. Section **62A-5-101** is amended to read:

1791 **62A-5-101. Definitions.**

1792 As used in this chapter:

1793 (1) "Approved provider" means a person approved by the division to provide
1794 home-based services.

1795 [~~(2)~~] "~~Board~~" means the ~~Board of Services for People with Disabilities established in~~
1796 ~~accordance with Section 62A-1-105.~~]

1797 [~~(3)~~] (2) (a) "Brain injury" means an acquired injury to the brain that is neurological in
1798 nature, including a cerebral vascular accident.

1799 (b) "Brain injury" does not include a deteriorating disease.

1800 [~~(4)~~] (3) "Designated mental retardation professional" means:

1801 (a) a psychologist licensed under Title 58, Chapter 61, Psychologist Licensing Act,
1802 who:

1803 (i) (A) has at least one year of specialized training in working with persons with mental
1804 retardation; or

1805 (B) has at least one year of clinical experience with persons with mental retardation;
1806 and

1807 (ii) is designated by the division as specially qualified, by training and experience, in
1808 the treatment of mental retardation; or

1809 (b) a clinical social worker, certified social worker, marriage and family therapist, or
1810 professional counselor, licensed under Title 58, Chapter 60, Mental Health Professional
1811 Practice Act, who:

1812 (i) has at least two years of clinical experience with persons with mental retardation;
1813 and

1814 (ii) is designated by the division as specially qualified, by training and experience, in
1815 the treatment of mental retardation.

1816 [~~(5)~~] (4) "Deteriorating disease" includes:

1817 (a) multiple sclerosis;

1818 (b) muscular dystrophy;

1819 (c) Huntington's chorea;

1820 (d) Alzheimer's disease;

1821 (e) ataxia; or

1822 (f) cancer.

1823 [~~(6)~~] (5) "Developmental center" means the Utah State Developmental Center,
1824 established in accordance with Part 2, Utah State Developmental Center.

1825 [~~(7)~~] (6) "Direct service worker" means a person who provides services to a person

1826 with a disability:

1827 (a) when the services are rendered in:

1828 (i) the physical presence of the person with a disability; or

1829 (ii) a location where the person rendering the services has access to the physical

1830 presence of the person with a disability; and

1831 (b) (i) under a contract with the division;

1832 (ii) under a grant agreement with the division; or

1833 (iii) as an employee of the division.

1834 [~~8~~] 7 "Director" means the director of the Division of Services for People with

1835 Disabilities.

1836 [~~9~~] 8 (a) "Disability" means a severe, chronic disability that:

1837 (i) is attributable to:

1838 (A) mental retardation;

1839 (B) a condition that qualifies a person as a person with a related condition, as defined

1840 in 42 C.F.R. 435.1009;

1841 (C) a physical disability; or

1842 (D) a brain injury;

1843 (ii) is likely to continue indefinitely;

1844 (iii) (A) for a condition described in Subsection [~~9~~] 8(a)(i)(A), (B), or (C), results in

1845 a substantial functional limitation in three or more of the following areas of major life activity:

1846 (I) self-care;

1847 (II) receptive and expressive language;

1848 (III) learning;

1849 (IV) mobility;

1850 (V) self-direction;

1851 (VI) capacity for independent living; or

1852 (VII) economic self-sufficiency; or

1853 (B) for a condition described in Subsection [~~9~~] 8(a)(i)(D), results in a substantial

1854 limitation in three or more of the following areas:

1855 (I) memory or cognition;

1856 (II) activities of daily life;

- 1857 (III) judgment and self-protection;
- 1858 (IV) control of emotions;
- 1859 (V) communication;
- 1860 (VI) physical health; or
- 1861 (VII) employment; and
- 1862 (iv) requires a combination or sequence of special interdisciplinary or generic care,
- 1863 treatment, or other services that:
 - 1864 (A) may continue throughout life; and
 - 1865 (B) must be individually planned and coordinated.
- 1866 (b) "Disability" does not include a condition due solely to:
 - 1867 (i) mental illness;
 - 1868 (ii) personality disorder;
 - 1869 (iii) hearing impairment;
 - 1870 (iv) visual impairment;
 - 1871 (v) learning disability;
 - 1872 (vi) behavior disorder;
 - 1873 (vii) substance abuse; or
 - 1874 (viii) the aging process.
- 1875 [~~(9)~~] (9) "Division" means the Division of Services for People with Disabilities.
- 1876 [~~(10)~~] (10) "Eligible to receive division services" or "eligibility" means qualification,
- 1877 based on criteria established by the division in accordance with Subsection 62A-5-102(4), to
- 1878 receive services that are administered by the division.
- 1879 [~~(11)~~] (11) "Endorsed program" means a facility or program that:
 - 1880 (a) is operated:
 - 1881 (i) by the division; or
 - 1882 (ii) under contract with the division; or
 - 1883 (b) provides services to a person committed to the division under Part 3, Admission to
 - 1884 Mental Retardation Facility.
- 1885 [~~(12)~~] (12) "Licensed physician" means:
 - 1886 (a) an individual licensed to practice medicine under:
 - 1887 (i) Title 58, Chapter 67, Utah Medical Practice Act; or

1888 (ii) Title 58, Chapter 68, Utah Osteopathic Medical Practice Act; or
1889 (b) a medical officer of the United States Government while in this state in the
1890 performance of official duties.

1891 ~~[(14)]~~ (13) "Mental retardation" means a significant, subaverage general intellectual
1892 functioning, that:

- 1893 (a) exists concurrently with deficits in adaptive behavior; and
- 1894 (b) is manifested during the developmental period as defined in the current edition of
1895 the Diagnostic and Statistical Manual of Mental Disorders, published by the American
1896 Psychiatric Association.

1897 ~~[(15)]~~ (14) "Mental retardation facility" means a residential facility for a person with
1898 mental retardation, that receives state or federal funds under Title XIX of the federal Social
1899 Security Act, for the purpose of serving a mentally retarded person in this state.

1900 ~~[(16)]~~ (15) "Physical disability" means a medically determinable physical impairment
1901 that has resulted in the functional loss of two or more of a person's limbs.

1902 ~~[(17)]~~ (16) "Public funds" means state or federal funds that are disbursed by the
1903 division.

1904 ~~[(18)]~~ (17) "Resident" means an individual under observation, care, or treatment in a
1905 mental retardation facility.

1906 Section 42. Section **62A-5-104** is amended to read:

1907 **62A-5-104. Director -- Qualifications -- Responsibilities.**

1908 (1) The director of the division shall be appointed by the executive director ~~[with the~~
1909 ~~concurrence of the board]~~.

1910 (2) The director shall have a bachelor's degree from an accredited university or college,
1911 be experienced in administration, and be knowledgeable in developmental disabilities, mental
1912 retardation, and other disabilities.

1913 (3) The director is the administrative head of the division.

1914 (4) The director shall appoint the superintendent of the developmental center and the
1915 necessary and appropriate administrators for other facilities operated by the division with the
1916 concurrence of the executive director ~~[and the board]~~.

1917 Section 43. Section **62A-5-105** is amended to read:

1918 **62A-5-105. Division responsibilities -- Policy mediation.**

- 1919 (1) The ~~[board is the policymaking body for the division and shall establish by rule the~~
1920 ~~policy of the division]~~ division shall establish its rules in accordance with:
- 1921 (a) the policy of the Legislature as set forth by this chapter; and
- 1922 (b) Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
- 1923 (2) The ~~[board]~~ division shall:
- 1924 (a) establish program policy for the division, the developmental center, and programs
1925 and facilities operated by or under contract with the division;
- 1926 (b) establish ~~[policies]~~ rules for the assessment and collection of fees for programs
1927 within the division;
- 1928 (c) no later than July 1, 2003, establish a graduated fee schedule based on ability to pay
1929 and implement the schedule with respect to service recipients and their families where not
1930 otherwise prohibited by federal law or regulation or not otherwise provided for in Section
1931 62A-5-109;
- 1932 (d) establish procedures to ensure that private citizens, consumers, private contract
1933 providers, allied state and local agencies, and others are provided with an opportunity to
1934 comment and provide input regarding any new policy or proposed revision to an existing
1935 policy;
- 1936 (e) provide a mechanism for systematic and regular review of existing policy and for
1937 consideration of policy changes proposed by the persons and agencies described under
1938 Subsection (2)(d);
- 1939 (f) (i) establish and periodically review the criteria used to determine who may receive
1940 services from the division and how the delivery of those services is prioritized within available
1941 funding; and
- 1942 (ii) make periodic recommendations based on the review conducted under Subsection
1943 (2)(f)(i) to the Health and Human Services Interim Committee beginning at or before the
1944 September 2002 meeting of the committee;
- 1945 (g) review implementation and compliance by the division with policies established by
1946 the board to ensure that the policies established by the Legislature in this chapter are carried
1947 out; and
- 1948 (h) annually report to the executive director.
- 1949 ~~[(3) At least one member of the board shall be a person whose life or family is directly~~

1950 affected by a disability, and at least one other board member shall be a person with a physical
1951 disability.]

1952 [(4)] (3) The executive director shall mediate any differences which arise between the
1953 policies of the [board] division and those of any other policy board or division in the
1954 department.

1955 Section 44. Section **62A-5-202** is amended to read:

1956 **62A-5-202. Developmental center within division.**

1957 The programs and facilities of the developmental center are within the division, and
1958 under the policy direction of the [board] division.

1959 Section 45. Section **62A-13-105** is amended to read:

1960 **62A-13-105. Department duties and powers.**

1961 (1) The department shall administer this chapter within the Division of Substance
1962 Abuse and Mental Health, created in Section 62A-15-103, and under [the] that division's policy
1963 direction [~~of the Board of Substance Abuse and Mental Health created~~] as provided in Section
1964 62A-1-105.

1965 (2) The Division of Substance Abuse and Mental Health shall establish rules in
1966 accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act to:

- 1967 (a) establish application procedures for grants and scholarships;
- 1968 (b) establish eligibility and selection criteria for grant and scholarship recipients;
- 1969 (c) determine grant and scholarship awards and conditions for each recipient;
- 1970 (d) designate eligible underserved rural areas regarding available mental health therapy
1971 services in which recipients may fulfill their service obligations; and
- 1972 (e) establish educational requirements necessary for the grant or scholarship recipient
1973 to be qualified to meet service obligations.

1974 (3) The Division of Substance Abuse and Mental Health may:

- 1975 (a) approve the specific site at which a recipient may fulfill the recipient's service
1976 obligations under this chapter;
- 1977 (b) set limitations on the amount an individual may receive and on the number of years
1978 for which an individual may receive funds under this chapter;
- 1979 (c) cancel grants or scholarships for cause and, for compelling reasons, accept a lesser
1980 measure of damages for breach of a grant or scholarship contract or release a recipient from the

1981 service obligation without penalty for extreme hardship or other good cause;
 1982 (d) cancel a grant or scholarship for cause without penalty to the state; and
 1983 (e) cancel a grant or a scholarship if the recipient fails to meet the conditions of the
 1984 award or if it reasonably appears the recipient will not meet the grant or scholarship conditions.
 1985 (4) The department may accept gifts, grants, loans, and other aid or funds from any
 1986 person, association, foundation, trust, corporation, governmental agency, or other entity for the
 1987 purposes set forth in this chapter.

1988 Section 46. Section **62A-14-102** is amended to read:

1989 **62A-14-102. Definitions.**

1990 As used in this chapter:

1991 [~~(1) "Board" means the Board of Public Guardian Services.~~]

1992 [~~(2)~~] (1) "Conservator" is as defined in Section 75-1-201.

1993 [~~(3)~~] (2) "Court" is as defined in Section 75-1-201.

1994 [~~(4)~~] (3) "Estate" is as defined in Section 75-1-201.

1995 [~~(5)~~] (4) "Guardian" is as defined in Section 75-1-201.

1996 [~~(6)~~] (5) "Incapacitated person" means a person who has been determined by a court,
 1997 pursuant to Section 75-5-303, to be incapacitated after the office has determined that the person
 1998 is 18 years of age or older and suffers from a mental or physical impairment as part of the
 1999 prepetition assessment in Section 62A-14-107.

2000 [~~(7)~~] (6) "Office" means the Office of Public Guardian.

2001 [~~(8)~~] (7) "Property" is as defined in Section 75-1-201.

2002 [~~(9)~~] (8) "Ward" means an incapacitated person for whom the office has been
 2003 appointed as guardian or conservator.

2004 Section 47. Section **62A-14-104** is amended to read:

2005 **62A-14-104. Director of the office -- Appointment -- Qualifications.**

2006 (1) The director of the office shall be appointed by the executive director [~~with the~~
 2007 ~~concurrence of the board~~].

2008 (2) The director shall have a bachelor's degree from an accredited university or college,
 2009 be experienced in administration, and be knowledgeable in matters concerning guardianship
 2010 and conservatorship.

2011 (3) The director is the administrative head of the office.

2012 Section 48. Section **62A-14-105** is amended to read:
2013 **62A-14-105. Powers and duties of the office.**
2014 (1) The office shall:
2015 (a) before January 1, 2000, develop and operate a statewide program to:
2016 (i) educate the public about the role and function of guardians and conservators; and
2017 (ii) serve as a guardian, conservator, or both for a ward upon appointment by a court
2018 when no other person is able and willing to do so and the office petitioned for or agreed in
2019 advance to the appointment;
2020 (b) possess and exercise all the powers and duties specifically given to the office by
2021 virtue of being appointed as guardian or conservator of a ward, including the power to access a
2022 ward's records;
2023 (c) review and monitor the personal and, if appropriate, financial status of each ward
2024 for whom the office has been appointed to serve as guardian or conservator;
2025 (d) train and monitor each employee and volunteer, and monitor each contract provider
2026 to whom the office has delegated a responsibility for a ward;
2027 (e) retain all court-delegated powers and duties for a ward;
2028 (f) report on the personal and financial status of a ward as required by a court in
2029 accordance with Title 75, Chapter 5, Protection of Persons Under Disability and Their
2030 Property;
2031 (g) handle a ward's funds in accordance with the department's trust account system;
2032 (h) request that the department's audit plan, established pursuant to Section 63I-5-401,
2033 include the requirement of an annual audit of all funds and property held by the office on behalf
2034 of wards;
2035 (i) maintain accurate records concerning each ward, the ward's property, and office
2036 services provided to the ward;
2037 (j) make reasonable and continuous efforts to find a family member, friend, or other
2038 person to serve as a ward's guardian or conservator;
2039 (k) after termination as guardian or conservator, distribute a ward's property in
2040 accordance with Title 75, Chapter 5, Protection of Persons Under Disability and Their
2041 Property;
2042 (l) submit recommendations for changes in state law and funding to the governor and

2043 the Legislature and report to the governor and Legislature, upon request; and
 2044 (m) establish, implement, and enforce [~~policies established by the board~~] rules.
 2045 (2) The office may:
 2046 (a) petition a court pursuant to Title 75, Chapter 5, Protection of Persons Under
 2047 Disability and Their Property, to be appointed an incapacitated person's guardian, conservator,
 2048 or both after conducting a prepetition assessment under Section 62A-14-107;
 2049 (b) develop and operate a statewide program to recruit, train, supervise, and monitor
 2050 volunteers to assist the office in providing guardian and conservator services;
 2051 (c) delegate one or more responsibilities for a ward to an employee, volunteer, or
 2052 contract provider, except as provided in Subsection 62A-14-107(1);
 2053 (d) solicit and receive private donations to provide guardian and conservator services
 2054 under this chapter; and
 2055 (e) adopt rules, in accordance with Title 63G, Chapter 3, Utah Administrative
 2056 Rulemaking Act, to:
 2057 (i) effectuate [~~board~~] policy; and
 2058 (ii) carry out the office's role as guardian and conservator of wards as provided in this
 2059 chapter.

2060 Section 49. Section **62A-15-101** is amended to read:

2061 **CHAPTER 15. SUBSTANCE ABUSE AND MENTAL HEALTH ACT**

2062 **Part 1. Division of Substance Abuse and Mental Health**

2063 **62A-15-101. Title.**

2064 (1) This chapter is known as the "Substance Abuse and Mental Health Act."

2065 (2) This part is known as the "Division [~~and Board~~] of Substance Abuse and Mental
 2066 Health."

2067 Section 50. Section **62A-15-102** is amended to read:

2068 **62A-15-102. Definitions.**

2069 As used in this chapter:

2070 [~~(1) "Board" means the Board of Substance Abuse and Mental Health established in~~
 2071 ~~accordance with Sections 62A-1-105 and 62A-15-106.]~~

2072 [~~(2)~~] (1) "Director" means the director of the Division of Substance Abuse and Mental
 2073 Health.

2074 [(3)] (2) "Division" means the Division of Substance Abuse and Mental Health
2075 established in Section 62A-15-103.

2076 [(4)] (3) "Local mental health authority" means a county legislative body.

2077 [(5)] (4) "Local substance abuse authority" means a county legislative body.

2078 [(6)] (5) (a) "Public funds" means federal monies received from the Department of
2079 Human Services or the Department of Health, and state monies appropriated by the Legislature
2080 to the Department of Human Services, the Department of Health, a county governing body, or a
2081 local substance abuse authority, or a local mental health authority for the purposes of providing
2082 substance abuse or mental health programs or services.

2083 (b) "Public funds" includes those federal and state monies that have been transferred by
2084 a local substance abuse authority or a local mental health authority to a private provider under
2085 an annual or otherwise ongoing contract to provide comprehensive substance abuse or mental
2086 health programs or services for the local substance abuse authority or local mental health
2087 authority. Those monies maintain the nature of "public funds" while in the possession of the
2088 private entity that has an annual or otherwise ongoing contract with a local substance abuse
2089 authority or a local mental health authority to provide comprehensive substance abuse or
2090 mental health programs or services for the local substance abuse authority or local mental
2091 health authority.

2092 (c) Public funds received for the provision of services pursuant to substance abuse or
2093 mental health service plans may not be used for any other purpose except those authorized in
2094 the contract between the local mental health or substance abuse authority and provider for the
2095 provision of plan services.

2096 [(7)] (6) "Severe mental disorder" means schizophrenia, major depression, bipolar
2097 disorders, delusional disorders, psychotic disorders, and other mental disorders as defined by
2098 the ~~[board]~~ division.

2099 Section 51. Section **62A-15-103** is amended to read:

2100 **62A-15-103. Division -- Creation -- Responsibilities.**

2101 (1) There is created the Division of Substance Abuse and Mental Health within the
2102 department, under the administration and general supervision of the executive director~~[-and;~~
2103 ~~with regard to its programs, under the policy direction of the board]~~. The division is the
2104 substance abuse authority and the mental health authority for this state.

- 2105 (2) The division shall:
- 2106 (a) (i) educate the general public regarding the nature and consequences of substance
- 2107 abuse by promoting school and community-based prevention programs;
- 2108 (ii) render support and assistance to public schools through approved school-based
- 2109 substance abuse education programs aimed at prevention of substance abuse;
- 2110 (iii) promote or establish programs for the prevention of substance abuse within the
- 2111 community setting through community-based prevention programs;
- 2112 (iv) cooperate and assist other organizations and private treatment centers for substance
- 2113 abusers, by providing them with essential materials for furthering programs of prevention and
- 2114 rehabilitation of actual and potential substance abusers; and
- 2115 (v) promote or establish programs for education and certification of instructors to
- 2116 educate persons convicted of driving under the influence of alcohol or drugs or driving with
- 2117 any measurable controlled substance in the body;
- 2118 (b) (i) collect and disseminate information pertaining to mental health; and
- 2119 (ii) provide direction over the state hospital including approval of its budget,
- 2120 administrative policy, and coordination of services with local service plans;
- 2121 (iii) promulgate rules in accordance with Title 63G, Chapter 3, Utah Administrative
- 2122 Rulemaking Act, to educate families concerning mental illness and promote family
- 2123 involvement, when appropriate, and with patient consent, in the treatment program of a family
- 2124 member; and
- 2125 (iv) promulgate rules in accordance with Title 63G, Chapter 3, Utah Administrative
- 2126 Rulemaking Act, to direct that all individuals receiving services through local mental health
- 2127 authorities or the Utah State Hospital be informed about and, if desired, provided assistance in
- 2128 completion of a declaration for mental health treatment in accordance with Section
- 2129 62A-15-1002;
- 2130 (c) (i) consult and coordinate with local substance abuse authorities and local mental
- 2131 health authorities regarding programs and services;
- 2132 (ii) provide consultation and other assistance to public and private agencies and groups
- 2133 working on substance abuse and mental health issues;
- 2134 (iii) promote and establish cooperative relationships with courts, hospitals, clinics,
- 2135 medical and social agencies, public health authorities, law enforcement agencies, education and

2136 research organizations, and other related groups;

2137 (iv) promote or conduct research on substance abuse and mental health issues, and

2138 submit to the governor and the Legislature recommendations for changes in policy and

2139 legislation;

2140 (v) receive, distribute, and provide direction over public funds for substance abuse and

2141 mental health services;

2142 (vi) monitor and evaluate programs provided by local substance abuse authorities and

2143 local mental health authorities;

2144 (vii) examine expenditures of any local, state, and federal funds;

2145 (viii) monitor the expenditure of public funds by:

2146 (A) local substance abuse authorities;

2147 (B) local mental health authorities; and

2148 (C) in counties where they exist, the private contract provider that has an annual or

2149 otherwise ongoing contract to provide comprehensive substance abuse or mental health

2150 programs or services for the local substance abuse authority or local mental health authorities;

2151 (ix) contract with local substance abuse authorities and local mental health authorities

2152 to provide a comprehensive continuum of services in accordance with ~~[board and]~~ division

2153 policy, contract provisions, and the local plan;

2154 (x) contract with private and public entities for special statewide or nonclinical services

2155 according to ~~[board and]~~ division ~~[policy]~~ rules;

2156 (xi) review and approve each local substance abuse authority's plan and each local

2157 mental health authority's plan in order to ensure:

2158 (A) a statewide comprehensive continuum of substance abuse services;

2159 (B) a statewide comprehensive continuum of mental health services; and

2160 (C) appropriate expenditure of public funds;

2161 (xii) review and make recommendations regarding each local substance abuse

2162 authority's contract with its provider of substance abuse programs and services and each local

2163 mental health authority's contract with its provider of mental health programs and services to

2164 ensure compliance with state and federal law and policy;

2165 (xiii) monitor and ensure compliance with ~~[board and]~~ division ~~[policy]~~ rules and

2166 contract requirements; and

2167 (xiv) withhold funds from local substance abuse authorities, local mental health
2168 authorities, and public and private providers for contract noncompliance, failure to comply
2169 with division directives regarding the use of public funds, or for misuse of public funds or
2170 monies;

2171 (d) assure that the requirements of this part are met and applied uniformly by local
2172 substance abuse authorities and local mental health authorities across the state;

2173 (e) require each local substance abuse authority and each local mental health authority
2174 to submit its plan to the division by May 1 of each year;

2175 (f) conduct an annual program audit and review of each local substance abuse authority
2176 in the state and its contract provider and each local mental health authority in the state and its
2177 contract provider, including:

2178 (i) a review and determination regarding whether:

2179 (A) public funds allocated to local substance abuse authorities and local mental health
2180 authorities are consistent with services rendered and outcomes reported by them or their
2181 contract providers; and

2182 (B) each local substance abuse authority and each local mental health authority is
2183 exercising sufficient oversight and control over public funds allocated for substance abuse and
2184 mental health programs and services; and

2185 (ii) items determined by the division to be necessary and appropriate;

2186 (g) by July 1 of each year, provide to the Health and Human Services Interim
2187 Committee and the Health and Human Services Appropriations Subcommittee a written report
2188 that includes:

2189 (i) the annual audit and review;

2190 (ii) the financial expenditures of each local substance abuse authority and its contract
2191 provider and each local mental health authority and its contract provider;

2192 (iii) the status of the compliance of each local authority and its contract provider with
2193 its plan, state statutes, and the provisions of the contract awarded; and

2194 (iv) whether audit guidelines established under Section 62A-15-110 and Subsection
2195 67-3-1(10) provide the division with sufficient criteria and assurances of appropriate
2196 expenditures of public funds; and

2197 (h) if requested by the Health and Human Services Interim Committee or the Health

2198 and Human Services Appropriations Subcommittee, provide an oral report as requested.

2199 (3) (a) The division may refuse to contract with and may pursue its legal remedies
2200 against any local substance abuse authority or local mental health authority that fails, or has
2201 failed, to expend public funds in accordance with state law, division policy, contract
2202 provisions, or directives issued in accordance with state law.

2203 (b) The division may withhold funds from a local substance abuse authority or local
2204 mental health authority if the authority's contract with its provider of substance abuse or mental
2205 health programs or services fails to comply with state and federal law or policy.

2206 (4) Before reissuing or renewing a contract with any local substance abuse authority or
2207 local mental health authority, the division shall review and determine whether the local
2208 substance abuse authority or local mental health authority is complying with its oversight and
2209 management responsibilities described in Sections 17-43-201, 17-43-203, 17-43-303, and
2210 17-43-309. Nothing in this Subsection (4) may be used as a defense to the responsibility and
2211 liability described in Section 17-43-303 and to the responsibility and liability described in
2212 Section 17-43-203.

2213 (5) In carrying out its duties and responsibilities, the division may not duplicate
2214 treatment or educational facilities that exist in other divisions or departments of the state, but
2215 shall work in conjunction with those divisions and departments in rendering the treatment or
2216 educational services that those divisions and departments are competent and able to provide.

2217 (6) (a) The division may accept in the name of and on behalf of the state donations,
2218 gifts, devises, or bequests of real or personal property or services to be used as specified by the
2219 donor.

2220 (b) Those donations, gifts, devises, or bequests shall be used by the division in
2221 performing its powers and duties. Any money so obtained shall be considered private
2222 nonlapsing funds and shall be deposited into an interest-bearing restricted special revenue fund
2223 to be used by the division for substance abuse or mental health services. The state treasurer
2224 may invest the fund and all interest shall remain with the fund.

2225 (7) The division shall annually review with each local substance abuse authority and
2226 each local mental health authority the authority's statutory and contract responsibilities
2227 regarding:

2228 (a) the use of public funds;

2229 (b) oversight responsibilities regarding public funds; and
2230 (c) governance of substance abuse and mental health programs and services.
2231 (8) The Legislature may refuse to appropriate funds to the division upon the division's
2232 failure to comply with the provisions of this part.

2233 (9) If a local substance abuse authority contacts the division under Subsection
2234 17-43-201(9) for assistance in providing treatment services to a pregnant woman or pregnant
2235 minor, the division shall:

2236 (a) refer the pregnant woman or pregnant minor to a treatment facility that has the
2237 capacity to provide the treatment services; or

2238 (b) otherwise ensure that treatment services are made available to the pregnant woman
2239 or pregnant minor.

2240 Section 52. Section **62A-15-104** is amended to read:

2241 **62A-15-104. Director -- Qualifications.**

2242 (1) The director of the division shall be appointed by the executive director [~~with the~~
2243 ~~concurrence of the board~~].

2244 (2) The director shall have a bachelor's degree from an accredited university or college,
2245 be experienced in administration, and be knowledgeable in matters concerning substance abuse
2246 and mental health.

2247 (3) The director is the administrative head of the division.

2248 Section 53. Section **62A-15-105** is amended to read:

2249 **62A-15-105. Authority and responsibilities of division.**

2250 The [~~board is the policymaking body for the~~] division shall set policy for its operation
2251 and for programs funded with state and federal moneys under Sections 17-43-201, 17-43-301,
2252 17-43-304, and 62A-15-110. The [~~board~~] division shall:

2253 (1) in establishing [~~policy~~] rules, seek input from local substance abuse authorities,
2254 local mental health authorities, consumers, providers, advocates, division staff, and other
2255 interested parties as determined by the [~~board~~] division;

2256 (2) establish, by rule, minimum standards for local substance abuse authorities and
2257 local mental health authorities;

2258 (3) establish, by rule, procedures for developing [~~its~~] policies [~~which~~] that ensure that
2259 local substance abuse authorities and local mental health authorities are given opportunity to

2260 comment and provide input on any new policy of the [board] division or proposed changes in
2261 existing [policy] rules of the [board] division;

2262 (4) provide a mechanism for review of its existing policy, and for consideration of
2263 policy changes that are proposed by local substance abuse authorities or local mental health
2264 authorities;

2265 (5) develop program policies, standards, rules, and fee schedules for the division; and

2266 (6) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,
2267 make rules approving the form and content of substance abuse treatment, educational series,
2268 screening, and assessment that are described in Section 41-6a-501.

2269 Section 54. Section **62A-15-107** is amended to read:

2270 **62A-15-107. Authority to assess fees.**

2271 The division may, with the approval of the Legislature[;] and the executive director,
2272 [~~and the board;~~] establish fee schedules and assess fees for services rendered by the division.

2273 Section 55. Section **62A-15-108** is amended to read:

2274 **62A-15-108. Formula for allocation of funds to local substance abuse authorities**
2275 **and local mental health authorities.**

2276 (1) The [board] division shall establish, by rule, formulas for allocating funds to local
2277 substance abuse authorities and local mental health authorities through contracts, to provide
2278 substance abuse prevention and treatment services in accordance with the provisions of this
2279 chapter and Title 17, Chapter 43, Part 2, Local Substance Abuse Authorities, and mental health
2280 services in accordance with the provisions of this chapter and Title 17, Chapter 43, Part 3,
2281 Local Mental Health Authorities. The formulas shall provide for allocation of funds based on
2282 need. Determination of need shall be based on population unless the [board] division
2283 establishes, by valid and accepted data, that other defined factors are relevant and reliable
2284 indicators of need. The formulas shall include a differential to compensate for additional costs
2285 of providing services in rural areas.

2286 (2) The formulas established under Subsection (1) apply to all state and federal funds
2287 appropriated by the Legislature to the division for local substance abuse authorities and local
2288 mental health authorities, but does not apply to:

2289 (a) funds that local substance abuse authorities and local mental health authorities
2290 receive from sources other than the division;

2291 (b) funds that local substance abuse authorities and local mental health authorities
2292 receive from the division to operate specific programs within their jurisdictions which are
2293 available to all residents of the state;

2294 (c) funds that local substance abuse authorities and local mental health authorities
2295 receive from the division to meet needs that exist only within their local areas; and

2296 (d) funds that local substance abuse authorities and local mental health authorities
2297 receive from the division for research projects.

2298 Section 56. Section **63A-5-220** is amended to read:

2299 **63A-5-220. Definitions -- Creation of Trust Fund for People with Disabilities --**
2300 **Use of trust fund monies.**

2301 (1) As used in this section:

2302 (a) "Developmental center" means the Utah State Developmental Center described in
2303 Section 62A-5-201.

2304 (b) "DSPD" means the Division of Services for People with Disabilities within the
2305 Department of Human Services.

2306 (c) "Fund" means the Trust Fund for People with Disabilities created by this section.

2307 (d) "Long-term lease" means:

2308 (i) a lease with a term of five years or more; or

2309 (ii) a lease with a term of less than five years that may be unilaterally renewed by the
2310 lessee.

2311 (2) Notwithstanding the provisions of Section 63A-5-215, any monies received by the
2312 division or DSPD from the sale, lease, except any lease existing on May 1, 1995, or other
2313 disposition of real property associated with the developmental center shall be deposited in the
2314 fund.

2315 (3) (a) There is created a restricted account within the General Fund entitled the "Trust
2316 Fund for People with Disabilities."

2317 (b) The Division of Finance shall deposit the following revenues into the fund:

2318 (i) revenue from the sale, lease, except any lease existing on May 1, 1995, or other
2319 disposition of real property associated with the developmental center;

2320 (ii) revenue from the sale, lease, or other disposition of water rights associated with the
2321 developmental center; and

2322 (iii) revenue from voluntary contributions made to the fund.

2323 (c) The state treasurer shall invest monies contained in the fund according to the
2324 procedures and requirements of Title 51, Chapter 7, State Money Management Act, and all
2325 interest shall remain with the fund.

2326 (d) (i) Except as provided in Subsection (3)(d)(ii), no expenditure or appropriation may
2327 be made from the fund.

2328 (ii) (A) The Legislature may appropriate interest earned on fund monies invested
2329 pursuant to this Subsection (3)(d), leases from real property and improvements, leases from
2330 water, rents, and fees to DSPD for programs described in Title 62A, Chapter 5, Services to
2331 People with Disabilities.

2332 (B) Fund monies appropriated each year under Subsection (3)(d)(ii)(A) may not be
2333 expended unless approved by the [~~Board~~] director of the Division of Services for People with
2334 Disabilities within the Department of Human Services in consultation with the executive
2335 director of the department.

2336 (4) (a) Notwithstanding the provisions of Section 65A-4-1, any sale or disposition of
2337 real property or water rights associated with the developmental center shall be conducted as
2338 provided in this Subsection (4).

2339 (b) The division shall secure the concurrence of DSPD and the approval of the governor
2340 before making the sale or other disposition of land or water rights.

2341 (c) In addition to the concurrences required by Subsection (4)(b), the division shall
2342 secure the approval of the Legislature before offering the land or water rights for sale,
2343 exchange, or long-term lease.

2344 (d) The division shall sell or otherwise dispose of the land or water rights as directed by
2345 the governor.

2346 (e) The division may not sell, exchange, or enter into a long-term lease of the land or
2347 water rights for a price or estimated value below the average of two appraisals conducted by an
2348 appraiser who holds an appraiser's certificate or license issued by the Division of Real Estate
2349 under Title 61, Chapter 2b, Real Estate Appraiser Licensing and Certification Act.

2350 Section 57. Section **78B-8-103** is amended to read:

2351 **78B-8-103. Foster Care Citizen Review Board Steering Committee --**
2352 **Membership -- Chair -- Duties.**

- 2353 (1) There is created within state government the Foster Care Citizen Review Board
2354 Steering Committee composed of the following members:
- 2355 (a) a member ~~[of the Board]~~ appointed by the director of the Division of Child and
2356 Family Services, within the Department of Human Services, ~~[appointed by the chair of that~~
2357 ~~board]~~ with the approval of the executive director of the Department of Human Services;
- 2358 (b) the director of the division, or his designee;
- 2359 (c) a juvenile court judge, appointed by the presiding officer of the Judicial Council;
- 2360 (d) a juvenile court administrator, appointed by the administrator of the courts;
- 2361 (e) a representative of the Utah Foster Parents Association, appointed by the president
2362 of that organization;
- 2363 (f) a representative of a statewide advocacy organization for children, appointed by the
2364 chair of the committee;
- 2365 (g) a representative of an agency or organization that provides services to children who
2366 have been adjudicated to be under the jurisdiction of the juvenile court, appointed by the chair
2367 of the committee;
- 2368 (h) the guardian ad litem director, appointed pursuant to Section 78A-6-901, or the
2369 director's designee;
- 2370 (i) the director or chief of the child protection unit within the Office of the Attorney
2371 General, or his designee;
- 2372 (j) one person from each region who is a member of a board, appointed by the chair of
2373 the committee; and
- 2374 (k) a private citizen, appointed by the chair of the committee.
- 2375 (2) The members of the committee shall annually elect a chair from among themselves.
- 2376 (3) A majority of the members of the committee constitutes a quorum. The action of
2377 the majority of a quorum represents the action of the committee.
- 2378 (4) The committee shall:
- 2379 (a) within appropriations from the Legislature, appoint members to boards established
2380 in accordance with Section 78B-8-108;
- 2381 (b) supervise the recruitment, training, and retention of board members;
- 2382 (c) supervise and evaluate the boards; and
- 2383 (d) establish and approve policies for the boards.

2384 (5) The Department of Human Services shall provide fiscal management services,
2385 including payroll and accounting services, to the committee.

2386 (6) Within appropriations from the Legislature, the committee may hire professional
2387 and clerical staff as it considers necessary and appropriate.

2388 Section 58. **Repealer.**

2389 This bill repeals:

2390 Section **62A-2-104, Human Services Licensing Board -- Composition -- Meetings --**
2391 **Expenses.**

2392 Section **62A-2-105, Licensing board responsibilities.**

2393 Section **62A-14-106, Board of Public Guardian Services.**

2394 Section **62A-14-112, Implementation plan and independent evaluation.**

2395 Section **62A-15-106, Membership of board.**

Legislative Review Note
as of **2-25-09 2:25 PM**

Office of Legislative Research and General Counsel

Fiscal Note

**H.B. 306 - Health and Human Services-related Commission, Committee, and
Council Amendments**
2009 General Session
State of Utah

State Impact

Enactment of this bill will result in General Fund savings of \$15,000 in FY 2009 and \$56,200 in FY 2010 and thereafter. These savings are reflected in H.B. 3 and S.B. 2, 2009 General Session.

	<u>2009</u> <u>Approp.</u>	<u>2010</u> <u>Approp.</u>	<u>2011</u> <u>Approp.</u>	<u>2009</u> <u>Revenue</u>	<u>2010</u> <u>Revenue</u>	<u>2011</u> <u>Revenue</u>
General Fund	(\$15,000)	(\$56,200)	(\$56,200)	\$0	\$0	\$0
Total	(\$15,000)	(\$56,200)	(\$56,200)	\$0	\$0	\$0

Individual, Business and/or Local Impact

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals, businesses, or local governments.