

1 **SUBSTANCE USE DISORDER TREATMENT AMENDMENTS**

2 2018 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: LaVar Christensen**

5 Senate Sponsor: J. Stuart Adams

7 **LONG TITLE**

8 **General Description:**

9 This bill amends provisions regarding treatment for substance use disorder.

10 **Highlighted Provisions:**

11 This bill:

- 12 ▶ defines "emergency, life saving treatment";
- 13 ▶ clarifies and requires a binding commitment to pay, rather than a "financial
- 14 guarantee," when an individual seeks an order for essential treatment and
- 15 intervention;
- 16 ▶ allows the documentation of certain emergency, life saving treatment to qualify to
- 17 reduce the number of essential treatment examinations that a court shall require;
- 18 ▶ establishes procedures to follow when an individual fails to comply with a court
- 19 order related to a petition for essential treatment and intervention;
- 20 ▶ allows a court to designate an individual to be a personal representative, under
- 21 specified conditions; and
- 22 ▶ makes technical changes.

23 **Money Appropriated in this Bill:**

24 None

25 **Other Special Clauses:**

26 None

27 **Utah Code Sections Affected:**



28 AMENDS:

29 **62A-15-1202**, as enacted by Laws of Utah 2017, Chapter 408

30 **62A-15-1203**, as enacted by Laws of Utah 2017, Chapter 408

31 **62A-15-1205**, as enacted by Laws of Utah 2017, Chapter 408

32 **62A-15-1207**, as enacted by Laws of Utah 2017, Chapter 408

33 ENACTS:

34 **62A-15-1205.5**, Utah Code Annotated 1953

35 **62A-15-1207.5**, Utah Code Annotated 1953



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

38 Section 1. Section **62A-15-1202** is amended to read:

39 **62A-15-1202. Definitions.**

40 As used in this part:

41 (1) "Emergency, life saving treatment" means treatment that is:

42 (a) provided at a licensed health care facility or licensed human services program;

43 (b) provided by a licensed health care professional;

44 (c) necessary to save the life of the patient; and

45 (d) required due to the patient's:

46 (i) use of an illegal substance; or

47 (ii) excessive use or misuse of a prescribed medication.

48 ~~[(1)]~~ (2) "Essential treatment examiner" means:

49 (a) a licensed physician, preferably a psychiatrist, who is designated by the division as
50 specifically qualified by training or experience in the diagnosis of substance use disorder; or

51 (b) a licensed mental health professional designated by the division as specially
52 qualified by training and who has at least five years' continual experience in the treatment of
53 substance use disorder.

54 ~~[(2)]~~ (3) "Relative" means an adult who is a spouse, parent, stepparent, grandparent,
55 child, or sibling of an individual.

56 ~~[(3)]~~ (4) "Serious harm" means the individual, due to substance use disorder, is at
57 serious risk of:

58 (a) drug overdose;

- 59 (b) suicide;
- 60 (c) serious bodily self-injury;
- 61 (d) serious bodily injury because the individual is incapable of providing the basic
- 62 necessities of life, including food, clothing, or shelter; or
- 63 (e) causing or attempting to cause serious bodily injury to another individual.
- 64 [~~4~~] (5) "Substance use disorder" means the same as that term is defined in the current
- 65 edition of the Diagnostic and Statistical Manual of Mental Disorders published by the
- 66 American Psychiatric Association.

67 Section 2. Section **62A-15-1203** is amended to read:

68 **62A-15-1203. Petition for essential treatment -- Contents -- Commitment to pay.**

69 (1) A relative seeking essential treatment and intervention for a sufferer of a substance

70 use disorder may file a petition with the district court of the county in which the sufferer of the

71 substance use disorder resides or is found.

72 (2) The petition shall include:

73 (a) the respondent's:

- 74 (i) legal name;
- 75 (ii) date of birth, if known;
- 76 (iii) social security number, if known; and
- 77 (iv) residence and current location, if known;

78 (b) the petitioner's relationship to the respondent;

79 (c) the name and residence of the respondent's legal guardian, if any and if known;

80 (d) a statement that the respondent:

- 81 (i) is suffering from a substance use disorder; and
- 82 (ii) if not treated for the substance use disorder presents a serious harm to self or

83 others;

84 (e) the factual basis for the statement described in Subsection (4)(d); and

85 (f) at least one specified local substance abuse authority or approved treatment facility

86 or program where the respondent may receive essential treatment.

87 (3) Any petition filed under this section:

88 (a) may be accompanied by proof of health insurance to provide for the respondent's

89 essential treatment; [~~and~~]

90 (b) shall be accompanied by a [~~financial guarantee~~] binding commitment to pay, signed
91 by the petitioner or another individual, obligating the petitioner or other individual to pay all
92 treatment costs beyond those covered by the respondent's health insurance policy for
93 court-ordered essential treatment for the respondent[~~;~~]; and

94 (c) may be accompanied by documentation of emergency, life saving treatment
95 provided to the respondent.

96 (4) Nothing in this section alters the contractual relationship between a health insurer
97 and an insured individual.

98 Section 3. Section **62A-15-1205** is amended to read:

99 **62A-15-1205. Proceeding for essential treatment -- Duties of court -- Disposition.**

100 (1) A district court shall review the assertions contained in the verified petition
101 described in Section **62A-15-1203**.

102 (2) If the court determines that the assertions, if true, are sufficient to order the
103 respondent to undergo essential treatment, the court shall:

104 (a) set an expedited date for a time-sensitive hearing to determine whether the court
105 should order the respondent to undergo essential treatment for a substance use disorder;

106 (b) provide notice of:

107 (i) the contents of the petition, including all assertions made;

108 (ii) a copy of any order for detention or examination;

109 (iii) the date of the hearing;

110 (iv) the purpose of the hearing;

111 (v) the right of the respondent to be represented by legal counsel; and

112 (vi) the right of the respondent to request a preliminary hearing before submitting to an
113 order for examination;

114 (c) provide notice to:

115 (i) the respondent;

116 (ii) the respondent's guardian, if any; and

117 (iii) the petitioner; and

118 (d) subject to the right described in Subsection (2)(b)(vi), order the respondent to be
119 examined before the hearing date:

120 (i) by two essential treatment examiners[~~;~~]; or

- 121 (ii) by one essential treatment examiner, if documentation before the court
122 demonstrates that the respondent received emergency, life saving treatment:
- 123 (A) within 30 days before the day on which the petition for essential treatment and
124 intervention was filed; or
- 125 (B) during the pendency of the petition for essential treatment and intervention.
- 126 (3) [~~The~~] An essential treatment [~~examiners~~] examiner shall examine the respondent to
127 determine:
- 128 (a) whether the respondent meets each of the criteria described in Section
129 62A-15-1204;
- 130 (b) the severity of the respondent's substance use disorder, if any;
- 131 (c) what forms of treatment would substantially benefit the respondent, if the examiner
132 determines that the respondent has a substance use disorder; and
- 133 (d) the appropriate duration for essential treatment, if essential treatment is
134 recommended.
- 135 (4) An essential treatment examiner shall certify the examiner's findings to the court
136 within 24 hours after completion of the examination.
- 137 (5) The court may, based upon the findings of [~~the~~] an essential treatment [~~examiners~~]
138 examiner, terminate the proceedings and dismiss the petition.
- 139 (6) The parties may, at any time, make a binding stipulation to an essential treatment
140 plan and submit that plan to the court for court order.
- 141 (7) At the hearing, the petitioner and the respondent may testify and may
142 cross-examine witnesses.
- 143 (8) If, upon completion of the hearing, the court finds that the criteria in Section
144 62A-15-1204 are met, the court shall order essential treatment for an initial period that:
- 145 (a) does not exceed 360 days, subject to periodic review as provided in Section
146 62A-15-1206; and
- 147 (b) (i) is recommended by an essential treatment examiner; or
148 (ii) is otherwise agreed to at the hearing.
- 149 (9) The court shall designate the facility for the essential treatment, as:
- 150 (a) described in the petition;
- 151 (b) recommended by an essential treatment examiner; or

152 (c) agreed to at the hearing.

153 (10) The court shall issue an order that includes the court's findings and the reasons for
154 the court's determination.

155 (11) The court may order the petitioner to be the respondent's personal representative,
156 as described in 45 C.F.R. Sec. 164.502(g), for purposes of the respondent's essential treatment.

157 Section 4. Section **62A-15-1205.5** is enacted to read:

158 **62A-15-1205.5. Failure to comply with court order.**

159 (1) The provisions of this section apply after a respondent has been afforded full due
160 process rights, as provided in this Essential Treatment and Intervention Act, including notice,
161 an opportunity to respond and appear at a hearing, and, as applicable, the court's finding that
162 the evidence meets the clear and convincing standard, as described in Section [62A-15-1204](#), for
163 a court to order essential treatment and intervention.

164 (2) When a respondent fails to comply with a court order issued under Subsection
165 [62A-15-1205\(2\)\(d\)](#) or (10), the court may:

166 (a) find the respondent in contempt under Subsection [78B-6-301\(5\)](#); and

167 (b) issue a warrant of commitment under Section [78B-6-312](#).

168 (3) When a peace officer executes a warrant issued under this section, the officer shall
169 take the respondent into protective custody and transport the respondent to the location
170 specified by the court.

171 (4) Notwithstanding Subsection (3), if a peace officer determines through the peace
172 officer's experience and training that taking the respondent into protective custody or
173 transporting the respondent would increase the risk of substantial danger to the respondent or
174 others, a peace officer may exercise discretion to not take the respondent into custody or
175 transport the respondent, as permitted by policies and procedures established by the peace
176 officer's law enforcement agency and any applicable federal or state statute, or case law.

177 Section 5. Section **62A-15-1207** is amended to read:

178 **62A-15-1207. Seventy-two-hour emergency treatment pending a final court**
179 **order.**

180 (1) A court may order a respondent to be hospitalized for up to 72 hours if:

181 (a) an essential treatment examiner has examined the respondent and certified that the
182 respondent meets the criteria described in Section [62A-15-1204](#); and

183 (b) the court finds by clear and convincing evidence that the respondent presents an
184 imminent threat of serious harm to self or others as a result of a substance use disorder.

185 (2) An individual who is admitted to a hospital under this section shall be released
186 from the hospital within 72 hours after admittance, unless a treating physician or essential
187 treatment examiner determines that the individual continues to pose an imminent threat of
188 serious harm to self or others.

189 (3) If a treating physician or essential treatment examiner makes the determination
190 described in Subsection (2), the individual may be detained for as long as the threat of serious
191 harm remains imminent, but not more than 10 days after the day on which the individual was
192 hospitalized, unless a court orders otherwise.

193 (4) A treating physician or an essential treatment examiner shall, as frequently as
194 practicable, examine an individual hospitalized under this section and release the individual if
195 ~~[the examination determines]~~ it is determined that a threat of imminent serious harm no longer
196 exists.

197 Section 6. Section **62A-15-1207.5** is enacted to read:

198 **62A-15-1207.5. Emergency, life saving treatment -- Temporary personal**
199 **representative.**

200 (1) When an individual receives emergency, life saving treatment:

201 (a) a licensed health care professional, at the health care facility where the emergency,
202 life saving treatment is provided, may ask the individual who, if anyone, may be contacted and
203 informed regarding the individual's treatment;

204 (b) a treating physician may hold the individual in the health care facility for up to 48
205 hours, if the treating physician determines that the individual poses a serious harm to self or
206 others; and

207 (c) a relative of the individual may petition a court to be designated as the individual's
208 personal representative, described in 45 C.F.R. Sec. 164.502(g), for the limited purposes of the
209 individual's medical and mental health care related to a substance use disorder.

210 (2) The petition described in Subsection (1)(c) shall include:

211 (a) the respondent's:

212 (i) legal name;

213 (ii) date of birth, if known;

- 214 (iii) social security number, if known; and
- 215 (iv) residence and current location, if known;
- 216 (b) the petitioner's relationship to the respondent;
- 217 (c) the name and residence of the respondent's legal guardian, if any and if known;
- 218 (d) a statement that the respondent:
- 219 (i) is suffering from a substance use disorder; and
- 220 (ii) has received, within the last 72 hours, emergency, life saving treatment;
- 221 (e) the factual basis for the statement described in Subsection (2)(d); and
- 222 (f) the name of any other individual, if any, who may be designated as the respondent's
- 223 personal representative.
- 224 (3) A court shall grant a petition for designation as a personal representative, ex parte,
- 225 if it appears from the petition for designation as a court-designated personal representative that:
- 226 (a) the respondent is suffering from a substance use disorder;
- 227 (b) the respondent received emergency, life saving treatment within 10 days before the
- 228 day on which the petition for designation as a personal representative is filed;
- 229 (c) the petitioner is a relative of the respondent; and
- 230 (d) no other individual is otherwise designated as the respondent's personal
- 231 representative.
- 232 (4) When a court grants, ex parte, a petition for designation as a personal
- 233 representative, the court:
- 234 (a) shall provide notice to the respondent;
- 235 (b) shall order the petitioner to be the respondent's personal representative for 10 days
- 236 after the day on which the court designates the petitioner as the respondent's personal
- 237 representative; and
- 238 (c) may extend the duration of the order:
- 239 (i) for good cause shown, after the respondent has been notified and given a proper and
- 240 sufficient opportunity to respond; or
- 241 (ii) if the respondent consents to an extension.