

PRIVATE COUNSELORS AMENDMENTS

2019 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Christine F. Watkins

Senate Sponsor: Wayne A. Harper

LONG TITLE

General Description:

This bill amends certification requirements for private mental health therapists to provide certain public services to certain individuals.

Highlighted Provisions:

This bill:

- ▶ modifies the authority of the Division of Substance Abuse and Mental Health to establish requirements and procedures for certification of a practitioner, provider, or facility that provides mental health treatment to certain individuals;
- ▶ provides that the Division of Substance Abuse and Mental Health may not require additional licensure for a private mental health therapist before the therapist may provide mental health and substance use disorder services to individuals who are incarcerated or who are required to participate in treatment by a court or the Board of Pardons and Parole; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

62A-15-103, as last amended by Laws of Utah 2018, Chapter 322

29 ENACTS:

30 [62A-15-103.5](#), Utah Code Annotated 1953

31

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

33 Section 1. Section **62A-15-103** is amended to read:

34 **62A-15-103. Division -- Creation -- Responsibilities.**

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

38 (2) The division shall:

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

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

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

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

48 (v) except as provided in Section [62A-15-103.5](#), make rules in accordance with Title
49 63G, Chapter 3, Utah Administrative Rulemaking Act, to develop, in collaboration with public
50 and private programs, minimum standards for public and private providers of substance abuse
51 and mental health programs licensed by the department under Title 62A, Chapter 2, Licensure
52 of Programs and Facilities;

53 (vi) promote integrated programs that address an individual's substance abuse, mental
54 health, physical health, and criminal risk factors;

55 (vii) establish and promote an evidence-based continuum of screening, assessment,

56 prevention, treatment, and recovery support services in the community for individuals with
57 substance use disorder and mental illness that addresses criminal risk factors;

58 (viii) evaluate the effectiveness of programs described in this Subsection (2);

59 (ix) consider the impact of the programs described in this Subsection (2) on:

60 (A) emergency department utilization;

61 (B) jail and prison populations;

62 (C) the homeless population; and

63 (D) the child welfare system; and

64 (x) promote or establish programs for education and certification of instructors to
65 educate persons convicted of driving under the influence of alcohol or drugs or driving with
66 any measurable controlled substance in the body;

67 (b) (i) collect and disseminate information pertaining to mental health;

68 (ii) provide direction over the state hospital including approval of its budget,
69 administrative policy, and coordination of services with local service plans;

70 (iii) make rules in accordance with Title 63G, Chapter 3, Utah Administrative
71 Rulemaking Act, to educate families concerning mental illness and promote family
72 involvement, when appropriate, and with patient consent, in the treatment program of a family
73 member; and

74 (iv) make rules in accordance with Title 63G, Chapter 3, Utah Administrative
75 Rulemaking Act, to direct that an individual receiving services through a local mental health
76 authority or the Utah State Hospital be informed about and, if desired by the individual,
77 provided assistance in the completion of a declaration for mental health treatment in
78 accordance with Section [62A-15-1002](#);

79 (c) (i) consult and coordinate with local substance abuse authorities and local mental
80 health authorities regarding programs and services;

81 (ii) provide consultation and other assistance to public and private agencies and groups
82 working on substance abuse and mental health issues;

83 (iii) promote and establish cooperative relationships with courts, hospitals, clinics,
84 medical and social agencies, public health authorities, law enforcement agencies, education and
85 research organizations, and other related groups;

86 (iv) promote or conduct research on substance abuse and mental health issues, and
87 submit to the governor and the Legislature recommendations for changes in policy and
88 legislation;

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

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

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

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

95 (A) local substance abuse authorities;

96 (B) local mental health authorities; and

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

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

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

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

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

- 110 (B) a statewide comprehensive continuum of mental health services;
- 111 (C) services result in improved overall health and functioning;
- 112 (D) a statewide comprehensive continuum of community-based services designed to
- 113 reduce criminal risk factors for individuals who are determined to have substance abuse or
- 114 mental illness conditions or both, and who are involved in the criminal justice system;
- 115 (E) compliance, where appropriate, with the certification requirements in Subsection
- 116 (2)(j); and
- 117 (F) appropriate expenditure of public funds;
- 118 (xii) review and make recommendations regarding each local substance abuse
- 119 authority's contract with the local substance abuse authority's provider of substance abuse
- 120 programs and services and each local mental health authority's contract with the local mental
- 121 health authority's provider of mental health programs and services to ensure compliance with
- 122 state and federal law and policy;
- 123 (xiii) monitor and ensure compliance with division rules and contract requirements;
- 124 and
- 125 (xiv) withhold funds from local substance abuse authorities, local mental health
- 126 authorities, and public and private providers for contract noncompliance, failure to comply
- 127 with division directives regarding the use of public funds, or for misuse of public funds or
- 128 money;
- 129 (d) ensure that the requirements of this part are met and applied uniformly by local
- 130 substance abuse authorities and local mental health authorities across the state;
- 131 (e) require each local substance abuse authority and each local mental health authority,
- 132 in accordance with Subsections 17-43-201(5)(b) and 17-43-301(5)(a)(ii), to submit a plan to
- 133 the division on or before May 15 of each year;
- 134 (f) conduct an annual program audit and review of each local substance abuse authority
- 135 and each local substance abuse authority's contract provider, and each local mental health
- 136 authority and each local mental health authority's contract provider, including:

137 (i) a review and determination regarding whether:
138 (A) public funds allocated to the local substance abuse authority or the local mental
139 health authorities are consistent with services rendered by the authority or the authority's
140 contract provider, and with outcomes reported by the authority's contract provider; and
141 (B) each local substance abuse authority and each local mental health authority is
142 exercising sufficient oversight and control over public funds allocated for substance use
143 disorder and mental health programs and services; and
144 (ii) items determined by the division to be necessary and appropriate; and
145 (g) define "prevention" by rule as required under Title 32B, Chapter 2, Part 4,
146 Alcoholic Beverage and Substance Abuse Enforcement and Treatment Restricted Account Act;
147 (h) (i) train and certify an adult as a peer support specialist, qualified to provide peer
148 supports services to an individual with:
149 (A) a substance use disorder;
150 (B) a mental health disorder; or
151 (C) a substance use disorder and a mental health disorder;
152 (ii) certify a person to carry out, as needed, the division's duty to train and certify an
153 adult as a peer support specialist;
154 (iii) make rules in accordance with Title 63G, Chapter 3, Utah Administrative
155 Rulemaking Act, that:
156 (A) establish training and certification requirements for a peer support specialist;
157 (B) specify the types of services a peer support specialist is qualified to provide;
158 (C) specify the type of supervision under which a peer support specialist is required to
159 operate; and
160 (D) specify continuing education and other requirements for maintaining or renewing
161 certification as a peer support specialist; and
162 (iv) make rules in accordance with Title 63G, Chapter 3, Utah Administrative
163 Rulemaking Act, that:

164 (A) establish the requirements for a person to be certified to carry out, as needed, the
165 division's duty to train and certify an adult as a peer support specialist; and

166 (B) specify how the division shall provide oversight of a person certified to train and
167 certify a peer support specialist;

168 (i) except as provided in Section 62A-15-103.5, establish by rule, in accordance with
169 Title 63G, Chapter 3, Utah Administrative Rulemaking Act, minimum standards and
170 requirements for the provision of substance use disorder and mental health treatment to an
171 individual who is [~~required to participate in treatment by the court or the Board of Pardons and~~
172 ~~Parole, or who is incarcerated~~] incarcerated or who is required to participate in treatment by a
173 court or by the Board of Pardons and Parole, including:

174 (i) collaboration with the Department of Corrections and the Utah Substance Use and
175 Mental Health Advisory Council to develop and coordinate the standards, including standards
176 for county and state programs serving individuals convicted of class A and class B
177 misdemeanors;

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

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

185 (j) except as provided in Section 62A-15-103.5, establish by rule, in accordance with
186 Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the requirements and procedures
187 for the certification of licensed public and private providers, including individuals licensed by
188 the Division of Occupational and Professional Licensing, programs licensed by the department,
189 and health care facilities licensed by the Department of Health, who provide, as part of their
190 practice, substance use disorder and mental health treatment to an individual involved in the

191 criminal justice system, including:

192 (i) collaboration with the Department of Corrections, the Utah Substance Use and
193 Mental Health Advisory Council, and the Utah Association of Counties to develop, coordinate,
194 and implement the certification process;

195 (ii) basing the certification process on the standards developed under Subsection (2)(i)
196 for the treatment of an individual involved in the criminal justice system; and

197 (iii) the requirement that a public or private provider of treatment to an individual
198 involved in the criminal justice system shall obtain certification on or before July 1, 2016, and
199 shall renew the certification every two years, in order to qualify for funds allocated to the
200 division, the Department of Corrections, or the Commission on Criminal and Juvenile Justice
201 on or after July 1, 2016;

202 (k) collaborate with the Commission on Criminal and Juvenile Justice to analyze and
203 provide recommendations to the Legislature regarding:

204 (i) pretrial services and the resources needed to reduce recidivism;

205 (ii) county jail and county behavioral health early-assessment resources needed for an
206 offender convicted of a class A or class B misdemeanor; and

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

209 (l) (i) establish performance goals and outcome measurements for all treatment
210 programs for which minimum standards are established under Subsection (2)(i), including
211 recidivism data and data regarding cost savings associated with recidivism reduction and the
212 reduction in the number of inmates, that are obtained in collaboration with the Administrative
213 Office of the Courts and the Department of Corrections; and

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

216 (m) in the division's discretion, use the data to make decisions regarding the use of
217 funds allocated to the division, the Administrative Office of the Courts, and the Department of

218 Corrections to provide treatment for which standards are established under Subsection (2)(i);
219 and

220 (n) annually, on or before August 31, submit the data collected under Subsection (2)(k)
221 to the Commission on Criminal and Juvenile Justice, which shall compile a report of findings
222 based on the data and provide the report to the Judiciary Interim Committee, the Health and
223 Human Services Interim Committee, the Law Enforcement and Criminal Justice Interim
224 Committee, and the related appropriations subcommittees.

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

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

232 (4) Before reissuing or renewing a contract with any local substance abuse authority or
233 local mental health authority, the division shall review and determine whether the local
234 substance abuse authority or local mental health authority is complying with the oversight and
235 management responsibilities described in Sections 17-43-201, 17-43-203, 17-43-303, and
236 17-43-309. Nothing in this Subsection (4) may be used as a defense to the responsibility and
237 liability described in Section 17-43-303 and to the responsibility and liability described in
238 Section 17-43-203.

239 (5) In carrying out the division's duties and responsibilities, the division may not
240 duplicate treatment or educational facilities that exist in other divisions or departments of the
241 state, but shall work in conjunction with those divisions and departments in rendering the
242 treatment or educational services that those divisions and departments are competent and able
243 to provide.

244 (6) The division may accept in the name of and on behalf of the state donations, gifts,

245 devises, or bequests of real or personal property or services to be used as specified by the
246 donor.

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

- 250 (a) use of public funds;
- 251 (b) oversight of public funds; and
- 252 (c) governance of substance use disorder and mental health programs and services.

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

255 (9) If a local substance abuse authority contacts the division under Subsection
256 [17-43-201](#)(10) for assistance in providing treatment services to a pregnant woman or pregnant
257 minor, the division shall:

- 258 (a) refer the pregnant woman or pregnant minor to a treatment facility that has the
259 capacity to provide the treatment services; or
- 260 (b) otherwise ensure that treatment services are made available to the pregnant woman
261 or pregnant minor.

262 Section 2. Section **62A-15-103.5** is enacted to read:

263 **62A-15-103.5. Provider certification.**

264 The division may not require a licensed mental health therapist, as defined in Section
265 [58-60-102](#), to also be licensed by the Office of Licensing, with the Department of Human
266 Services, in order to certify the licensed mental health therapist to provide mental health or
267 substance use disorder screening, assessment, treatment, or recovery support services to an
268 individual who is incarcerated or who is required to participate in treatment by a court or by the
269 Board of Pardons and Parole.