

**Representative Keith Grover** proposes the following substitute bill:

**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 inside and 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 inside and 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; 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

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

**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

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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:
  - (a) (i) transmitted between the client or patient and a mental health therapist in the course of that relationship; or
  - (ii) transmitted among the client or patient, the mental health therapist, and individuals

57 who are participating in the diagnosis or treatment under the direction of the mental health  
58 therapist, including members of the client's or patient's family; and

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

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

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

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

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

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

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

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

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

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

78 (d) a clinical social worker;

79 (e) a certified social worker;

80 (f) a marriage and family therapist; or

81 (g) a professional counselor.

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

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

87 (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. Rulemaking authority.**

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

122 Section 4. Section **58-60-202** is amended to read:

123 **58-60-202. Definitions.**

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

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

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

131 (i) conducting:

132 (A) a non-clinical psychosocial assessment; or

133 (B) a home study;

134 (ii) collaborative planning and goal setting;

135 (iii) ongoing case management;

136 (iv) progress monitoring;

137 (v) supportive counseling;

138 (vi) information gathering;

139 (vii) making referrals; and

140 (viii) engaging in advocacy.

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

142 (i) diagnosing or treating mental illness; or

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

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

146 (a) the practice of mental health therapy, whether in person or remotely, by  
147 observation, description, evaluation, interpretation, intervention, and treatment to effect  
148 modification of behavior by the application of generally recognized professional social work  
149 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 5. 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 6. 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 7. 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



243 eligible for admission to a particular program;

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

245 (iii) conducting orientation of a client, including:

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

247 (B) explaining rules governing client conduct and infractions that can lead to

248 disciplinary action or discharge from the program;

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

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

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

252 (iv) conducting those assessment procedures by which a substance abuse counselor

253 identifies an individual's strengths, weaknesses, problems, and needs for the development of

254 the treatment plan;

255 (v) participating in the process of treatment planning by which the substance abuse

256 counselor, the mental health therapist, and the client:

257 (A) identify and rank problems needing resolution;

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

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

260 (vi) providing substance abuse counseling services to alcohol and drug abuse clients

261 and significant other persons in the client's life as part of a comprehensive treatment plan,

262 including the following, but not including mental health therapy:

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

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

265 (C) engaging in one-on-one interventions and interactions coordinated and directly

266 supervised by a mental health therapist;

267 (vii) performing case management activities which bring services, agencies, resources,

268 or people together within a planned framework of action toward the achievement of established

269 goals, including, when appropriate, liaison activities and collateral contacts;

270 (viii) providing substance abuse crisis intervention services;

271 (ix) providing client education to individuals and groups concerning alcohol and other

272 drug abuse, including identification and description of available treatment services and

273 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.

# FISCAL NOTE

H.B. 244 1st Sub. (Buff)

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 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.

2/22/2011, 06:40 PM, Lead Analyst: Pratt, S./Attorney: GCL

Office of the Legislative Fiscal Analyst