

# HB0172S01 compared with HB0172

~~{deleted text}~~ shows text that was in HB0172 but was deleted in HB0172S01.

inserted text shows text that was not in HB0172 but was inserted into HB0172S01.

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Representative Brad R. Wilson proposes the following substitute bill:

## PUBLIC ASSISTANCE BENEFITS AMENDMENTS

2016 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Angela Romero**

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

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### LONG TITLE

#### General Description:

This bill modifies provisions of the Family Employment Program.

#### Highlighted Provisions:

This bill:

- ▶ ~~{removes certain}~~ defines "licensed clinical therapist";
- ▶ modifies the requirements ~~{for an applicant}~~ to receive cash assistance under the state's Family Employment Program ~~{, including:~~

~~• the completion of};~~

- ▶ modifies when an individual receiving cash assistance under the Family Employment Program must take a written questionnaire designed to determine the likelihood of the applicant having a substance use disorder; and

~~{ • a drug test if the written questionnaire indicates the applicant likely has a~~

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~~substance use disorder~~ requires that an individual be evaluated by a licensed clinical therapist before an individual may be required to take a drug test as a condition of continuing to receive cash assistance under the Family Employment Program.

### Money Appropriated in this Bill:

None

### Other Special Clauses:

None

### Utah Code Sections Affected:

AMENDS:

~~35A-3-302~~ 35A-3-102, as last amended by Laws of Utah 2015, Chapter 221

35A-3-304, as last amended by Laws of Utah 2015, Chapters 143 and 221

~~REPEALS:~~

~~35A-3-304.5~~, as last amended by Laws of Utah 2015, Chapter 221

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

Section 1. Section 35A-3-102 is amended to read:

#### **35A-3-102. Definitions.**

As used in this chapter:

- (1) "Adjudicative proceeding" has the same meaning as defined in Section 63G-4-103.
- (2) "Administrative order" means an order issued by the department that addresses an overpayment of public assistance.
- (3) "Applicant" means a person who requests assistance under this chapter.
- (4) "Assignment of support" means the transfer to the state of a recipient's right to receive support from another person that accrues during the period the recipient receives public assistance, including a right to receive support on behalf of any family member for whom the recipient is applying for or receiving assistance.
- (5) "Average monthly number of families" means the average number of families who received cash assistance on a monthly basis during the previous federal fiscal year.
- (6) "Cash assistance" means the monthly dollar amount a recipient is eligible to receive

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under the Family Employment Program under Section 35A-3-302.

(7) "Child care services" means care of a child by a responsible person who is not the child's parent or legal guardian, for a portion of the day that is less than 24 hours in a qualified setting, as defined by rules made by the department in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(8) (a) "Civic organization" means an organization that provides services to its community.

(b) "Civic organization" includes a community service club or organization, a charitable health care or service organization, a fraternal organization, a labor union, a minority or ethnic organization, a commercial or industrial organization, a commerce or business club, a private nonprofit organization, a private nonprofit corporation that provides funding to a community service organization, an organization that advocates or provides for the needs of persons with low incomes, a religious organization, and an organization that fosters strong neighborhoods and communities.

(9) "Court order" means a judgment or order of a court of this state, another state, or the federal government that addresses an overpayment of public assistance.

(10) "Date of enrollment" means the date on which the applicant was approved as eligible for cash assistance.

(11) "Director" means the director of the division assigned by the department to administer a program.

(12) "Diversion" or "diversion payment" means a one-time cash assistance payment under Section 35A-3-303 to a recipient who is eligible for cash assistance, but does not require extended cash assistance under Part 3, Family Employment Program.

(13) "Education or training" means:

- (a) basic remedial education;
- (b) adult education;
- (c) high school education;
- (d) education to obtain the equivalent of a high school diploma;
- (e) education to learn English as a second language;
- (f) applied technology training;
- (g) employment skills training; or

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(h) on-the-job training.

(14) "Full-time education or training" means training on a full-time basis as defined by the educational institution attended by the parent recipient.

(15) "General assistance" means financial assistance provided to a person under Part 4, General Assistance.

(16) "Licensed clinical therapist" means an individual licensed by the state under:

(a) Title 58, Chapter 60, Part 2, Social Worker Licensing Act;

(b) Title 58, Chapter 60, Part 3, Marriage and Family Therapist Licensing Act;

(c) Title 58, Chapter 60, Part 4, Clinical Mental Health Counselor Licensing Act; or

(d) Title 58, Chapter 61, Psychologist Licensing Act.

~~(16)~~ (17) "Notice of agency action" means the notice required to commence an adjudicative proceeding as described in Section 63G-4-201.

~~(17)~~ (18) "Obligor" means an individual:

(a) who is liable to the state under Section 35A-3-603 and applicable federal statutes and regulations; or

(b) against whom an administrative or judicial order determining overpayment has been obtained.

~~(18)~~ (19) (a) "Overpayment" means money, public assistance, or another item of value provided under a state or federally funded benefit program to a person that is not entitled to receive it or is not entitled to receive it at the level provided.

(b) "Overpayment" includes money paid to a provider under this title in connection with public assistance or another publicly funded assistance program to the extent that the provider receives payment:

(i) for goods or services not provided; or

(ii) in excess of the amount to which the provider is entitled.

~~(19)~~ (20) "Parent recipient" means a person who enters into an employment plan with the department to qualify for cash assistance under Part 3, Family Employment Program.

~~(20)~~ (21) "Performance goals" means a target level of performance that will be compared to actual performance.

~~(21)~~ (22) "Performance indicators" means actual performance information regarding a program or activity.

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~~[(22)]~~ [(23)] "Performance monitoring system" means a process to regularly collect and analyze performance information, including performance indicators and performance goals.

~~[(23)]~~ [(24)] "Plan" or "state plan" means the state plan submitted to the Secretary of the United States Department of Health and Human Services to receive funding from the United States through the Temporary Assistance for Needy Families Block Grant in accordance with 42 U.S.C. Sec. 602.

~~[(24)]~~ [(25)] "Recipient" means a person who is qualified to receive, is receiving, or has received assistance under this chapter.

~~[(25)]~~ [(26)] "Single minor parent" means a person under 18 years of age who is not married and has a minor child in the person's care and custody.

~~[(26)]~~ [(27)] "Transitional cash assistance" means assistance provided to a recipient to stabilize employment and reduce the future use of cash assistance provided under Part 3, Family Employment Program.

~~{ Section 1. Section 35A-3-302 is amended to read:~~

~~—— 35A-3-302. Eligibility requirements.~~

~~—— (1) There is created the "Family Employment Program" to provide cash assistance under this part.~~

~~—— (2) (a) The department shall submit a state plan to the Secretary of the United States Department of Health and Human Services to obtain funding under the federal Temporary Assistance for Needy Families Block Grant.~~

~~—— (b) The department shall make the state plan consistent with this part and federal law.~~

~~—— (c) If a discrepancy exists between a provision of the state plan and this part, this part supersedes the provision in the state plan.~~

~~—— (3) The services provided under this part are for both one-parent and two-parent families.~~

~~—— (4) To be eligible for cash assistance under this part, a family shall:~~

~~—— (a) have at least one minor dependent child; or~~

~~—— (b) have a parent who is in the third trimester of a pregnancy.~~

~~—— (5) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the department shall make rules for eligibility and the amount of cash assistance a family is eligible to receive under this part based on:~~

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- ~~—— (a) family size;~~
- ~~—— (b) family income;~~
- ~~—— (c) income disregards;~~
- ~~—— (d) other relevant factors; and~~
- ~~—— (e) if the applicant has met the eligibility requirements under Subsections (5)(a) through (d), the assessment and other requirements described in [Sections] Section 35A-3-304 [and 35A-3-304.5].~~
- ~~—— (6) To determine eligibility, the department may not consider money on deposit in an Individual Development Account established under Section 35A-3-312.~~
- ~~—— (7) The department shall provide for an appeal of a determination of eligibility in accordance with Title 63G, Chapter 4, Administrative Procedures Act.~~
- ~~—— (8) (a) The department shall make a report to either the Legislature's Executive Appropriations Committee or the Social Services Appropriations Subcommittee on any proposed rule change made under Subsection (5) that would modify the:~~
  - ~~—— (i) eligibility requirements for cash assistance; or~~
  - ~~—— (ii) amount of cash assistance a family is eligible to receive.~~
- ~~—— (b) The department shall submit the report under Subsection (8)(a) prior to implementing the proposed rule change.~~
- ~~—— (c) The report under Subsection (8)(a) shall include:~~
  - ~~—— (i) a description of the department's current practice or policy that it is proposing to change;~~
  - ~~—— (ii) an explanation of why the department is proposing the change;~~
  - ~~—— (iii) the effect of an increase or decrease in cash benefits on families; and~~
  - ~~—— (iv) the fiscal impact of the proposed change.~~
- ~~—— (d) The department may use the Notice of Proposed Rule Amendment form filed with the Division of Administrative Rules as its report if the notice contains the information required under Subsection (8)(c).~~
- ~~—— (9) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the department shall make rules to ensure that:~~
  - ~~—— (a) a recipient of assistance from the Family Employment Program:~~
    - ~~—— (i) has adequate access to the assistance;~~

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~~—— (ii) has the ability to use and withdraw assistance with minimal fees or surcharges, including the opportunity to obtain assistance with no fees or surcharges;~~

~~—— (iii) is provided information regarding fees and surcharges that may apply to assistance accessed through an electronic fund transaction; and~~

~~—— (iv) is provided information explaining the restrictions on accessing assistance described in Subsection (10); and~~

~~—— (b) information regarding fees and surcharges that may apply when accessing assistance from the Family Employment Program through an electronic fund transaction is available to the public.~~

~~—— (10) An individual receiving assistance under this section may not access the assistance through an electronic benefit transfer, including through an automated teller machine or point-of-sale device, in an establishment in the state that:~~

~~—— (a) exclusively or primarily sells intoxicating liquor;~~

~~—— (b) allows gambling or gaming; or~~

~~—— (c) provides adult-oriented entertainment where performers disrobe or perform unclothed.~~

~~—— (11) An establishment described under Subsection (10)(a), (b), or (c) may not allow an individual to access the assistance under this section on the establishment's premises through an electronic benefit transfer, including through an automated teller machine or point-of-sale device.~~

~~—— (12) In accordance with federal requirements and in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the department shall make rules to prevent individuals from accessing assistance in a manner prohibited by Subsections (10) and (11), which rules may include enforcement provisions that impose sanctions that temporarily or permanently disqualify an individual from receiving assistance.~~

‡ Section 2. Section **35A-3-304** is amended to read:

### **35A-3-304. Assessment -- Participation requirements and limitations --**

#### **Employment plan -- Mentors.**

(1) (a) Within 30 business days of the date of enrollment, the department shall provide that a parent recipient:

(i) is assigned an employment counselor; and

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(ii) completes an assessment provided by the department regarding the parent recipient's:

(A) prior work experience;

(B) ability to become employable; and

(C) skills[~~;~~~~and~~].

~~[(D) likelihood of a substance use disorder involving the misuse of a controlled substance.]~~

(b) The assessment provided under Subsection (1)(a)(ii) shall include~~[(i)]~~ a survey to be completed by the parent recipient with the assistance of the department~~;~~~~and~~].

~~[(ii) a written questionnaire to be completed by the parent recipient designed to accurately determine the likelihood of the parent recipient having a substance use disorder involving the misuse of a controlled substance.]~~

~~[(c) In addition to the other requirements of this part, if the results of the written questionnaire taken by a parent recipient indicate a reasonable likelihood that the parent recipient has a substance use disorder involving the misuse of a controlled substance, the parent recipient may only receive cash assistance provided under this part in accordance with the additional requirements of Section 35A-3-304.5.]~~

(2) (a) Within 15 business days of a parent recipient completing an assessment~~;~~;:

(i) the department and the parent recipient shall enter into an employment plan~~;~~; and

(ii) the parent recipient shall complete a written questionnaire, provided by the department, designed to accurately determine the likelihood of the parent recipient having a substance use disorder involving the misuse of a controlled substance.

(b) The employment plan shall have a target date for entry into employment.

(c) The department shall provide a copy of the employment plan to the parent recipient.

(d) For the parent recipient, the employment plan may include:

(i) job searching requirements;

(ii) if the parent recipient does not have a high school diploma, participation in an educational program to obtain a high school diploma, or its equivalent;

(iii) education or training necessary to obtain employment;

(iv) a combination of work and education or training; and

(v) assisting the Office of Recovery Services in good faith to:



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(A) establish the paternity of a minor child; and

(B) establish or enforce a child support order.

~~(e)~~ If the parent recipient tests positive for the unlawful use of a controlled substance after taking a drug test under Section 35A-3-304.5, the employment plan shall include an agreement by the parent recipient to:~~(f)~~

~~(i)~~ participate in treatment for a substance use disorder; and~~(j)~~

~~(ii)~~ meet the other requirements of Section 35A-3-304.5.~~(k)~~

~~(f)~~~~(e)~~ The department's responsibilities under the employment plan may include:

(i) providing cash and other types of public and employment assistance, including child care;

(ii) assisting the parent recipient to obtain education or training necessary for employment;

(iii) assisting the parent recipient to set up and follow a household budget; and

(iv) assisting the parent recipient to obtain employment.

~~(g)~~~~(f)~~ The department may amend the employment plan to reflect new information or changed circumstances.

~~(h)~~~~(g)~~ If immediate employment is an activity in the employment plan, the parent recipient shall:

(i) promptly commence a search for employment for a specified number of hours each week; and

(ii) regularly submit a report to the department on:

(A) how time was spent in search for a job;

(B) the number of job applications completed;

(C) the interviews attended;

(D) the offers of employment extended; and

(E) other related information required by the department.

~~(i)~~~~(h)~~ (i) If full-time education or training to secure employment is an activity in an employment plan, the parent recipient shall promptly undertake a full-time education or training program.

(ii) The employment plan may describe courses, education or training goals, and classroom hours.

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~~(j)~~ (i) The department may only provide cash assistance under this part if the parent recipient agrees in writing to make a good faith effort to comply with the parent recipient's employment plan.

(ii) The department shall establish a process to reconcile disputes between a parent recipient and the department as to whether:

(A) the parent recipient has made a good faith effort to comply with the employment plan; or

(B) the department has complied with the employment plan.

(iii) If a parent recipient consistently fails to show good faith in complying with the employment plan, the department may seek to terminate all or part of the cash assistance services provided under this part.

(3) The department may only provide cash assistance on behalf of a minor child under this part if the minor child is:

(a) enrolled in and attending school in compliance with Sections 53A-11-101.5 and 53A-11-101.7; or

(b) exempt from school attendance under Section 53A-11-102.

(4) This section does not apply to a person who has received diversion assistance under Section 35A-3-303.

(5) (a) The department may recruit and train volunteers to serve as mentors for parent recipients.

(b) A mentor may advocate on behalf of a parent recipient and help a parent recipient:

(i) develop life skills;

(ii) implement an employment plan; or

(iii) obtain services and support from:

(A) the volunteer mentor;

(B) the department; or

(C) civic organizations.

Section 3. ~~Section ~~Repealer~~ 35A-3-304.5~~

~~This bill repeals~~ is amended to read:

~~{Section } 35A-3-304.5~~. Drug testing requirements.

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### Legislative Review Note

~~Office of Legislative Research and General Counsel~~ (1) (a) If the results of [a] the written questionnaire described in Subsection 35A-3-304[†](2) indicate a reasonable likelihood that [an applicant] a parent recipient may have a substance use disorder involving the misuse of a controlled substance, the department shall require the [applicant] parent recipient to meet with a licensed clinical therapist and be evaluated for a potential substance use disorder involving the misuse of a controlled substance.

(b) If the licensed clinical therapist determines that there is a reasonable likelihood that the parent recipient may have a substance use disorder involving the misuse of a controlled substance, the department shall require the parent applicant to take a drug test at the department's expense in order to continue to receive cash assistance under this part.

(2) If [an applicant] a parent recipient refuses to meet with a licensed clinical therapist or take a drug test if required under Subsection (1), the department shall terminate cash assistance under this part and the [applicant] parent recipient may not reapply for cash assistance under this part for:

(a) 90 days after a first refusal to meet with a licensed clinical therapist or take a drug test; or

(b) one year after a second refusal to meet with a licensed clinical therapist or take a drug test within one year.

(3) A drug test given under this section shall be administered with due regard to the privacy and dignity of the person being tested.

(4) Before taking a drug test under this section, [an applicant] a parent recipient may advise the person administering the test regarding any prescription or over-the-counter medication the [applicant] parent recipient is taking.

(5) The result of a drug test given under this section is a private record in accordance with Section 63G-2-302 and disclosure to a third party is prohibited except as provided under Title 63G, Chapter 2, Government Records Access and Management Act.

(6) If [an applicant] a parent recipient tests negative for the unlawful use of a controlled substance after taking a drug test under Subsection (1), the [applicant] parent

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recipient is eligible for cash assistance, subject to the other eligibility requirements of this part.

(7) If [an applicant] a parent recipient tests positive for the unlawful use of a controlled substance after taking a drug test under Subsection (1), the [applicant] parent recipient:

(a) shall be given a list of approved substance use disorder treatment providers that are available in the area in which the individual resides; and

(b) may continue to receive benefits if the [applicant] parent recipient enters into and follows the requirements of the [applicant's] parent recipient's employment plan, including:

(i) receiving treatment, at the department's expense, from an approved substance use disorder treatment provider for at least 60 days;

(ii) testing negative for the unlawful use of a controlled substance:

(A) in each subsequent drug test required by department rule during treatment; and

(B) in an additional drug test given at the conclusion of treatment; and

(iii) meeting the other requirements of receiving cash assistance under this part.

(8) (a) The department shall terminate cash assistance under this part, if [an applicant] a parent recipient:

(i) declines to enter into an employment plan required by Subsection (7); or

(ii) enters into, but fails to meet, a requirement of an employment plan under Subsection (7), including if the [applicant] parent recipient refuses to take a drug test required by the employment plan or tests positive for the unlawful use of a controlled substance in a drug test required by the employment plan.

(b) [An applicant] A parent recipient whose cash assistance has been terminated under Subsection (8)(a) may not reapply for cash assistance under this part for:

(i) except as provided in Subsection (8)(b)(ii), 90 days after the day on which the department determines, under this Subsection (8), that the [applicant] parent recipient is no longer eligible for cash assistance; or

(ii) one year after the day on which the department determines, under this Subsection (8), that the [applicant] parent recipient is no longer eligible for cash assistance, if the department has previously determined on at least one other occasion in the past year that the [applicant] parent recipient is no longer eligible for cash assistance under this Subsection (8).