

1 **SUBSTANCE ABUSE TREATMENT FACILITY PATIENT**

2 **BROKERING**

3 2018 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: Eric K. Hutchings**

6 Senate Sponsor: Gene Davis

8 **LONG TITLE**

9 **General Description:**

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

12 **Highlighted Provisions:**

13 This bill:

- 14 ▶ makes remuneration for the referral of an individual for substance use disorder
15 treatment a class A misdemeanor;
- 16 ▶ specifies permissible exceptions;
- 17 ▶ defines terms; and
- 18 ▶ makes technical changes.

19 **Money Appropriated in this Bill:**

20 None

21 **Other Special Clauses:**

22 None

23 **Utah Code Sections Affected:**

24 AMENDS:

25 **26-36a-103**, as last amended by Laws of Utah 2013, Chapter 32

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

27 **62A-2-101**, as last amended by Laws of Utah 2017, Chapters 29, 148, and 209

28 **62A-2-116**, as last amended by Laws of Utah 2016, Chapter 211

29 **63G-2-305**, as last amended by Laws of Utah 2017, Chapters 374, 382, and 415

30 **77-7a-104**, as last amended by Laws of Utah 2017, Chapter 415



31
32 *Be it enacted by the Legislature of the state of Utah:*

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

34 **26-36a-103. Definitions.**

35 As used in this chapter:

36 (1) "Accountable care organization" means a managed care organization, as defined in
37 42 C.F.R. Sec. 438, that contracts with the department under the provisions of Section
38 **26-18-405**.

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

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

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

46 (5) "Hospital":

47 (a) means a privately owned:

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

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

51 (A) rehabilitation;

52 (B) psychiatric;

53 (C) chemical dependency; or

54 (D) long-term acute care services; and

55 (b) does not include:

56 (i) ~~[a residential care or treatment facility]~~ a human services program, as defined in
57 Section **62A-2-101**;

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

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

62 (A) a state-owned teaching hospital; and

63 (B) the Utah State Hospital.

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

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

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

68 **26-36b-103. Definitions.**

69 As used in this chapter:

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

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

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

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

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

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

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

80 (6) "Non-state government hospital":

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

82 (b) does not include:

83 (i) the Utah State Hospital; or

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

- 86 (7) "Private hospital":
87 (a) means:
88 (i) a privately owned general acute hospital operating in the state as defined in Section
89 26-21-2; and
90 (ii) a privately owned specialty hospital operating in the state, which shall include a
91 privately owned hospital whose inpatient admissions are predominantly:
92 (A) rehabilitation;
93 (B) psychiatric;
94 (C) chemical dependency; or
95 (D) long-term acute care services; and
96 (b) does not include a [~~residential care or treatment facility~~] human services program,
97 as defined in Section 62A-2-101.
98 (8) "State teaching hospital" means a state owned teaching hospital that is part of an
99 institution of higher education.

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

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

102 As used in this chapter:

- 103 (1) "Adult day care" means nonresidential care and supervision:
104 (a) for three or more adults for at least four but less than 24 hours a day; and
105 (b) that meets the needs of functionally impaired adults through a comprehensive
106 program that provides a variety of health, social, recreational, and related support services in a
107 protective setting.
108 (2) "Applicant" means a person who applies for an initial license or a license renewal
109 under this chapter.
110 (3) (a) "Associated with the licensee" means that an individual is:
111 (i) affiliated with a licensee as an owner, director, member of the governing body,
112 employee, agent, provider of care, department contractor, or volunteer; or
113 (ii) applying to become affiliated with a licensee in a capacity described in Subsection

114 (3)(a)(i).
115 (b) "Associated with the licensee" does not include:
116 (i) service on the following bodies, unless that service includes direct access to a child
117 or a vulnerable adult:
118 (A) a local mental health authority described in Section 17-43-301;
119 (B) a local substance abuse authority described in Section 17-43-201; or
120 (C) a board of an organization operating under a contract to provide mental health or
121 substance abuse programs, or services for the local mental health authority or substance abuse
122 authority; or
123 (ii) a guest or visitor whose access to a child or a vulnerable adult is directly supervised
124 at all times.
125 (4) (a) "Boarding school" means a private school that:
126 (i) uses a regionally accredited education program;
127 (ii) provides a residence to the school's students:
128 (A) for the purpose of enabling the school's students to attend classes at the school; and
129 (B) as an ancillary service to educating the students at the school;
130 (iii) has the primary purpose of providing the school's students with an education, as
131 defined in Subsection (4)(b)(i); and
132 (iv) (A) does not provide the treatment or services described in Subsection ~~[(29)]~~
133 (33)(a); or
134 (B) provides the treatment or services described in Subsection ~~[(29)]~~ (33)(a) on a
135 limited basis, as described in Subsection (4)(b)(ii).
136 (b) (i) For purposes of Subsection (4)(a)(iii), "education" means a course of study for
137 one or more of grades kindergarten through 12th grade.
138 (ii) For purposes of Subsection (4)(a)(iv)(B), a private school provides the treatment or
139 services described in Subsection ~~[(29)]~~ (33)(a) on a limited basis if:
140 (A) the treatment or services described in Subsection ~~[(29)]~~ (33)(a) are provided only
141 as an incidental service to a student; and

- 142 (B) the school does not:
- 143 (I) specifically solicit a student for the purpose of providing the treatment or services
- 144 described in Subsection [~~(29)~~] (33)(a); or
- 145 (II) have a primary purpose of providing the treatment or services described in
- 146 Subsection [~~(29)~~] (33)(a).
- 147 (c) "Boarding school" does not include a therapeutic school.
- 148 (5) "Child" means a person under 18 years of age.
- 149 (6) "Child placing" means receiving, accepting, or providing custody or care for any
- 150 child, temporarily or permanently, for the purpose of:
- 151 (a) finding a person to adopt the child;
- 152 (b) placing the child in a home for adoption; or
- 153 (c) foster home placement.
- 154 (7) "Child-placing agency" means a person that engages in child placing.
- 155 (8) "Client" means an individual who receives or has received services from a licensee.
- 156 (9) "Day treatment" means specialized treatment that is provided to:
- 157 (a) a client less than 24 hours a day; and
- 158 (b) four or more persons who:
- 159 (i) are unrelated to the owner or provider; and
- 160 (ii) have emotional, psychological, developmental, physical, or behavioral
- 161 dysfunctions, impairments, or chemical dependencies.
- 162 (10) "Department" means the Department of Human Services.
- 163 (11) "Department contractor" means an individual who:
- 164 (a) provides services under a contract with the department; and
- 165 (b) due to the contract with the department, has or will likely have direct access to a
- 166 child or vulnerable adult.
- 167 (12) "Direct access" means that an individual has, or likely will have:
- 168 (a) contact with or access to a child or vulnerable adult that provides the individual
- 169 with an opportunity for personal communication or touch; or

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

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

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

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

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

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

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

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

184 (20) "Health benefit plan" means the same as that term is defined in Section
185 [31A-22-619.6](#).

186 (21) "Health care provider" means the same as that term is defined in Section
187 [78B-3-403](#).

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

189 [~~20~~] (23) (a) "Human services program" means a:

190 (i) foster home;

191 (ii) therapeutic school;

192 (iii) youth program;

193 (iv) resource family home;

194 (v) recovery residence; or

195 (vi) facility or program that provides:

196 (A) secure treatment;

197 (B) inpatient treatment;

- 198 (C) residential treatment;
- 199 (D) residential support;
- 200 (E) adult day care;
- 201 (F) day treatment;
- 202 (G) outpatient treatment;
- 203 (H) domestic violence treatment;
- 204 (I) child-placing services;
- 205 (J) social detoxification; or
- 206 (K) any other human services that are required by contract with the department to be
- 207 licensed with the department.
- 208 (b) "Human services program" does not include a boarding school.
- 209 [~~(21)~~] (24) "Indian child" means the same as that term is defined in 25 U.S.C. Sec.
- 210 1903.
- 211 [~~(22)~~] (25) "Indian country" means the same as that term is defined in 18 U.S.C. Sec.
- 212 1151.
- 213 [~~(23)~~] (26) "Indian tribe" means the same as that term is defined in 25 U.S.C. Sec.
- 214 1903.
- 215 [~~(24)~~] (27) "Licensee" means an individual or a human services program licensed by
- 216 the office.
- 217 [~~(25)~~] (28) "Local government" means a city, town, metro township, or county.
- 218 [~~(26)~~] (29) "Minor" has the same meaning as "child."
- 219 [~~(27)~~] (30) "Office" means the Office of Licensing within the Department of Human
- 220 Services.
- 221 [~~(28)~~] (31) "Outpatient treatment" means individual, family, or group therapy or
- 222 counseling designed to improve and enhance social or psychological functioning for those
- 223 whose physical and emotional status allows them to continue functioning in their usual living
- 224 environment.
- 225 (32) "Practice group" or "group practice" means two or more health care providers

226 legally organized as a partnership, professional corporation, or similar association, for which:

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

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

232 ~~[(29)]~~ (33) (a) "Recovery residence" means a home, residence, or facility that meets at
233 least two of the following requirements:

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

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

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

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

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

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

244 (b) "Recovery residence" does not mean:

245 (i) a residential treatment program;

246 (ii) residential support; or

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

248 (A) residents, by their majority vote, establish, implement, and enforce policies

249 governing the living environment, including the manner in which applications for residence are
250 approved and the manner in which residents are expelled;

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

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

254 living environment.

255 ~~[(30)]~~ (34) "Regular business hours" means:

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

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

258 ~~[(31)]~~ (35) (a) "Residential support" means arranging for or providing the necessities of
259 life as a protective service to individuals or families who have a disability or who are
260 experiencing a dislocation or emergency that prevents them from providing these services for
261 themselves or their families.

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

264 (i) emotional;

265 (ii) psychological;

266 (iii) developmental; or

267 (iv) behavioral.

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

269 (d) "Residential support" does not include:

270 (i) a recovery residence; or

271 (ii) residential services that are performed:

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

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

275 ~~[(32)]~~ (36) (a) "Residential treatment" means a 24-hour group living environment for
276 four or more individuals unrelated to the owner or provider that offers room or board and
277 specialized treatment, behavior modification, rehabilitation, discipline, emotional growth, or
278 habilitation services for persons with emotional, psychological, developmental, or behavioral
279 dysfunctions, impairments, or chemical dependencies.

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

281 (i) boarding school;

282 (ii) foster home; or

283 (iii) recovery residence.

284 [~~33~~] (37) "Residential treatment program" means a human services program that
285 provides:

286 (a) residential treatment; or

287 (b) secure treatment.

288 [~~34~~] (38) (a) "Secure treatment" means 24-hour specialized residential treatment or
289 care for persons whose current functioning is such that they cannot live independently or in a
290 less restrictive environment.

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

294 [~~35~~] (39) "Social detoxification" means short-term residential services for persons
295 who are experiencing or have recently experienced drug or alcohol intoxication, that are
296 provided outside of a health care facility licensed under Title 26, Chapter 21, Health Care
297 Facility Licensing and Inspection Act, and that include:

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

300 (b) specialized rehabilitation to acquire sobriety; and

301 (c) aftercare services.

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

304 [~~36~~] (41) "Substance abuse treatment program" or "substance use disorder treatment
305 program" means a program:

306 (a) designed to provide:

307 (i) specialized drug or alcohol treatment;

308 (ii) rehabilitation; or

309 (iii) habilitation services; and

310 (b) that provides the treatment or services described in Subsection [~~(36)~~] (40)(a) to
311 persons with:

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

313 (ii) chemical dependency disorder.

314 [~~(37)~~] (42) "Therapeutic school" means a residential group living facility:

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

316 (i) the owner of the facility; or

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

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

319 (i) at home;

320 (ii) in a public school; or

321 (iii) in a nonresidential private school; and

322 (c) that offers:

323 (i) room and board; and

324 (ii) an academic education integrated with:

325 (A) specialized structure and supervision; or

326 (B) services or treatment related to:

327 (I) a disability;

328 (II) emotional development;

329 (III) behavioral development;

330 (IV) familial development; or

331 (V) social development.

332 [~~(38)~~] (43) "Unrelated persons" means persons other than parents, legal guardians,
333 grandparents, brothers, sisters, uncles, or aunts.

334 [~~(39)~~] (44) "Vulnerable adult" means an elder adult or an adult who has a temporary or
335 permanent mental or physical impairment that substantially affects the person's ability to:

336 (a) provide personal protection;

337 (b) provide necessities such as food, shelter, clothing, or mental or other health care;

- 338 (c) obtain services necessary for health, safety, or welfare;
- 339 (d) carry out the activities of daily living;
- 340 (e) manage the adult's own resources; or
- 341 (f) comprehend the nature and consequences of remaining in a situation of abuse,
- 342 neglect, or exploitation.

343 [~~40~~] (45) (a) "Youth program" means a nonresidential program designed to provide
344 behavioral, substance abuse, or mental health services to minors that:

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

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

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

356 **62A-2-116. Violation -- Criminal penalties.**

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

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

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

365 (2) Any person that violates a provision of this chapter, lawful orders of the office, or

366 rules adopted under this chapter may be assessed a penalty not to exceed the sum of \$10,000
367 per violation, in:

368 (a) a judicial civil proceeding; or

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

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

373 (a) seeking criminal penalties;

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

375 (c) seeking injunctive or equitable relief.

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

378 (5) Notwithstanding Subsection (1)(a) and subject to Subsections (1)(b) and (2), an
379 individual is guilty of a class A misdemeanor if the individual knowingly and willfully offers,
380 pays, promises to pay, solicits, or receives any remuneration, including any commission, bonus,
381 kickback, bribe, or rebate, directly or indirectly, overtly or covertly, in cash or in kind, or
382 engages in any split-fee arrangement in return for:

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

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

387 (6) Subsection (5) does not prohibit:

388 (a) any discount, payment, waiver of payment, or payment practice not prohibited by
389 42 U.S.C. Sec. 1320a-7(b) or regulations made under 42 U.S.C. Sec. 1320a-7(b);

390 (b) patient referrals within a practice group;

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

394 (d) payments to or by a health care provider, practice group, or substance use disorder
395 treatment program that has contracted with a local mental health authority, a local substance
396 abuse authority, a health insurer, a health care purchasing group, or the Medicare or Medicaid
397 program to provide health, mental health, or substance use disorder goods or services under a
398 health benefit plan when the payments are for goods or services under the plan; or

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

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

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

410 (iii) charges and collects fees from a health care provider, practice group, or substance
411 use disorder treatment program participating in information services that are set in advance, are
412 consistent with the fair market value for those information services, and are not based on the
413 potential value of a patient or patients to a health care provider, practice group, or substance
414 use disorder treatment program of the goods or services provided by the health care provider,
415 practice group, or substance use disorder treatment program.

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

417 **63G-2-305. Protected records.**

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

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

421 (2) commercial information or nonindividual financial information obtained from a

422 person if:

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

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

428 (c) the person submitting the information has provided the governmental entity with
429 the information specified in Section [63G-2-309](#);

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

434 (4) records, the disclosure of which could cause commercial injury to, or confer a
435 competitive advantage upon a potential or actual competitor of, a commercial project entity as
436 defined in Subsection [11-13-103\(4\)](#);

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

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

445 (a) an invitation for bids;

446 (b) a request for proposals;

447 (c) a request for quotes;

448 (d) a grant; or

449 (e) other similar document;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

487 (a) reasonably could be expected to interfere with investigations undertaken for
488 enforcement, discipline, licensing, certification, or registration purposes;

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

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

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

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

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

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

505 (13) records that, if disclosed, would jeopardize the security or safety of a correctional

506 facility, or records relating to incarceration, treatment, probation, or parole, that would interfere
507 with the control and supervision of an offender's incarceration, treatment, probation, or parole;

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

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

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

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

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

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

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

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

528 (A) members of a legislative body;

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

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

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

533 (20) (a) records in the custody or control of the Office of Legislative Research and

534 General Counsel, that, if disclosed, would reveal a particular legislator's contemplated
535 legislation or contemplated course of action before the legislator has elected to support the
536 legislation or course of action, or made the legislation or course of action public; and
537 (b) notwithstanding Subsection (20)(a), the form to request legislation submitted to the
538 Office of Legislative Research and General Counsel is a public document unless a legislator
539 asks that the records requesting the legislation be maintained as protected records until such
540 time as the legislator elects to make the legislation or course of action public;

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

544 (22) drafts, unless otherwise classified as public;

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

546 (a) collective bargaining; or
547 (b) imminent or pending litigation;

548 (24) records of investigations of loss occurrences and analyses of loss occurrences that
549 may be covered by the Risk Management Fund, the Employers' Reinsurance Fund, the
550 Uninsured Employers' Fund, or similar divisions in other governmental entities;

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

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

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

559 (28) records of an institution within the state system of higher education defined in
560 Section [53B-1-102](#) regarding tenure evaluations, appointments, applications for admissions,
561 retention decisions, and promotions, which could be properly discussed in a meeting closed in

562 accordance with Title 52, Chapter 4, Open and Public Meetings Act, provided that records of
563 the final decisions about tenure, appointments, retention, promotions, or those students
564 admitted, may not be classified as protected under this section;

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

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

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

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

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

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

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

589 (36) materials to which access must be limited for purposes of securing or maintaining

590 the governmental entity's proprietary protection of intellectual property rights including patents,
591 copyrights, and trade secrets;

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

596 (a) the donor requests anonymity in writing;

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

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

604 (38) accident reports, except as provided in Sections 41-6a-404, 41-12a-202, and
605 73-18-13;

606 (39) a notification of workers' compensation insurance coverage described in Section
607 34A-2-205;

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

611 (i) unpublished lecture notes;

612 (ii) unpublished notes, data, and information:

613 (A) relating to research; and

614 (B) of:

615 (I) the institution within the state system of higher education defined in Section
616 53B-1-102; or

617 (II) a sponsor of sponsored research;

618 (iii) unpublished manuscripts;
619 (iv) creative works in process;
620 (v) scholarly correspondence; and
621 (vi) confidential information contained in research proposals;
622 (b) Subsection (40)(a) may not be construed to prohibit disclosure of public
623 information required pursuant to Subsection 53B-16-302(2)(a) or (b); and
624 (c) Subsection (40)(a) may not be construed to affect the ownership of a record;
625 (41) (a) records in the custody or control of the Office of Legislative Auditor General
626 that would reveal the name of a particular legislator who requests a legislative audit prior to the
627 date that audit is completed and made public; and
628 (b) notwithstanding Subsection (41)(a), a request for a legislative audit submitted to the
629 Office of the Legislative Auditor General is a public document unless the legislator asks that
630 the records in the custody or control of the Office of Legislative Auditor General that would
631 reveal the name of a particular legislator who requests a legislative audit be maintained as
632 protected records until the audit is completed and made public;
633 (42) records that provide detail as to the location of an explosive, including a map or
634 other document that indicates the location of:
635 (a) a production facility; or
636 (b) a magazine;
637 (43) information:
638 (a) contained in the statewide database of the Division of Aging and Adult Services
639 created by Section 62A-3-311.1; or
640 (b) received or maintained in relation to the Identity Theft Reporting Information
641 System (IRIS) established under Section 67-5-22;
642 (44) information contained in the Management Information System and Licensing
643 Information System described in Title 62A, Chapter 4a, Child and Family Services;
644 (45) information regarding National Guard operations or activities in support of the
645 National Guard's federal mission;

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

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

651 (48) except to the extent that the record is exempt from this chapter pursuant to Section
652 [63G-2-106](#), records related to an emergency plan or program, a copy of which is provided to or
653 prepared or maintained by the Division of Emergency Management, and the disclosure of
654 which would jeopardize:

655 (a) the safety of the general public; or

656 (b) the security of:

657 (i) governmental property;

658 (ii) governmental programs; or

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

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

665 (50) as provided in Section [26-39-501](#):

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

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

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

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

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

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

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

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

682 (a) conducted within the state system of higher education, as defined in Section
683 [53B-1-102](#); and

684 (b) conducted using animals;

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

687 (54) in accordance with Section [78A-12-203](#), any record of the Judicial Performance
688 Evaluation Commission concerning an individual commissioner's vote on whether or not to
689 recommend that the voters retain a judge including information disclosed under Subsection
690 [78A-12-203\(5\)\(e\)](#);

691 (55) information collected and a report prepared by the Judicial Performance
692 Evaluation Commission concerning a judge, unless Section [20A-7-702](#) or Title 78A, Chapter
693 12, Judicial Performance Evaluation Commission Act, requires disclosure of, or makes public,
694 the information or report;

695 (56) records contained in the Management Information System created in Section
696 [62A-4a-1003](#);

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

699 (58) information requested by and provided to the 911 Division under Section
700 [63H-7a-302](#);

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

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

704 (b) an outline of an emergency response plan in possession of the state or a county or
705 municipality;

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

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

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

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

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

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

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

- 730 (62) information provided to the Department of Health or the Division of Occupational
731 and Professional Licensing under Subsection 58-68-304(3) or (4);
- 732 (63) a record described in Section 63G-12-210;
- 733 (64) captured plate data that is obtained through an automatic license plate reader
734 system used by a governmental entity as authorized in Section 41-6a-2003;
- 735 (65) any record in the custody of the Utah Office for Victims of Crime relating to a
736 victim, including:
- 737 (a) a victim's application or request for benefits;
- 738 (b) a victim's receipt or denial of benefits; and
- 739 (c) any administrative notes or records made or created for the purpose of, or used to,
740 evaluate or communicate a victim's eligibility for or denial of benefits from the Crime Victim
741 Reparations Fund;
- 742 (66) an audio or video recording created by a body-worn camera, as that term is
743 defined in Section 77-7a-103, that records sound or images inside a hospital or health care
744 facility as those terms are defined in Section 78B-3-403, inside a clinic of a health care
745 provider, as that term is defined in Section 78B-3-403, or inside a human service program as
746 that term is defined in [~~Subsection 62A-2-101(19)(a)(vi)~~] Section 62A-2-101, except for
747 recordings that:
- 748 (a) depict the commission of an alleged crime;
- 749 (b) record any encounter between a law enforcement officer and a person that results in
750 death or bodily injury, or includes an instance when an officer fires a weapon;
- 751 (c) record any encounter that is the subject of a complaint or a legal proceeding against
752 a law enforcement officer or law enforcement agency;
- 753 (d) contain an officer involved critical incident as defined in Subsection
754 76-2-408(1)(d); or
- 755 (e) have been requested for reclassification as a public record by a subject or
756 authorized agent of a subject featured in the recording; and
- 757 (67) a record pertaining to the search process for a president of an institution of higher

758 education described in Section 53B-2-102, except for application materials for a publicly
759 announced finalist.

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

761 **77-7a-104. Activation and use of body-worn cameras.**

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

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

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

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

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

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

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

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

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

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

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

786 (a) to consult with a supervisor or another officer;
787 (b) during a significant period of inactivity; and
788 (c) during a conversation with a sensitive victim of crime, a witness of a crime, or an
789 individual who wishes to report or discuss criminal activity if:
790 (i) the individual who is the subject of the recording requests that the officer deactivate
791 the officer's body-worn camera; and
792 (ii) the officer believes that the value of the information outweighs the value of the
793 potential recording and records the request by the individual to deactivate the body-worn
794 camera.
795 (10) If an officer deactivates a body-worn camera, the officer shall document the
796 reason for deactivating a body-worn camera in a written report.
797 (11) (a) For purposes of this Subsection (11):
798 (i) "Health care facility" means the same as that term is defined in Section [78B-3-403](#).
799 (ii) "Health care provider" means the same as that term is defined in Section
800 [78B-3-403](#).
801 (iii) "Hospital" means the same as that term is defined in Section [78B-3-403](#).
802 (iv) "Human service program" means the same as that term is defined in [~~Subsection~~
803 ~~62A-2-101(20)(a)(vi)] Section [62A-2-101](#).
804 (b) An officer may not activate a body-worn camera in a hospital, health care facility,
805 human service program, or the clinic of a health care provider, except during a law
806 enforcement encounter, and with notice under Section [77-7a-105](#).~~