

**PRIVATE COUNSELORS IN THIRD THROUGH SIXTH CLASS
COUNTIES**

2019 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Christine F. Watkins

Senate Sponsor: _____

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:

- requires the Division of Substance Abuse and Mental Health to exempt licensed private mental health therapists from additional licensure in order to be certified to provide mental health and substance use disorder services to individuals who reside in certain rural areas and 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

ENACTS:



28 [62A-15-103.5](#), Utah Code Annotated 1953



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

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

32 **62A-15-103. Division -- Creation -- Responsibilities.**

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

36 (2) The division shall:

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

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

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

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

46 (v) except as provided in Section [62A-15-103.5](#), make rules in accordance with Title
47 63G, Chapter 3, Utah Administrative Rulemaking Act, to develop, in collaboration with public
48 and private programs, minimum standards for public and private providers of substance abuse
49 and mental health programs licensed by the department under Title 62A, Chapter 2, Licensure
50 of Programs and Facilities;

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

53 (vii) establish and promote an evidence-based continuum of screening, assessment,
54 prevention, treatment, and recovery support services in the community for individuals with
55 substance use disorder and mental illness that addresses criminal risk factors;

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

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

58 (A) emergency department utilization;

- 59 (B) jail and prison populations;
- 60 (C) the homeless population; and
- 61 (D) the child welfare system; and
- 62 (x) promote or establish programs for education and certification of instructors to
- 63 educate persons convicted of driving under the influence of alcohol or drugs or driving with
- 64 any measurable controlled substance in the body;
- 65 (b) (i) collect and disseminate information pertaining to mental health;
- 66 (ii) provide direction over the state hospital including approval of its budget,
- 67 administrative policy, and coordination of services with local service plans;
- 68 (iii) make rules in accordance with Title 63G, Chapter 3, Utah Administrative
- 69 Rulemaking Act, to educate families concerning mental illness and promote family
- 70 involvement, when appropriate, and with patient consent, in the treatment program of a family
- 71 member; and
- 72 (iv) make rules in accordance with Title 63G, Chapter 3, Utah Administrative
- 73 Rulemaking Act, to direct that an individual receiving services through a local mental health
- 74 authority or the Utah State Hospital be informed about and, if desired by the individual,
- 75 provided assistance in the completion of a declaration for mental health treatment in
- 76 accordance with Section [62A-15-1002](#);
- 77 (c) (i) consult and coordinate with local substance abuse authorities and local mental
- 78 health authorities regarding programs and services;
- 79 (ii) provide consultation and other assistance to public and private agencies and groups
- 80 working on substance abuse and mental health issues;
- 81 (iii) promote and establish cooperative relationships with courts, hospitals, clinics,
- 82 medical and social agencies, public health authorities, law enforcement agencies, education and
- 83 research organizations, and other related groups;
- 84 (iv) promote or conduct research on substance abuse and mental health issues, and
- 85 submit to the governor and the Legislature recommendations for changes in policy and
- 86 legislation;
- 87 (v) receive, distribute, and provide direction over public funds for substance abuse and
- 88 mental health services;
- 89 (vi) monitor and evaluate programs provided by local substance abuse authorities and

90 local mental health authorities;

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

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

93 (A) local substance abuse authorities;

94 (B) local mental health authorities; and

95 (C) in counties where they exist, a private contract provider that has an annual or

96 otherwise ongoing contract to provide comprehensive substance abuse or mental health

97 programs or services for the local substance abuse authority or local mental health authority;

98 (ix) contract with local substance abuse authorities and local mental health authorities

99 to provide a comprehensive continuum of services that include community-based services for

100 individuals involved in the criminal justice system, in accordance with division policy, contract

101 provisions, and the local plan;

102 (x) contract with private and public entities for special statewide or nonclinical

103 services, or services for individuals involved in the criminal justice system, according to

104 division rules;

105 (xi) review and approve each local substance abuse authority's plan and each local

106 mental health authority's plan in order to ensure:

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

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

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

110 (D) a statewide comprehensive continuum of community-based services designed to

111 reduce criminal risk factors for individuals who are determined to have substance abuse or

112 mental illness conditions or both, and who are involved in the criminal justice system;

113 (E) compliance, where appropriate, with the certification requirements in Subsection

114 (2)(j); and

115 (F) appropriate expenditure of public funds;

116 (xii) review and make recommendations regarding each local substance abuse

117 authority's contract with the local substance abuse authority's provider of substance abuse

118 programs and services and each local mental health authority's contract with the local mental

119 health authority's provider of mental health programs and services to ensure compliance with

120 state and federal law and policy;

121 (xiii) monitor and ensure compliance with division rules and contract requirements;
122 and

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

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

129 (e) require each local substance abuse authority and each local mental health authority,
130 in accordance with Subsections 17-43-201(5)(b) and 17-43-301(5)(a)(ii), to submit a plan to
131 the division on or before May 15 of each year;

132 (f) conduct an annual program audit and review of each local substance abuse authority
133 and each local substance abuse authority's contract provider, and each local mental health
134 authority and each local mental health authority's contract provider, including:

135 (i) a review and determination regarding whether:

136 (A) public funds allocated to the local substance abuse authority or the local mental
137 health authorities are consistent with services rendered by the authority or the authority's
138 contract provider, and with outcomes reported by the authority's contract provider; and

139 (B) each local substance abuse authority and each local mental health authority is
140 exercising sufficient oversight and control over public funds allocated for substance use
141 disorder and mental health programs and services; and

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

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

145 (h) (i) train and certify an adult as a peer support specialist, qualified to provide peer
146 supports services to an individual with:

147 (A) a substance use disorder;

148 (B) a mental health disorder; or

149 (C) a substance use disorder and a mental health disorder;

150 (ii) certify a person to carry out, as needed, the division's duty to train and certify an
151 adult as a peer support specialist;

152 (iii) make rules in accordance with Title 63G, Chapter 3, Utah Administrative
153 Rulemaking Act, that:
154 (A) establish training and certification requirements for a peer support specialist;
155 (B) specify the types of services a peer support specialist is qualified to provide;
156 (C) specify the type of supervision under which a peer support specialist is required to
157 operate; and
158 (D) specify continuing education and other requirements for maintaining or renewing
159 certification as a peer support specialist; and

160 (iv) make rules in accordance with Title 63G, Chapter 3, Utah Administrative
161 Rulemaking Act, that:
162 (A) establish the requirements for a person to be certified to carry out, as needed, the
163 division's duty to train and certify an adult as a peer support specialist; and
164 (B) specify how the division shall provide oversight of a person certified to train and
165 certify a peer support specialist;

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

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

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

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

183 (j) establish by rule, in accordance with Title 63G, Chapter 3, Utah Administrative
184 Rulemaking Act, the requirements and procedures for the certification of licensed public and
185 private providers who provide, as part of their practice, substance use disorder and mental
186 health treatment to an individual involved in the criminal justice system, including:

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

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

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

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

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

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

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

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

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

211 (m) in the division's discretion, use the data to make decisions regarding the use of
212 funds allocated to the division, the Administrative Office of the Courts, and the Department of
213 Corrections to provide treatment for which standards are established under Subsection (2)(i);

214 and

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

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

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

227 (4) Before reissuing or renewing a contract with any local substance abuse authority or
228 local mental health authority, the division shall review and determine whether the local
229 substance abuse authority or local mental health authority is complying with the oversight and
230 management responsibilities described in Sections 17-43-201, 17-43-203, 17-43-303, and
231 17-43-309. Nothing in this Subsection (4) may be used as a defense to the responsibility and
232 liability described in Section 17-43-303 and to the responsibility and liability described in
233 Section 17-43-203.

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

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

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

- 245 (a) use of public funds;
- 246 (b) oversight of public funds; and
- 247 (c) governance of substance use disorder and mental health programs and services.

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

250 (9) If a local substance abuse authority contacts the division under Subsection
251 [17-43-201](#)(10) for assistance in providing treatment services to a pregnant woman or pregnant
252 minor, the division shall:

- 253 (a) refer the pregnant woman or pregnant minor to a treatment facility that has the
254 capacity to provide the treatment services; or
- 255 (b) otherwise ensure that treatment services are made available to the pregnant woman
256 or pregnant minor.

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

258 **62A-15-103.5. Provider certification -- exemption.**

259 The division may not require a licensed mental health therapist, as defined in Section
260 [58-60-102](#), to also be licensed by the Office of Licensing, with the Department of Human
261 Services, in order to certify the licensed mental health therapist to provide mental health or
262 substance use disorder screening, assessment, treatment, or recovery support services to:

- 263 (1) an individual who is incarcerated or who is required to participate in treatment by a
264 court or by the Board of Pardons and Parole; and
- 265 (2) an individual who receives treatment in a county of the third class, fourth class,
266 fifth class, or sixth class.