

FATALITY REVIEW ACT AMENDMENTS

2011 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Merlynn T. Newbold

Senate Sponsor: Allen M. Christensen

LONG TITLE

General Description:

This bill amends provisions of the Fatality Review Act and the Government Records Access and Management Act with respect to the status, disclosure, and use of records relating to fatality reviews and near fatalities.

Highlighted Provisions:

This bill:

- ▶ modifies procedures relating to the initial review of a fatality;
 - ▶ requires a fatality review committee to provide an unredacted copy of a fatality review report to a division director and a regional director or a designee of the division director and regional director;
 - ▶ provides that an executive summary of fatality reviews is not admissible as evidence in a civil, judicial, or administrative proceeding;
 - ▶ amends procedures for providing an executive summary of fatality reviews to the Legislature;
 - ▶ requires that the Division of Child and Family Services, to the extent required by the federal Child Abuse Prevention and Treatment Act, as amended, allow public disclosure of the findings or information relating to a case of child abuse or neglect that results in a child fatality or near fatality;
 - ▶ removes the fatality review executive summary from the definition of a fatality review document and clarifies that the executive summary is a public document;
- and
- ▶ makes technical changes.

30 **Money Appropriated in this Bill:**

31 None

32 **Other Special Clauses:**

33 None

34 **Utah Code Sections Affected:**

35 AMENDS:

36 **62A-16-201**, as enacted by Laws of Utah 2010, Chapter 239

37 **62A-16-301**, as enacted by Laws of Utah 2010, Chapter 239

38 **62A-16-302**, as enacted by Laws of Utah 2010, Chapter 239

39 **63G-2-202**, as last amended by Laws of Utah 2010, Chapter 239



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

42 Section 1. Section **62A-16-201** is amended to read:

43 **62A-16-201. Initial review.**

44 (1) Within seven days after the day on which the department knows that a qualified
45 individual has died, a person designated by the department shall:

- 46 (a) complete a deceased client report form, created by the department; and
- 47 (b) forward the completed client report form to the director of the office or division
48 that has jurisdiction over the region or facility.

49 (2) The director of the office or division described in Subsection (1) shall, upon receipt
50 of a deceased client report form, immediately provide a copy of the form to:

- 51 (a) the executive director; and
- 52 (b) the fatality review coordinator or the fatality review coordinator's designee.

53 (3) Within 10 days after the day on which the fatality review coordinator or the fatality
54 review coordinator's designee receives a copy of the deceased client report form, the fatality
55 review coordinator or the fatality review coordinator's designee shall request a copy of all
56 relevant department case records regarding the individual who is the subject of the deceased
57 client report form.

58 (4) Each person who receives a request for a record described in Subsection (3) shall
59 provide a copy of the record to the fatality review coordinator or the fatality review
60 coordinator's designee, by a secure method, within seven days after the day on which the
61 request is made.

62 (5) Within 30 days after the day on which the fatality review coordinator or the fatality
63 review coordinator's designee receives the case records requested under Subsection (3), the
64 fatality review coordinator, or [~~a designee of~~] the fatality review [~~coordinator~~] coordinator's
65 designee, shall:

66 (a) review the deceased client report form, the case files, and other relevant
67 information received by the fatality review coordinator; and

68 (b) make a recommendation to the director of the Office of Services Review regarding
69 whether a formal fatality review should be conducted.

70 (6) (a) In accordance with Subsection (6)(b), within seven days after the day on which
71 the fatality review coordinator or the fatality review coordinator's designee makes the
72 recommendation described in Subsection (5)(b), the director of the Office of Services Review
73 or the director's designee shall determine whether to order that a formal fatality review be
74 conducted.

75 (b) The director of the Office of Services Review or the director's designee shall order
76 that a formal fatality review be conducted if:

77 (i) at the time of death, the qualified individual is:

78 (A) an individual described in Subsection 62A-16-102(2)(a) or (b), unless:

79 (I) the death is due to a natural cause; or

80 (II) the director of the Office of Services Review or the director's designee determines
81 that the death was not in any way related to services that were provided by, or under the
82 direction of, the department or a division of the department; or

83 (B) a child in foster care or substitute care, unless the death is due to:

84 (I) a natural cause; or

85 (II) an accident;

86 (ii) it appears, based on the information provided to the director of the Office of
87 Services Review or the director's designee, that:

88 (A) a provision of law, rule, policy, or procedure relating to the deceased individual or
89 the deceased individual's family may not have been complied with;

90 (B) the fatality was not responded to properly;

91 (C) a law, rule, policy, or procedure may need to be changed; or

92 (D) additional training is needed;

93 (iii) the death is caused by suicide; or

94 (iv) the director of the Office of Services Review or the director's designee determines
95 that another reason exists to order that a formal fatality review be conducted.

96 Section 2. Section **62A-16-301** is amended to read:

97 **62A-16-301. Fatality review committee report -- Response to report.**

98 (1) Within 20 days after the day on which the committee proceedings described in
99 Section 62A-16-204 end, the committee shall submit:

100 (a) a written report to the executive director that includes:

101 (i) the advisory opinions made under Subsection 62A-16-204(6); and

102 (ii) any recommendations regarding action that should be taken in relation to an
103 employee of the department or a person who contracts with the department; [~~and~~]

104 (b) a copy of the report described in Subsection (1)(a) to:

105 (i) the director, or the director's designee, of the office or division to which the fatality
106 relates; and

107 (ii) the regional director, or the regional director's designee, of the region to which the
108 fatality relates; and

109 [~~(b)~~] (c) a copy of the report described in Subsection (1)(a), with only identifying
110 information redacted, to [~~:(i) the director of the office or division to which the fatality relates;~~
111 ~~and (ii)] the Office of Legislative Research and General Counsel.~~

112 (2) Within 20 days after the day on which the director described in Subsection (1)(b)(i)
113 receives a copy of the report described in Subsection (1)(a), the director shall provide a written

114 response to the ~~[executive]~~ director~~[-]~~ of the Office of Services Review and a copy of the
115 response, with only identifying information redacted, to the Office of Legislative Research and
116 General Counsel, ~~[and an unredacted copy of the response to the director of the Office of~~
117 ~~Services Review,]~~ if the report:

118 (a) indicates that a law, rule, policy, or procedure was not complied with;

119 (b) indicates that the fatality was not responded to properly;

120 (c) recommends that a law, rule, policy, or procedure be changed; or

121 (d) indicates that additional training is needed.

122 (3) The response described in Subsection (2) shall include a plan of action to
123 implement any recommended improvements within the office or division.

124 (4) Within 30 days after the day on which the executive director receives the response
125 described in Subsection (2), the executive director, or the executive director's designee shall:

126 (a) review the ~~[action]~~ plan of action described in Subsection (3);

127 (b) make any written response that the executive director or the executive director's
128 designee determines is necessary;

129 (c) provide a copy of the written response described in Subsection (4)(b), with only
130 identifying information redacted, to the Office of Legislative Research and General Counsel;
131 and

132 (d) provide an unredacted copy of the response described in Subsection (4)(b) to the
133 director of the Office of Services Review.

134 (5) A report described in Subsection (1) and each response described in this section is a
135 protected record.

136 (6) (a) As used in this Subsection (6), "fatality review document" means any document
137 created in connection with, or as a result of, a fatality review or a decision whether to conduct a
138 fatality review, including:

139 (i) a report described in Subsection (1);

140 (ii) a response described in this section;

141 (iii) a recommendation regarding whether a fatality review should be conducted;

142 (iv) a decision to conduct a fatality review;

143 (v) notes of a person who participates in a fatality review;

144 (vi) notes of a person who reviews a fatality review report;

145 [~~(vii) an executive summary described in Subsection 62A-16-302(4);~~]

146 [~~(viii)~~ (vii) minutes of a fatality review;

147 [~~(ix)~~ (viii) minutes of a meeting where a fatality review report is reviewed; and

148 [~~(x)~~ (ix) minutes of, documents received in relation to, and documents generated in

149 relation to, the portion of a meeting of the Health and Human Services Interim Committee or

150 the Child Welfare Legislative Oversight Panel that a fatality review report or a document

151 described in this Subsection (6)(a) is reviewed or discussed.

152 (b) A fatality review document is not subject to discovery, subpoena, or similar

153 compulsory process in any civil, judicial, or administrative proceeding, nor shall any individual

154 or organization with lawful access to the data be compelled to testify with regard to a report

155 described in Subsection (1) or a response described in this section.

156 (c) [~~A fatality review document is~~] The following are not admissible as evidence in a

157 civil, judicial, or administrative proceeding[-]:

- 158 (i) a fatality review document; and
- 159 (ii) an executive summary described in Subsection 62A-16-302(4).

160 Section 3. Section **62A-16-302** is amended to read:

161 **62A-16-302. Reporting to, and review by, legislative committees.**

162 (1) The Office of Legislative Research and General Counsel shall provide a copy of the

163 report described in Subsection 62A-16-301(1)(b), and the responses described in Subsections

164 62A-16-301(2) and (4)(c) to the chairs of:

- 165 (a) the Health and Human Services Interim Committee; or
- 166 (b) if the individual who is the subject of the report was, at the time of death, a person
- 167 described in Subsection 62A-16-102(2)(c) or (d), the Child Welfare Legislative Oversight
- 168 Panel.

169 (2) (a) The Health and Human Services Interim Committee may, in a closed meeting,

170 review a report described in Subsection 62A-16-301(1)(b).

171 (b) The Child Welfare Legislative Oversight Panel shall, in a closed meeting, review a
172 report described in Subsection (1)(b).

173 (3) (a) Neither the Health and Human Services Interim Committee nor the Child
174 Welfare Legislative Oversight Panel may interfere with, or make recommendations regarding,
175 the resolution of a particular case.

176 (b) The purpose of a review described in Subsection (2) is to assist a committee or
177 panel described in Subsection (2) in determining whether to recommend a change in the law.

178 (c) Any recommendation, described in Subsection (3)(b), by a committee or panel for a
179 change in the law shall be made in an open meeting.

180 (4) (a) On or before September 1 of each year, the department shall provide an
181 executive summary of all fatality review reports for the preceding state fiscal year to[+] the
182 Office of Legislative Research and General Counsel.

183 (b) The Office of Legislative Research and General Counsel shall forward a copy of the
184 executive summary described in Subsection (4)(a) to:

185 [~~(a)~~] (i) the Health and Human Services Interim Committee; and

186 [~~(b)~~] (ii) the Child Welfare Legislative Oversight Panel.

187 (5) The executive summary described in Subsection (4):

188 (a) may not include any names or identifying information; [~~and~~]

189 (b) shall include:

190 (i) all recommendations regarding changes to the law that were made during the
191 preceding fiscal year under Subsection 62A-16-204(6);

192 (ii) all changes made, or in the process of being made, to a law, rule, policy, or
193 procedure in response to a fatality review that occurred during the preceding fiscal year;

194 (iii) a description of the training that has been completed in response to a fatality
195 review that occurred during the preceding fiscal year;

196 (iv) statistics for the preceding fiscal year regarding:

197 (A) the number and type of fatalities of qualified individuals that are known to the

198 department;

199 (B) the number of formal fatality reviews conducted;

200 (C) the categories, described in Subsection 62A-16-102(2) of qualified individuals who
201 died;

202 (D) the gender, age, race, and other significant categories of qualified individuals who
203 died; and

204 (E) the number of fatalities of qualified individuals known to the department that are
205 identified as suicides; and

206 (v) action taken by the Office of Licensing and the Bureau of Internal Review and
207 Audits in response to the fatality of a qualified individual[-]; and

208 (c) is a public document.

209 (6) The Division of Child and Family Services shall, to the extent required by the
210 federal Child Abuse Prevention and Treatment Act, as amended, allow public disclosure of the
211 findings or information relating to a case of child abuse or neglect that results in a child fatality
212 or near fatality.

213 Section 4. Section **63G-2-202** is amended to read:

214 **63G-2-202. Access to private, controlled, and protected documents.**

215 (1) Upon request, and except as provided in Subsection (11)(a), a governmental entity
216 shall disclose a private record to:

217 (a) the subject of the record;

218 (b) the parent or legal guardian of an unemancipated minor who is the subject of the
219 record;

220 (c) the legal guardian of a legally incapacitated individual who is the subject of the
221 record;

222 (d) any other individual who:

223 (i) has a power of attorney from the subject of the record;

224 (ii) submits a notarized release from the subject of the record or the individual's legal
225 representative dated no more than 90 days before the date the request is made; or

226 (iii) if the record is a medical record described in Subsection 63G-2-302(1)(b), is a
227 health care provider, as defined in Section 26-33a-102, if releasing the record or information in
228 the record is consistent with normal professional practice and medical ethics; or

229 (e) any person to whom the record must be provided pursuant to:

230 (i) court order as provided in Subsection (7); or

231 (ii) a legislative subpoena as provided in Title 36, Chapter 14, Legislative Subpoena
232 Powers.

233 (2) (a) Upon request, a governmental entity shall disclose a controlled record to:

234 (i) a physician, psychologist, certified social worker, insurance provider or producer, or
235 a government public health agency upon submission of:

236 (A) a release from the subject of the record that is dated no more than 90 days prior to
237 the date the request is made; and

238 (B) a signed acknowledgment of the terms of disclosure of controlled information as
239 provided by Subsection (2)(b); and

240 (ii) any person to whom the record must be disclosed pursuant to:

241 (A) a court order as provided in Subsection (7); or

242 (B) a legislative subpoena as provided in Title 36, Chapter 14, Legislative Subpoena
243 Powers.

244 (b) A person who receives a record from a governmental entity in accordance with
245 Subsection (2)(a)(i) may not disclose controlled information from that record to any person,
246 including the subject of the record.

247 (3) If there is more than one subject of a private or controlled record, the portion of the
248 record that pertains to another subject shall be segregated from the portion that the requester is
249 entitled to inspect.

250 (4) Upon request, and except as provided in Subsection (10) or (11)(b), a governmental
251 entity shall disclose a protected record to:

252 (a) the person who submitted the record;

253 (b) any other individual who:

- 254 (i) has a power of attorney from all persons, governmental entities, or political
255 subdivisions whose interests were sought to be protected by the protected classification; or
256 (ii) submits a notarized release from all persons, governmental entities, or political
257 subdivisions whose interests were sought to be protected by the protected classification or from
258 their legal representatives dated no more than 90 days prior to the date the request is made;
- 259 (c) any person to whom the record must be provided pursuant to:
- 260 (i) a court order as provided in Subsection (7); or
261 (ii) a legislative subpoena as provided in Title 36, Chapter 14, Legislative Subpoena
262 Powers; or
- 263 (d) the owner of a mobile home park, subject to the conditions of Subsection
264 41-1a-116(5).
- 265 (5) A governmental entity may disclose a private, controlled, or protected record to
266 another governmental entity, political subdivision, another state, the United States, or a foreign
267 government only as provided by Section 63G-2-206.
- 268 (6) Before releasing a private, controlled, or protected record, the governmental entity
269 shall obtain evidence of the requester's identity.
- 270 (7) A governmental entity shall disclose a record pursuant to the terms of a court order
271 signed by a judge from a court of competent jurisdiction, provided that:
- 272 (a) the record deals with a matter in controversy over which the court has jurisdiction;
273 (b) the court has considered the merits of the request for access to the record;
274 (c) the court has considered and, where appropriate, limited the requester's use and
275 further disclosure of the record in order to protect:
- 276 (i) privacy interests in the case of private or controlled records;
277 (ii) business confidentiality interests in the case of records protected under Subsection
278 63G-2-305(1), (2), (40)(a)(ii), or (40)(a)(vi); and
279 (iii) privacy interests or the public interest in the case of other protected records;
- 280 (d) to the extent the record is properly classified private, controlled, or protected, the
281 interests favoring access, considering limitations thereon, outweigh the interests favoring

282 restriction of access; and

283 (e) where access is restricted by a rule, statute, or regulation referred to in Subsection
284 63G-2-201(3)(b), the court has authority independent of this chapter to order disclosure.

285 (8) (a) A governmental entity may disclose or authorize disclosure of private or
286 controlled records for research purposes if the governmental entity:

287 (i) determines that the research purpose cannot reasonably be accomplished without
288 use or disclosure of the information to the researcher in individually identifiable form;

289 (ii) determines that:

290 (A) the proposed research is bona fide; and

291 (B) the value of the research outweighs the infringement upon personal privacy;

292 (iii) (A) requires the researcher to assure the integrity, confidentiality, and security of
293 the records; and

294 (B) requires the removal or destruction of the individual identifiers associated with the
295 records as soon as the purpose of the research project has been accomplished;

296 (iv) prohibits the researcher from:

297 (A) disclosing the record in individually identifiable form, except as provided in
298 Subsection (8)(b); or

299 (B) using the record for purposes other than the research approved by the governmental
300 entity; and

301 (v) secures from the researcher a written statement of the researcher's understanding of
302 and agreement to the conditions of this Subsection (8) and the researcher's understanding that
303 violation of the terms of this Subsection (8) may subject the researcher to criminal prosecution
304 under Section 63G-2-801.

305 (b) A researcher may disclose a record in individually identifiable form if the record is
306 disclosed for the purpose of auditing or evaluating the research program and no subsequent use
307 or disclosure of the record in individually identifiable form will be made by the auditor or
308 evaluator except as provided by this section.

309 (c) A governmental entity may require indemnification as a condition of permitting

310 research under this Subsection (8).

311 (9) (a) Under Subsections 63G-2-201(5)(b) and 63G-2-401(6), a governmental entity
312 may disclose to persons other than those specified in this section records that are:

313 (i) private under Section 63G-2-302; or

314 (ii) protected under Section 63G-2-305 subject to Section 63G-2-309 if a claim for
315 business confidentiality has been made under Section 63G-2-309.

316 (b) Under Subsection 63G-2-403(11)(b), the records committee may require the
317 disclosure to persons other than those specified in this section of records that are:

318 (i) private under Section 63G-2-302;

319 (ii) controlled under Section 63G-2-304; or

320 (iii) protected under Section 63G-2-305 subject to Section 63G-2-309 if a claim for
321 business confidentiality has been made under Section 63G-2-309.

322 (c) Under Subsection 63G-2-404(8), the court may require the disclosure of records
323 that are private under Section 63G-2-302, controlled under Section 63G-2-304, or protected
324 under Section 63G-2-305 to persons other than those specified in this section.

325 (10) A record contained in the Management Information System, created in Section
326 62A-4a-1003, that is found to be unsubstantiated, unsupported, or without merit may not be
327 disclosed to any person except the person who is alleged in the report to be a perpetrator of
328 abuse, neglect, or dependency.

329 (11) (a) A private record described in Subsection 63G-2-302(2)(f) may only be
330 disclosed as provided in Subsection (1)(e).

331 (b) A protected record described in Subsection 63G-2-305(43) may only be disclosed
332 as provided in Subsection (4)(c) or Section 62A-3-312.

333 (12) (a) A private, protected, or controlled record described in Section 62A-16-301
334 shall be disclosed as required under:

335 (i) Subsections 62A-16-301(1)(b), (2), and (4)(c); and

336 (ii) ~~Subsection~~ Subsections 62A-16-302(1) and (6).

337 (b) A record disclosed under Subsection (12)(a) shall retain its character as private,

338 protected, or controlled.