

Representative Eric K. Hutchings proposes the following substitute bill:

SUBSTANCE ABUSE TREATMENT FRAUD

2016 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Eric K. Hutchings

Senate Sponsor: Karen Mayne

LONG TITLE

General Description:

This bill enacts and amends provisions in the Utah Human Services Code related to substance abuse treatment fraud.

Highlighted Provisions:

This bill:

- ▶ amends the definition "recovery residence" in the Licensure of Programs and Facilities chapter of the Utah Human Services Code;
- ▶ amends provisions related to violations, penalties, and liability of human services programs;
- ▶ requires the Office of Licensing, Department of Human Services (office), to make rules establishing:
 - what constitutes an "outpatient treatment program";
 - a procedure requiring a licensee to provide an insurer the licensee's records related to any services or supplies billed to the insurer; and
 - a protocol for the office to investigate and process complaints about licensees;
- ▶ directs the office to electronically post notices of agency action on the office's website; and
- ▶ directs the Division of Substance Abuse and Mental Health, Department of Human



26 Services, to make rules to develop minimum standards for licensed public and private
27 providers of substance abuse and mental health programs.

28 **Money Appropriated in this Bill:**

29 None

30 **Other Special Clauses:**

31 None

32 **Utah Code Sections Affected:**

33 AMENDS:

34 **62A-2-101**, as last amended by Laws of Utah 2015, Chapters 67 and 255

35 **62A-2-106**, as last amended by Laws of Utah 2013, Chapter 442

36 **62A-2-108**, as last amended by Laws of Utah 2012, Chapter 302

37 **62A-2-112**, as last amended by Laws of Utah 2009, Chapter 75

38 **62A-2-113**, as last amended by Laws of Utah 2005, Chapter 188

39 **62A-2-116**, as last amended by Laws of Utah 2005, Chapter 188

40 **62A-15-103**, as last amended by Laws of Utah 2015, Chapter 412



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

43 Section 1. Section **62A-2-101** is amended to read:

44 **62A-2-101. Definitions.**

45 As used in this chapter:

46 (1) "Adult day care" means nonresidential care and supervision:

47 (a) for three or more adults for at least four but less than 24 hours a day; and

48 (b) that meets the needs of functionally impaired adults through a comprehensive

49 program that provides a variety of health, social, recreational, and related support services in a
50 protective setting.

51 (2) "Applicant" means:

52 (a) a person who applies for an initial license or a license renewal under this chapter;

53 (b) an individual who:

54 (i) is associated with the licensee; and

55 (ii) has direct access to a child or a vulnerable adult;

56 (c) an individual who is 12 years of age or older, other than the child or vulnerable

57 adult who is receiving the service, who resides in a residence with the child or vulnerable adult
58 who is receiving services from the person described in Subsection (2)(a) or (b), if the child or
59 vulnerable adult is not receiving services in the child's or vulnerable adult's own residence; or

60 (d) an individual who provides respite care to a foster parent or an adoptive parent on
61 more than one occasion.

62 (3) (a) "Associated with the licensee" means that an individual is:

63 (i) affiliated with a licensee as an owner, director, member of the governing body,
64 employee, agent, provider of care, or volunteer; or

65 (ii) applying to become affiliated with a licensee in a capacity described in Subsection
66 (3)(a)(i).

67 (b) "Associated with the licensee" does not include:

68 (i) service on the following bodies, unless that service includes direct access to a child
69 or a vulnerable adult:

70 (A) a local mental health authority described in Section 17-43-301;

71 (B) a local substance abuse authority described in Section 17-43-201; or

72 (C) a board of an organization operating under a contract to provide mental health or
73 substance abuse programs, or services for the local mental health authority or substance abuse
74 authority; or

75 (ii) a guest or visitor whose access to a child or a vulnerable adult is directly supervised
76 by the licensee at all times.

77 (4) (a) "Boarding school" means a private school that:

78 (i) uses a regionally accredited education program;

79 (ii) provides a residence to the school's students:

80 (A) for the purpose of enabling the school's students to attend classes at the school; and

81 (B) as an ancillary service to educating the students at the school;

82 (iii) has the primary purpose of providing the school's students with an education, as
83 defined in Subsection (4)(b)(i); and

84 (iv) (A) does not provide the treatment or services described in Subsection (28)(a); or

85 (B) provides the treatment or services described in Subsection (28)(a) on a limited
86 basis, as described in Subsection (4)(b)(ii).

87 (b) (i) For purposes of Subsection (4)(a)(iii), "education" means a course of study for

88 one or more of grades kindergarten through 12th grade.

89 (ii) For purposes of Subsection (4)(a)(iv)(B), a private school provides the treatment or
90 services described in Subsection (28)(a) on a limited basis if:

91 (A) the treatment or services described in Subsection (28)(a) are provided only as an
92 incidental service to a student; and

93 (B) the school does not:

94 (I) specifically solicit a student for the purpose of providing the treatment or services
95 described in Subsection (28)(a); or

96 (II) have a primary purpose of providing the treatment or services described in
97 Subsection (28)(a).

98 (c) "Boarding school" does not include a therapeutic school.

99 (5) "Child" means a person under 18 years of age.

100 (6) "Child placing" means receiving, accepting, or providing custody or care for any
101 child, temporarily or permanently, for the purpose of:

102 (a) finding a person to adopt the child;

103 (b) placing the child in a home for adoption; or

104 (c) foster home placement.

105 (7) "Client" means an individual who receives or has received services from a licensee.

106 (8) "Day treatment" means specialized treatment that is provided to:

107 (a) a client less than 24 hours a day; and

108 (b) four or more persons who:

109 (i) are unrelated to the owner or provider; and

110 (ii) have emotional, psychological, developmental, physical, or behavioral
111 dysfunctions, impairments, or chemical dependencies.

112 (9) "Department" means the Department of Human Services.

113 (10) "Direct access" means that an individual has, or likely will have:

114 (a) contact with or access to a child or vulnerable adult that provides the individual
115 with an opportunity for personal communication or touch; or

116 (b) an opportunity to view medical, financial, or other confidential personal identifying
117 information of the child, the child's parents or legal guardians, or the vulnerable adult.

118 (11) "Directly supervised" means that an individual is being supervised under the

119 uninterrupted visual and auditory surveillance of another individual.

120 (12) "Director" means the director of the Office of Licensing.

121 (13) "Domestic violence" means the same as that term is defined in Section 77-36-1.

122 (14) "Domestic violence treatment program" means a nonresidential program designed
123 to provide psychological treatment and educational services to perpetrators and victims of
124 domestic violence.

125 (15) "Elder adult" means a person 65 years of age or older.

126 (16) "Executive director" means the executive director of the department.

127 (17) "Foster home" means a temporary residential living environment for the care of:

128 (a) (i) fewer than five foster children in the home of a licensed foster parent; or

129 (ii) five or more foster children in the home of a licensed foster parent if there are no

130 foster children or if there is one foster child in the home at the time of the placement of a

131 sibling group; or

132 (b) (i) fewer than four foster children in the home of a certified foster parent; or

133 (ii) four or more foster children in the home of a certified foster parent if there are no

134 foster children or if there is one foster child in the home at the time of the placement of a

135 sibling group.

136 (18) (a) "Human services program" means a:

137 (i) foster home;

138 (ii) therapeutic school;

139 (iii) youth program;

140 (iv) resource family home;

141 (v) recovery residence; or

142 (vi) facility or program that provides:

143 (A) secure treatment;

144 (B) inpatient treatment;

145 (C) residential treatment;

146 (D) residential support;

147 (E) adult day care;

148 (F) day treatment;

149 (G) outpatient treatment;

- 150 (H) domestic violence treatment;
- 151 (I) child placing services;
- 152 (J) social detoxification; or
- 153 (K) any other human services that are required by contract with the department to be
- 154 licensed with the department.
- 155 (b) "Human services program" does not include a boarding school.
- 156 (19) "Licensee" means an individual or a human services program licensed by the
- 157 office.
- 158 (20) "Local government" means a:
- 159 (a) city; or
- 160 (b) county.
- 161 (21) "Minor" has the same meaning as "child."
- 162 (22) "Office" means the Office of Licensing within the Department of Human Services.
- 163 (23) "Outpatient treatment" means individual, family, or group therapy or counseling
- 164 designed to improve and enhance social or psychological functioning for those whose physical
- 165 and emotional status allows them to continue functioning in their usual living environment.
- 166 (24) (a) "Recovery residence" means a home, residence, or facility~~[, other than a~~
- 167 ~~residential treatment or residential support program,]~~ that meets at least two of the following
- 168 requirements:
- 169 ~~[(a)]~~ (i) provides a supervised living environment for individuals recovering from a
- 170 substance abuse disorder;
- 171 ~~[(b) requires]~~ (ii) provides a living environment in which more than half of the
- 172 individuals in the residence ~~[to be]~~ are recovering from a substance abuse disorder;
- 173 ~~[(c)]~~ (iii) provides or arranges for residents to receive services related to their recovery
- 174 from a substance abuse disorder, either on or off site;
- 175 ~~[(d) holds the home or facility out as being a recovery residence; or]~~
- 176 (iv) is held out as a living environment in which individuals recovering from substance
- 177 abuse disorders live together to encourage continued sobriety; or
- 178 ~~[(e)-(i)]~~ (v) (A) receives public funding; or
- 179 ~~[(ii) runs the home or facility as a commercial venture for financial gain.];~~
- 180 (B) is run as a business venture, either for-profit or not-for-profit.

- 181 **(b) "Recovery residence" does not mean:**
- 182 **(i) a residential treatment program;**
- 183 **(ii) residential support; or**
- 184 **(iii) a home, residence, or facility, in which:**
- 185 **(A) residents, by their majority vote, establish, implement, and enforce policies**
- 186 **governing the living environment, including the manner in which applications for residence are**
- 187 **approved and the manner in which residents are expelled;**
- 188 **(B) residents equitably share rent and housing-related expenses; and**
- 189 **(C) a landlord, owner, or operator does not receive compensation, other than fair**
- 190 **market rental income, for establishing, implementing, or enforcing policies governing the**
- 191 **living environment.**
- 192 **(25) "Regular business hours" means:**
- 193 **(a) the hours during which services of any kind are provided to a client; or**
- 194 **(b) the hours during which a client is present at the facility of a licensee.**
- 195 **(26) (a) "Residential support" means arranging for or providing the necessities of life**
- 196 **as a protective service to individuals or families who have a disability or who are experiencing**
- 197 **a dislocation or emergency that prevents them from providing these services for themselves or**
- 198 **their families.**
- 199 **(b) "Residential support" includes providing a supervised living environment for**
- 200 **persons with dysfunctions or impairments that are:**
- 201 **(i) emotional;**
- 202 **(ii) psychological;**
- 203 **(iii) developmental; or**
- 204 **(iv) behavioral.**
- 205 **(c) Treatment is not a necessary component of residential support.**
- 206 **(d) "Residential support" does not include:**
- 207 **(i) a recovery residence; or**
- 208 **(ii) residential services that are performed:**
- 209 **(A) exclusively under contract with the Division of Services for People with**
- 210 **Disabilities; or**
- 211 **(B) in a facility that serves fewer than four individuals.**

212 (27) (a) "Residential treatment" means a 24-hour group living environment for four or
213 more individuals unrelated to the owner or provider that offers room or board and specialized
214 treatment, behavior modification, rehabilitation, discipline, emotional growth, or habilitation
215 services for persons with emotional, psychological, developmental, or behavioral dysfunctions,
216 impairments, or chemical dependencies.

217 (b) "Residential treatment" does not include a:

218 (i) boarding school;

219 (ii) foster home; or

220 (iii) recovery residence.

221 (28) "Residential treatment program" means a human services program that provides:

222 (a) residential treatment; or

223 (b) secure treatment.

224 (29) (a) "Secure treatment" means 24-hour specialized residential treatment or care for
225 persons whose current functioning is such that they cannot live independently or in a less
226 restrictive environment.

227 (b) "Secure treatment" differs from residential treatment to the extent that it requires
228 intensive supervision, locked doors, and other security measures that are imposed on residents
229 with neither their consent nor control.

230 (30) "Social detoxification" means short-term residential services for persons who are
231 experiencing or have recently experienced drug or alcohol intoxication, that are provided
232 outside of a health care facility licensed under Title 26, Chapter 21, Health Care Facility
233 Licensing and Inspection Act, and that include:

234 (a) room and board for persons who are unrelated to the owner or manager of the
235 facility;

236 (b) specialized rehabilitation to acquire sobriety; and

237 (c) aftercare services.

238 (31) "Substance abuse treatment program" means a program:

239 (a) designed to provide:

240 (i) specialized drug or alcohol treatment;

241 (ii) rehabilitation; or

242 (iii) habilitation services; and

243 (b) that provides the treatment or services described in Subsection (31)(a) to persons
244 with:

- 245 (i) a diagnosed substance abuse disorder; or
- 246 (ii) chemical dependency disorder.

247 (32) "Therapeutic school" means a residential group living facility:

248 (a) for four or more individuals that are not related to:

- 249 (i) the owner of the facility; or
- 250 (ii) the primary service provider of the facility;

251 (b) that serves students who have a history of failing to function:

- 252 (i) at home;
- 253 (ii) in a public school; or
- 254 (iii) in a nonresidential private school; and

255 (c) that offers:

- 256 (i) room and board; and
- 257 (ii) an academic education integrated with:
 - 258 (A) specialized structure and supervision; or
 - 259 (B) services or treatment related to:
 - 260 (I) a disability;
 - 261 (II) emotional development;
 - 262 (III) behavioral development;
 - 263 (IV) familial development; or
 - 264 (V) social development.

265 (33) "Unrelated persons" means persons other than parents, legal guardians,
266 grandparents, brothers, sisters, uncles, or aunts.

267 (34) "Vulnerable adult" means an elder adult or an adult who has a temporary or
268 permanent mental or physical impairment that substantially affects the person's ability to:

- 269 (a) provide personal protection;
- 270 (b) provide necessities such as food, shelter, clothing, or mental or other health care;
- 271 (c) obtain services necessary for health, safety, or welfare;
- 272 (d) carry out the activities of daily living;
- 273 (e) manage the adult's own resources; or

274 (f) comprehend the nature and consequences of remaining in a situation of abuse,
275 neglect, or exploitation.

276 (35) (a) "Youth program" means a nonresidential program designed to provide
277 behavioral, substance abuse, or mental health services to minors that:

278 (i) serves adjudicated or nonadjudicated youth;

279 (ii) charges a fee for its services;

280 (iii) may or may not provide host homes or other arrangements for overnight
281 accommodation of the youth;

282 (iv) may or may not provide all or part of its services in the outdoors;

283 (v) may or may not limit or censor access to parents or guardians; and

284 (vi) prohibits or restricts a minor's ability to leave the program at any time of the
285 minor's own free will.

286 (b) "Youth program" does not include recreational programs such as Boy Scouts, Girl
287 Scouts, 4-H, and other such organizations.

288 Section 2. Section **62A-2-106** is amended to read:

289 **62A-2-106. Office responsibilities.**

290 (1) Subject to the requirements of federal and state law, the office shall:

291 (a) make rules in accordance with Title 63G, Chapter 3, Utah Administrative
292 Rulemaking Act, to establish:

293 (i) except as provided in Subsection (1)(a)(ii), basic health and safety standards for
294 licensees, that shall be limited to:

295 (A) fire safety;

296 (B) food safety;

297 (C) sanitation;

298 (D) infectious disease control;

299 (E) safety of the:

300 (I) physical facility and grounds; and

301 (II) area and community surrounding the physical facility;

302 (F) transportation safety;

303 (G) emergency preparedness and response;

304 (H) the administration of medical standards and procedures, consistent with the related

305 provisions of this title;

306 (I) staff and client safety and protection;

307 (J) the administration and maintenance of client and service records;

308 (K) staff qualifications and training, including standards for permitting experience to
309 be substituted for education, unless prohibited by law;

310 (L) staff to client ratios; ~~and~~

311 (M) access to firearms; and

312 (N) the prevention of abuse, neglect, exploitation, harm, mistreatment, or fraud;

313 (ii) basic health and safety standards for therapeutic schools, that shall be limited to:

314 (A) fire safety, except that the standards are limited to those required by law or rule
315 under Title 53, Chapter 7, Part 2, Fire Prevention and Fireworks Act;

316 (B) food safety;

317 (C) sanitation;

318 (D) infectious disease control, except that the standards are limited to:

319 (I) those required by law or rule under Title 26, Utah Health Code or Title 26A, Local
320 Health Authorities; and

321 (II) requiring a separate room for clients who are sick;

322 (E) safety of the physical facility and grounds, except that the standards are limited to
323 those required by law or rule under Title 53, Chapter 7, Part 2, Fire Prevention and Fireworks
324 Act;

325 (F) transportation safety;

326 (G) emergency preparedness and response;

327 (H) access to appropriate medical care, including:

328 (I) subject to the requirements of law, designation of a person who is authorized to
329 dispense medication; and

330 (II) storing, tracking, and securing medication;

331 (I) staff and client safety and protection that permits the school to provide for the direct
332 supervision of clients at all times;

333 (J) the administration and maintenance of client and service records;

334 (K) staff qualifications and training, including standards for permitting experience to
335 be substituted for education, unless prohibited by law;

336 (L) staff to client ratios; ~~and~~
337 (M) access to firearms; and
338 (N) the prevention of abuse, neglect, exploitation, harm, mistreatment, or fraud;
339 (iii) procedures and standards for permitting a licensee to:
340 (A) provide in the same facility and under the same conditions as children, residential
341 treatment services to a person 18 years old or older who:
342 (I) begins to reside at the licensee's residential treatment facility before the person's
343 18th birthday;
344 (II) has resided at the licensee's residential treatment facility continuously since the
345 time described in Subsection (1)(a)(iii)(A)(I);
346 (III) has not completed the course of treatment for which the person began residing at
347 the licensee's residential treatment facility; and
348 (IV) voluntarily consents to complete the course of treatment described in Subsection
349 (1)(a)(iii)(A)(III); or
350 (B) (I) provide residential treatment services to a child who is:
351 (Aa) 12 years old or older; and
352 (Bb) under the custody of the ~~[Division of Juvenile Justice Services]~~ Department of
353 Human Services, or one of its divisions; and
354 (II) provide, in the same facility as a child described in Subsection (1)(a)(iii)(B)(I),
355 residential treatment services to a person who is:
356 (Aa) at least 18 years old, but younger than 21 years old; and
357 (Bb) under the custody of the ~~[Division of Juvenile Justice Services]~~ Department of
358 Human Services, or one of its divisions;
359 (iv) minimum administration and financial requirements for licensees;
360 (v) guidelines for variances from rules established under this Subsection (1); ~~and~~
361 (vi) minimum ethical responsibilities of an adoption agency licensed under this
362 chapter, including prohibiting an adoption agency or its employee from misrepresenting facts
363 or information;
364 (vii) what constitutes an "outpatient treatment program" for purposes of this chapter;
365 (viii) a procedure requiring a licensee to provide an insurer the licensee's records
366 related to any services or supplies billed to the insurer, and a procedure allowing the licensee

367 and the insurer to contact the Insurance Department to resolve any disputes;
368 (ix) a protocol for the office to investigate and process complaints about licensees; and
369 (x) a procedure for licensees to report incidents;
370 (b) enforce rules relating to the office;
371 (c) issue licenses in accordance with this chapter;
372 (d) if the United States Department of State executes an agreement with the office that
373 designates the office to act as an accrediting entity in accordance with the Intercountry
374 Adoption Act of 2000, Pub. L. No. 106-279, accredit one or more agencies and persons to
375 provide intercountry adoption services pursuant to:
376 (i) the Intercountry Adoption Act of 2000, Pub. L. No. 106-279; and
377 (ii) the implementing regulations for the Intercountry Adoption Act of 2000, Pub. L.
378 No. 106-279;
379 (e) make rules to implement the provisions of Subsection (1)(d);
380 (f) conduct surveys and inspections of licensees and facilities in accordance with
381 Section [62A-2-118](#);
382 (g) collect licensure fees;
383 (h) notify licensees of the name of a person within the department to contact when
384 filing a complaint;
385 (i) investigate complaints regarding any licensee or human services program;
386 (j) have access to all records, correspondence, and financial data required to be
387 maintained by a licensee;
388 (k) have authority to interview any client, family member of a client, employee, or
389 officer of a licensee; [~~and~~]
390 (l) have authority to deny, condition, revoke, suspend, or extend any license issued by
391 the department under this chapter by following the procedures and requirements of Title 63G,
392 Chapter 4, Administrative Procedures Act[-]; and
393 (m) electronically post notices of agency action issued to a human services program,
394 with the exception of a foster home, on the office's website, in accordance with Title 63G,
395 Chapter 2, Government Records Access and Management Act.
396 (2) In establishing rules under Subsection (1)(a)(ii)(G), the office shall require a
397 licensee to establish and comply with an emergency response plan that requires clients and staff

398 to:

399 (a) immediately report to law enforcement any significant criminal activity, as defined
400 by rule, committed:

401 (i) on the premises where the licensee operates its human services program;

402 (ii) by or against its clients; or

403 (iii) by or against a staff member while the staff member is on duty;

404 (b) immediately report to emergency medical services any medical emergency, as
405 defined by rule:

406 (i) on the premises where the licensee operates its human services program;

407 (ii) involving its clients; or

408 (iii) involving a staff member while the staff member is on duty; and

409 (c) immediately report other emergencies that occur on the premises where the licensee
410 operates its human services program to the appropriate emergency services agency.

411 Section 3. Section **62A-2-108** is amended to read:

412 **62A-2-108. Licensure requirements -- Expiration -- Renewal.**

413 (1) Except as provided in Section **62A-2-110**, a person, agency, firm, corporation,
414 association, or governmental unit, acting severally or jointly with any other person, agency,
415 firm, corporation, association, or governmental unit, may not establish, conduct, or maintain a
416 human services program in this state without a valid and current license issued by and under
417 the authority of the office as provided by this chapter and the rules under the authority of this
418 chapter.

419 (2) (a) For purposes of this Subsection (2), "member" means a person or entity that is
420 associated with another person or entity:

421 (i) as a member;

422 (ii) as a partner;

423 (iii) as a shareholder; or

424 (iv) as a person or entity involved in the ownership or management of a [~~residential~~
425 ~~treatment~~] human services program owned or managed by the other person or entity.

426 (b) A license issued under this chapter may not be assigned or transferred.

427 (c) An application for a license under this chapter shall be treated as an application for
428 reinstatement of a revoked license if:

429 (i) (A) the person or entity applying for the license had a license revoked under this
430 chapter; and

431 (B) the revoked license described in Subsection (2)(c)(i)(A) is not reinstated before the
432 application described in this Subsection (2)(c) is made; or

433 (ii) a member of an entity applying for the license:

434 (A) (I) had a license revoked under this chapter; and

435 (II) the revoked license described in Subsection (2)(c)(ii)(A)(I) is not reinstated before
436 the application described in this Subsection (2)(c) is made; or

437 (B) (I) was a member of an entity that had a license revoked under this chapter at any
438 time before the license was revoked; and

439 (II) the revoked license described in Subsection (2)(c)(ii)(B)(I) is not reinstated before
440 the application described in this Subsection (2)(c) is made.

441 (3) A current license shall at all times be posted in the facility where each human
442 services program is operated, in a place that is visible and readily accessible to the public.

443 (4) (a) Except as provided in Subsection (4)(c), each license issued under this chapter
444 expires at midnight 12 months from the date of issuance unless it has been:

445 (i) previously revoked by the office; or

446 (ii) voluntarily returned to the office by the licensee.

447 (b) A license shall be renewed upon application and payment of the applicable fee,
448 unless the office finds that the licensee:

449 (i) is not in compliance with the:

450 (A) provisions of this chapter; or

451 (B) rules made under this chapter;

452 (ii) has engaged in a pattern of noncompliance with the:

453 (A) provisions of this chapter; or

454 (B) rules made under this chapter;

455 (iii) has engaged in conduct that is grounds for denying a license under Section
456 62A-2-112; or

457 (iv) has engaged in conduct that poses a substantial risk of harm to any person.

458 (c) The office may issue a renewal license that expires at midnight 24 months after the
459 day on which it is issued if:

460 (i) the licensee has maintained a human services license for at least 24 months before
461 the day on which the licensee applies for the renewal; and

462 (ii) the licensee has not violated this chapter or a rule made under this chapter.

463 (5) Any licensee that is in operation at the time rules are made in accordance with this
464 chapter shall be given a reasonable time for compliance as determined by the rule.

465 (6) (a) A license for a human services program issued under this section shall apply to
466 a specific human services program site.

467 (b) A human services program shall obtain a separate license for each site where the
468 human services program is operated.

469 Section 4. Section **62A-2-112** is amended to read:

470 **62A-2-112. Violations -- Penalties.**

471 [~~If the office finds that a violation has occurred under Section **62A-2-111**, it may:]~~

472 (1) The office may deny, place conditions on, suspend, or revoke a human services
473 license, if it finds, related to the human services program:

474 (a) that there has been a failure to comply with the rules established under this chapter;
475 [~~or~~]

476 (b) evidence of aiding, abetting, or permitting the commission of any illegal act; or

477 (c) evidence of conduct adverse to the standards required to provide services and
478 promote public trust, including aiding, abetting, or permitting the commission of abuse,
479 neglect, exploitation, harm, mistreatment, or fraud.

480 (2) The office may restrict or prohibit new admissions to a human services program [~~or~~
481 facility], if it finds:

482 (a) that there has been a failure to comply with rules established under this chapter; [~~or~~]

483 (b) evidence of aiding, abetting, or permitting the commission of any illegal act [~~in the~~
484 ~~human services program or facility.] or~~

485 (c) evidence of conduct adverse to the standards required to provide services and
486 promote public trust, including aiding, abetting, or permitting the commission of abuse,
487 neglect, exploitation, harm, mistreatment, or fraud.

488 Section 5. Section **62A-2-113** is amended to read:

489 **62A-2-113. License revocation -- Suspension.**

490 (1) If a license is revoked, the office may not grant a new license unless:

491 (a) the human services program provides satisfactory evidence to the office that the
492 conditions upon which revocation was based have been corrected;

493 (b) the human services program is inspected by the office and found to be in
494 compliance with all provisions of this chapter and applicable rules;

495 (c) at least [~~one year has~~] five years have passed since the day on which the licensee is
496 served with final notice that the license is revoked; and

497 (d) the office determines that the interests of the public will not be jeopardized by
498 granting the license.

499 (2) The office may suspend a license for no longer than one year.

500 (3) When a license has been suspended, the office may restore, or restore subject to
501 conditions, the suspended license upon a determination that the:

502 (a) conditions upon which the suspension was based have been completely or partially
503 corrected; and

504 (b) interests of the public will not be jeopardized by restoration of the license.

505 Section 6. Section **62A-2-116** is amended to read:

506 **62A-2-116. Violation -- Criminal penalties.**

507 (1) (a) A person who owns, establishes, conducts, maintains, manages, or operates a
508 human services program in violation of this chapter is guilty of a class A misdemeanor if the
509 violation endangers or harms the health, welfare, or safety of persons participating in that
510 program.

511 (b) Conviction in a criminal proceeding does not preclude the office from:

512 (i) assessing a civil penalty or an administrative penalty;

513 (ii) denying, placing conditions on, suspending, or revoking a license; or

514 (iii) seeking injunctive or equitable relief.

515 (2) Any person that violates a provision of this chapter, lawful orders of the office, or
516 rules adopted under this chapter, may be assessed a penalty not to exceed the sum of \$10,000
517 per violation, in:

518 (a) a judicial civil proceeding; or

519 (b) in an administrative action in accordance with Title 63G, Chapter 4, Administrative
520 Procedures Act.

521 (3) Assessment of a judicial penalty or an administrative penalty does not preclude the

522 office from:

523 (a) seeking criminal penalties;

524 (b) denying, placing conditions on, suspending, or revoking a license; or

525 (c) seeking injunctive or equitable relief.

526 (4) The office may assess the human services program the cost incurred by the office in
527 placing a monitor.

528 Section 7. Section **62A-15-103** is amended to read:

529 **62A-15-103. Division -- Creation -- Responsibilities.**

530 (1) There is created the Division of Substance Abuse and Mental Health within the
531 department, under the administration and general supervision of the executive director. The
532 division is the substance abuse authority and the mental health authority for this state.

533 (2) The division shall:

534 (a) (i) educate the general public regarding the nature and consequences of substance
535 abuse by promoting school and community-based prevention programs;

536 (ii) render support and assistance to public schools through approved school-based
537 substance abuse education programs aimed at prevention of substance abuse;

538 (iii) promote or establish programs for the prevention of substance abuse within the
539 community setting through community-based prevention programs;

540 (iv) cooperate with and assist treatment centers, recovery residences, and other
541 organizations that provide services to individuals recovering from a substance abuse disorder,
542 by identifying and disseminating information about effective practices and programs;

543 (v) promulgate rules in accordance with Title 63G, Chapter 3, Utah Administrative
544 Rulemaking Act, to develop, in collaboration with public and private programs, minimum
545 standards for public and private providers of substance abuse and mental health programs
546 licensed by the Department of Human Services under Title 62A, Chapter 2, Licensure of
547 Programs and Facilities;

548 [~~(v)~~] (vi) promote integrated programs that address an individual's substance abuse,
549 mental health, physical health, and criminal risk factors;

550 [~~(vi)~~] (vii) establish and promote an evidence-based continuum of screening,
551 assessment, prevention, treatment, and recovery support services in the community for
552 individuals with substance abuse and mental illness that addresses criminal risk factors;

553 [~~(vii)~~] (viii) evaluate the effectiveness of programs described in Subsection (2);
554 [~~(viii)~~] (ix) consider the impact of the programs described in Subsection (2) on:
555 (A) emergency department utilization;
556 (B) jail and prison populations;
557 (C) the homeless population; and
558 (D) the child welfare system; and
559 [~~(ix)~~] (x) promote or establish programs for education and certification of instructors to
560 educate persons convicted of driving under the influence of alcohol or drugs or driving with
561 any measurable controlled substance in the body;
562 (b) (i) collect and disseminate information pertaining to mental health;
563 (ii) provide direction over the state hospital including approval of its budget,
564 administrative policy, and coordination of services with local service plans;
565 (iii) promulgate rules in accordance with Title 63G, Chapter 3, Utah Administrative
566 Rulemaking Act, to educate families concerning mental illness and promote family
567 involvement, when appropriate, and with patient consent, in the treatment program of a family
568 member; and
569 (iv) promulgate rules in accordance with Title 63G, Chapter 3, Utah Administrative
570 Rulemaking Act, to direct that all individuals receiving services through local mental health
571 authorities or the Utah State Hospital be informed about and, if desired, provided assistance in
572 completion of a declaration for mental health treatment in accordance with Section
573 [62A-15-1002](#);
574 (c) (i) consult and coordinate with local substance abuse authorities and local mental
575 health authorities regarding programs and services;
576 (ii) provide consultation and other assistance to public and private agencies and groups
577 working on substance abuse and mental health issues;
578 (iii) promote and establish cooperative relationships with courts, hospitals, clinics,
579 medical and social agencies, public health authorities, law enforcement agencies, education and
580 research organizations, and other related groups;
581 (iv) promote or conduct research on substance abuse and mental health issues, and
582 submit to the governor and the Legislature recommendations for changes in policy and
583 legislation;

584 (v) receive, distribute, and provide direction over public funds for substance abuse and
585 mental health services;

586 (vi) monitor and evaluate programs provided by local substance abuse authorities and
587 local mental health authorities;

588 (vii) examine expenditures of any local, state, and federal funds;

589 (viii) monitor the expenditure of public funds by:

590 (A) local substance abuse authorities;

591 (B) local mental health authorities; and

592 (C) in counties where they exist, the private contract provider that has an annual or
593 otherwise ongoing contract to provide comprehensive substance abuse or mental health
594 programs or services for the local substance abuse authority or local mental health authorities;

595 (ix) contract with local substance abuse authorities and local mental health authorities
596 to provide a comprehensive continuum of services that include community-based services for
597 individuals involved in the criminal justice system, in accordance with division policy, contract
598 provisions, and the local plan;

599 (x) contract with private and public entities for special statewide or nonclinical
600 services, or services for individuals involved in the criminal justice system, according to
601 division rules;

602 (xi) review and approve each local substance abuse authority's plan and each local
603 mental health authority's plan in order to ensure:

604 (A) a statewide comprehensive continuum of substance abuse services;

605 (B) a statewide comprehensive continuum of mental health services;

606 (C) services result in improved overall health and functioning;

607 (D) a statewide comprehensive continuum of community-based services designed to
608 reduce criminal risk factors for individuals who are determined to have substance abuse or
609 mental illness conditions or both, and who are involved in the criminal justice system;

610 (E) compliance, where appropriate, with the certification requirements in Subsection
611 (2)(i); and

612 (F) appropriate expenditure of public funds;

613 (xii) review and make recommendations regarding each local substance abuse
614 authority's contract with its provider of substance abuse programs and services and each local

615 mental health authority's contract with its provider of mental health programs and services to
616 ensure compliance with state and federal law and policy;

617 (xiii) monitor and ensure compliance with division rules and contract requirements;
618 and

619 (xiv) withhold funds from local substance abuse authorities, local mental health
620 authorities, and public and private providers for contract noncompliance, failure to comply
621 with division directives regarding the use of public funds, or for misuse of public funds or
622 money;

623 (d) assure that the requirements of this part are met and applied uniformly by local
624 substance abuse authorities and local mental health authorities across the state;

625 (e) require each local substance abuse authority and each local mental health authority
626 to submit its plan to the division by May 1 of each year;

627 (f) conduct an annual program audit and review of each local substance abuse authority
628 in the state and its contract provider and each local mental health authority in the state and its
629 contract provider, including:

630 (i) a review and determination regarding whether:

631 (A) public funds allocated to local substance abuse authorities and local mental health
632 authorities are consistent with services rendered and outcomes reported by them or their
633 contract providers; and

634 (B) each local substance abuse authority and each local mental health authority is
635 exercising sufficient oversight and control over public funds allocated for substance abuse and
636 mental health programs and services; and

637 (ii) items determined by the division to be necessary and appropriate; and

638 (g) define "prevention" by rule as required under Title 32B, Chapter 2, Part 4,
639 Alcoholic Beverage and Substance Abuse Enforcement and Treatment Restricted Account Act;

640 (h) establish by rule, in accordance with Title 63G, Chapter 3, Utah Administrative
641 Rulemaking Act, minimum standards and requirements for the provision of substance abuse
642 and mental health treatment to individuals who are required to participate in treatment by the
643 court or the Board of Pardons and Parole, or who are incarcerated, including:

644 (i) collaboration with the Department of Corrections, the Utah Substance Abuse
645 Advisory Council to develop and coordinate the standards, including standards for county and

646 state programs serving individuals convicted of class A and class B misdemeanors;

647 (ii) determining that the standards ensure available treatment includes the most current
648 practices and procedures demonstrated by recognized scientific research to reduce recidivism,
649 including focus on the individual's criminal risk factors; and

650 (iii) requiring that all public and private treatment programs meet the standards
651 established under this Subsection (2)(h) in order to receive public funds allocated to the
652 division, the Department of Corrections, or the Commission on Criminal and Juvenile Justice
653 for the costs of providing screening, assessment, prevention, treatment, and recovery support;

654 (i) establish by rule, in accordance with Title 63G, Chapter 3, Utah Administrative
655 Rulemaking Act, the requirements and procedures for the certification of licensed public and
656 private providers who provide, as part of their practice, substance abuse and mental health
657 treatment to individuals involved in the criminal justice system, including:

658 (i) collaboration with the Department of Corrections, the Utah Substance Abuse
659 Advisory Council, and the Utah Association of Counties to develop, coordinate, and implement
660 the certification process;

661 (ii) basing the certification process on the standards developed under Subsection (2)(h)
662 for the treatment of individuals involved in the criminal justice system; and

663 (iii) the requirement that all public and private providers of treatment to individuals
664 involved in the criminal justice system shall obtain certification on or before July 1, 2016, and
665 shall renew the certification every two years, in order to qualify for funds allocated to the
666 division, the Department of Corrections, or the Commission on Criminal and Juvenile Justice
667 on or after July 1, 2016;

668 (j) [~~collaboration~~] collaborate with the Commission on Criminal and Juvenile Justice
669 to analyze and provide recommendations to the Legislature regarding:

670 (i) pretrial services and the resources needed for the reduced recidivism efforts;

671 (ii) county jail and county behavioral health early-assessment resources needed for
672 offenders convicted of a class A or class B misdemeanor; and

673 (iii) the replacement of federal dollars associated with drug interdiction law
674 enforcement task forces that are reduced;

675 (k) (i) establish performance goals and outcome measurements for all treatment
676 programs for which minimum standards are established under Subsection (2)(h), including

677 recidivism data and data regarding cost savings associated with recidivism reduction and the
678 reduction in the number of inmates, that are obtained in collaboration with the Administrative
679 Office of the Courts and the Department of Corrections; and

680 (ii) collect data to track and determine whether the goals and measurements are being
681 attained and make this information available to the public;

682 (l) in its discretion, use the data to make decisions regarding the use of funds allocated
683 to the division, the Administrative Office of the Courts, and the Department of Corrections to
684 provide treatment for which standards are established under Subsection (2)(h); and

685 (m) annually, on or before August 31, submit the data collected under Subsection (2)(j)
686 to the Commission on Criminal and Juvenile Justice, which shall compile a report of findings
687 based on the data and provide the report to the legislative Judiciary Interim Committee, the
688 Health and Human Services Interim Committee, the Law Enforcement and Criminal Justice
689 Interim Committee, and the related appropriations subcommittees.

690 (3) (a) The division may refuse to contract with and may pursue its legal remedies
691 against any local substance abuse authority or local mental health authority that fails, or has
692 failed, to expend public funds in accordance with state law, division policy, contract
693 provisions, or directives issued in accordance with state law.

694 (b) The division may withhold funds from a local substance abuse authority or local
695 mental health authority if the authority's contract with its provider of substance abuse or mental
696 health programs or services fails to comply with state and federal law or policy.

697 (4) Before reissuing or renewing a contract with any local substance abuse authority or
698 local mental health authority, the division shall review and determine whether the local
699 substance abuse authority or local mental health authority is complying with its oversight and
700 management responsibilities described in Sections 17-43-201, 17-43-203, 17-43-303, and
701 17-43-309. Nothing in this Subsection (4) may be used as a defense to the responsibility and
702 liability described in Section 17-43-303 and to the responsibility and liability described in
703 Section 17-43-203.

704 (5) In carrying out its duties and responsibilities, the division may not duplicate
705 treatment or educational facilities that exist in other divisions or departments of the state, but
706 shall work in conjunction with those divisions and departments in rendering the treatment or
707 educational services that those divisions and departments are competent and able to provide.

708 (6) The division may accept in the name of and on behalf of the state donations, gifts,
709 devises, or bequests of real or personal property or services to be used as specified by the
710 donor.

711 (7) The division shall annually review with each local substance abuse authority and
712 each local mental health authority the authority's statutory and contract responsibilities
713 regarding:

714 (a) the use of public funds;

715 (b) oversight responsibilities regarding public funds; and

716 (c) governance of substance abuse and mental health programs and services.

717 (8) The Legislature may refuse to appropriate funds to the division upon the division's
718 failure to comply with the provisions of this part.

719 (9) If a local substance abuse authority contacts the division under Subsection
720 [17-43-201](#)(9) for assistance in providing treatment services to a pregnant woman or pregnant
721 minor, the division shall:

722 (a) refer the pregnant woman or pregnant minor to a treatment facility that has the
723 capacity to provide the treatment services; or

724 (b) otherwise ensure that treatment services are made available to the pregnant woman
725 or pregnant minor.