

**ONLINE MENTAL HEALTH THERAPY**

2011 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Keith Grover**

Senate Sponsor: \_\_\_\_\_

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**LONG TITLE****General Description:**

This bill amends the Mental Health Professional Practice Act to allow mental health therapists to conduct therapy remotely to individuals outside of the state.

**Highlighted Provisions:**

This bill:

- ▶ modifies definitions;
- ▶ allows the following mental health therapists to establish an online practice and other forms of remote practice to individuals outside of the state:
  - a physician, surgeon, or osteopathic physician engaged in the practice of mental health therapy;
  - an advanced practice registered nurse, specializing in psychiatric mental health nursing;
  - a psychologist qualified to engage in the practice of mental health therapy;
  - a clinical social worker;
  - a certified social worker;
  - a marriage and family therapist;
  - a professional counselor;
  - a social service worker; and
  - substance abuse approved agencies;
- ▶ requires a mental health therapist to obtain informal consent from a patient prior to



engaging in online therapy;

▸ provides that a mental health therapist practicing remotely may be subject to the jurisdiction and laws of other states; and

▸ allows the Division of Occupational and Professional Licensing to make rules to implement online and other forms of remote therapy.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**58-60-102**, as last amended by Laws of Utah 1999, Chapter 81

**58-60-202**, as last amended by Laws of Utah 2010, Chapters 78 and 214

**58-60-302**, as enacted by Laws of Utah 1994, Chapter 32

**58-60-308**, as last amended by Laws of Utah 2010, Chapter 214

**58-60-402**, as enacted by Laws of Utah 1994, Chapter 32

**58-60-407**, as last amended by Laws of Utah 2010, Chapter 214

**58-60-502**, as last amended by Laws of Utah 2007, Chapter 283

ENACTS:

**58-60-118**, Utah Code Annotated 1953

**58-60-119**, Utah Code Annotated 1953

**58-60-120**, Utah Code Annotated 1953

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

Section 1. Section **58-60-102** is amended to read:

**58-60-102. Definitions.**

In addition to the definitions in Section 58-1-102, as used in this chapter:

(1) "Client" or "patient" means an individual who consults or is examined or interviewed by a mental health therapist acting in his professional capacity.

(2) "Confidential communication" means information, including information obtained by the mental health therapist's examination of the client or patient, which is:

59 (a) (i) transmitted between the client or patient and a mental health therapist in the  
60 course of that relationship; or

61 (ii) transmitted among the client or patient, the mental health therapist, and individuals  
62 who are participating in the diagnosis or treatment under the direction of the mental health  
63 therapist, including members of the client's or patient's family; and

64 (b) made in confidence, for the diagnosis or treatment of the client or patient by the  
65 mental health therapist, and by a means not intended to be disclosed to third persons other than  
66 those individuals:

67 (i) present to further the interest of the client or patient in the consultation,  
68 examination, or interview;

69 (ii) reasonably necessary for the transmission of the communications; or

70 (iii) participating in the diagnosis and treatment of the client or patient under the  
71 direction of the mental health therapist.

72 (3) "Hypnosis" means, regarding individuals exempted from licensure under this  
73 chapter, a process by which one individual induces or assists another individual into a hypnotic  
74 state without the use of drugs or other substances and for the purpose of increasing motivation  
75 or to assist the individual to alter lifestyles or habits.

76 (4) "Individual" means a natural person.

77 (5) "Mental health therapist" means an individual licensed under this title as:

78 (a) a physician and surgeon, or osteopathic physician engaged in the practice of mental  
79 health therapy;

80 (b) an advanced practice registered nurse, specializing in psychiatric mental health  
81 nursing;

82 (c) a psychologist qualified to engage in the practice of mental health therapy;

83 (d) a clinical social worker;

84 (e) a certified social worker;

85 (f) a marriage and family therapist; or

86 (g) a professional counselor.

87 (6) "Mental illness" means a mental or emotional condition defined in an approved  
88 diagnostic and statistical manual for mental disorders generally recognized in the professions of  
89 mental health therapy listed under Subsection (5).

(7) "Practice of mental health therapy" means treatment or prevention of mental illness, whether in person or remotely, including:

(a) conducting a professional evaluation of an individual's condition of mental health, mental illness, or emotional disorder consistent with standards generally recognized in the professions of mental health therapy listed under Subsection (5);

(b) establishing a diagnosis in accordance with established written standards generally recognized in the professions of mental health therapy listed under Subsection (5);

(c) prescribing a plan for the prevention or treatment of a condition of mental illness or emotional disorder; and

(d) engaging in the conduct of professional intervention, including psychotherapy by the application of established methods and procedures generally recognized in the professions of mental health therapy listed under Subsection (5).

(8) "Remotely" means engaging in the practice of mental health therapy via the Internet, telephone, or other means where the patient and the therapist are not physically present in the same room at the same time.

~~[(8)]~~ (9) "Unlawful conduct" is as defined in Sections 58-1-501 and 58-60-109.

~~[(9)]~~ (10) "Unprofessional conduct" is as defined in Sections 58-1-501 and 58-60-110, and may be further defined by division rule.

Section 2. Section **58-60-118** is enacted to read:

**58-60-118. Informed consent -- Online and remote therapy.**

(1) Before a mental health therapist may engage in the practice of mental health therapy remotely, a mental health therapist shall provide, both verbally and in writing, to the patient:

(a) a description of the potential risks, consequences, and benefits of receiving treatment remotely;

(b) that all existing confidentiality protections apply; and

(c) that all existing laws regarding patient access to medical information and copies of medical records apply.

(2) The written consent statement signed by the patient or the patient's legal representative shall become part of the patient's medical record.

(3) The failure of a mental health therapist to comply with this section shall constitute

unprofessional conduct as defined in Section 58-1-501.

Section 3. Section **58-60-119** is enacted to read:

**58-60-119. Online and remote therapy -- Outside of Utah.**

A mental health therapist practicing remotely may be subject to the jurisdiction and laws of other states.

Section 4. Section **58-60-120** is enacted to read:

**58-60-120. Rulemaking authority.**

In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the division may make rules to establish procedures under which a mental health therapist may practice remotely, without limiting the location of the patient.

Section 5. Section **58-60-202** is amended to read:

**58-60-202. Definitions.**

In addition to the definitions in Sections 58-1-102 and 58-60-102, as used in this part:

(1) "Board" means the Social Worker Licensing Board created in Section 58-60-203.

(2) (a) "Practice as a social service worker" means performance of general entry level services, whether in person or remotely, under general supervision of a mental health therapist through the application of social work theory, methods, and ethics in order to enhance the social or psychosocial functioning of an individual, a couple, a family, a group, or a community, including:

(i) conducting:

(A) a non-clinical psychosocial assessment; or

(B) a home study;

(ii) collaborative planning and goal setting;

(iii) ongoing case management;

(iv) progress monitoring;

(v) supportive counseling;

(vi) information gathering;

(vii) making referrals; and

(viii) engaging in advocacy.

(b) "Practice as a social service worker" does not include:

(i) diagnosing or treating mental illness; or

(ii) providing psychotherapeutic services to an individual, couple, family, group, or community.

(3) "Practice of clinical social work" includes:

(a) the practice of mental health therapy, whether in person or remotely, by observation, description, evaluation, interpretation, intervention, and treatment to effect modification of behavior by the application of generally recognized professional social work principles, methods, and procedures for the purpose of preventing, treating, or eliminating mental or emotional illness or dysfunction, the symptoms of any of these, or maladaptive behavior;

(b) the application of generally recognized psychotherapeutic and social work principles and practices requiring the education, training, and clinical experience of a clinical social worker; and

(c) supervision of the practice of a certified social worker or social service worker as the supervision is required under this chapter and as further defined by division rule.

(4) "Practice of certified social work" includes:

(a) the supervised practice of mental health therapy by a clinical social worker, whether in person or remotely, by observation, description, evaluation, interpretation, intervention, and treatment to effect modification of behavior by the application of generally recognized professional social work principles, methods, and procedures for the purpose of preventing, treating, or eliminating mental or emotional illness or dysfunctions, the symptoms of any of these, or maladaptive behavior;

(b) the supervised or independent and unsupervised application of generally recognized professional social work principles and practices requiring the education, training, and experience of a certified social worker; and

(c) supervision of the practice of a social service worker as the supervision is required under this chapter and as further defined by division rule.

(5) "Program accredited by the Council on Social Work Education" means a program that:

(a) was accredited by the Council on Social Work Education on the day on which the applicant for licensure satisfactorily completed the program; or

(b) was in candidacy for accreditation by the Council on Social Work Education on the

day on which the applicant for licensure satisfactorily completed the program.

(6) "Supervision of a social service worker" means supervision conducted by an individual licensed as a mental health therapist under this title in accordance with division rules made in collaboration with the board.

Section 6. Section **58-60-302** is amended to read:

**58-60-302. Definitions.**

In addition to the definitions in Sections 58-1-102 and 58-60-102, as used in this part:

(1) "Assess" means the use of diagnostic procedures, tests, and interview techniques generally accepted as standard in mental health therapy to diagnose any condition related to mental, emotional, behavioral, and social disorders or dysfunctions.

(2) "Board" means the Marriage and Family Therapist Licensing Board created in Section 58-60-303.

(3) "Practice of marriage and family therapy" includes:

(a) the process of providing professional mental health therapy, whether in person or remotely, including psychotherapy to individuals, couples, families, or groups;

(b) utilizing established principles that recognize the interrelated nature of individual problems and dysfunctions in family members to assess, diagnose, and treat mental, emotional, and behavioral disorders;

(c) individual, premarital, relationship, marital, divorce, and family therapy, whether in person or remotely;

(d) specialized modes of treatment for the purpose of diagnosing and treating mental, emotional, and behavioral disorders, modifying interpersonal and intrapersonal dysfunction, and promoting mental health; and

(e) assessment utilized to develop, recommend, and implement appropriate plans of treatment, dispositions, and placement related to the functioning of the individual, couple, family, or group.

Section 7. Section **58-60-308** is amended to read:

**58-60-308. Scope of practice -- Limitations.**

(1) A licensed marriage and family therapist may engage in all acts and practices defined as the practice of marriage and family therapy without supervision, in private and independent practice, or as an employee of another person, limited only by the licensee's

education, training, and competence.

(2) (a) To the extent an individual has completed the educational requirements of Subsection 58-60-305(1)(d), a licensed associate marriage and family therapist may engage in all acts and practices defined as the practice of marriage and family therapy if the practice is:

(i) within the scope of employment as a licensed associate marriage and family therapist with a public agency or a private traditional or online clinic as defined by division rule; and

(ii) under the supervision of a licensed marriage and family therapist who is qualified as a supervisor under Section 58-60-307.

(b) A licensed associate marriage and family therapist may not engage in the independent practice of marriage and family therapy.

Section 8. Section **58-60-402** is amended to read:

**58-60-402. Definitions.**

In addition to the definitions in Sections 58-1-102 and 58-60-102, as used in this part:

(1) "Board" means the Professional Counselor Licensing Board created in Section 58-60-403.

(2) "Practice of professional counseling" means the practice of mental health therapy, whether in person or remotely, by means of observation, description, evaluation, interpretation, intervention, and treatment to effect modification of human behavior by the application of generally recognized professional counseling principles, methods, and procedures for the purpose of preventing, treating, or eliminating mental or emotional illness or dysfunction, symptoms of any of these, or maladaptive behavior.

Section 9. Section **58-60-407** is amended to read:

**58-60-407. Scope of practice -- Limitations.**

(1) A licensed professional counselor may engage in all acts and practices defined as the practice of professional counseling without supervision, in private and independent practice, or as an employee of another person, limited only by the licensee's education, training, and competence.

(2) (a) To the extent an individual has completed the educational requirements of Subsection 58-60-305(1)(d), a licensed associate professional counselor may engage in all acts and practices defined as the practice of professional counseling if the practice is:



(i) within the scope of employment as a licensed professional counselor with a public agency or private traditional or online clinic as defined by division rule; and

(ii) under supervision of a qualified licensed mental health therapist as defined in Subsection 58-60-102(5).

(b) A licensed associate professional counselor may not engage in the independent practice of professional counseling.

Section 10. Section **58-60-502** is amended to read:

**58-60-502. Definitions.**

In addition to the definitions in Sections 58-1-102 and 58-60-102, as used in this part:

(1) "Approved agency" means an agency, whether providing services in person or remotely, licensed by the Department of Human Services or a general acute hospital or specialty hospital as defined in Section 26-21-2 and licensed by the state Department of Health that:

(a) provides substance abuse services; and

(b) provides qualified mental health therapists in sufficient number to evaluate the conditions of the clients being treated by counselors licensed under this part employed by the approved agency to ensure that appropriate substance abuse services are being given.

(2) "Board" means the Substance Abuse Counselor Licensing Board created in Section 58-60-503.

(3) "Direct supervision" means:

(a) a supervisor provides a minimum of one hour of supervision to the licensed substance abuse counselor for every 40 hours of client care provided by the counselor, which supervision may include group supervision;

(b) the supervision is conducted in a face-to-face manner, unless otherwise approved on a case-by-case basis by the division in collaboration with the board; and

(c) a supervisor is available for consultation with the counselor at all times.

(4) "General supervision" shall be defined by the division by rule.

(5) "Group supervision" means more than one counselor licensed under this part meets with the supervisor at the same time.

(6) "Individual supervision" means only one counselor licensed under this part meets with the supervisor at a given time.

(7) (a) "Practice as a licensed substance abuse counselor" means providing services, whether in person or remotely, as an employee of an approved agency under the general supervision of a licensed mental health therapist, to individuals or groups of persons for conditions of substance abuse, consistent with the education and training of a licensed substance abuse counselor required under this part, and the standards and ethics of the profession as approved by the division in collaboration with the board, and includes:

(i) administering the screening process by which a client is determined appropriate and eligible for admission to a particular program;

(ii) conducting the administrative intake procedures for admission to a program;

(iii) conducting orientation of a client, including:

(A) describing the general nature and goals of the program;

(B) explaining rules governing client conduct and infractions that can lead to disciplinary action or discharge from the program;

(C) explaining hours during which services are available in a nonresidential program;

(D) treatment costs to be borne by the client, if any; and

(E) describing the client's rights as a program participant;

(iv) conducting those assessment procedures by which a substance abuse counselor identifies an individual's strengths, weaknesses, problems, and needs for the development of the treatment plan;

(v) participating in the process of treatment planning by which the substance abuse counselor, the mental health therapist, and the client:

(A) identify and rank problems needing resolution;

(B) establish agreed upon immediate and long term goals; and

(C) decide on a treatment process and the resources to be utilized;

(vi) providing substance abuse counseling services to alcohol and drug abuse clients and significant other persons in the client's life as part of a comprehensive treatment plan, including the following, but not including mental health therapy:

(A) leading specific task-oriented groups, didactic groups, and group discussions;

(B) cofacilitating group therapy with a licensed mental health therapist; and

(C) engaging in one-on-one interventions and interactions coordinated and directly supervised by a mental health therapist;

(vii) performing case management activities which bring services, agencies, resources, or people together within a planned framework of action toward the achievement of established goals, including, when appropriate, liaison activities and collateral contacts;

(viii) providing substance abuse crisis intervention services;

(ix) providing client education to individuals and groups concerning alcohol and other drug abuse, including identification and description of available treatment services and resources;

(x) identifying the needs of the client that cannot be met by the substance abuse counselor or agency and referring the client to appropriate services and community resources;

(xi) developing and providing effective reporting and recordkeeping procedures and services, which include charting the results of the assessment and treatment plan, writing reports, progress notes, discharge summaries, and other client-related data; and

(xii) consulting with other professionals in regard to client treatment and services to assure comprehensive quality care for the client.

(b) "Practice as a certified substance abuse counselor, certified substance abuse counselor intern, or certified substance abuse counselor extern" means providing the services described in Subsections (7)(a) and (b) under the direct supervision of a mental health therapist or licensed substance abuse counselor.

(c) "Practice as a licensed substance abuse counselor" does not include:

(i) the diagnosing of mental illness, including substance abuse, as defined in Section 58-60-102;

(ii) engaging in the practice of mental health therapy as defined in Section 58-60-102; or

(iii) the performance of a substance abuse diagnosis, any other mental illness diagnosis, or psychological testing.

(8) "Program" means a residential or nonresidential program that provides substance abuse services.

(9) "Substance abuse education program" means a formal program of substance abuse education offered by an accredited institution of higher education that meets standards established by the division by rule in collaboration with the board and includes a minimum of 300 hours of classroom education and a supervised field work practicum of at least 300 hours.

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**Legislative Review Note**  
**as of 1-24-11 4:27 PM**

**Office of Legislative Research and General Counsel**

# FISCAL NOTE

H.B. 244

SHORT TITLE: **Online Mental Health Therapy**

SPONSOR: **Grover, K.**

2011 GENERAL SESSION, STATE OF UTAH

STATE GOVERNMENT (UCA 36-12-13(2)(b))

Enactment of this bill likely will not materially impact the state budget.

LOCAL GOVERNMENTS (UCA 36-12-13(2)(c))

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for local governments.

DIRECT EXPENDITURES BY UTAH RESIDENTS AND BUSINESSES (UCA 36-12-13(2)(d))

Enactment of this bill likely will not result in direct, measurable expenditures by Utah residents or businesses.