

SUBSTANCE ABUSE TREATMENT FACILITY PATIENT

BROKERING

2018 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Eric K. Hutchings

Senate Sponsor: Gene Davis

LONG TITLE

Committee Note:

The Health Reform Task Force recommended this bill.

General Description:

This bill makes remuneration for the referral of an individual for substance use disorder treatment an unlawful act.

Highlighted Provisions:

This bill:

- ▶ makes remuneration for the referral of an individual for substance use disorder treatment a ~~§~~→ ~~[third-degree felony]~~ class A misdemeanor ←~~§~~ ;
- ▶ specifies permissible exceptions;
- ▶ defines terms; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

26-36a-103, as last amended by Laws of Utah 2013, Chapter 32



26-36b-103, as enacted by Laws of Utah 2016, Chapter 279

62A-2-101, as last amended by Laws of Utah 2017, Chapters 29, 148, and 209

62A-2-116, as last amended by Laws of Utah 2016, Chapter 211

63G-2-305, as last amended by Laws of Utah 2017, Chapters 374, 382, and 415

77-7a-104, as last amended by Laws of Utah 2017, Chapter 415

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

Section 1. Section **26-36a-103** is amended to read:

26-36a-103. Definitions.

As used in this chapter:

(1) "Accountable care organization" means a managed care organization, as defined in 42 C.F.R. Sec. 438, that contracts with the department under the provisions of Section

26-18-405.

(2) "Assessment" means the Medicaid hospital provider assessment established by this chapter.

(3) "Discharges" means the number of total hospital discharges reported on worksheet S-3 Part I, column 15, lines 12, 14, and 14.01 of the 2552-96 Medicare Cost Report or on Worksheet S-3 Part I, column 15, lines 14, 16, and 17 of the 2552-10 Medicare Cost Report for the applicable assessment year.

(4) "Division" means the Division of Health Care Financing of the department.

(5) "Hospital":

(a) means a privately owned:

(i) general acute hospital operating in the state as defined in Section **26-21-2**; and

(ii) specialty hospital operating in the state, which shall include a privately owned hospital whose inpatient admissions are predominantly:

(A) rehabilitation;

(B) psychiatric;

(C) chemical dependency; or

(D) long-term acute care services; and

(b) does not include:

(i) ~~[a residential care or treatment facility]~~ a human services program, as defined in

Section 62A-2-101;

(ii) a hospital owned by the federal government, including the Veterans Administration Hospital; or

(iii) a hospital that is owned by the state government, a state agency, or a political subdivision of the state, including:

(A) a state-owned teaching hospital; and

(B) the Utah State Hospital.

(6) "Medicare cost report" means CMS-2552-96 or CMS-2552-10, the cost report for electronic filing of hospitals.

(7) "State plan amendment" means a change or update to the state Medicaid plan.

Section 2. Section 26-36b-103 is amended to read:

26-36b-103. Definitions.

As used in this chapter:

(1) "Assessment" means the inpatient hospital assessment established by this chapter.

(2) "CMS" means the same as that term is defined in Section 26-18-411.

(3) "Discharges" means the number of total hospital discharges reported on:

(a) Worksheet S-3 Part I, column 15, lines 14, 16, and 17 of the 2552-10 Medicare cost report for the applicable assessment year; or

(b) a similar report adopted by the department by administrative rule, if the report under Subsection (3)(a) is no longer available.

(4) "Division" means the Division of Health Care Financing within the department.

(5) "Medicare cost report" means CMS-2552-10, the cost report for electronic filing of hospitals.

(6) "Non-state government hospital":

(a) means a hospital owned by a non-state government entity; and

(b) does not include:

(i) the Utah State Hospital; or

(ii) a hospital owned by the federal government, including the Veterans Administration Hospital.

(7) "Private hospital":

(a) means:

(i) a privately owned general acute hospital operating in the state as defined in Section 26-21-2; and

(ii) a privately owned specialty hospital operating in the state, which shall include a privately owned hospital whose inpatient admissions are predominantly:

(A) rehabilitation;

(B) psychiatric;

(C) chemical dependency; or

(D) long-term acute care services; and

(b) does not include a [~~residential care or treatment facility~~] human services program, as defined in Section 62A-2-101.

(8) "State teaching hospital" means a state owned teaching hospital that is part of an institution of higher education.

Section 3. Section 62A-2-101 is amended to read:

62A-2-101. Definitions.

As used in this chapter:

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

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

(b) that meets the needs of functionally impaired adults through a comprehensive program that provides a variety of health, social, recreational, and related support services in a protective setting.

(2) "Applicant" means a person who applies for an initial license or a license renewal under this chapter.

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

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

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

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

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

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

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

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

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

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

(i) uses a regionally accredited education program;

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

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

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

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

(iv) (A) does not provide the treatment or services described in Subsection ~~[(29)]~~ (33)(a); or

(B) provides the treatment or services described in Subsection ~~[(29)]~~ (33)(a) on a limited basis, as described in Subsection (4)(b)(ii).

(b) (i) For purposes of Subsection (4)(a)(iii), "education" means a course of study for one or more of grades kindergarten through 12th grade.

(ii) For purposes of Subsection (4)(a)(iv)(B), a private school provides the treatment or services described in Subsection ~~[(29)]~~ (33)(a) on a limited basis if:

(A) the treatment or services described in Subsection ~~[(29)]~~ (33)(a) are provided only as an incidental service to a student; and

(B) the school does not:

(I) specifically solicit a student for the purpose of providing the treatment or services described in Subsection ~~[(29)]~~ (33)(a); or

(II) have a primary purpose of providing the treatment or services described in Subsection ~~[(29)]~~ (33)(a).

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

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

(6) "Child placing" means receiving, accepting, or providing custody or care for any

child, temporarily or permanently, for the purpose of:

(a) finding a person to adopt the child;

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

(c) foster home placement.

(7) "Child-placing agency" means a person that engages in child placing.

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

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

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

(b) four or more persons who:

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

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

(10) "Department" means the Department of Human Services.

(11) "Department contractor" means an individual who:

(a) provides services under a contract with the department; and

(b) due to the contract with the department, has or will likely have direct access to a child or vulnerable adult.

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

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

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

(13) "Directly supervised" means that an individual is being supervised under the uninterrupted visual and auditory surveillance of another individual who has a current background screening approval issued by the office.

(14) "Director" means the director of the Office of Licensing.

(15) "Domestic violence" means the same as that term is defined in Section [77-36-1](#).

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

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

183 (18) "Executive director" means the executive director of the department.

184 (19) "Foster home" means a residence that is licensed or certified by the Office of
185 Licensing for the full-time substitute care of a child.

186 (20) "Health benefit plan" means the same as that term is defined in Section
187 [31A-22-619.6](#).

188 (21) "Health care provider" means the same as that term is defined in Section
189 [78B-3-403](#).

190 (22) "Health insurer" means the same as that term is defined in Section [31A-22-615.5](#).

191 [~~20~~] (23) (a) "Human services program" means a:

192 (i) foster home;

193 (ii) therapeutic school;

194 (iii) youth program;

195 (iv) resource family home;

196 (v) recovery residence; or

197 (vi) facility or program that provides:

198 (A) secure treatment;

199 (B) inpatient treatment;

200 (C) residential treatment;

201 (D) residential support;

202 (E) adult day care;

203 (F) day treatment;

204 (G) outpatient treatment;

205 (H) domestic violence treatment;

206 (I) child-placing services;

207 (J) social detoxification; or

208 (K) any other human services that are required by contract with the department to be
209 licensed with the department.

210 (b) "Human services program" does not include a boarding school.

211 [~~21~~] (24) "Indian child" means the same as that term is defined in 25 U.S.C. Sec.
212 1903.

213 [~~22~~] (25) "Indian country" means the same as that term is defined in 18 U.S.C. Sec.

214 1151.

215 ~~[(23)]~~ (26) "Indian tribe" means the same as that term is defined in 25 U.S.C. Sec.

216 1903.

217 ~~[(24)]~~ (27) "Licensee" means an individual or a human services program licensed by
218 the office.

219 ~~[(25)]~~ (28) "Local government" means a city, town, metro township, or county.

220 ~~[(26)]~~ (29) "Minor" has the same meaning as "child."

221 ~~[(27)]~~ (30) "Office" means the Office of Licensing within the Department of Human
222 Services.

223 ~~[(28)]~~ (31) "Outpatient treatment" means individual, family, or group therapy or
224 counseling designed to improve and enhance social or psychological functioning for those
225 whose physical and emotional status allows them to continue functioning in their usual living
226 environment.

227 (32) "Practice group" or "group practice" means two or more health care providers
228 legally organized as a partnership, professional corporation, or similar association, for which:

229 (a) substantially all of the services of the health care providers who are members of the
230 group are provided through the group and are billed in the name of the group and amounts
231 received are treated as receipts of the group; and

232 (b) the overhead expenses of and the income from the practice are distributed in
233 accordance with methods previously determined by members of the group.

234 ~~[(29)]~~ (33) (a) "Recovery residence" means a home, residence, or facility that meets at
235 least two of the following requirements:

236 (i) provides a supervised living environment for individuals recovering from a
237 substance ~~[abuse]~~ use disorder;

238 (ii) provides a living environment in which more than half of the individuals in the
239 residence are recovering from a substance ~~[abuse]~~ use disorder;

240 (iii) provides or arranges for residents to receive services related to their recovery from
241 a substance ~~[abuse]~~ use disorder, either on or off site;

242 (iv) is held out as a living environment in which individuals recovering from substance
243 abuse disorders live together to encourage continued sobriety; or

244 (v) (A) receives public funding; or

(B) is run as a business venture, either for-profit or not-for-profit.

(b) "Recovery residence" does not mean:

(i) a residential treatment program;

(ii) residential support; or

(iii) a home, residence, or facility, in which:

(A) residents, by their majority vote, establish, implement, and enforce policies governing the living environment, including the manner in which applications for residence are approved and the manner in which residents are expelled;

(B) residents equitably share rent and housing-related expenses; and

(C) a landlord, owner, or operator does not receive compensation, other than fair market rental income, for establishing, implementing, or enforcing policies governing the living environment.

~~[(30)]~~ (34) "Regular business hours" means:

(a) the hours during which services of any kind are provided to a client; or

(b) the hours during which a client is present at the facility of a licensee.

~~[(31)]~~ (35) (a) "Residential support" means arranging for or providing the necessities of life as a protective service to individuals or families who have a disability or who are experiencing a dislocation or emergency that prevents them from providing these services for themselves or their families.

(b) "Residential support" includes providing a supervised living environment for persons with dysfunctions or impairments that are:

(i) emotional;

(ii) psychological;

(iii) developmental; or

(iv) behavioral.

(c) Treatment is not a necessary component of residential support.

(d) "Residential support" does not include:

(i) a recovery residence; or

(ii) residential services that are performed:

(A) exclusively under contract with the Division of Services for People with Disabilities; or

(B) in a facility that serves fewer than four individuals.

~~[(32)]~~ (36) (a) "Residential treatment" means a 24-hour group living environment for four or more individuals unrelated to the owner or provider that offers room or board and specialized treatment, behavior modification, rehabilitation, discipline, emotional growth, or habilitation services for persons with emotional, psychological, developmental, or behavioral dysfunctions, impairments, or chemical dependencies.

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

(i) boarding school;

(ii) foster home; or

(iii) recovery residence.

~~[(33)]~~ (37) "Residential treatment program" means a human services program that provides:

(a) residential treatment; or

(b) secure treatment.

~~[(34)]~~ (38) (a) "Secure treatment" means 24-hour specialized residential treatment or care for persons whose current functioning is such that they cannot live independently or in a less restrictive environment.

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

~~[(35)]~~ (39) "Social detoxification" means short-term residential services for persons who are experiencing or have recently experienced drug or alcohol intoxication, that are provided outside of a health care facility licensed under Title 26, Chapter 21, Health Care Facility Licensing and Inspection Act, and that include:

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

(b) specialized rehabilitation to acquire sobriety; and

(c) aftercare services.

(40) "Substance abuse disorder" or "substance use disorder" mean the same as "substance use disorder" is defined in Section [62A-15-1202](#).

~~[(36)]~~ (41) "Substance abuse treatment program" or "substance use disorder treatment

307 program" means a program:

308 (a) designed to provide:

309 (i) specialized drug or alcohol treatment;

310 (ii) rehabilitation; or

311 (iii) habilitation services; and

312 (b) that provides the treatment or services described in Subsection [~~(36)~~] (40)(a) to

313 persons with:

314 (i) a diagnosed substance [~~abuse~~] use disorder; or

315 (ii) chemical dependency disorder.

316 [~~(37)~~] (42) "Therapeutic school" means a residential group living facility:

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

318 (i) the owner of the facility; or

319 (ii) the primary service provider of the facility;

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

321 (i) at home;

322 (ii) in a public school; or

323 (iii) in a nonresidential private school; and

324 (c) that offers:

325 (i) room and board; and

326 (ii) an academic education integrated with:

327 (A) specialized structure and supervision; or

328 (B) services or treatment related to:

329 (I) a disability;

330 (II) emotional development;

331 (III) behavioral development;

332 (IV) familial development; or

333 (V) social development.

334 [~~(38)~~] (43) "Unrelated persons" means persons other than parents, legal guardians,

335 grandparents, brothers, sisters, uncles, or aunts.

336 [~~(39)~~] (44) "Vulnerable adult" means an elder adult or an adult who has a temporary or

337 permanent mental or physical impairment that substantially affects the person's ability to:

(a) provide personal protection;
(b) provide necessities such as food, shelter, clothing, or mental or other health care;
(c) obtain services necessary for health, safety, or welfare;
(d) carry out the activities of daily living;
(e) manage the adult's own resources; or
(f) comprehend the nature and consequences of remaining in a situation of abuse, neglect, or exploitation.

~~[(40)]~~ (45) (a) "Youth program" means a nonresidential program designed to provide behavioral, substance abuse, or mental health services to minors that:

(i) serves adjudicated or nonadjudicated youth;
(ii) charges a fee for its services;
(iii) may or may not provide host homes or other arrangements for overnight accommodation of the youth;
(iv) may or may not provide all or part of its services in the outdoors;
(v) may or may not limit or censor access to parents or guardians; and
(vi) prohibits or restricts a minor's ability to leave the program at any time of the minor's own free will.

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

Section 4. Section **62A-2-116** is amended to read:

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

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

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

(i) assessing a civil penalty or an administrative penalty;
(ii) denying, placing conditions on, suspending, or revoking a license; or
(iii) seeking injunctive or equitable relief.

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

per violation, in:

(a) a judicial civil proceeding; or

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

(3) Assessment of a judicial penalty or an administrative penalty does not preclude the office from:

(a) seeking criminal penalties;

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

(c) seeking injunctive or equitable relief.

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

(5) Notwithstanding Subsection (1)(a) and subject to Subsections (1)(b) and (2), an individual is guilty of a ~~Ŝ→ [third-degree felony]~~ **class A misdemeanor** ~~←Ŝ~~ ~~Ĥ→ [and, upon conviction, Ĥ→ [shall] may ←Ĥ be~~

imprisoned for not

more than five years] ~~←Ĥ~~ if the individual knowingly and willfully offers, pays, promises to pay, solicits, or receives any remuneration, including any commission, bonus, kickback, bribe, or rebate, directly or indirectly, overtly or covertly, in cash or in kind, or engages in any split-fee arrangement in return for:

(a) referring an individual to a person for the furnishing or arranging for the furnishing of any item or service for the treatment of a substance use disorder; or

(b) receiving a referred individual for the furnishing or arranging for the furnishing of any item or service for the treatment of a substance use disorder.

(6) Subsection (5) does not prohibit:

(a) any discount, payment, waiver of payment, or payment practice not prohibited by 42 U.S.C. Sec. 1320a-7(b) or regulations made under 42 U.S.C. Sec. 1320a-7(b);

(b) patient referrals within a practice group;

(c) payments by a health insurer who reimburses, provides, offers to provide, or administers health, mental health, or substance use disorder goods or services under a health benefit plan;

(d) payments to or by a health care provider, practice group, or substance use disorder treatment program that has contracted with a ~~Ĥ→~~ **local mental health authority, a local substance abuse authority, a** ~~←Ĥ~~ health insurer, a health care purchasing group, or the Medicare or Medicaid program to provide health, mental health, or substance use disorder

goods or services under a health benefit plan when the payments are for goods or services under the plan; or

(e) payments by a health care provider, practice group, or substance use disorder treatment program to a health, mental health, or substance use disorder information service that provides information upon request and without charge to consumers about providers of health care goods or services to enable consumers to select appropriate providers or facilities, if the information service:

(i) does not attempt through standard questions for solicitation of consumer criteria or through any other means to steer or lead a consumer to select or consider selection of a particular health care provider, practice group, or substance use disorder treatment program;

(ii) does not provide or represent that the information service provides diagnostic or counseling services or assessments of illness or injury and does not make any promises of cure or guarantees of treatment; ~~H→~~ **and**

~~[(iii) does not provide or arrange for transportation of a patient to or from the location of a health care provider, practice group, or substance use disorder treatment program; and~~

~~——(iv)] (iii) ←H~~ charges and collects fees from a health care provider, practice group, or substance

use disorder treatment program participating in information services that are set in advance, are consistent with the fair market value for those information services, and are not based on the potential value of a patient or patients to a health care provider, practice group, or substance use disorder treatment program of the goods or services provided by the health care provider, practice group, or substance use disorder treatment program.

Section 5. Section **63G-2-305** is amended to read:

63G-2-305. Protected records.

The following records are protected if properly classified by a governmental entity:

(1) trade secrets as defined in Section **13-24-2** if the person submitting the trade secret has provided the governmental entity with the information specified in Section **63G-2-309**;

(2) commercial information or nonindividual financial information obtained from a person if:

(a) disclosure of the information could reasonably be expected to result in unfair competitive injury to the person submitting the information or would impair the ability of the governmental entity to obtain necessary information in the future;

431 (b) the person submitting the information has a greater interest in prohibiting access
432 than the public in obtaining access; and

433 (c) the person submitting the information has provided the governmental entity with
434 the information specified in Section 63G-2-309;

435 (3) commercial or financial information acquired or prepared by a governmental entity
436 to the extent that disclosure would lead to financial speculations in currencies, securities, or
437 commodities that will interfere with a planned transaction by the governmental entity or cause
438 substantial financial injury to the governmental entity or state economy;

439 (4) records, the disclosure of which could cause commercial injury to, or confer a
440 competitive advantage upon a potential or actual competitor of, a commercial project entity as
441 defined in Subsection 11-13-103(4);

442 (5) test questions and answers to be used in future license, certification, registration,
443 employment, or academic examinations;

444 (6) records, the disclosure of which would impair governmental procurement
445 proceedings or give an unfair advantage to any person proposing to enter into a contract or
446 agreement with a governmental entity, except, subject to Subsections (1) and (2), that this
447 Subsection (6) does not restrict the right of a person to have access to, after the contract or
448 grant has been awarded and signed by all parties, a bid, proposal, application, or other
449 information submitted to or by a governmental entity in response to:

450 (a) an invitation for bids;

451 (b) a request for proposals;

452 (c) a request for quotes;

453 (d) a grant; or

454 (e) other similar document;

455 (7) information submitted to or by a governmental entity in response to a request for
456 information, except, subject to Subsections (1) and (2), that this Subsection (7) does not restrict
457 the right of a person to have access to the information, after:

458 (a) a contract directly relating to the subject of the request for information has been
459 awarded and signed by all parties; or

460 (b) (i) a final determination is made not to enter into a contract that relates to the
461 subject of the request for information; and

(ii) at least two years have passed after the day on which the request for information is issued;

(8) records that would identify real property or the appraisal or estimated value of real or personal property, including intellectual property, under consideration for public acquisition before any rights to the property are acquired unless:

(a) public interest in obtaining access to the information is greater than or equal to the governmental entity's need to acquire the property on the best terms possible;

(b) the information has already been disclosed to persons not employed by or under a duty of confidentiality to the entity;

(c) in the case of records that would identify property, potential sellers of the described property have already learned of the governmental entity's plans to acquire the property;

(d) in the case of records that would identify the appraisal or estimated value of property, the potential sellers have already learned of the governmental entity's estimated value of the property; or

(e) the property under consideration for public acquisition is a single family residence and the governmental entity seeking to acquire the property has initiated negotiations to acquire the property as required under Section 78B-6-505;

(9) records prepared in contemplation of sale, exchange, lease, rental, or other compensated transaction of real or personal property including intellectual property, which, if disclosed prior to completion of the transaction, would reveal the appraisal or estimated value of the subject property, unless:

(a) the public interest in access is greater than or equal to the interests in restricting access, including the governmental entity's interest in maximizing the financial benefit of the transaction; or

(b) when prepared by or on behalf of a governmental entity, appraisals or estimates of the value of the subject property have already been disclosed to persons not employed by or under a duty of confidentiality to the entity;

(10) records created or maintained for civil, criminal, or administrative enforcement purposes or audit purposes, or for discipline, licensing, certification, or registration purposes, if release of the records:

(a) reasonably could be expected to interfere with investigations undertaken for

493 enforcement, discipline, licensing, certification, or registration purposes;

494 (b) reasonably could be expected to interfere with audits, disciplinary, or enforcement
495 proceedings;

496 (c) would create a danger of depriving a person of a right to a fair trial or impartial
497 hearing;

498 (d) reasonably could be expected to disclose the identity of a source who is not
499 generally known outside of government and, in the case of a record compiled in the course of
500 an investigation, disclose information furnished by a source not generally known outside of
501 government if disclosure would compromise the source; or

502 (e) reasonably could be expected to disclose investigative or audit techniques,
503 procedures, policies, or orders not generally known outside of government if disclosure would
504 interfere with enforcement or audit efforts;

505 (11) records the disclosure of which would jeopardize the life or safety of an
506 individual;

507 (12) records the disclosure of which would jeopardize the security of governmental
508 property, governmental programs, or governmental recordkeeping systems from damage, theft,
509 or other appropriation or use contrary to law or public policy;

510 (13) records that, if disclosed, would jeopardize the security or safety of a correctional
511 facility, or records relating to incarceration, treatment, probation, or parole, that would interfere
512 with the control and supervision of an offender's incarceration, treatment, probation, or parole;

513 (14) records that, if disclosed, would reveal recommendations made to the Board of
514 Pardons and Parole by an employee of or contractor for the Department of Corrections, the
515 Board of Pardons and Parole, or the Department of Human Services that are based on the
516 employee's or contractor's supervision, diagnosis, or treatment of any person within the board's
517 jurisdiction;

518 (15) records and audit workpapers that identify audit, collection, and operational
519 procedures and methods used by the State Tax Commission, if disclosure would interfere with
520 audits or collections;

521 (16) records of a governmental audit agency relating to an ongoing or planned audit
522 until the final audit is released;

523 (17) records that are subject to the attorney client privilege;

(18) records prepared for or by an attorney, consultant, surety, indemnitor, insurer, employee, or agent of a governmental entity for, or in anticipation of, litigation or a judicial, quasi-judicial, or administrative proceeding;

(19) (a) (i) personal files of a state legislator, including personal correspondence to or from a member of the Legislature; and

(ii) notwithstanding Subsection (19)(a)(i), correspondence that gives notice of legislative action or policy may not be classified as protected under this section; and

(b) (i) an internal communication that is part of the deliberative process in connection with the preparation of legislation between:

(A) members of a legislative body;

(B) a member of a legislative body and a member of the legislative body's staff; or

(C) members of a legislative body's staff; and

(ii) notwithstanding Subsection (19)(b)(i), a communication that gives notice of legislative action or policy may not be classified as protected under this section;

(20) (a) records in the custody or control of the Office of Legislative Research and General Counsel, that, if disclosed, would reveal a particular legislator's contemplated legislation or contemplated course of action before the legislator has elected to support the legislation or course of action, or made the legislation or course of action public; and

(b) notwithstanding Subsection (20)(a), the form to request legislation submitted to the Office of Legislative Research and General Counsel is a public document unless a legislator asks that the records requesting the legislation be maintained as protected records until such time as the legislator elects to make the legislation or course of action public;

(21) research requests from legislators to the Office of Legislative Research and General Counsel or the Office of the Legislative Fiscal Analyst and research findings prepared in response to these requests;

(22) drafts, unless otherwise classified as public;

(23) records concerning a governmental entity's strategy about:

(a) collective bargaining; or

(b) imminent or pending litigation;

(24) records of investigations of loss occurrences and analyses of loss occurrences that may be covered by the Risk Management Fund, the Employers' Reinsurance Fund, the

Uninsured Employers' Fund, or similar divisions in other governmental entities;

(25) records, other than personnel evaluations, that contain a personal recommendation concerning an individual if disclosure would constitute a clearly unwarranted invasion of personal privacy, or disclosure is not in the public interest;

(26) records that reveal the location of historic, prehistoric, paleontological, or biological resources that if known would jeopardize the security of those resources or of valuable historic, scientific, educational, or cultural information;

(27) records of independent state agencies if the disclosure of the records would conflict with the fiduciary obligations of the agency;

(28) records of an institution within the state system of higher education defined in Section 53B-1-102 regarding tenure evaluations, appointments, applications for admissions, retention decisions, and promotions, which could be properly discussed in a meeting closed in accordance with Title 52, Chapter 4, Open and Public Meetings Act, provided that records of the final decisions about tenure, appointments, retention, promotions, or those students admitted, may not be classified as protected under this section;

(29) records of the governor's office, including budget recommendations, legislative proposals, and policy statements, that if disclosed would reveal the governor's contemplated policies or contemplated courses of action before the governor has implemented or rejected those policies or courses of action or made them public;

(30) records of the Office of the Legislative Fiscal Analyst relating to budget analysis, revenue estimates, and fiscal notes of proposed legislation before issuance of the final recommendations in these areas;

(31) records provided by the United States or by a government entity outside the state that are given to the governmental entity with a requirement that they be managed as protected records if the providing entity certifies that the record would not be subject to public disclosure if retained by it;

(32) transcripts, minutes, or reports of the closed portion of a meeting of a public body except as provided in Section 52-4-206;

(33) records that would reveal the contents of settlement negotiations but not including final settlements or empirical data to the extent that they are not otherwise exempt from disclosure;

(34) memoranda prepared by staff and used in the decision-making process by an administrative law judge, a member of the Board of Pardons and Parole, or a member of any other body charged by law with performing a quasi-judicial function;

(35) records that would reveal negotiations regarding assistance or incentives offered by or requested from a governmental entity for the purpose of encouraging a person to expand or locate a business in Utah, but only if disclosure would result in actual economic harm to the person or place the governmental entity at a competitive disadvantage, but this section may not be used to restrict access to a record evidencing a final contract;

(36) materials to which access must be limited for purposes of securing or maintaining the governmental entity's proprietary protection of intellectual property rights including patents, copyrights, and trade secrets;

(37) the name of a donor or a prospective donor to a governmental entity, including an institution within the state system of higher education defined in Section 53B-1-102, and other information concerning the donation that could reasonably be expected to reveal the identity of the donor, provided that:

(a) the donor requests anonymity in writing;

(b) any terms, conditions, restrictions, or privileges relating to the donation may not be classified protected by the governmental entity under this Subsection (37); and

(c) except for an institution within the state system of higher education defined in Section 53B-1-102, the governmental unit to which the donation is made is primarily engaged in educational, charitable, or artistic endeavors, and has no regulatory or legislative authority over the donor, a member of the donor's immediate family, or any entity owned or controlled by the donor or the donor's immediate family;

(38) accident reports, except as provided in Sections 41-6a-404, 41-12a-202, and 73-18-13;

(39) a notification of workers' compensation insurance coverage described in Section 34A-2-205;

(40) (a) the following records of an institution within the state system of higher education defined in Section 53B-1-102, which have been developed, discovered, disclosed to, or received by or on behalf of faculty, staff, employees, or students of the institution:

(i) unpublished lecture notes;

617 (ii) unpublished notes, data, and information:
618 (A) relating to research; and
619 (B) of:
620 (I) the institution within the state system of higher education defined in Section
621 53B-1-102; or
622 (II) a sponsor of sponsored research;
623 (iii) unpublished manuscripts;
624 (iv) creative works in process;
625 (v) scholarly correspondence; and
626 (vi) confidential information contained in research proposals;
627 (b) Subsection (40)(a) may not be construed to prohibit disclosure of public
628 information required pursuant to Subsection 53B-16-302(2)(a) or (b); and
629 (c) Subsection (40)(a) may not be construed to affect the ownership of a record;
630 (41) (a) records in the custody or control of the Office of Legislative Auditor General
631 that would reveal the name of a particular legislator who requests a legislative audit prior to the
632 date that audit is completed and made public; and
633 (b) notwithstanding Subsection (41)(a), a request for a legislative audit submitted to the
634 Office of the Legislative Auditor General is a public document unless the legislator asks that
635 the records in the custody or control of the Office of Legislative Auditor General that would
636 reveal the name of a particular legislator who requests a legislative audit be maintained as
637 protected records until the audit is completed and made public;
638 (42) records that provide detail as to the location of an explosive, including a map or
639 other document that indicates the location of:
640 (a) a production facility; or
641 (b) a magazine;
642 (43) information:
643 (a) contained in the statewide database of the Division of Aging and Adult Services
644 created by Section 62A-3-311.1; or
645 (b) received or maintained in relation to the Identity Theft Reporting Information
646 System (IRIS) established under Section 67-5-22;
647 (44) information contained in the Management Information System and Licensing

Information System described in Title 62A, Chapter 4a, Child and Family Services;

(45) information regarding National Guard operations or activities in support of the National Guard's federal mission;

(46) records provided by any pawn or secondhand business to a law enforcement agency or to the central database in compliance with Title 13, Chapter 32a, Pawnshop and Secondhand Merchandise Transaction Information Act;

(47) information regarding food security, risk, and vulnerability assessments performed by the Department of Agriculture and Food;

(48) except to the extent that the record is exempt from this chapter pursuant to Section 63G-2-106, records related to an emergency plan or program, a copy of which is provided to or prepared or maintained by the Division of Emergency Management, and the disclosure of which would jeopardize:

(a) the safety of the general public; or

(b) the security of:

(i) governmental property;

(ii) governmental programs; or

(iii) the property of a private person who provides the Division of Emergency Management information;

(49) records of the Department of Agriculture and Food that provides for the identification, tracing, or control of livestock diseases, including any program established under Title 4, Chapter 24, Utah Livestock Brand and Anti-Theft Act, or Title 4, Chapter 31, Control of Animal Disease;

(50) as provided in Section 26-39-501:

(a) information or records held by the Department of Health related to a complaint regarding a child care program or residential child care which the department is unable to substantiate; and

(b) information or records related to a complaint received by the Department of Health from an anonymous complainant regarding a child care program or residential child care;

(51) unless otherwise classified as public under Section 63G-2-301 and except as provided under Section 41-1a-116, an individual's home address, home telephone number, or personal mobile phone number, if:

679 (a) the individual is required to provide the information in order to comply with a law,
680 ordinance, rule, or order of a government entity; and

681 (b) the subject of the record has a reasonable expectation that this information will be
682 kept confidential due to:

683 (i) the nature of the law, ordinance, rule, or order; and

684 (ii) the individual complying with the law, ordinance, rule, or order;

685 (52) the name, home address, work addresses, and telephone numbers of an individual
686 that is engaged in, or that provides goods or services for, medical or scientific research that is:

687 (a) conducted within the state system of higher education, as defined in Section

688 [53B-1-102](#); and

689 (b) conducted using animals;

690 (53) an initial proposal under Title 63N, Chapter 13, Part 2, Government Procurement
691 Private Proposal Program, to the extent not made public by rules made under that chapter;

692 (54) in accordance with Section [78A-12-203](#), any record of the Judicial Performance
693 Evaluation Commission concerning an individual commissioner's vote on whether or not to
694 recommend that the voters retain a judge including information disclosed under Subsection

695 [78A-12-203\(5\)\(e\)](#);

696 (55) information collected and a report prepared by the Judicial Performance
697 Evaluation Commission concerning a judge, unless Section [20A-7-702](#) or Title 78A, Chapter
698 12, Judicial Performance Evaluation Commission Act, requires disclosure of, or makes public,
699 the information or report;

700 (56) records contained in the Management Information System created in Section
701 [62A-4a-1003](#);

702 (57) records provided or received by the Public Lands Policy Coordinating Office in
703 furtherance of any contract or other agreement made in accordance with Section [63J-4-603](#);

704 (58) information requested by and provided to the 911 Division under Section
705 [63H-7a-302](#);

706 (59) in accordance with Section [73-10-33](#):

707 (a) a management plan for a water conveyance facility in the possession of the Division
708 of Water Resources or the Board of Water Resources; or

709 (b) an outline of an emergency response plan in possession of the state or a county or

municipality;

(60) the following records in the custody or control of the Office of Inspector General of Medicaid Services, created in Section [63A-13-201](#):

(a) records that would disclose information relating to allegations of personal misconduct, gross mismanagement, or illegal activity of a person if the information or allegation cannot be corroborated by the Office of Inspector General of Medicaid Services through other documents or evidence, and the records relating to the allegation are not relied upon by the Office of Inspector General of Medicaid Services in preparing a final investigation report or final audit report;

(b) records and audit workpapers to the extent they would disclose the identity of a person who, during the course of an investigation or audit, communicated the existence of any Medicaid fraud, waste, or abuse, or a violation or suspected violation of a law, rule, or regulation adopted under the laws of this state, a political subdivision of the state, or any recognized entity of the United States, if the information was disclosed on the condition that the identity of the person be protected;

(c) before the time that an investigation or audit is completed and the final investigation or final audit report is released, records or drafts circulated to a person who is not an employee or head of a governmental entity for the person's response or information;

(d) records that would disclose an outline or part of any investigation, audit survey plan, or audit program; or

(e) requests for an investigation or audit, if disclosure would risk circumvention of an investigation or audit;

(61) records that reveal methods used by the Office of Inspector General of Medicaid Services, the fraud unit, or the Department of Health, to discover Medicaid fraud, waste, or abuse;

(62) information provided to the Department of Health or the Division of Occupational and Professional Licensing under Subsection [58-68-304](#)(3) or (4);

(63) a record described in Section [63G-12-210](#);

(64) captured plate data that is obtained through an automatic license plate reader system used by a governmental entity as authorized in Section [41-6a-2003](#);

(65) any record in the custody of the Utah Office for Victims of Crime relating to a

victim, including:

(a) a victim's application or request for benefits;

(b) a victim's receipt or denial of benefits; and

(c) any administrative notes or records made or created for the purpose of, or used to, evaluate or communicate a victim's eligibility for or denial of benefits from the Crime Victim Reparations Fund;

(66) an audio or video recording created by a body-worn camera, as that term is defined in Section 77-7a-103, that records sound or images inside a hospital or health care facility as those terms are defined in Section 78B-3-403, inside a clinic of a health care provider, as that term is defined in Section 78B-3-403, or inside a human service program as that term is defined in ~~Subsection 62A-2-101(19)(a)(vi)]~~ Section 62A-2-101, except for recordings that:

(a) depict the commission of an alleged crime;

(b) record any encounter between a law enforcement officer and a person that results in death or bodily injury, or includes an instance when an officer fires a weapon;

(c) record any encounter that is the subject of a complaint or a legal proceeding against a law enforcement officer or law enforcement agency;

(d) contain an officer involved critical incident as defined in Subsection 76-2-408(1)(d); or

(e) have been requested for reclassification as a public record by a subject or authorized agent of a subject featured in the recording; and

(67) a record pertaining to the search process for a president of an institution of higher education described in Section 53B-2-102, except for application materials for a publicly announced finalist.

Section 6. Section 77-7a-104 is amended to read:

77-7a-104. Activation and use of body-worn cameras.

(1) An officer using a body-worn camera shall verify that the equipment is properly functioning as is reasonably within the officer's ability.

(2) An officer shall report any malfunctioning equipment to the officer's supervisor if:

(a) the body-worn camera issued to the officer is not functioning properly upon initial inspection; or

772 (b) an officer determines that the officer's body-worn camera is not functioning
773 properly at any time while the officer is on duty.

774 (3) An officer shall wear the body-worn camera so that it is clearly visible to the person
775 being recorded.

776 (4) An officer shall activate the body-worn camera prior to any law enforcement
777 encounter, or as soon as reasonably possible.

778 (5) An officer shall record in an uninterrupted manner until after the conclusion of a
779 law enforcement encounter, except as an interruption of a recording is allowed under this
780 section.

781 (6) When going on duty and off duty, an officer who is issued a body-worn camera
782 shall record the officer's name, identification number, and the current time and date, unless the
783 information is already available due to the functionality of the body-worn camera.

784 (7) If a body-worn camera was present during a law enforcement encounter, the officer
785 shall document the presence of the body-worn camera in any report or other official record of a
786 contact.

787 (8) When a body-worn camera has been activated, the officer may not deactivate the
788 body-worn camera until the officer's direct participation in the law enforcement encounter is
789 complete, except as provided in Subsection (9).

790 (9) An officer may deactivate a body-worn camera:

791 (a) to consult with a supervisor or another officer;

792 (b) during a significant period of inactivity; and

793 (c) during a conversation with a sensitive victim of crime, a witness of a crime, or an
794 individual who wishes to report or discuss criminal activity if:

795 (i) the individual who is the subject of the recording requests that the officer deactivate
796 the officer's body-worn camera; and

797 (ii) the officer believes that the value of the information outweighs the value of the
798 potential recording and records the request by the individual to deactivate the body-worn
799 camera.

800 (10) If an officer deactivates a body-worn camera, the officer shall document the
801 reason for deactivating a body-worn camera in a written report.

802 (11) (a) For purposes of this Subsection (11):

- 803 (i) "Health care facility" means the same as that term is defined in Section [78B-3-403](#).
- 804 (ii) "Health care provider" means the same as that term is defined in Section
- 805 [78B-3-403](#).
- 806 (iii) "Hospital" means the same as that term is defined in Section [78B-3-403](#).
- 807 (iv) "Human service program" means the same as that term is defined in [Subsection
- 808 ~~62A-2-101(20)(a)(vi)] Section [62A-2-101](#).~~
- 809 (b) An officer may not activate a body-worn camera in a hospital, health care facility,
- 810 human service program, or the clinic of a health care provider, except during a law
- 811 enforcement encounter, and with notice under Section [77-7a-105](#).

Legislative Review Note
Office of Legislative Research and General Counsel