

REPRODUCTIVE HEALTH AMENDMENTS

2016 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Brian S. King

Senate Sponsor: _____

LONG TITLE

General Description:

This bill enacts provisions related to reproductive health services and education.

Highlighted Provisions:

This bill:

- ▶ defines terms;
 - ▶ directs the Division of Health Care Financing to seek a waiver for family planning services;
 - ▶ establishes requirements for comprehensive human sexuality education;
 - ▶ requires the State Instructional Materials Commission to consult with parents and others when evaluating comprehensive human sexuality curriculum;
 - ▶ prohibits a school from receiving federal abstinence education funding;
 - ▶ repeals certain criminal provisions regarding contraceptive and abortion services;
- and
- ▶ makes technical and conforming corrections.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a special effective date.

Utah Code Sections Affected:

AMENDS:



28 [53A-13-101](#), as last amended by Laws of Utah 2004, Chapter 196

29 [76-7-324](#), as last amended by Laws of Utah 2004, Chapter 271

30 ENACTS:

31 [26-18-411](#), Utah Code Annotated 1953

32 REPEALS:

33 [76-7-321](#), as last amended by Laws of Utah 1995, Chapter 20

34 [76-7-322](#), as last amended by Laws of Utah 1988, Chapter 50

35 [76-7-323](#), as last amended by Laws of Utah 1988, Chapter 50

36 [76-7-325](#), as enacted by Laws of Utah 1983, Chapter 94



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

39 Section 1. Section [26-18-411](#) is enacted to read:

40 **[26-18-411](#). Medicaid waiver for limited family planning services for low-income**
41 **individuals.**

42 (1) For purposes of this section:

43 (a) (i) "Family planning services" includes, at a minimum:

44 (A) testing, treatment, and counseling for sexually transmitted infections and
45 HIV/AIDS, including follow-up treatment for diagnosed sexually transmitted infections;

46 (B) well-woman exams, including screening and testing for breast and cervical cancer
47 and other cervical cancer causing abnormalities, and other preventive services related to family
48 planning or provided as part of a family planning visit;

49 (C) sexual health education and family planning counseling;

50 (D) contraceptives; and

51 (E) other medical diagnosis, treatment, or preventive care routinely provided as part of
52 a family planning service visit.

53 (ii) "Family planning services" does not include an abortion, as that term is defined in
54 Section [76-7-301](#).

55 (b) "Low-income individual" means an individual who has an income level that is
56 equal to or below the highest income level for which a pregnant women is eligible for
57 Medicaid coverage under the state plan.

58 (2) Before July 1, 2016, the division shall seek a waiver that has a duration of at least

59 three years from the Centers for Medicare and Medicaid Services within the United States
60 Department of Health and Human Services to:

61 (a) provide family planning services to low-income individuals who do not qualify for
62 full Medicaid coverage; and

63 (b) receive a federal match rate of 90% of state expenditures for family planning
64 services provided under the waiver.

65 Section 2. Section 53A-13-101 is amended to read:

66 **53A-13-101. Definitions -- Instruction in health -- Parental consent requirements**
67 **-- Political and religious doctrine prohibited.**

68 (1) As used in this section:

69 (a) "Age appropriate" means topics, messages, and teaching methods suitable to a
70 particular age or age group, based on developing cognitive, emotional, and behavioral capacity
71 typical for the age or age group.

72 (b) "Board" means the State Board of Education.

73 (c) (i) "Comprehensive human sexuality" or "comprehensive human sexuality
74 education" means evidence-based information about:

75 (A) human reproduction, reproductive anatomy, and reproductive physiology;

76 (B) all methods to prevent unintended pregnancy and sexually transmitted diseases and
77 infections, including HIV and AIDS; and

78 (C) the link between human papillomavirus and cancer, and other types of cancer
79 involving the human reproductive systems, including prostate, testicular, ovarian, and uterine
80 cancer.

81 (ii) "Comprehensive human sexuality" includes information about the correct and
82 consistent use of sexual abstinence, contraception, condoms, and other birth control barrier
83 methods.

84 (d) "Evidence-based information" means information that is evaluated using rigorous
85 research design, including:

86 (i) measuring knowledge, attitude, and behavior;

87 (ii) having an adequate sample size;

88 (iii) using sound research methods and processes;

89 (iv) replicating in different locations and finding similar evaluation results; and

90 (v) publishing results in a peer-reviewed journal.

91 (e) "Positive youth development" means an approach that:

92 (i) is inclusive of all youth, collaborative, and strength-based; and

93 (ii) emphasizes the many positive attributes of young people and focuses on developing

94 inherent strengths and assets to promote health.

95 (f) "Sexual abstinence" means not engaging in oral, vaginal, or anal intercourse or

96 genital skin-to-skin contact.

97 ~~[(1)(a)]~~ (2) The ~~[State Board of Education]~~ board shall establish curriculum

98 requirements under Section ~~53A-1-402~~ that include health instruction in:

99 ~~[(i)]~~ (a) community and personal health;

100 ~~[(ii)]~~ (b) physiology;

101 ~~[(iii)]~~ (c) personal hygiene; ~~[and]~~

102 ~~[(iv)]~~ (d) prevention of communicable disease~~[-];~~ and

103 (e) subject to Subsection (3), comprehensive human sexuality.

104 ~~[(b)(i) That instruction shall stress:]~~

105 ~~[(A) the importance of abstinence from all sexual activity before marriage and fidelity~~
106 ~~after marriage as methods for preventing certain communicable diseases; and]~~

107 ~~[(B) personal skills that encourage individual choice of abstinence and fidelity.]~~

108 ~~[(ii) (A) At no time may instruction be provided, including responses to spontaneous~~
109 ~~questions raised by students, regarding any means or methods that facilitate or encourage the~~
110 ~~violation of any state or federal criminal law by a minor or an adult.]~~

111 ~~[(B) Subsection (1)(b)(ii)(A) does not preclude an instructor from responding to a~~
112 ~~spontaneous question as long as the response is consistent with the provisions of this section.]~~

113 (3) (a) The comprehensive human sexuality education curriculum established under
114 Subsection (2)(e) shall:

115 (i) encourage parental or guardian involvement and family communication;

116 (ii) include instruction to help students develop skills for making responsible and
117 healthy decisions about human sexuality, personal power, boundary setting, developing safe
118 and healthy relationships, and resisting peer pressure, including:

119 (A) not making unwanted verbal, physical, and sexual advances; and

120 (B) not making assumptions about a person's supposed sexual intentions based on that

121 person's appearance;
 122 (iii) teach human sexuality as a normal and healthy aspect of human development;
 123 (iv) include information about the physical, social, and emotional changes of
 124 adolescence and subsequent stages of human maturation, including how pregnancy happens;
 125 (v) include evidence-based information shown to be effective in changing behaviors
 126 that contribute to early pregnancy and sexually transmitted diseases and infections, including:
 127 (A) sexual abstinence and delaying sexual initiation;
 128 (B) reducing the frequency of sexual intercourse;
 129 (C) reducing the number of sexual partners; and
 130 (D) increasing the use of condoms and other contraceptives;
 131 (vi) include discussions and information on how to recognize and respond safely and
 132 effectively in situations where sexual or physical violence may be occurring or where there
 133 may be a risk for these behaviors to occur;
 134 (vii) include discussions of how alcohol and drug use impair responsible and healthy
 135 decision making;
 136 (viii) be comprehensive, age appropriate, rely on evidence-based information, be
 137 inclusive of a positive youth development framework, and be medically accurate; and
 138 (ix) provide instruction about the health benefits and potential side effects of using
 139 contraceptives and barrier methods to prevent pregnancy, including instruction regarding
 140 emergency contraception and the availability of contraceptive methods.

141 ~~[(e)]~~ (b) (i) The board shall recommend instructional materials for use in the ~~[curricula]~~
 142 curriculum required under Subsection ~~[(1)(a)]~~ (2) after considering evaluations of instructional
 143 materials by the State Instructional Materials Commission.

144 (ii) The State Instructional Materials Commission shall consult with parents, teachers,
 145 school nurses, and community members in evaluating instructional materials for
 146 comprehensive human sexuality curriculum that comply with this section.

147 ~~[(ii)]~~ (iii) A local school board or charter school governing board may choose to adopt:
 148 (A) the instructional materials recommended under Subsection (1)~~[(e)]~~(b)(i); or
 149 (B) other instructional materials as provided in ~~[state]~~ board rule.

150 ~~[(iii)]~~ (iv) The ~~[state]~~ board rule made under Subsection (1)~~[(e)(ii)]~~(b)(iii)(B) shall
 151 include, at a minimum:

152 (A) that the materials adopted by a local school board or charter school governing
 153 board under Subsection (1)[~~(c)(ii)~~](b)(iii)(B) shall be based upon recommendations of the
 154 school district's [~~Curriculum Materials Review Committee~~] or charter school's curriculum
 155 materials review committee that comply with state law and [state] board rules [~~emphasizing~~
 156 ~~abstinence before marriage and fidelity after marriage, and prohibiting instruction in~~];

157 [~~(f) the intricacies of intercourse, sexual stimulation, or erotic behavior;~~]

158 [~~(H) the advocacy of homosexuality;~~]

159 [~~(III) the advocacy or encouragement of the use of contraceptive methods or devices;~~

160 or]

161 [~~(IV) the advocacy of sexual activity outside of marriage;~~]

162 (B) that the adoption of instructional materials shall take place in an open and regular
 163 meeting of the local school board or charter school governing board for which prior notice is
 164 given to parents and guardians of students attending schools in the district and an opportunity
 165 for them to express their views and opinions on the materials at the meeting;

166 (C) provision for an appeal and review process of the local school board's or charter
 167 school governing board's decision; and

168 (D) provision for a report to the board by the local school board [~~to the State Board of~~
 169 ~~Education~~] or charter school governing board of the action taken and the materials adopted by
 170 the local school board or charter school governing board under Subsections
 171 (1)[~~(c)(ii)~~](b)(iii)(B) and (1)[~~(c)(iii)~~](b)(iv).

172 [~~(2)~~] (4) (a) Instruction in the courses described in Subsection [(1)] (2):

173 (i) shall be consistent and systematic in grades [~~eight~~] 8 through 12[-]; and

174 (ii) may not be taught in kindergarten through grade 3.

175 (b) At the request of the board, the Department of Health shall cooperate with the board
 176 in [~~developing programs to provide instruction in those areas~~] establishing curriculum
 177 requirements as described in Subsection (2).

178 [~~(3)(a)~~] (5) The board shall adopt rules that:

179 [(i)] (a) provide that the parental consent requirements of [~~Sections 76-7-322 and~~
 180 ~~76-7-323~~] Section 53A-13-101.2 are complied with; and

181 [(ii)] (b) require a student's parent or legal guardian to be notified in advance and have
 182 an opportunity to review the information for which parental consent is required under [~~Sections~~

183 ~~76-7-322 and 76-7-323~~] Section 53A-13-101.2.

184 [(b) The board shall also provide procedures for disciplinary action for violation of
185 Section ~~76-7-322 or 76-7-323~~.]

186 [(4) (a) In keeping with the requirements of Section ~~53A-13-109~~, and because school
187 employees and volunteers serve as examples to their students, school employees or volunteers
188 acting in their official capacities may not support or encourage criminal conduct by students,
189 teachers, or volunteers.]

190 [(b) To ensure the effective performance of school personnel, the limitations described
191 in Subsection (4)(a) also apply to school employees or volunteers acting outside of their official
192 capacities if:]

193 [(i) they knew or should have known that their action could result in a material and
194 substantial interference or disruption in the normal activities of the school; and]

195 [(ii) that action does result in a material and substantial interference or disruption in the
196 normal activities of the school.]

197 [(c) Neither the State Office of Education nor local school districts may provide
198 training of school employees or volunteers that supports or encourages criminal conduct.]

199 [(d)] (6) The [State Board of Education] board shall adopt rules implementing this
200 section.

201 [(e) Nothing in this section limits the ability or authority of the State Board of
202 Education and local school boards to enact and enforce rules or take actions that are otherwise
203 lawful, regarding educators', employees', or volunteers' qualifications or behavior evidencing
204 unfitness for duty.]

205 [(5)] (7) Except as provided in Section ~~53A-13-101.1~~, political, atheistic, sectarian,
206 religious, or denominational doctrine may not be taught in the public schools.

207 [(6)] (8) (a) [~~Local~~] A local school [boards] board or charter school governing board
208 and [~~their~~] that board's employees shall cooperate and share responsibility in carrying out the
209 purposes of this chapter.

210 (b) Each school district and charter school shall provide appropriate inservice training
211 for its teachers, counselors, and school administrators to enable them to understand, protect,
212 and properly instruct students in the information, values, and character traits referred to in this
213 section and Sections ~~53A-13-101.1, 53A-13-101.2, 53A-13-101.3, 53A-13-109, 53A-13-301,~~

214 and [53A-13-302](#) and distribute appropriate written materials on the information, values,
215 character traits, and conduct to each individual receiving the inservice training.

216 (c) The written materials shall also be made available to classified employees, students,
217 and parents and guardians of students.

218 (d) In order to assist school districts in providing the inservice training required under
219 Subsection ~~[(6)]~~ (8)(b), the ~~[State Board of Education]~~ board shall, as appropriate, contract
220 with a qualified individual or entity possessing expertise in the areas referred to in Subsection
221 ~~[(6)]~~ (8)(b) to develop and disseminate model teacher inservice programs ~~[which]~~ that districts
222 may use to train the individuals referred to in Subsection ~~[(6)]~~ (8)(b) to effectively teach the
223 values and qualities of character referenced in that subsection.

224 ~~[(e) In accordance with the provisions of Subsection (4)(c), inservice training may not~~
225 ~~support or encourage criminal conduct.]~~

226 ~~[(7)]~~ (9) If any one or more provision, subsection, sentence, clause, phrase, or word of
227 this section, or the application thereof to any person or circumstance, is found to be
228 unconstitutional, the balance of this section shall be given effect without the invalid provision,
229 subsection, sentence, clause, phrase, or word.

230 (10) (a) A school district or charter school that, before July 1, 2016, is awarded direct
231 or indirect federal funding for the provision of an abstinence education program pursuant to 42
232 U.S.C. Sec. 710 is not required to adopt requirements for comprehensive human sexuality
233 education for the provision of comprehensive human sexuality education as described in this
234 section for the year or years for which the school district or charter school receives the federal
235 funding awarded before July 1, 2016.

236 (b) Except as provided in Subsection (10)(a), on or after July 1, 2016, a school district
237 or charter school:

238 (i) may not use direct or indirect federal funding for the provision of an abstinence
239 education program pursuant to 42 U.S.C. Sec. 710; and

240 (ii) shall provide comprehensive human sexuality education as described in this
241 section.

242 Section 3. Section **76-7-324** is amended to read:

243 **76-7-324. Violation of restrictions on public funds for abortion services as**
244 **misdemeanor.**

245 Any agent of a state agency or political subdivision, acting alone or in concert with
246 others, who violates Section [~~76-7-322, 76-7-323, or~~ 76-7-331 is guilty of a class B
247 misdemeanor.

248 Section 4. **Repealer.**

249 This bill repeals:

250 Section **76-7-321, Contraceptive and abortion services -- Funds -- Minor --**

251 **Definitions.**

252 Section **76-7-322, Public funds for provision of contraceptive or abortion services**
253 **restricted.**

254 Section **76-7-323, Public funds for support entities providing contraceptive or**
255 **abortion services restricted.**

256 Section **76-7-325, Notice to parent or guardian of minor requesting contraceptive**
257 **-- Definition of contraceptives -- Penalty for violation.**

258 Section 5. **Effective date.**

259 This bill takes effect on July 1, 2016.

Legislative Review Note
Office of Legislative Research and General Counsel