

SB0203S01 compared with SB0203

~~{deleted text}~~ shows text that was in SB0203 but was deleted in SB0203S01.

Inserted text shows text that was not in SB0203 but was inserted into SB0203S01.

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Senator Curtis S. Bramble proposes the following substitute bill:

PHYSICIAN ASSISTANT AMENDMENTS

2019 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Curtis S. Bramble

House Sponsor: _____

LONG TITLE

General Description:

This bill amends provisions relating to practice as a physician assistant.

Highlighted Provisions:

This bill:

- ▶ amends the Insect Infestation Emergency Control Act to allow a physician assistant to sign an affidavit stating that a planned treatment for controlling an insect infestation emergency is a danger to the health of the owner or occupant of a property;
- ▶ amends the Residential, Vocational and Life Skills Program Act to allow a physician assistant to grant certain clearances;
- ▶ amends the Professional Corporation Act's definition of "professional service" to include a personal service rendered by a physician assistant;

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- ▶ amends the Election Code to allow a physician assistant to certify that a party's candidate has acquired a physical or mental disability;
- ▶ amends the Wildlife Resources Code of Utah to allow a physician assistant to make certain certifications with respect to licenses, certificates, or permits;
- ▶ amends the Utah Vital Statistics Act to allow a physician assistant to complete and file a birth certificate for a live birth that occurs outside a birthing facility;
- ▶ amends the Utah Medical Examiner Act to:
 - include the death of a person who has not been seen by a physician assistant in the definition of an "unattended death";
 - allow a physician assistant to certify cause of death in certain instances; and
 - require the state medical examiner to provide a copy of a final report of examination to a physician assistant, upon written request by the physician assistant;
- ▶ amends the Utah Communicable Disease Control Act to include a physician assistant among those:
 - from whom the Department of Health suggests a person should seek screening for a sexually transmitted disease;
 - to whom a person with venereal disease is required to report;
 - recognized to provide medical care or services to a minor who may be afflicted with a sexually transmitted disease;
 - to whom a person may be required by the Department of Health to report at the time of the expiration of the person's term of imprisonment; and
 - authorized to take a blood sample from a pregnant or recently delivered woman;
- ▶ amends the Utah Health Code to include a physician assistant among those who may find that an individual or group is subject to examination, treatment, isolation, or quarantine;
- ▶ amends the Utah Emergency Medical Services System Act by:
 - amending the composition of the Trauma System Advisory Committee within the Department of Health; and
 - extending certain immunities to a physician assistant;
- ▶ amends the composition of certain committees within the Utah Statewide Stroke

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and Cardiac Registry Act to include physician assistants;

- ▶ amends the Utah Health Code to include a physician assistant among those whose diagnosis of hearing loss in a child younger than six years old satisfies a requirement for obtaining hearing aids from a program offered by the Department of Health;
- ▶ amends the Medical Assistance Act to prohibit a pharmacist from altering an outpatient drug therapy prescribed by a physician assistant without the consent of the physician assistant;

~~amends the Health Care Facility Licensing and Inspection Act to include a physician assistant in certain definitions;~~

when conducting a prospective drug utilization review;

- ▶ amends the Revised Uniform Anatomical Gift Act to include a physician assistant who:
 - attends a decedent's death and a physician assistant who determines the time of a decedent's death among those who are prohibited from participating in the procedures for removing or transplanting a part from the decedent; and
 - is qualified to remove a donated part from the body of a donor among those authorized to remove the part;
- ▶ amends the Utah Health Data Authority Act definition of "health care provider" to include a physician assistant;
- ▶ amends the Family Planning Access Act to permit a physician assistant to issue certain standing prescription orders;
- ▶ amends the Insurance Code to include:
 - certain physician assistants among those from whom an insured may be required by a health insurance policy to select as a primary care provider; and
 - certain consultations involving a physician assistant among the telepsychiatric consultations that must be covered by a health benefit plan that offers coverage for mental health services;
- ▶ amends the Motor Vehicle Act to include a physician assistant among those who may certify specified information about a person with a disability who is applying for a disability special group license plate, a temporary removable windshield

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placard, or a removable windshield placard;

- ▶ amends the Traffic Code to include a physician assistant among those who may administer certain chemical tests or draw blood under certain circumstances;
- ▶ amends the Motor Vehicle Safety Belt Usage Act to include a physician assistant among those who may provide written verification that an operator or passenger of a motor vehicle is unable to wear a safety belt for physical or medical reasons;
- ▶ amends the Unincorporated Business Entity Act definition of "professional services" to include a personal service provided by a physician assistant;
- ▶ amends the Public Employees' Contributory Retirement Act to include a physician assistant among those who may be appointed by the Utah State Retirement Board to conduct certain medical examinations;
- ▶ amends the Firefighters' Retirement Act to include a physician assistant among those who may make certain evaluations, diagnoses, and recommendations;
- ▶ amends the Public Employees' Long-Term Disability Act to include a physician assistant among those:
 - under whom an eligible employee may receive ongoing care and treatment; and
 - who may set forth the limitations of an office-approved rehabilitation program;
- ▶ amends the Statewide Mutual Aid Act definition of "emergency responder" to include a physician assistant;
- ▶ amends the Uniform Driver License Act definition of "health care professional" to include a physician assistant;
- ▶ amends the Criminal Investigations and Technical Services Act to include a physician assistant among those who may draw a blood sample in a medically acceptable manner;

~~{ —————▶ permits a physician assistant among those who may certify that a school-age minor is in a physical or mental condition which makes school attendance inexpedient and impracticable;~~

- ‡
- ▶ permits a physician assistant to:
 - receive information from a behavioral health information form completed by school personnel at the request of a student's parent;
 - be included in a list of health care providers that a school counselor or other

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mental health professional working within a school system may provide to a parent or guardian;

- permit a student to possess or self-apply certain sunscreens;
 - train nonlicensed volunteers to administer glucagon; and
 - train a nonlicensed school employee who volunteers to administer a seizure rescue medication;
- ▶ amends the Public Telecommunications Law to include a physician assistant among those who may certify that a state resident is deaf, hard of hearing, or severely speech impaired;
- ▶ amends the Division of Occupational and Professional Licensing Act:
- ~~{ ——— • definition of "licensed services" to include the provision of behavioral health treatment within the scope of practice of a physician assistant;~~
 - { • to require the Department of Health to establish certain procedures to authorize the dispensing, administration, or distribution of a vaccine, an antiviral, an antibiotic, or other prescription medication; and
 - definition of "anatomic pathology services" to include certain services performed or requested by a physician assistant;
- ~~{ ———▶ amends the Utah Controlled Substances Act to require certain physician assistants to keep certain records;~~
- { ▶ amends the Speech-Language Pathology and Audiology Licensing Act to exempt certain physician assistants from the licensing requirement;
- ▶ amends the Hearing Instrument Specialist Licensing Act to:
- exempt certain physician assistants from the licensing requirement; and
 - permit a physician assistant to receive certain referrals and issue certain prescriptions;
- ▶ amends the Massage Therapy Practice Act to exempt a physician assistant from the licensing requirement;
- ~~{ ———▶ amends the Mental Health Professional Practice Act to exempt physician assistants from certain licensing requirements;~~
- ~~————▶ amends the Psychologist Licensing Act to include a physician assistant engaged in the practice of mental health therapy in the definition of "mental health therapist";~~

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- ‡ ▶ renames the Physician Assistant Act as the Utah Physician Assistant Act;
- ~~{ → amends the membership requirements for the Physician Assistant Licensing Board;~~
- ‡ ▶ amends the Genetic Counselors Licensing Act to exempt certain physician assistants from the licensing requirement;
- ▶ amends the Utah Human Services Code to permit a physician assistant to~~‡~~
 - ~~• } take photographs of the areas of trauma visible on a child and, if medically indicated, perform radiological examinations;~~
 - ~~• examine or treat a child for certain protective custody determinations;~~
 - ~~• certify an intellectual disability for the purpose of determining the need for protective custody; and~~
 - ~~• examine an individual and certify that an individual has an intellectual disability and is in need of involuntary commitment;~~
- ~~amends the Substance Abuse and Mental Health Act to permit a physician assistant to:~~
 - ~~• make certain medical determinations;~~
 - ~~• make arrangements for the transport of an adult by ambulance to a facility designated by a local mental health authority for temporary commitment;~~
 - ~~• certify that a proposed patient has a mental illness and should be involuntarily committed;~~
 - ~~• serve as a designated examiner; and~~
 - ~~• determine that medical need requires certain prescription medications;~~
- ~~permits a physician assistant's orders to be used for:~~
 - ~~• a commitment proceeding for a child;~~
 - ~~• determining whether a person is "incapable"; and~~
 - ~~• making certain treatment plans operative;~~
- ~~adds physician assistants to the declaration for mental health treatment form;~~
- ‡ ▶ amends the Government Records Access and Management Act to include a physician assistant among those to whom a governmental entity shall, under certain conditions, disclose a controlled record upon request;
- ▶ amends the Pete Suazo Utah Athletic Commission Act to include a physician assistant in certain definitions;

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- ▶ allows a physician assistant to serve on a Children's Justice Center local advisory board or the Advisory Board on Children's Justice;
- ~~{ → amends the Utah Uniform Probate Code to allow a physician assistant to:~~
 - ~~• be appointed by a court to examine a person alleged to be incapacitated;~~
 - ~~• conduct an independent evaluation of a resident of the Utah State Developmental Center who is the subject of guardianship proceedings; and~~
 - ~~• evaluate an incapacitated minor for the purpose of determining the need for guardianship;~~
- ~~→ amends the Uniform Power of Attorney Act to include a physician assistant among those who may make certain medical determinations;~~
- ~~‡~~ ▶ amends the Utah Criminal Code to:
 - permit a physician assistant to provide certain medical services;~~{~~
 - ~~• amend the definition of "abuse" to include certain actions toward a vulnerable adult that are in conflict with a physician assistant's orders;~~
 - ~~• amend the definition of "isolation" of a vulnerable adult to exempt acts performed under the instructions of a physician assistant;}~~ and
 - specify that certain sexual offenses committed by a "health professional" include offenses committed by a physician assistant;
- ~~{ → amends the Bus Passenger Safety Act to exempt the ingestion of a controlled substance prescribed by a physician assistant from certain charges;~~
- ~~‡~~ ▶ amends the Utah Code of Criminal Procedure to include a physician assistant among those who may draw blood;
- ~~{ → amends the Juvenile Court Act to:~~
 - ~~• permit a physician assistant to examine or treat a minor; and~~
 - ~~• permit a second medical opinion by a physician assistant for a child custody determination under certain circumstances;~~
- ~~‡~~ ▶ amends the Judicial Code to include physician assistants in certain provisions relating to other health care professionals; and
 - ▶ makes corresponding and other technical amendments.

Money Appropriated in this Bill:

None

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Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

- 4-35-107, as renumbered and amended by Laws of Utah 2017, Chapter 345
- 13-53-107, as enacted by Laws of Utah 2018, Chapter 252
- 16-11-2, as last amended by Laws of Utah 2011, Chapter 289
- 20A-1-501, as last amended by Laws of Utah 2016, Chapter 16
- 23-19-36, as last amended by Laws of Utah 2011, Chapter 366
- 23-19-38, as last amended by Laws of Utah 2010, Chapter 288
- 26-2-5, as last amended by Laws of Utah 2008, Chapter 3
- 26-4-2, as last amended by Laws of Utah 2018, Chapters 326 and 414
- 26-4-14, as last amended by Laws of Utah 1993, Chapter 38
- 26-4-17, as last amended by Laws of Utah 2018, Chapter 414
- 26-6-3, as last amended by Laws of Utah 2011, Chapter 297
- 26-6-17, as enacted by Laws of Utah 1981, Chapter 126
- 26-6-18, as last amended by Laws of Utah 2011, Chapter 297
- 26-6-19, as enacted by Laws of Utah 1981, Chapter 126
- 26-6-20, as last amended by Laws of Utah 2011, Chapter 297
- 26-6b-5, as last amended by Laws of Utah 2008, Chapter 115
- 26-8a-251, as enacted by Laws of Utah 2000, Chapter 305
- 26-8a-601, as last amended by Laws of Utah 2017, Chapter 326
- 26-8d-104, as enacted by Laws of Utah 2018, Chapter 104
- 26-8d-105, as enacted by Laws of Utah 2018, Chapter 104
- 26-10-11, as last amended by Laws of Utah 2018, Chapter 415
- 26-18-107, as enacted by Laws of Utah 1992, Chapter 273
- ~~† 26-21-2, as last amended by Laws of Utah 2011, Chapter 161~~
- † 26-21-7, as last amended by Laws of Utah 2011, Chapter 161
- ~~† 26-21-29, as enacted by Laws of Utah 2016, Chapter 73~~
- † 26-28-114, as last amended by Laws of Utah 2011, Chapter 297
- 26-33a-102, as last amended by Laws of Utah 2016, Chapter 74

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26-64-105, as enacted by Laws of Utah 2018, Chapter 295

26-64-107, as enacted by Laws of Utah 2018, Chapter 295

31A-22-624, as last amended by Laws of Utah 2002, Chapter 308

31A-22-649, as enacted by Laws of Utah 2018, Chapter 119

41-1a-420, as last amended by Laws of Utah 2017, Chapter 41

41-6a-520, as last amended by Laws of Utah 2018, Chapter 35

41-6a-523, as last amended by Laws of Utah 2017, Chapter 326

41-6a-1804, as last amended by Laws of Utah 2018, Chapter 113

48-1d-102, as enacted by Laws of Utah 2013, Chapter 412

48-3a-1101, as enacted by Laws of Utah 2013, Chapter 412

49-12-601, as last amended by Laws of Utah 2011, Chapter 366

49-16-102, as last amended by Laws of Utah 2017, Chapter 93

49-16-602, as last amended by Laws of Utah 2011, Chapter 366

49-21-402, as last amended by Laws of Utah 2018, Chapter 185

49-21-406, as last amended by Laws of Utah 2015, Chapter 328

53-2a-302, as renumbered and amended by Laws of Utah 2013, Chapter 295

53-3-302, as enacted by Laws of Utah 1993, Chapter 234

53-10-405, as last amended by Laws of Utah 2017, Chapter 326

~~{ 53G-6-204, as renumbered and amended by Laws of Utah 2018, Chapter 3~~

{ 53G-9-203, as renumbered and amended by Laws of Utah 2018, Chapter 3

53G-9-208, as renumbered and amended by Laws of Utah 2018, Chapter 3

53G-9-504, as renumbered and amended by Laws of Utah 2018, Chapter 3

53G-9-505, as renumbered and amended by Laws of Utah 2018, Chapter 3

54-8b-10, as last amended by Laws of Utah 2017, Chapters 43 and 423

~~{ 58-1-111, as enacted by Laws of Utah 2016, Chapter 407~~

{ 58-1-307, as last amended by Laws of Utah 2017, Chapter 326

58-1-501.5, as last amended by Laws of Utah 2008, Chapter 250

~~{ 58-37-6, as last amended by Laws of Utah 2018, Chapter 318~~

{ 58-41-4, as last amended by Laws of Utah 2018, Chapter 415

58-46a-305, as last amended by Laws of Utah 2004, Chapter 90

58-46a-502, as last amended by Laws of Utah 2015, Chapter 252

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58-47b-304, as last amended by Laws of Utah 2014, Chapters 330, 348 and last amended by Coordination Clause, Laws of Utah 2014, Chapter 330

~~{ 58-60-102, as last amended by Laws of Utah 2013, Chapters 16 and 123~~

~~58-60-107, as last amended by Laws of Utah 2013, Chapter 16~~

~~58-61-102, as last amended by Laws of Utah 2013, Chapters 16 and 123~~

~~‡ 58-70a-101, as enacted by Laws of Utah 1997, Chapter 229~~

~~{58-70a-201}~~58-70a-305, as last amended by Laws of Utah ~~{2010}~~2016, Chapter ~~{37}~~238

58-75-304, as enacted by Laws of Utah 2001, Chapter 100

62A-4a-406, as last amended by Laws of Utah 2008, Chapter 299

~~{ 62A-4a-407, as last amended by Laws of Utah 2006, Chapter 75~~

~~62A-5-311, as last amended by Laws of Utah 2011, Chapter 366~~

~~62A-5-312, as last amended by Laws of Utah 2011, Chapter 366~~

~~62A-15-301, as renumbered and amended by Laws of Utah 2002, Fifth Special Session, Chapter 8~~

~~62A-15-602, as last amended by Laws of Utah 2018, Chapter 322~~

~~62A-15-629, as last amended by Laws of Utah 2018, Chapter 322~~

~~62A-15-631, as last amended by Laws of Utah 2018, Chapter 322~~

~~62A-15-640, as renumbered and amended by Laws of Utah 2002, Fifth Special Session, Chapter 8~~

~~62A-15-703, as last amended by Laws of Utah 2018, Chapter 322~~

~~62A-15-1001, as renumbered and amended by Laws of Utah 2002, Fifth Special Session, Chapter 8~~

~~62A-15-1002, as renumbered and amended by Laws of Utah 2002, Fifth Special Session, Chapter 8~~

~~62A-15-1003, as renumbered and amended by Laws of Utah 2002, Fifth Special Session, Chapter 8~~

~~62A-15-1004, as renumbered and amended by Laws of Utah 2002, Fifth Special Session, Chapter 8~~

~~62A-15-1207, as last amended by Laws of Utah 2018, Chapter 77~~

~~62A-15-1207.5, as enacted by Laws of Utah 2018, Chapter 77~~

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- ‡ 63G-2-202, as last amended by Laws of Utah 2018, Chapter 270
- 63N-10-102, as renumbered and amended by Laws of Utah 2015, Chapter 283
- 63N-10-301, as renumbered and amended by Laws of Utah 2015, Chapter 283
- 67-5b-105, as last amended by Laws of Utah 2016, Chapter 290
- 67-5b-106, as last amended by Laws of Utah 2016, Chapter 290
- ~~{ 75-5-303, as last amended by Laws of Utah 2018, Chapter 455~~
- ~~— 75-5-316, as last amended by Laws of Utah 2011, Chapter 366~~
- ~~— 75-5-317, as enacted by Laws of Utah 2018, Chapter 294~~
- ~~— 75-9-109, as enacted by Laws of Utah 2016, Chapter 256~~
- ‡ 76-5-110, as last amended by Laws of Utah 2011, Chapter 366
- ~~{ 76-5-111, as last amended by Laws of Utah 2011, Chapter 320~~
- ‡ 76-5-406, as last amended by Laws of Utah 2018, Chapter 176
- ~~{ 76-10-1506, as last amended by Laws of Utah 2010, Chapter 276~~
- ‡ 77-23-213, as enacted by Laws of Utah 2018, Chapter 35
- ~~{ 78A-6-117, as last amended by Laws of Utah 2018, Chapters 117 and 285~~
- ~~— 78A-6-301.5, as enacted by Laws of Utah 2015, Chapter 274~~
- ‡ 78B-1-137, as renumbered and amended by Laws of Utah 2008, Chapter 3
- 78B-2-114, as renumbered and amended by Laws of Utah 2008, Chapter 3
- 78B-3-403, as last amended by Laws of Utah 2013, Chapter 104

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

Section 1. Section **4-35-107** is amended to read:

4-35-107. Notice to owner or occupant -- Corrective action required -- Directive issued by department -- Costs -- Owner or occupant may prohibit treatment.

(1) The department or an authorized agent of the department shall notify the owner or occupant of the problem and the available alternatives to remedy the problem. The owner or occupant shall take corrective action within 30 days.

(2) (a) If the owner or occupant fails to take corrective action under Subsection (1), the department may issue a directive for corrective action which shall be taken within 15 days.

(b) If the owner or occupant fails to act within the required time, the department shall take the necessary action.

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(c) The department may recover costs incurred for controlling an insect infestation emergency from the owner or occupant of the property on whose property corrective action was taken.

(3) (a) Owners or occupants of property may prohibit treatment by presenting an affidavit from the owner's or occupant's attending physician or physician assistant to the department which states that the treatment as planned is a danger to the owner's or occupant's health.

(b) The department shall provide the owner or occupant with alternatives to treatment which will abate the infestation.

Section 2. Section **13-53-107** is amended to read:

13-53-107. Participant screening.

(1) A residential, vocational and life skills program shall interview and screen all prospective participants for medical prescriptions, physical and mental health history, and recent alcohol or drug use.

(2) Unless an individual obtains a medical clearance from a physician or physician assistant, a residential, vocational and life skills program may not have as a participant an individual who:

(a) has a recent diagnosis of a mental, social, psychiatric, or psychological illness; or

(b) has an active prescription for medication for a mental, social, psychiatric, or psychological illness.

(3) A residential, vocational and life skills program may not admit a minor.

Section 3. Section **16-11-2** is amended to read:

16-11-2. Definitions.

As used in this chapter:

(1) "Filed" means the division has received and approved, as to form, a document submitted under this chapter, and has marked on the face of the document a stamp or seal indicating the time of day and date of approval, the name of the division, the division director's signature and division seal, or facsimiles of the signature or seal.

(2) "Professional corporation" means a corporation organized under this chapter.

(3) "Professional service" means the personal service rendered by:

(a) a physician, surgeon, or doctor of medicine holding a license under Title 58,

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Chapter 67, Utah Medical Practice Act, and any subsequent laws regulating the practice of medicine;

(b) a doctor of dentistry holding a license under Title 58, Chapter 69, Dentist and Dental Hygienist Practice Act, and any subsequent laws regulating the practice of dentistry;

(c) an osteopathic physician or surgeon holding a license under Title 58, Chapter 68, Utah Osteopathic Medical Practice Act, and any subsequent laws regulating the practice of osteopathy;

(d) a physician assistant holding a license under Title 58, Chapter 70a, Utah Physician Assistant Act, and any subsequent laws regulating the practice as a physician assistant;

~~(d)~~ (e) a chiropractor holding a license under Title 58, Chapter 73, Chiropractic Physician Practice Act, and any subsequent laws regulating the practice of chiropractics;

~~(e)~~ (f) a podiatric physician holding a license under Title 58, Chapter 5a, Podiatric Physician Licensing Act, and any subsequent laws regulating the practice of podiatry;

~~(f)~~ (g) an optometrist holding a license under Title 58, Chapter 16a, Utah Optometry Practice Act, and any subsequent laws regulating the practice of optometry;

~~(g)~~ (h) a veterinarian holding a license under Title 58, Chapter 28, Veterinary Practice Act, and any subsequent laws regulating the practice of veterinary medicine;

~~(h)~~ (i) an architect holding a license under Title 58, Chapter 3a, Architects Licensing Act, and any subsequent laws regulating the practice of architecture;

~~(i)~~ (j) a public accountant holding a license under Title 58, Chapter 26a, Certified Public Accountant Licensing Act, and any subsequent laws regulating the practice of public accounting;

~~(j)~~ (k) a naturopath holding a license under Title 58, Chapter 71, Naturopathic Physician Practice Act, and any subsequent laws regulating the practice of naturopathy;

~~(k)~~ (l) a pharmacist holding a license under Title 58, Chapter 17b, Pharmacy Practice Act, and any subsequent laws regulating the practice of pharmacy;

~~(l)~~ (m) an attorney granted the authority to practice law by:

(i) the Utah Supreme Court; or

(ii) the Supreme Court, other court, agency, instrumentality, or regulating board that licenses or regulates the authority to practice law in any state or territory of the United States other than Utah;

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~~[(m)]~~ (n) a professional engineer registered under Title 58, Chapter 22, Professional Engineers and Professional Land Surveyors Licensing Act;

~~[(n)]~~ (o) a principal broker, associate broker, or sales agent holding a license under Title 61, Chapter 2f, Real Estate Licensing and Practices Act, and any subsequent laws regulating the selling, exchanging, purchasing, renting, or leasing of real estate;

~~[(o)]~~ (p) a psychologist holding a license under Title 58, Chapter 61, Psychologist Licensing Act, and any subsequent laws regulating the practice of psychology;

~~[(p)]~~ (q) a clinical or certified social worker holding a license under Title 58, Chapter 60, Part 2, Social Worker Licensing Act, and any subsequent laws regulating the practice of social work;

~~[(q)]~~ (r) a physical therapist holding a license under Title 58, Chapter 24b, Physical Therapy Practice Act, and any subsequent laws regulating the practice of physical therapy;

~~[(r)]~~ (s) a nurse licensed under Title 58, Chapter 31b, Nurse Practice Act, or Title 58, Chapter 44a, Nurse Midwife Practice Act;

~~[(s)]~~ (t) a landscape architect licensed under Title 58, Chapter 53, Landscape Architects Licensing Act, and any subsequent laws regulating landscape architects; or

~~[(t)]~~ (u) an individual licensed, certified, or registered under Title 61, Chapter 2g, Real Estate Appraiser Licensing and Certification Act, and any subsequent laws regulating the practice of appraising real estate.

(4) "Regulating board" means the board that is charged with the licensing and regulation of the practice of the profession which the professional corporation is organized to render. The definitions of Title 16, Chapter 10a, Utah Revised Business Corporation Act, apply to this chapter unless the context clearly indicates that a different meaning is intended.

Section 4. Section **20A-1-501** is amended to read:

20A-1-501. Candidate vacancies -- Procedure for filling.

(1) The state central committee of a political party, for candidates for United States senator, United States representative, governor, lieutenant governor, attorney general, state treasurer, and state auditor, and for legislative candidates whose legislative districts encompass more than one county, and the county central committee of a political party, for all other party candidates seeking an office elected at a regular general election, may certify the name of another candidate to the appropriate election officer if:

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(a) for a registered political party that will have a candidate on a ballot in a primary election, after the close of the period for filing a declaration of candidacy and continuing through the day before the day on which the lieutenant governor provides the list described in Subsection 20A-9-403(4)(a):

(i) only one or two candidates from that party have filed a declaration of candidacy for that office; and

(ii) one or both:

(A) dies;

(B) resigns because of acquiring a physical or mental disability, certified by a physician or physician assistant, that prevents the candidate from continuing the candidacy; or

(C) is disqualified by an election officer for improper filing or nominating procedures;

(b) for a registered political party that does not have a candidate on the ballot in a primary, but that will have a candidate on the ballot for a general election, after the close of the period for filing a declaration of candidacy and continuing through the day before the day on which the lieutenant governor makes the certification described in Section 20A-5-409, the party's candidate:

(i) dies;

(ii) resigns because of acquiring a physical or mental disability as certified by a physician or physician assistant;

(iii) is disqualified by an election officer for improper filing or nominating procedures;

or

(iv) resigns to become a candidate for president or vice president of the United States;

or

(c) for a registered political party with a candidate certified as winning a primary election, after the deadline described in Subsection (1)(a) and continuing through the day before that day on which the lieutenant governor makes the certification described in Section 20A-5-409, the party's candidate:

(i) dies;

(ii) resigns because of acquiring a physical or mental disability as certified by a physician or physician assistant;

(iii) is disqualified by an election officer for improper filing or nominating procedures;

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or

(iv) resigns to become a candidate for president or vice president of the United States.

(2) If no more than two candidates from a political party have filed a declaration of candidacy for an office elected at a regular general election and one resigns to become the party candidate for another position, the state central committee of that political party, for candidates for governor, lieutenant governor, attorney general, state treasurer, and state auditor, and for legislative candidates whose legislative districts encompass more than one county, and the county central committee of that political party, for all other party candidates, may certify the name of another candidate to the appropriate election officer.

(3) Each replacement candidate shall file a declaration of candidacy as required by Title 20A, Chapter 9, Part 2, Candidate Qualifications and Declarations of Candidacy.

(4) (a) The name of a candidate who is certified under Subsection (1)(a) after the deadline described in Subsection (1)(a) may not appear on the primary election ballot.

(b) The name of a candidate who is certified under Subsection (1)(b) after the deadline described in Subsection (1)(b) may not appear on the general election ballot.

(c) The name of a candidate who is certified under Subsection (1)(c) after the deadline described in Subsection (1)(c) may not appear on the general election ballot.

(5) A political party may not replace a candidate who is disqualified for failure to timely file a campaign disclosure financial report under Title 20A, Chapter 11, Campaign and Financial Reporting Requirements, or Section 17-16-6.5.

Section 5. Section **23-19-36** is amended to read:

23-19-36. Persons with a physical or intellectual disability, terminally ill persons, and children in the custody of the state -- License to fish for free.

(1) A resident who is blind, has paraplegia, or has another permanent disability so as to be permanently confined to a wheelchair or the use of crutches, or who has lost either or both lower extremities, may receive a free license to fish upon furnishing satisfactory proof of this fact to the Division of Wildlife Resources.

(2) A resident who has an intellectual disability and is not eligible under Section 23-19-14 to fish without a license may receive a free license to fish upon furnishing verification from a physician or physician assistant that the person has an intellectual disability.

(3) A resident who is terminally ill, and has less than five years to live, may receive a

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free license to fish:

- (a) upon furnishing verification from a physician or physician assistant; and
- (b) if the resident qualifies for assistance under any low income public assistance

program administered by a state agency.

(4) A child placed in the custody of the state by a court order may receive a free fishing license upon furnishing verification of custody to the Division of Wildlife Resources.

Section 6. Section **23-19-38** is amended to read:

23-19-38. Sales of licenses, certificates, or permits final -- Exceptions --

Reallocation of surrendered permits.

(1) Sales of all licenses, certificates, or permits are final, and no refunds may be made by the division except as provided in Subsections (2) and (3).

(2) The division may refund the amount of the license, certificate, or permit if:

(a) the division or the Wildlife Board discontinues the activity for which the license, certificate, or permit was obtained;

(b) the division determines that it has erroneously collected a fee;

(c) (i) the person to whom the license, certificate, or permit is issued becomes ill or suffers an injury that precludes the person from using the license, certificate, or permit;

(ii) the person furnishes verification of illness or injury from a physician or physician assistant;

(iii) the person does not actually use the license, certificate, or permit; and

(iv) the license, certificate, or permit is surrendered before the end of the season for which the permit was issued; or

(d) the person to whom the license, certificate, or permit is issued dies prior to the person being able to use the license, certificate, or permit.

(3) The Wildlife Board may establish additional exceptions in rule to the refund prohibitions in Subsection (1).

(4) The division director may reallocate surrendered permits in accordance with rules adopted by the Wildlife Board.

Section 7. Section **26-2-5** is amended to read:

26-2-5. Birth certificates -- Execution and registration requirements.

(1) As used in this section, "birthing facility" means a general acute hospital or birthing

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center as defined in Section 26-21-2.

(2) For each live birth occurring in the state, a certificate shall be filed with the local registrar for the district in which the birth occurred within 10 days following the birth. The certificate shall be registered if it is completed and filed in accordance with this chapter.

(3) (a) For each live birth that occurs in a birthing facility, the administrator of the birthing facility, or his designee, shall obtain and enter the information required under this chapter on the certificate, securing the required signatures, and filing the certificate.

(b) (i) The date, time, place of birth, and required medical information shall be certified by the birthing facility administrator or his designee.

(ii) The attending physician or nurse midwife may sign the certificate, but if the attending physician or nurse midwife has not signed the certificate within seven days of the date of birth, the birthing facility administrator or his designee shall enter the attending physician's or nurse midwife's name and transmit the certificate to the local registrar.

(iii) The information on the certificate about the parents shall be provided and certified by the mother or father or, in their incapacity or absence, by a person with knowledge of the facts.

(4) (a) For live births that occur outside a birthing facility, the birth certificate shall be completed and filed by the physician, physician assistant, nurse, midwife, or other person primarily responsible for providing assistance to the mother at the birth. If there is no such person, either the presumed or declarant father shall complete and file the certificate. In his absence, the mother shall complete and file the certificate, and in the event of her death or disability, the owner or operator of the premises where the birth occurred shall do so.

(b) The certificate shall be completed as fully as possible and shall include the date, time, and place of birth, the mother's name, and the signature of the person completing the certificate.

(5) (a) For each live birth to an unmarried mother that occurs in a birthing facility, the administrator or director of that facility, or his designee, shall:

(i) provide the birth mother and declarant father, if present, with:

(A) a voluntary declaration of paternity form published by the state registrar;

(B) oral and written notice to the birth mother and declarant father of the alternatives to, the legal consequences of, and the rights and responsibilities that arise from signing the

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declaration; and

(C) the opportunity to sign the declaration;

(ii) witness the signature of a birth mother or declarant father in accordance with Section 78B-15-302 if the signature occurs at the facility;

(iii) enter the declarant father's information on the original birth certificate, but only if the mother and declarant father have signed a voluntary declaration of paternity or a court or administrative agency has issued an adjudication of paternity; and

(iv) file the completed declaration with the original birth certificate.

(b) If there is a presumed father, the voluntary declaration will only be valid if the presumed father also signs the voluntary declaration.

(c) The state registrar shall file the information provided on the voluntary declaration of paternity form with the original birth certificate and may provide certified copies of the declaration of paternity as otherwise provided under Title 78B, Chapter 15, Utah Uniform Parentage Act.

(6) (a) The state registrar shall publish a form for the voluntary declaration of paternity, a description of the process for filing a voluntary declaration of paternity, and of the rights and responsibilities established or effected by that filing, in accordance with Title 78B, Chapter 15, Utah Uniform Parentage Act.

(b) Information regarding the form and services related to voluntary paternity establishment shall be made available to birthing facilities and to any other entity or individual upon request.

(7) The name of a declarant father may only be included on the birth certificate of a child of unmarried parents if:

(a) the mother and declarant father have signed a voluntary declaration of paternity; or

(b) a court or administrative agency has issued an adjudication of paternity.

(8) Voluntary declarations of paternity, adjudications of paternity by judicial or administrative agencies, and voluntary rescissions of paternity shall be filed with and maintained by the state registrar for the purpose of comparing information with the state case registry maintained by the Office of Recovery Services pursuant to Section 62A-11-104.

Section 8. Section **26-4-2** is amended to read:

26-4-2. Definitions.

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As used in this chapter:

(1) "Dead body" is as defined in Section 26-2-2.

(2) "Death by violence" means death that resulted by the decedent's exposure to physical, mechanical, or chemical forces, and includes death which appears to have been due to homicide, death which occurred during or in an attempt to commit rape, mayhem, kidnapping, robbery, burglary, housebreaking, extortion, or blackmail accompanied by threats of violence, assault with a dangerous weapon, assault with intent to commit any offense punishable by imprisonment for more than one year, arson punishable by imprisonment for more than one year, or any attempt to commit any of the foregoing offenses.

(3) "Immediate relative" means an individual's spouse, child, parent, sibling, grandparent, or grandchild.

(4) "Medical examiner" means the state medical examiner appointed pursuant to Section 26-4-4 or a deputy appointed by the medical examiner.

(5) "Medical examiner record" means:

(a) all information that the medical examiner obtains regarding a decedent; and

(b) reports that the medical examiner makes regarding a decedent.

(6) "Regional pathologist" means a trained pathologist licensed to practice medicine and surgery in the state, appointed by the medical examiner pursuant to Subsection 26-4-4(3).

(7) "Sudden death while in apparent good health" means apparently instantaneous death without obvious natural cause, death during or following an unexplained syncope or coma, or death during an acute or unexplained rapidly fatal illness.

(8) "Sudden infant death syndrome" means the death of a child who was thought to be in good health or whose terminal illness appeared to be so mild that the possibility of a fatal outcome was not anticipated.

(9) "Suicide" means death caused by an intentional and voluntary act of a person who understands the physical nature of the act and intends by such act to accomplish self-destruction.

(10) "Unattended death" means the death of a person who has not been seen by a physician or physician assistant within the scope of the physician's or physician assistant's professional capacity within 30 days immediately prior to the date of death. This definition does not require an investigation, autopsy, or inquest in any case where death occurred without

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medical attendance solely because the deceased was under treatment by prayer or spiritual means alone in accordance with the tenets and practices of a well-recognized church or religious denomination.

(11) (a) "Unavailable for postmortem investigation" means that a dead body is:

(i) transported out of state;

(ii) buried at sea;

(iii) cremated;

(iv) processed by alkaline hydrolysis; or

(v) otherwise made unavailable to the medical examiner for postmortem investigation or autopsy.

(b) "Unavailable for postmortem investigation" does not include embalming or burial of a dead body pursuant to the requirements of law.

(12) "Within the scope of the decedent's employment" means all acts reasonably necessary or incident to the performance of work, including matters of personal convenience and comfort not in conflict with specific instructions.

Section 9. Section **26-4-14** is amended to read:

26-4-14. Certification of death by attending physician or physician assistant -- Deaths without medical attendance -- Cause of death uncertain -- Notice requirements.

The physician or physician assistant in attendance at the last illness of a deceased person who, in the judgment of the physician or physician assistant, does not appear to have died in a manner described in Section 26-4-7, shall certify the cause of death to his best knowledge and belief. When there is no physician or physician assistant in attendance during the last illness or when an attending physician or physician assistant is unable to determine with reasonable certainty the cause of death, the physician, physician assistant, or person with custody of the body shall so notify the medical examiner. If the medical examiner has reason to believe there may be criminal responsibility for the death, he shall notify the district attorney or county attorney having criminal jurisdiction or the head of the law enforcement agency having jurisdiction to make further investigation of the death.

Section 10. Section **26-4-17** is amended to read:

26-4-17. Records of medical examiner -- Confidentiality.

(1) The medical examiner shall maintain complete, original records for the medical

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examiner record, which shall:

(a) be properly indexed, giving the name, if known, or otherwise identifying every individual whose death is investigated;

(b) indicate the place where the body was found;

(c) indicate the date of death;

(d) indicate the cause and manner of death;

(e) indicate the occupation of the decedent, if available;

(f) include all other relevant information concerning the death; and

(g) include a full report and detailed findings of the autopsy or report of the investigation.

(2) Upon written request from an individual described in Subsections (2)(a) through (d), the medical examiner shall provide a copy of the medical examiner's final report of examination for the decedent, including the autopsy report, toxicology report, lab reports, and investigative reports to:

(a) a decedent's immediate relative;

(b) a decedent's legal representative;

(c) a physician or physician assistant who attended the decedent during the year before the decedent's death; or

(d) as necessary for the performance of the individual's professional duties, a county attorney, a district attorney, a criminal defense attorney, or other law enforcement official with jurisdiction.

(3) Reports provided under Subsection (2) may not include records that the medical examiner obtains from a third party in the course of investigating the decedent's death.

(4) The medical examiner may provide a medical examiner record to a researcher who:

(a) has an advanced degree;

(b) (i) is affiliated with an accredited college or university, a hospital, or another system of care, including an emergency medical response or a local health agency; or

(ii) is part of a research firm contracted with an accredited college or university, a hospital, or another system of care;

(c) requests a medical examiner record for a research project or a quality improvement initiative that will have a public health benefit, as determined by the Department of Health; and

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- (d) provides to the medical examiner an approval from:
 - (i) the researcher's sponsoring organization; and
 - (ii) the Utah Department of Health Institutional Review Board.
- (5) Records provided under Subsection (4) may not include a third party record, unless:
 - (a) a court has ordered disclosure of the third party record; and
 - (b) disclosure is conducted in compliance with state and federal law.
- (6) A person who obtains a medical examiner record under Subsection (4) shall:
 - (a) maintain the confidentiality of the medical examiner record by removing personally identifying information about a decedent or the decedent's family and any other information that may be used to identify a decedent before using the medical examiner record in research;
 - (b) conduct any research within and under the supervision of the Office of the Medical Examiner, if the medical examiner record contains a third party record with personally identifiable information;
 - (c) limit the use of a medical examiner record to the purpose for which the person requested the medical examiner record;
 - (d) destroy a medical examiner record and the data abstracted from the medical examiner record at the conclusion of the research for which the person requested the medical examiner record;
 - (e) reimburse the medical examiner, as provided in Section 26-1-6, for any costs incurred by the medical examiner in providing a medical examiner record;
 - (f) allow the medical examiner to review, before public release, a publication in which data from a medical examiner record is referenced or analyzed; and
 - (g) provide the medical examiner access to the researcher's database containing data from a medical examiner record, until the day on which the researcher permanently destroys the medical examiner record and all data obtained from the medical examiner record.
- (7) Except as provided in this chapter or ordered by a court, the medical examiner may not disclose any part of a medical examiner record.
- (8) A person who obtains a medical examiner record under Subsection (4) is guilty of a class B misdemeanor, if the person fails to comply with the requirements of Subsections (6)(a) through (d).

Section 11. Section **26-6-3** is amended to read:

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26-6-3. Authority to investigate and control epidemic infections and communicable disease.

(1) The department has authority to investigate and control the causes of epidemic infections and communicable disease, and shall provide for the detection, reporting, prevention, and control of communicable diseases and epidemic infections or any other health hazard which may affect the public health.

(2) (a) As part of the requirements of Subsection (1), the department shall distribute to the public and to health care professionals:

(i) medically accurate information about sexually transmitted diseases that may cause infertility and sterility if left untreated, including descriptions of:

(A) the probable side effects resulting from an untreated sexually transmitted disease, including infertility and sterility;

(B) medically accepted treatment for sexually transmitted diseases;

(C) the medical risks commonly associated with the medical treatment of sexually transmitted diseases; and

(D) [~~suggest~~] suggested screening by a private physician or physician assistant; and

(ii) information about:

(A) public services and agencies available to assist individuals with obtaining treatment for the sexually transmitted disease;

(B) medical assistance benefits that may be available to the individual with the sexually transmitted disease; and

(C) abstinence before marriage and fidelity after marriage being the surest prevention of sexually transmitted disease.

(b) The information required by Subsection (2)(a):

(i) shall be distributed by the department and by local health departments free of charge;

(ii) shall be relevant to the geographic location in which the information is distributed by:

(A) listing addresses and telephone numbers for public clinics and agencies providing services in the geographic area in which the information is distributed; and

(B) providing the information in English as well as other languages that may be

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appropriate for the geographic area.

(c) (i) Except as provided in Subsection (2)(c)(ii), the department shall develop written material that includes the information required by this Subsection (2).

(ii) In addition to the written materials required by Subsection (2)(c)(i), the department may distribute the information required by this Subsection (2) by any other methods the department determines is appropriate to educate the public, excluding public schools, including websites, toll free telephone numbers, and the media.

(iii) If the information required by Subsection (2)(b)(ii)(A) is not included in the written pamphlet developed by the department, the written material shall include either a website, or a 24-hour toll free telephone number that the public may use to obtain that information.

Section 12. Section **26-6-17** is amended to read:

26-6-17. Venereal disease -- Examinations by authorities -- Treatment of infected persons.

State, county, and municipal health officers within their respective jurisdictions may make examinations of persons reasonably suspected of being infected with venereal disease. Persons infected with venereal disease shall be required to report for treatment to either a reputable physician or physician assistant and continue treatment until cured or to submit to treatment provided at public expense until cured.

Section 13. Section **26-6-18** is amended to read:

26-6-18. Venereal disease -- Consent of minor to treatment.

(1) A consent to medical care or services by a hospital or public clinic or the performance of medical care or services by a licensed physician or physician assistant executed by a minor who is or professes to be afflicted with a sexually transmitted disease, shall have the same legal effect upon the minor and the same legal obligations with regard to the giving of consent as a consent given by a person of full legal age and capacity, the infancy of the minor and any contrary provision of law notwithstanding.

(2) The consent of the minor is not subject to later disaffirmance by reason of minority at the time it was given and the consent of no other person or persons shall be necessary to authorize hospital or clinical care or services to be provided to the minor by a licensed physician or physician assistant.

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(3) The provisions of this section shall apply also to minors who profess to be in need of hospital or clinical care and services or medical care or services provided by a physician or physician assistant for suspected sexually transmitted disease, regardless of whether such professed suspicions are subsequently substantiated on a medical basis.

Section 14. Section **26-6-19** is amended to read:

26-6-19. Venereal disease -- Examination and treatment of persons in prison or jail.

(1) All persons confined in any state, county, or city prison or jail shall be examined, and if infected, treated for venereal diseases by the health authorities. The prison authorities of every state, county, or city prison or jail shall make available to the health authorities such portion of the prison or jail as may be necessary for a clinic or hospital wherein all persons suffering with venereal disease at the time of the expiration of their terms of imprisonment, shall be isolated and treated at public expense until cured.

(2) The department may require persons suffering with venereal disease at the time of the expiration of their terms of imprisonment to report for treatment to a licensed physician or physician assistant or submit to treatment provided at public expense in lieu of isolation. Nothing in this section shall interfere with the service of any sentence imposed by a court as a punishment for the commission of crime.

Section 15. Section **26-6-20** is amended to read:

26-6-20. Serological testing of pregnant or recently delivered women.

(1) Every licensed physician and surgeon attending a pregnant or recently delivered woman for conditions relating to her pregnancy shall take or cause to be taken a sample of blood of the woman at the time of first examination or within 10 days thereafter. The blood sample shall be submitted to an approved laboratory for a standard serological test for syphilis. The provisions of this section do not apply to any female who objects thereto on the grounds that she is a bona fide member of a specified, well recognized religious organization whose teachings are contrary to the tests.

(2) Every other person attending a pregnant or recently delivered woman, who is not permitted by law to take blood samples, shall within 10 days from the time of first attendance cause a sample of blood to be taken by a licensed physician or physician assistant. The blood sample shall be submitted to an approved laboratory for a standard serological test for syphilis.

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(3) An approved laboratory is a laboratory approved by the department according to its rules governing the approval of laboratories for the purpose of this title. In submitting the sample to the laboratory the physician or physician assistant shall designate whether it is a prenatal test or a test following recent delivery.

(4) For the purpose of this chapter, a "standard serological test" means a test for syphilis approved by the department and made at an approved laboratory.

(5) The laboratory shall transmit a detailed report of the standard serological test, showing the result thereof to the physician or physician assistant.

Section 16. Section **26-6b-5** is amended to read:

26-6b-5. Petition for judicial review of order of restriction -- Court-ordered examination period.

(1) (a) A department may petition for a judicial review of the department's order of restriction for an individual or group of individuals who are subject to restriction by filing a written petition with the district court of the county in which the individual or group of individuals reside or are located.

(b) (i) The county attorney for the county where the individual or group of individuals reside or are located shall represent the local health department in any proceedings under this chapter.

(ii) The Office of the Attorney General shall represent the department when the petitioner is the Department of Health in any proceedings under this chapter.

(2) The petition under Subsection (1) shall be accompanied by:

(a) written affidavit of the department stating:

(i) a belief the individual or group of individuals are subject to restriction;

(ii) a belief that the individual or group of individuals who are subject to restriction are likely to fail to submit to examination, treatment, quarantine, or isolation if not immediately restrained;

(iii) this failure would pose a threat to the public health; and

(iv) the personal knowledge of the individual's or group of individuals' condition or the circumstances that lead to that belief; and

(b) a written statement by a licensed physician or physician assistant indicating the physician or physician assistant finds the individual or group of individuals are subject to

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restriction.

(3) The court shall issue an order of restriction requiring the individual or group of individuals to submit to involuntary restriction to protect the public health if the district court finds:

(a) there is a reasonable basis to believe that the individual's or group of individuals' condition requires involuntary examination, quarantine, treatment, or isolation pending examination and hearing; or

(b) the individual or group of individuals have refused to submit to examination by a health professional as directed by the department or to voluntarily submit to examination, treatment, quarantine, or isolation.

(4) If the individual or group of individuals who are subject to restriction are not in custody, the court may make its determination and issue its order of restriction in an ex parte hearing.

(5) At least 24 hours prior to the hearing required by Section 26-6b-6, the department which is the petitioner, shall report to the court, in writing, the opinion of qualified health care providers:

(a) regarding whether the individual or group of individuals are infected by or contaminated with:

(i) a communicable or possible communicable disease that poses a threat to public health;

(ii) an infectious agent or possibly infectious agent that poses a threat to public health;

(iii) a chemical or biological agent that poses a threat to public health; or

(iv) a condition that poses a threat to public health;

(b) that despite the exercise of reasonable diligence, the diagnostic studies have not been completed;

(c) whether the individual or group of individuals have agreed to voluntarily comply with necessary examination, treatment, quarantine, or isolation; and

(d) whether the petitioner believes the individual or group of individuals will comply without court proceedings.

Section 17. Section **26-8a-251** is amended to read:

26-8a-251. Trauma system advisory committee.

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(1) There is created within the department the trauma system advisory committee.

(2) (a) The committee shall be comprised of individuals knowledgeable in adult or pediatric trauma care, including physicians, physician assistants, nurses, hospital administrators, emergency medical services personnel, government officials, consumers, and persons affiliated with professional health care associations.

(b) Representation on the committee shall be broad and balanced among the health care delivery systems in the state with no more than three representatives coming from any single delivery system.

(3) The committee shall:

(a) advise the department regarding trauma system needs throughout the state;

(b) assist the department in evaluating the quality and outcomes of the overall trauma system;

(c) review and comment on proposals and rules governing the statewide trauma system; and

(d) make recommendations for the development of statewide triage, treatment, transportation, and transfer guidelines.

(4) The department shall:

(a) determine, by rule, the term and causes for removal of committee members;

(b) establish committee procedures and administration policies consistent with this chapter and department rule; and

(c) provide administrative support to the committee.

Section 18. Section **26-8a-601** is amended to read:

26-8a-601. Persons and activities exempt from civil liability.

(1) (a) Except as provided in Subsection (1)(b), a licensed physician, physician's assistant, or licensed registered nurse who, gratuitously and in good faith, gives oral or written instructions to any of the following is not liable for any civil damages as a result of issuing the instructions:

(i) an individual licensed under Section 26-8a-302;

(ii) a person who uses a fully automated external defibrillator, as defined in Section 26-8b-102; or

(iii) a person who administers CPR, as defined in Section 26-8b-102.

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(b) The liability protection described in Subsection (1)(a) does not apply if the instructions given were the result of gross negligence or willful misconduct.

(2) An individual licensed under Section 26-8a-302, during either training or after licensure, a licensed physician, a ~~physician's~~ physician assistant, or a registered nurse who, gratuitously and in good faith, provides emergency medical instructions or renders emergency medical care authorized by this chapter is not liable for any civil damages as a result of any act or omission in providing the emergency medical instructions or medical care, unless the act or omission is the result of gross negligence or willful misconduct.

(3) An individual licensed under Section 26-8a-302 is not subject to civil liability for failure to obtain consent in rendering emergency medical services authorized by this chapter to any individual who is unable to give his consent, regardless of the individual's age, where there is no other person present legally authorized to consent to emergency medical care, provided that the licensed individual acted in good faith.

(4) A principal, agent, contractor, employee, or representative of an agency, organization, institution, corporation, or entity of state or local government that sponsors, authorizes, supports, finances, or supervises any functions of an individual licensed under Section 26-8a-302 is not liable for any civil damages for any act or omission in connection with such sponsorship, authorization, support, finance, or supervision of the licensed individual where the act or omission occurs in connection with the licensed individual's training or occurs outside a hospital where the life of a patient is in immediate danger, unless the act or omission is inconsistent with the training of the licensed individual, and unless the act or omission is the result of gross negligence or willful misconduct.

(5) A physician or physician assistant who gratuitously and in good faith arranges for, requests, recommends, or initiates the transfer of a patient from a hospital to a critical care unit in another hospital is not liable for any civil damages as a result of such transfer where:

(a) sound medical judgment indicates that the patient's medical condition is beyond the care capability of the transferring hospital or the medical community in which that hospital is located; and

(b) the physician or physician assistant has secured an agreement from the receiving facility to accept and render necessary treatment to the patient.

(6) A person who is a registered member of the National Ski Patrol System (NSPS) or

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a member of a ski patrol who has completed a course in winter emergency care offered by the NSPS combined with CPR for medical technicians offered by the American Red Cross or American Heart Association, or an equivalent course of instruction, and who in good faith renders emergency care in the course of ski patrol duties is not liable for civil damages as a result of any act or omission in rendering the emergency care, unless the act or omission is the result of gross negligence or willful misconduct.

(7) An emergency medical service provider who, in good faith, transports an individual against his will but at the direction of a law enforcement officer pursuant to Section 62A-15-629 is not liable for civil damages for transporting the individual.

Section 19. Section **26-8d-104** is amended to read:

26-8d-104. Stroke registry advisory committee.

(1) There is created within the department a stroke registry advisory committee.

(2) The stroke registry advisory committee created in Subsection (1) shall:

(a) be composed of individuals knowledgeable in adult and pediatric stroke care, including physicians, physician assistants, nurses, hospital administrators, emergency medical services personnel, government officials, consumers, and persons affiliated with professional health care associations;

(b) advise the department regarding the development and implementation of the stroke registry;

(c) assist the department in evaluating the quality and outcomes of the stroke registry; and

(d) review and comment on proposals and rules governing the statewide stroke registry.

Section 20. Section **26-8d-105** is amended to read:

26-8d-105. Cardiac registry advisory committee.

(1) There is created within the department a cardiac registry advisory committee.

(2) The cardiac registry advisory committee created in Subsection (1) shall:

(a) be composed of individuals knowledgeable in adult and pediatric cardiac care, including physicians, physician assistants, nurses, hospital administrators, emergency medical services personnel, government officials, consumers, and persons affiliated with professional health care associations;

(b) advise the department regarding the development and implementation of the

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cardiac registry;

(c) assist the department in evaluating the quality and outcomes of the cardiac registry;

and

(d) review and comment on proposals and rules governing the statewide cardiac registry.

Section 21. Section **26-10-11** is amended to read:

26-10-11. Children's Hearing Aid Program.

(1) The department shall offer a program to provide hearing aids to children who qualify under this section.

(2) The department shall provide hearing aids to a child who:

(a) is younger than six years old;

(b) is a resident of Utah;

(c) has been diagnosed with hearing loss by:

(i) an audiologist with pediatric expertise; and

(ii) a physician or physician assistant;

(d) provides documentation from an audiologist with pediatric expertise certifying that the child needs hearing aids;

(e) has obtained medical clearance by a medical provider for hearing aid fitting;

(f) does not qualify to receive a contribution that equals the full cost of a hearing aid from the state's Medicaid program or the Utah Children's Health Insurance Program; and

(g) meets the financial need qualification criteria established by the department by rule, made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, for participation in the program.

(3) (a) There is established the Children's Hearing Aid Advisory Committee.

(b) The committee shall be composed of five members appointed by the executive director, and shall include:

(i) one audiologist with pediatric expertise;

(ii) one speech language pathologist;

(iii) one teacher, certified under Title 53E, Public Education System -- State Administration, as a teacher of the deaf or a listening and spoken language therapist;

(iv) one ear, nose, and throat specialist; and

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(v) one parent whose child:

(A) is six years old or older; and

(B) has hearing loss.

(c) A majority of the members constitutes a quorum.

(d) A vote of the majority of the members, with a quorum present, constitutes an action of the committee.

(e) The committee shall elect a chair from its members.

(f) The committee shall:

(i) meet at least quarterly;

(ii) recommend to the department medical criteria and procedures for selecting children who may qualify for assistance from the account; and

(iii) review rules developed by the department.

(g) A member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with Sections 63A-3-106 and 63A-3-107 and rules made by the Division of Finance, pursuant to Sections 63A-3-106 and 63A-3-107.

(h) The department shall provide staff to the committee.

(4) (a) There is created within the General Fund a restricted account known as the "Children's Hearing Aid Program Restricted Account."

(b) The Children's Hearing Aid Program Restricted Account shall consist of:

(i) amounts appropriated to the account by the Legislature; and

(ii) gifts, grants, devises, donations, and bequests of real property, personal property, or services, from any source, or any other conveyance that may be made to the account from private sources.

(c) Upon appropriation, all actual and necessary operating expenses for the committee described in Subsection (3) shall be paid by the account.

(d) Upon appropriation, no more than 9% of the account money may be used for the department's expenses.

(e) If this account is repealed in accordance with Section 63I-1-226, any remaining assets in the account shall be deposited into the General Fund.

(5) The department shall make rules, in accordance with Title 63G, Chapter 3, Utah

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Administrative Rulemaking Act, to establish procedures for:

(a) identifying the children who are financially eligible to receive services under the program; and

(b) reviewing and paying for services provided to a child under the program.

(6) The department shall, before December 1 of each year, submit a report to the Health and Human Services Interim Committee that describes the operation and accomplishments of the program.

Section 22. Section **26-18-107** is amended to read:

26-18-107. Retrospective and prospective DUR.

(1) The board, in cooperation with the division, shall include in its state plan the creation and implementation of a retrospective and prospective DUR program for Medicaid outpatient drugs to ensure that prescriptions are appropriate, medically necessary, and not likely to result in adverse medical outcomes.

(2) The retrospective and prospective DUR program shall be operated under guidelines established by the board under Subsections (3) and (4).

(3) The retrospective DUR program shall be based on guidelines established by the board, using the mechanized drug claims processing and information retrieval system to analyze claims data in order to:

(a) identify patterns of fraud, abuse, gross overuse, and inappropriate or medically unnecessary care; and

(b) assess data on drug use against explicit predetermined standards that are based on the compendia and other sources for the purpose of monitoring:

(i) therapeutic appropriateness;

(ii) overutilization or underutilization;

(iii) therapeutic duplication;

(iv) drug-disease contraindications;

(v) drug-drug interactions;

(vi) incorrect drug dosage or duration of drug treatment; and

(vii) clinical abuse and misuse.

(4) The prospective DUR program shall be based on guidelines established by the board and shall provide that, before a prescription is filled or delivered, a review will be

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conducted by the pharmacist at the point of sale to screen for potential drug therapy problems resulting from:

- (a) therapeutic duplication;
- (b) drug-drug interactions;
- (c) incorrect dosage or duration of treatment;
- (d) drug-allergy interactions; and
- (e) clinical abuse or misuse.

(5) In conducting the prospective DUR, a pharmacist may not alter the prescribed outpatient drug therapy without the consent of the prescribing physician or physician assistant.

This section does not effect the ability of a pharmacist to substitute a generic equivalent.

Section 23. Section ~~{26-21-2}~~ 26-21-7 is amended to read:

~~{~~ ~~26-21-2. Definitions:~~

~~As used in this chapter:~~

~~(1) "Abortion clinic" means a type I abortion clinic or a type II abortion clinic.~~

~~(2) "Activities of daily living" means essential activities including:~~

~~(a) dressing;~~

~~(b) eating;~~

~~(c) grooming;~~

~~(d) bathing;~~

~~(e) toileting;~~

~~(f) ambulation;~~

~~(g) transferring; and~~

~~(h) self-administration of medication.~~

~~(3) "Ambulatory surgical facility" means a freestanding facility, which provides surgical services to patients not requiring hospitalization.~~

~~(4) "Assistance with activities of daily living" means providing of or arranging for the provision of assistance with activities of daily living.~~

~~(5) (a) "Assisted living facility" means:~~

~~(i) a type I assisted living facility, which is a residential facility that provides assistance with activities of daily living and social care to two or more residents who:~~

~~(A) require protected living arrangements; and~~

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~~—— (B) are capable of achieving mobility sufficient to exit the facility without the assistance of another person; and~~

~~—— (ii) a type II assisted living facility, which is a residential facility with a home-like setting that provides an array of coordinated supportive personal and health care services available 24 hours per day to residents who have been assessed under department rule to need any of these services:~~

~~—— (b) Each resident in a type I or type II assisted living facility shall have a service plan based on the assessment, which may include:~~

~~—— (i) specified services of intermittent nursing care;~~

~~—— (ii) administration of medication; and~~

~~—— (iii) support services promoting residents' independence and self sufficiency.~~

~~—— (6) "Birthing center" means a freestanding facility, receiving maternal clients and providing care during pregnancy, delivery, and immediately after delivery.~~

~~—— (7) "Committee" means the Health Facility Committee created in Section 26-1-7.~~

~~—— (8) "Consumer" means any person not primarily engaged in the provision of health care to individuals or in the administration of facilities or institutions in which such care is provided and who does not hold a fiduciary position, or have a fiduciary interest in any entity involved in the provision of health care, and does not receive, either directly or through his spouse, more than 1/10 of his gross income from any entity or activity relating to health care.~~

~~—— (9) "End stage renal disease facility" means a facility which furnishes staff-assisted kidney dialysis services, self-dialysis services, or home-dialysis services on an outpatient basis.~~

~~—— (10) "Freestanding" means existing independently or physically separated from another health care facility by fire walls and doors and administrated by separate staff with separate records.~~

~~—— (11) "General acute hospital" means a facility which provides diagnostic, therapeutic, and rehabilitative services to both inpatients and outpatients by or under the supervision of physicians.~~

~~—— (12) "Governmental unit" means the state, or any county, municipality, or other political subdivision or any department, division, board, or agency of the state, a county, municipality, or other political subdivision.~~

~~—— (13) (a) "Health care facility" means general acute hospitals, specialty hospitals, home~~

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~~health agencies, hospices, nursing care facilities, residential-assisted living facilities, birthing centers, ambulatory surgical facilities, small health care facilities, abortion clinics, facilities owned or operated by health maintenance organizations, end-stage renal disease facilities, and any other health care facility which the committee designates by rule.~~

~~—— (b) "Health care facility" does not include the offices of private physicians, physician assistants, or dentists, whether for individual or group practice, except that it does include an abortion clinic.~~

~~—— (14) "Health maintenance organization" means an organization, organized under the laws of any state which:~~

~~—— (a) is a qualified health maintenance organization under 42 U.S.C. Sec. 300e-9; or~~

~~—— (b) (i) provides or otherwise makes available to enrolled participants at least the following basic health care services: usual physician services, hospitalization, laboratory, x-ray, emergency, and preventive services and out-of-area coverage;~~

~~—— (ii) is compensated, except for copayments, for the provision of the basic health services listed in Subsection (14)(b)(i) to enrolled participants by a payment which is paid on a periodic basis without regard to the date the health services are provided and which is fixed without regard to the frequency, extent, or kind of health services actually provided; and~~

~~—— (iii) provides physicians' services primarily directly through physicians who are either employees or partners of such organizations, or through arrangements with individual physicians or one or more groups of physicians organized on a group practice or individual practice basis.~~

~~—— (15) (a) "Home health agency" means an agency, organization, or facility or a subdivision of an agency, organization, or facility which employs two or more direct care staff persons who provide licensed nursing services, therapeutic services of physical therapy, speech therapy, occupational therapy, medical social services, or home health aide services on a visiting basis.~~

~~—— (b) "Home health agency" does not mean an individual who provides services under the authority of a private license.~~

~~—— (16) "Hospice" means a program of care for the terminally ill and their families which occurs in a home or in a health care facility and which provides medical, palliative, psychological, spiritual, and supportive care and treatment.~~

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- ~~———— (17) "Nursing care facility" means a health care facility, other than a general acute or specialty hospital, constructed, licensed, and operated to provide patient living accommodations, 24-hour staff availability, and at least two of the following patient services:~~
- ~~———— (a) a selection of patient care services, under the direction and supervision of a registered nurse, ranging from continuous medical, skilled nursing, psychological, or other professional therapies to intermittent health-related or paraprofessional personal care services;~~
- ~~———— (b) a structured, supportive social living environment based on a professionally designed and supervised treatment plan, oriented to the individual's habilitation or rehabilitation needs; or~~
- ~~———— (c) a supervised living environment that provides support, training, or assistance with individual activities of daily living.~~
- ~~———— (18) "Person" means any individual, firm, partnership, corporation, company, association, or joint stock association, and the legal successor thereof.~~
- ~~———— (19) "Resident" means a person 21 years of age or older who:~~
- ~~———— (a) as a result of physical or mental limitations or age requires or requests services provided in an assisted living facility; and~~
- ~~———— (b) does not require intensive medical or nursing services as provided in a hospital or nursing care facility.~~
- ~~———— (20) "Small health care facility" means a four to 16 bed facility that provides licensed health care programs and services to residents.~~
- ~~———— (21) "Specialty hospital" means a facility which provides specialized diagnostic, therapeutic, or rehabilitative services in the recognized specialty or specialties for which the hospital is licensed.~~
- ~~———— (22) "Substantial compliance" means in a department survey of a licensee, the department determines there is an absence of deficiencies which would harm the physical health, mental health, safety, or welfare of patients or residents of a licensee.~~
- ~~———— (23) "Type I abortion clinic" means a facility, including a physician's office, but not including a general acute or specialty hospital, that:~~
- ~~———— (a) performs abortions, as defined in Section 76-7-301, during the first trimester of pregnancy; and~~
- ~~———— (b) does not perform abortions, as defined in Section 76-7-301, after the first trimester~~

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of pregnancy.

~~———— (24) "Type II abortion clinic" means a facility, including a physician's office, but not including a general acute or specialty hospital, that:~~

~~———— (a) performs abortions, as defined in Section 76-7-301, after the first trimester of pregnancy; or~~

~~———— (b) performs abortions, as defined in Section 76-7-301, during the first trimester of pregnancy and after the first trimester of pregnancy.~~

~~———— Section 24. Section 26-21-7 is amended to read:~~

~~‡~~ **26-21-7. Exempt facilities.**

This chapter does not apply to:

(1) a dispensary or first aid facility maintained by any commercial or industrial plant, educational institution, or convent;

(2) a health care facility owned or operated by an agency of the United States;

(3) the office of a physician, physician assistants, or dentist whether it is an individual or group practice, except that it does apply to an abortion clinic;

(4) a health care facility established or operated by any recognized church or denomination for the practice of religious tenets administered by mental or spiritual means without the use of drugs, whether gratuitously or for compensation, if it complies with statutes and rules on environmental protection and life safety;

(5) any health care facility owned or operated by the Department of Corrections, created in Section 64-13-2; and

(6) a residential facility providing 24-hour care:

(a) that does not employ direct care staff;

(b) in which the residents of the facility contract with a licensed hospice agency to receive end-of-life medical care; and

(c) that meets other requirements for an exemption as designated by administrative rule.

Section ~~{25}~~24. Section ~~{26-21-29}~~26-28-114 is amended to read:

~~{~~ **26-21-29. Birthing centers -- Regulatory restrictions.**

~~———— (1) For purposes of this section:~~

~~———— (a) "Certified nurse midwife" means an individual who is licensed under Title 58;~~

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~~Chapter 44a, Nurse-Midwife Practice Act.~~

~~—— (b) "Direct-entry midwife" means an individual who is licensed under Title 58, Chapter 77, Direct-Entry Midwife Act.~~

~~—— (c) "Licensed maternity care practitioner" includes:~~

~~—— (i) a physician;~~

~~—— (ii) a physician assistant;~~

~~—— [(ii)] (iii) a certified nurse midwife;~~

~~—— [(iii)] (iv) a direct entry midwife;~~

~~—— [(iv)] (v) a naturopathic physician; and~~

~~—— [(v)] (vi) other individuals who are licensed under Title 58, [Division of Occupational and Professional Licensing Act] Occupations and Professions, and whose scope of practice includes midwifery or obstetric care.~~

~~—— (d) "Naturopathic physician" means an individual who is licensed under Title 58, Chapter 71, Naturopathic Physician Practice Act.~~

~~—— (e) "Physician" means an individual who is licensed under Title 58, Chapter 67, Utah Medical Practice Act, or Title 58, Chapter 68, Utah Osteopathic Medical Practice Act.~~

~~—— (f) "Physician assistant" means an individual who is licensed under Title 58, Chapter 70a, Utah Physician Assistant Act.~~

~~—— (2) The Health Facility Committee and the department may not require a birthing center or a licensed maternity care practitioner who practices at a birthing center to:~~

~~—— (a) maintain admitting privileges at a general acute hospital;~~

~~—— (b) maintain a written transfer agreement with one or more general acute hospitals;~~

~~—— (c) maintain a collaborative practice agreement with a physician; or~~

~~—— (d) have a physician or certified nurse midwife present at each birth when another licensed maternity care practitioner is present at the birth and remains until the maternal patient and newborn are stable postpartum.~~

~~—— (3) The Health Facility Committee and the department shall:~~

~~—— (a) permit all types of licensed maternity care practitioners to practice in a birthing center; and~~

~~—— (b) except as provided in Subsection (2)(b), require a birthing center to have a written plan for the transfer of a patient to a hospital in accordance with Subsection (4).~~

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- ~~———— (4) A transfer plan under Subsection (3)(b) shall:~~
- ~~———— (a) be signed by the patient; and~~
- ~~———— (b) indicate that the plan is not an agreement with a hospital.~~
- ~~———— (5) If a birthing center transfers a patient to a licensed maternity care practitioner or facility, the responsibility of the licensed maternity care practitioner or facility, for the patient:~~
- ~~———— (a) does not begin until the patient is physically within the care of the licensed maternity care practitioner or facility;~~
- ~~———— (b) is limited to the examination and care provided after the patient is transferred to the licensed maternity care practitioner or facility; and~~
- ~~———— (c) does not include responsibility or accountability for the patient's decision to pursue an out-of-hospital birth and the services of a birthing center.~~
- ~~———— (6) (a) Except as provided in Subsection (6)(c), a licensed maternity care practitioner who is not practicing at a birthing center may, upon receiving a briefing from a member of a birthing center's clinical staff, issue a medical order for the birthing center's patient without assuming liability for the care of the patient for whom the order was issued.~~
- ~~———— (b) Regardless of the advice given or order issued under Subsection (6)(a), the responsibility and liability for caring for the patient is that of the birthing center and the birthing center's clinical staff.~~
- ~~———— (c) The licensed maternity care practitioner giving the order under Subsection (6)(a) is responsible and liable only for the appropriateness of the order, based on the briefing received under Subsection (6)(a).~~
- ~~———— (7) The department shall hold a public hearing under Subsection 63G-3-302(2)(a) for a proposed administrative rule, and amendment to a rule, or repeal of a rule, that relates to birthing centers.~~

~~———— Section 26. Section **26-28-114** is amended to read:~~

‡ **26-28-114. Rights and duties of procurement organization and others.**

(1) When a hospital refers an individual at or near death to a procurement organization, the organization shall make a reasonable search of the records of the Department of Public Safety and any donor registry that it knows exists for the geographical area in which the individual resides to ascertain whether the individual has made an anatomical gift.

(2) A procurement organization shall be allowed reasonable access to information in

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the records of the Department of Public Safety to ascertain whether an individual at or near death is a donor.

(3) When a hospital refers an individual at or near death to a procurement organization, the organization may conduct any reasonable examination necessary to ensure the medical suitability of a part that is or could be the subject of an anatomical gift for transplantation, therapy, research, or education from a donor or a prospective donor. During the examination period, measures necessary to ensure the medical suitability of the part may not be withdrawn unless the hospital or procurement organization knows that the individual expressed a contrary intent.

(4) Unless prohibited by law other than this chapter, at any time after a donor's death, the person to which a part passes under Section 26-28-111 may conduct any reasonable examination necessary to ensure the medical suitability of the body or part for its intended purpose.

(5) Unless prohibited by law other than this chapter, an examination under Subsection (3) or (4) may include an examination of all medical and dental records of the donor or prospective donor.

(6) Upon the death of a minor who was a donor or had signed a refusal, unless a procurement organization knows the minor is emancipated, the procurement organization shall conduct a reasonable search for the parents of the minor and provide the parents with an opportunity to revoke or amend the anatomical gift or revoke the refusal.

(7) Upon referral by a hospital under Subsection (1), a procurement organization shall make a reasonable search for any person listed in Section 26-28-109 having priority to make an anatomical gift on behalf of a prospective donor. If a procurement organization receives information that an anatomical gift to any other person was made, amended, or revoked, it shall promptly advise the other person of all relevant information.

(8) Subject to Subsection 26-28-111(9) and Section 26-28-123, the rights of the person to which a part passes under Section 26-28-111 are superior to the rights of all others with respect to the part. The person may accept or reject an anatomical gift in whole or in part. Subject to the terms of the document of gift and this chapter, a person that accepts an anatomical gift of an entire body may allow embalming, burial or cremation, and use of remains in a funeral service. If the gift is of a part, the person to which the part passes under

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Section 26-28-111, upon the death of the donor and before embalming, burial, or cremation, shall cause the part to be removed without unnecessary mutilation.

(9) Neither the physician or physician assistant who attends the decedent at death nor the physician or physician assistant who determines the time of the decedent's death may participate in the procedures for removing or transplanting a part from the decedent.

(10) A physician, physician assistant, or technician may remove a donated part from the body of a donor that the physician, physician assistant, or technician is qualified to remove.

Section ~~{27}~~25. Section 26-33a-102 is amended to read:

26-33a-102. Definitions.

As used in this chapter:

(1) "Committee" means the Health Data Committee created by Section 26-1-7.

(2) "Control number" means a number assigned by the committee to an individual's health data as an identifier so that the health data can be disclosed or used in research and statistical analysis without readily identifying the individual.

(3) "Data supplier" means a health care facility, health care provider, self-funded employer, third-party payor, health maintenance organization, or government department which could reasonably be expected to provide health data under this chapter.

(4) "Disclosure" or "disclose" means the communication of health care data to any individual or organization outside the committee, its staff, and contracting agencies.

(5) "Executive director" means the director of the department.

(6) (a) "Health care facility" means a facility that is licensed by the department under Title 26, Chapter 21, Health Care Facility Licensing and Inspection Act.

(b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the committee, with the concurrence of the department, may by rule add, delete, or modify the list of facilities that come within this definition for purposes of this chapter.

(7) "Health care provider" means any person, partnership, association, corporation, or other facility or institution that renders or causes to be rendered health care or professional services as a physician, physician assistant, registered nurse, licensed practical nurse, nurse-midwife, dentist, dental hygienist, optometrist, clinical laboratory technologist, pharmacist, physical therapist, podiatric physician, psychologist, chiropractic physician, naturopathic physician, osteopathic physician, osteopathic physician and surgeon, audiologist,

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speech pathologist, certified social worker, social service worker, social service aide, marriage and family counselor, or practitioner of obstetrics, and others rendering similar care and services relating to or arising out of the health needs of persons or groups of persons, and officers, employees, or agents of any of the above acting in the course and scope of their employment.

(8) "Health data" means information relating to the health status of individuals, health services delivered, the availability of health manpower and facilities, and the use and costs of resources and services to the consumer, except vital records as defined in Section 26-2-2 shall be excluded.

(9) "Health maintenance organization" has the meaning set forth in Section 31A-8-101.

(10) "Identifiable health data" means any item, collection, or grouping of health data that makes the individual supplying or described in the health data identifiable.

(11) "Individual" means a natural person.

(12) "Organization" means any corporation, association, partnership, agency, department, unit, or other legally constituted institution or entity, or part thereof.

(13) "Research and statistical analysis" means activities using health data analysis including:

(a) describing the group characteristics of individuals or organizations;

(b) analyzing the noncompliance among the various characteristics of individuals or organizations;

(c) conducting statistical procedures or studies to improve the quality of health data;

(d) designing sample surveys and selecting samples of individuals or organizations;

and

(e) preparing and publishing reports describing these matters.

(14) "Self-funded employer" means an employer who provides for the payment of health care services for employees directly from the employer's funds, thereby assuming the financial risks rather than passing them on to an outside insurer through premium payments.

(15) "Plan" means the plan developed and adopted by the Health Data Committee under Section 26-33a-104.

(16) "Third party payor" means:

(a) an insurer offering a health benefit plan, as defined by Section 31A-1-301, to at

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least 2,500 enrollees in the state;

(b) a nonprofit health service insurance corporation licensed under Title 31A, Chapter 7, Nonprofit Health Service Insurance Corporations;

(c) a program funded or administered by Utah for the provision of health care services, including the Medicaid and medical assistance programs described in Chapter 18, Medical Assistance Act; and

(d) a corporation, organization, association, entity, or person:

(i) which administers or offers a health benefit plan to at least 2,500 enrollees in the state; and

(ii) which is required by administrative rule adopted by the department in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to supply health data to the committee.

Section ~~28~~26. Section **26-64-105** is amended to read:

26-64-105. Standing prescription drug orders for a self-administered hormonal contraceptive.

A physician or physician assistant who is licensed to prescribe a self-administered hormonal contraceptive, including a physician or physician assistant acting in the physician's or physician assistant's capacity as an employee of the department, or a medical director of a local health department, may issue a standing prescription drug order authorizing the dispensing of the self-administered hormonal contraceptive under Section 26-64-104 in accordance with a protocol that:

(1) requires the physician or physician assistant to specify the persons, by professional license number, authorized to dispense the self-administered hormonal contraceptive;

(2) requires the physician or physician assistant to review at least annually the dispensing practices of those authorized by the physician or physician assistant to dispense the self-administered hormonal contraceptive;

(3) requires those authorized by the physician or physician assistant to dispense the self-administered hormonal contraceptive to make and retain a record of each person to whom the self-administered hormonal contraceptive is dispensed, including:

(a) the name of the person;

(b) the drug dispensed; and

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(c) other relevant information; and

(4) is approved by the department by administrative rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

Section ~~{29}~~27. Section **26-64-107** is amended to read:

26-64-107. Limited civil liability.

A physician or physician assistant who issues a standing prescription drug order in accordance with Section 26-64-105 is not liable for any civil damages for acts or omissions resulting from the dispensing of a self-administered hormonal contraceptive under this chapter.

Section ~~{30}~~28. Section **31A-22-624** is amended to read:

31A-22-624. Primary care physician or physician assistant.

An accident and health insurance policy that requires an insured to select a primary care physician to receive optimum coverage:

(1) shall permit an insured to select a participating provider who:

(a) is an:

(i) obstetrician;

(ii) gynecologist; [~~or~~]

(iii) pediatrician; [~~and~~] or

(iv) physician assistant; and

(b) is qualified and willing to provide primary care services, as defined by the health care plan, as the insured's provider from whom primary care services are received;

(2) shall clearly state in literature explaining the policy the option available to insureds under Subsection (1); and

(3) may not impose a higher premium, higher copayment requirement, or any other additional expense on an insured because the insured selected a primary care physician in accordance with Subsection (1).

Section ~~{31}~~29. Section **31A-22-649** is amended to read:

31A-22-649. Coverage of telepsychiatric consultations.

(1) As used in this section:

(a) "Telehealth services" means the same as that term is defined in Section 26-60-102.

(b) "Telepsychiatric consultation" means a consultation [~~between a physician and a board certified psychiatrist, both of whom are licensed to engage in the practice of medicine in~~

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~~the state,]:~~

(i) between the following individuals who are licensed to practice in the state:

(A) a physician or physician assistant; and

(B) a board certified psychiatrist or a physician assistant working with a psychiatrist;

and

(ii) that utilizes:

~~(i)~~ (A) the health records of the patient, provided from the patient or the referring physician;

~~(ii)~~ (B) a written, evidence-based patient questionnaire; and

~~(iii)~~ (C) telehealth services that meet industry security and privacy standards, including compliance with the~~[-(A)]~~ Health Insurance Portability and Accountability Act~~[-and~~ ~~(B)]~~ and the Health Information Technology for Economic and Clinical Health Act, Pub. L. No. 111-5, 123 Stat. 226, 467, as amended.

(2) Beginning January 1, 2019, a health benefit plan that offers coverage for mental health services shall:

(a) provide coverage for a telepsychiatric consultation during or after an initial visit between the patient and a referring in-network physician or physician assistant;

(b) provide coverage for a telepsychiatric consultation from an out-of-network board certified psychiatrist if a telepsychiatric consultation is not made available to a physician or physician assistant within seven business days after the initial request is made by the physician or physician assistant to an in-network provider of telepsychiatric consultations; and

(c) reimburse for the services described in Subsections (2)(a) and (b) at the equivalent in-network or out-of-network rate set by the health benefit plan after taking into account cost-sharing that may be required under the health benefit plan.

(3) A single telepsychiatric consultation includes all contacts, services, discussion, and information review required to complete an individual request from a referring physician or physician assistant for a patient.

(4) An insurer may satisfy the requirement to cover a telepsychiatric consultation described in Subsection (2)(a) for a patient by:

(a) providing coverage for behavioral health treatment, as defined in Section 31A-22-642, in person or using telehealth services; and

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(b) ensuring that the patient receives an appointment for the behavioral health treatment in person or using telehealth services on a date that is within seven business days after the initial request is made by the in-network referring physician or physician assistant.

(5) A referring physician or physician assistant who uses a telepsychiatric consultation for a patient shall, at the time that the questionnaire described in Subsection (1)(b)(ii) is completed, notify the patient that:

(a) the referring physician or physician assistant plans to request a telepsychiatric consultation; and

(b) additional charges to the patient may apply.

(6) (a) An insurer may receive a temporary waiver from the department from the requirements in this section if the insurer demonstrates to the department that the insurer is unable to provide the benefits described in this section due to logistical reasons.

(b) An insurer that receives a waiver from the department under Subsection (6)(a) is subject to the requirements of this section beginning July 1, 2019.

(7) This section does not limit an insurer from engaging in activities that ensure payment integrity or facilitate review and investigation of improper practices by health care providers.

Section ~~{32}~~30. Section **41-1a-420** is amended to read:

41-1a-420. Disability special group license plates -- Application and qualifications -- Rulemaking.

(1) As used in this section:

(a) "Advanced practice registered nurse" means a person licensed to practice as an advanced practice registered nurse in this state under Title 58, Chapter 31b, Nurse Practice Act.

(b) "Nurse practitioner" means an advanced practice registered nurse specializing as a nurse practitioner.

(c) "Physician" means a person licensed to practice as a physician or osteopath in this state under Title 58, Chapter 67, Utah Medical Practice Act, or Title 58, Chapter 68, Utah Osteopathic Medical Practice Act.

(d) "Physician assistant" means an individual licensed to practice as a physician assistant in the state under Title 58, Chapter 70a, Utah Physician Assistant Act.

~~(d)~~ (e) "Temporary wheelchair user placard" means a removable windshield placard

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that is issued to a qualifying person, as provided in this section, who has a walking disability that is not permanent.

~~[(e)]~~ (f) "Walking disability" means a physical disability that requires the use of a walking-assistive device or wheelchair or similar low-powered motorized or mechanically propelled vehicle that is designed to specifically assist a person who has a limited or impaired ability to walk.

~~[(f)]~~ (g) "Wheelchair user placard" means a removable windshield placard that is issued to a qualifying person, as provided in this section, who has a walking disability.

(2) (a) The division shall issue a disability special group license plate, a temporary removable windshield placard, or a removable windshield placard to an applicant who is either:

- (i) a qualifying person with a disability; or
- (ii) the registered owner of a vehicle that an organization uses primarily for the transportation of persons with disabilities that limit or impair the ability to walk.

(b) The division shall issue a temporary wheelchair user placard or a wheelchair user placard to an applicant who is either:

- (i) a qualifying person with a walking disability; or
- (ii) the registered owner of a vehicle that an organization uses primarily for the transportation of persons with walking disabilities.

(c) The division shall require that an applicant under Subsection (2)(b) certifies that the person travels in a vehicle equipped with a wheelchair lift or a vehicle carrying the person's walking-assistive device or wheelchair and requires a van accessible parking space.

(3) (a) The person with a disability shall ensure that the initial application contains the certification of a physician, physician assistant, or nurse practitioner that:

(i) the applicant meets the definition of a person with a disability that limits or impairs the ability to walk as defined in the federal Uniform System for Parking for Persons with Disabilities, 23 C.F.R. Ch. II, Subch. B, Pt. 1235.2 (1991);

(ii) if the person is applying for a temporary wheelchair user placard or a wheelchair user placard, the applicant has a walking disability; and

(iii) specifies the period of time that the physician, physician assistant, or nurse practitioner determines the applicant will have the disability, not to exceed six months in the case of a temporary disability or a temporary walking disability.

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(b) The division shall issue a disability special group license plate, a removable windshield placard, or a wheelchair user placard, as applicable, to a person with a permanent disability.

(c) The issuance of a person with a disability special group license plate does not preclude the issuance to the same applicant of a removable windshield placard or wheelchair user placard.

(d) (i) On request of an applicant with a disability special group license plate, a temporary removable windshield placard, or a removable windshield placard, the division shall issue one additional placard.

(ii) On request of a qualified applicant with a disability special group license plate, the division shall issue up to two temporary wheelchair user placards or two wheelchair user placards.

(iii) On request of a qualified applicant with a temporary wheelchair user placard or a wheelchair user placard, the division shall issue one additional placard.

(e) The division shall ensure that a temporary wheelchair user placard and a wheelchair user placard have the following visible features:

(i) a large "W" next to the internationally recognized disabled persons symbol; and

(ii) the words "Wheelchair User" printed on a portion of the placard.

(f) A disability special group license plate, temporary removable windshield placard, or removable windshield placard may be used to allow one motorcycle to share a parking space reserved for persons with a disability if:

(i) the person with a disability:

(A) is using a motorcycle; and

(B) displays on the motorcycle a disability special group license plate, temporary removable windshield placard, or a removable windshield placard;

(ii) the person who shares the parking space assists the person with a disability with the parking accommodation; and

(iii) the parking space is sufficient size to accommodate both motorcycles without interfering with other parking spaces or traffic movement.

(4) (a) When a vehicle is parked in a parking space reserved for persons with disabilities, a temporary removable windshield placard, a removable windshield placard, a

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temporary wheelchair user placard, or a wheelchair user placard shall be displayed so that the placard is visible from the front of the vehicle.

(b) If a motorcycle is being used, the temporary removable windshield placard or removable windshield placard shall be displayed in plain sight on or near the handle bars of the motorcycle.

(5) The commission shall make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to:

(a) establish qualifying criteria for persons to receive, renew, or surrender a disability special group license plate, a temporary removable windshield placard, a removable windshield placard, a temporary wheelchair user placard, or a wheelchair user placard in accordance with this section;

(b) establish the maximum number of numerals or characters for a disability special group license plate;

(c) require all temporary removable windshield placards, removable windshield placards, temporary wheelchair user placards, and wheelchair user placards to include:

(i) an identification number;

(ii) an expiration date not to exceed:

(A) six months for a temporary removable windshield placard; and

(B) two years for a removable windshield placard; and

(iii) the seal or other identifying mark of the division.

(6) The commission shall insert the following on motor vehicle registration certificates:

"State law prohibits persons who do not lawfully possess a disability placard or disability special group license plate from parking in an accessible parking space designated for persons with disabilities. Persons who possess a disability placard or disability special group license plate are discouraged from parking in an accessible parking space designated as van accessible unless they have a temporary wheelchair user placard or a wheelchair user placard."

Section ~~33~~31. Section **41-6a-520** is amended to read:

41-6a-520. Implied consent to chemical tests for alcohol or drug -- Number of tests -- Refusal -- Warning, report.

(1) (a) A person operating a motor vehicle in this state is considered to have given the person's consent to a chemical test or tests of the person's breath, blood, urine, or oral fluids for

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the purpose of determining whether the person was operating or in actual physical control of a motor vehicle while:

(i) having a blood or breath alcohol content statutorily prohibited under Section 41-6a-502, 41-6a-530, or 53-3-231;

(ii) under the influence of alcohol, any drug, or combination of alcohol and any drug under Section 41-6a-502; or

(iii) having any measurable controlled substance or metabolite of a controlled substance in the person's body in violation of Section 41-6a-517.

(b) A test or tests authorized under this Subsection (1) must be administered at the direction of a peace officer having grounds to believe that person to have been operating or in actual physical control of a motor vehicle while in violation of any provision under Subsections (1)(a)(i) through (iii).

(c) (i) The peace officer determines which of the tests are administered and how many of them are administered.

(ii) If a peace officer requests more than one test, refusal by a person to take one or more requested tests, even though the person does submit to any other requested test or tests, is a refusal under this section.

(d) (i) A person who has been requested under this section to submit to a chemical test or tests of the person's breath, blood, or urine, or oral fluids may not select the test or tests to be administered.

(ii) The failure or inability of a peace officer to arrange for any specific chemical test is not a defense to taking a test requested by a peace officer, and it is not a defense in any criminal, civil, or administrative proceeding resulting from a person's refusal to submit to the requested test or tests.

(2) (a) A peace officer requesting a test or tests shall warn a person that refusal to submit to the test or tests may result in revocation of the person's license to operate a motor vehicle, a five or 10 year prohibition of driving with any measurable or detectable amount of alcohol in the person's body depending on the person's prior driving history, and a three-year prohibition of driving without an ignition interlock device if the person:

(i) has been placed under arrest;

(ii) has then been requested by a peace officer to submit to any one or more of the

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chemical tests under Subsection (1); and

(iii) refuses to submit to any chemical test requested.

(b) (i) Following the warning under Subsection (2)(a), if the person does not immediately request that the chemical test or tests as offered by a peace officer be administered, a peace officer shall, on behalf of the Driver License Division and within 24 hours of the arrest, give notice of the Driver License Division's intention to revoke the person's privilege or license to operate a motor vehicle.

(ii) When a peace officer gives the notice on behalf of the Driver License Division, the peace officer shall:

(A) take the Utah license certificate or permit, if any, of the operator;

(B) issue a temporary license certificate effective for only 29 days from the date of arrest; and

(C) supply to the operator, in a manner specified by the Driver License Division, basic information regarding how to obtain a hearing before the Driver License Division.

(c) A citation issued by a peace officer may, if provided in a manner specified by the Driver License Division, also serve as the temporary license certificate.

(d) As a matter of procedure, the peace officer shall submit a signed report, within 10 calendar days after the day on which notice is provided under Subsection (2)(b), that:

(i) the peace officer had grounds to believe the arrested person was in violation of any provision under Subsections (1)(a)(i) through (iii); and

(ii) the person had refused to submit to a chemical test or tests under Subsection (1).

(3) Upon the request of the person who was tested, the results of the test or tests shall be made available to the person.

(4) (a) The person to be tested may, at the person's own expense, have a physician or physician assistant of the person's own choice administer a chemical test in addition to the test or tests administered at the direction of a peace officer.

(b) The failure or inability to obtain the additional test does not affect admissibility of the results of the test or tests taken at the direction of a peace officer, or preclude or delay the test or tests to be taken at the direction of a peace officer.

(c) The additional test shall be subsequent to the test or tests administered at the direction of a peace officer.

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(5) For the purpose of determining whether to submit to a chemical test or tests, the person to be tested does not have the right to consult an attorney or have an attorney, physician, or other person present as a condition for the taking of any test.

(6) Notwithstanding the provisions in this section, a blood test taken under this section is subject to Section 77-23-213.

Section ~~{34}~~32. Section **41-6a-523** is amended to read:

41-6a-523. Persons authorized to draw blood -- Immunity from liability.

(1) (a) Only the following, acting at the request of a peace officer, may draw blood to determine its alcohol or drug content:

(i) a physician;

(ii) a physician assistant;

~~[(ii)]~~ (iii) a registered nurse;

~~[(iii)]~~ (iv) a licensed practical nurse;

~~[(iv)]~~ (v) a paramedic;

~~[(v)]~~ (vi) as provided in Subsection (1)(b), emergency medical service personnel other than paramedics; or

~~[(vi)]~~ (vii) a person with a valid permit issued by the Department of Health under Section 26-1-30.

(b) The Department of Health may designate by rule, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, which emergency medical service personnel, as defined in Section 26-8a-102, are authorized to draw blood under Subsection ~~[(1)(a)(v)]~~ (1)(a)(vi), based on the type of license under Section 26-8a-302.

(c) Subsection (1)(a) does not apply to taking a urine, breath, or oral fluid specimen.

(2) The following are immune from civil or criminal liability arising from drawing a blood sample from a person whom a peace officer has reason to believe is driving in violation of this chapter, if the sample is drawn in accordance with standard medical practice:

(a) a person authorized to draw blood under Subsection (1)(a); and

(b) if the blood is drawn at a hospital or other medical facility, the medical facility.

Section ~~{35}~~33. Section **41-6a-1804** is amended to read:

41-6a-1804. Exceptions.

(1) This part does not apply to an operator or passenger of:

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(a) a motor vehicle manufactured before July 1, 1966;

(b) a motor vehicle in which the operator or passengers possess a written verification from a licensed physician or physician assistant that the person is unable to wear a safety belt for physical or medical reasons; or

(c) a motor vehicle or seating position which is not required to be equipped with a safety belt system under federal law.

(2) This part does not apply to a passenger if all seating positions are occupied by other passengers.

(3) This part does not apply to a passenger of a public transit vehicle with a gross vehicle weight rating exceeding 10,000 pounds.

Section ~~36~~34. Section **48-1d-102** is amended to read:

48-1d-102. Definitions.

As used in this chapter:

(1) "Business" includes every trade, occupation, and profession.

(2) "Contribution," except in the phrase "right of contribution," means property or a benefit described in Section 48-1d-501 which is provided by a person to a partnership to become a partner or in the person's capacity as a partner.

(3) "Debtor in bankruptcy" means a person that is the subject of:

(a) an order for relief under Title 11 of the United States Code or a comparable order under a successor statute of general application; or

(b) a comparable order under federal, state, or foreign law governing insolvency.

(4) "Distribution" means a transfer of money or other property from a partnership to a person on account of a transferable interest or in a person's capacity as a partner. The term:

(a) includes:

(i) a redemption or other purchase by a partnership of a transferable interest; and

(ii) a transfer to a partner in return for the partner's relinquishment of any right to participate as a partner in the management or conduct of the partnership's activities and affairs or have access to records or other information concerning the partnership's activities and affairs; and

(b) does not include amounts constituting reasonable compensation for present or past service or payments made in the ordinary course of business under a bona fide retirement plan

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or other bona fide benefits program.

(5) "Division" means the Division of Corporations and Commercial Code.

(6) "Foreign limited liability partnership" means a foreign partnership whose partners have limited liability for the debts, obligations, or other liabilities of the foreign partnership under a provision similar to Subsection 48-1d-306(3).

(7) "Foreign partnership" means an unincorporated entity formed under the law of a jurisdiction other than this state which would be a partnership if formed under the law of this state. The term includes a foreign limited liability partnership.

(8) "Jurisdiction," used to refer to a political entity, means the United States, a state, a foreign country, or a political subdivision of a foreign country.

(9) "Jurisdiction of formation" means, with respect to an entity, the jurisdiction:

(a) under whose law the entity is formed; or

(b) in the case of a limited liability partnership or foreign limited liability partnership, in which the partnership's statement of qualification is filed.

(10) "Limited liability partnership," except in the phrase "foreign limited liability partnership," means a partnership that has filed a statement of qualification under Section 48-1d-1101 and does not have a similar statement in effect in any other jurisdiction.

(11) "Partner" means a person that:

(a) has become a partner in a partnership under Section 48-1d-401 or was a partner in a partnership when the partnership became subject to this chapter under Section 48-1d-1405; and

(b) has not dissociated as a partner under Section 48-1d-701.

(12) "Partnership" means an association of two or more persons to carry on as co-owners a business for profit formed under this chapter or that becomes subject to this chapter under Part 10, Merger, Interest Exchange, Conversion, and Domestication, or Section 48-1d-1405. The term includes a limited liability partnership.

(13) "Partnership agreement" means the agreement, whether or not referred to as a partnership agreement, and whether oral, implied, in a record, or in any combination thereof, of all the partners of a partnership concerning the matters described in Subsection 48-1d-106(1). The term includes the agreement as amended or restated.

(14) "Partnership at will" means a partnership in which the partners have not agreed to remain partners until the expiration of a definite term or the completion of a particular

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undertaking.

(15) "Person" means an individual, business corporation, nonprofit corporation, partnership, limited partnership, limited liability company, limited cooperative association, unincorporated nonprofit association, statutory trust, business trust, common-law business trust, estate, trust, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(16) "Principal office" means the principal executive office of a partnership or a foreign limited liability partnership, whether or not the office is located in this state.

(17) "Professional services" means a personal service provided by:

(a) a public accountant holding a license under Title 58, Chapter 26a, Certified Public Accountant Licensing Act, or a subsequent law regulating the practice of public accounting;

(b) an architect holding a license under Title 58, Chapter 3a, Architects Licensing Act, or a subsequent law regulating the practice of architecture;

(c) an attorney granted the authority to practice law by the:

(i) Utah Supreme Court; or

(ii) one or more of the following that licenses or regulates the authority to practice law in a state or territory of the United States other than Utah:

(A) a supreme court;

(B) a court other than a supreme court;

(C) an agency;

(D) an instrumentality; or

(E) a regulating board;

(d) a chiropractor holding a license under Title 58, Chapter 73, Chiropractic Physician Practice Act, or a subsequent law regulating the practice of chiropractics;

(e) a doctor of dentistry holding a license under Title 58, Chapter 69, Dentist and Dental Hygienist Practice Act, or a subsequent law regulating the practice of dentistry;

(f) a professional engineer registered under Title 58, Chapter 22, Professional Engineers and Professional Land Surveyors Licensing Act, or a subsequent law regulating the practice of engineers or land surveyors;

(g) a naturopath holding a license under Title 58, Chapter 71, Naturopathic Physician Practice Act, or a subsequent law regulating the practice of naturopathy;

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(h) a nurse licensed under Title 58, Chapter 31b, Nurse Practice Act, or Chapter 44a, Nurse Midwife Practice Act, or a subsequent law regulating the practice of nursing;

(i) an optometrist holding a license under Title 58, Chapter 16a, Utah Optometry Practice Act, or a subsequent law regulating the practice of optometry;

(j) an osteopathic physician or surgeon holding a license under Title 58, Chapter 68, Utah Osteopathic Medical Practice Act, or a subsequent law regulating the practice of osteopathy;

(k) a pharmacist holding a license under Title 58, Chapter 17b, Pharmacy Practice Act, or a subsequent law regulating the practice of pharmacy;

(l) a physician, surgeon, or doctor of medicine holding a license under Title 58, Chapter 67, Utah Medical Practice Act, or a subsequent law regulating the practice of medicine;

(m) a physician assistant holding a license under Title 58, Chapter 70a, Utah Physician Assistant Act, or a subsequent law regulating the practice as a physician assistant;

~~(m)~~ (n) a physical therapist holding a license under Title 58, Chapter 24b, Physical Therapy Practice Act, or a subsequent law regulating the practice of physical therapy;

~~(n)~~ (o) a podiatric physician holding a license under Title 58, Chapter 5a, Podiatric Physician Licensing Act, or a subsequent law regulating the practice of podiatry;

~~(o)~~ (p) a psychologist holding a license under Title 58, Chapter 61, Psychologist Licensing Act, or a subsequent law regulating the practice of psychology;

~~(p)~~ (q) a principal broker, associate broker, or sales agent holding a license under Title 61, Chapter 2f, Real Estate Licensing and Practices Act, or a subsequent law regulating the sale, exchange, purchase, rental, or leasing of real estate;

~~(q)~~ (r) a clinical or certified social worker holding a license under Title 58, Chapter 60, Part 2, Social Worker Licensing Act, or a subsequent law regulating the practice of social work;

~~(r)~~ (s) a mental health therapist holding a license under Title 58, Chapter 60, Mental Health Professional Practice Act, or a subsequent law regulating the practice of mental health therapy;

~~(s)~~ (t) a veterinarian holding a license under Title 58, Chapter 28, Veterinary Practice Act, or a subsequent law regulating the practice of veterinary medicine; or

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[(†)] (u) an individual licensed, certified, or registered under Title 61, Chapter 2g, Real Estate Appraiser Licensing and Certification Act, or a subsequent law regulating the practice of appraising real estate.

(18) "Property" means all property, whether real, personal, or mixed, or tangible or intangible, or any right or interest therein.

(19) "Record," used as a noun, means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(20) "Registered agent" means an agent of a limited liability partnership or foreign limited liability partnership which is authorized to receive service of any process, notice, or demand required or permitted by law to be served on the partnership.

(21) "Registered foreign limited liability partnership" means a foreign limited liability partnership that is registered to do business in this state pursuant to a statement of registration filed by the division.

(22) "Sign" means, with present intent to authenticate or adopt a record:

(a) to execute or adopt a tangible symbol; or

(b) to attach to or logically associate with the record an electronic symbol, sound, or process.

(23) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(24) "Transfer" includes:

(a) an assignment;

(b) a conveyance;

(c) a sale;

(d) a lease;

(e) an encumbrance, including a mortgage or security interest;

(f) a gift; and

(g) a transfer by operation of law.

(25) "Transferable interest" means the right, as initially owned by a person in the person's capacity as a partner, to receive distributions from a partnership in accordance with the

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partnership agreement, whether or not the person remains a partner or continues to own any part of the right. The term applies to any fraction of the interest, by whomever owned.

(26) "Transferee" means a person to which all or part of a transferable interest has been transferred, whether or not the transferor is a partner.

(27) "Tribal partnership" means a partnership:

(a) formed under the law of a tribe; and

(b) that is at least 51% owned or controlled by the tribe under whose law the partnership is formed.

(28) "Tribe" means a tribe, band, nation, pueblo, or other organized group or community of Indians, including an Alaska Native village, that is legally recognized as eligible for and is consistent with a special program, service, or entitlement provided by the United States to Indians because of their status as Indians.

Section ~~37~~35. Section **48-3a-1101** is amended to read:

48-3a-1101. Definitions.

As used in this part:

(1) "Professional services" means a personal service provided by:

(a) a public accountant holding a license under Title 58, Chapter 26a, Certified Public Accountant Licensing Act, or a subsequent law regulating the practice of public accounting;

(b) an architect holding a license under Title 58, Chapter 3a, Architects Licensing Act, or a subsequent law regulating the practice of architecture;

(c) an attorney granted the authority to practice law by the:

(i) Utah Supreme Court; or

(ii) one or more of the following that licenses or regulates the authority to practice law in a state or territory of the United States other than Utah:

(A) a supreme court;

(B) a court other than a supreme court;

(C) an agency;

(D) an instrumentality; or

(E) a regulating board;

(d) a chiropractor holding a license under Title 58, Chapter 73, Chiropractic Physician Practice Act, or any subsequent law regulating the practice of chiropractics;

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(e) a doctor of dentistry holding a license under Title 58, Chapter 69, Dentist and Dental Hygienist Practice Act, or a subsequent law regulating the practice of dentistry;

(f) a professional engineer registered under Title 58, Chapter 22, Professional Engineers and Professional Land Surveyors Licensing Act, or a subsequent law regulating the practice of engineers and land surveyors;

(g) a naturopath holding a license under Title 58, Chapter 71, Naturopathic Physician Practice Act, or a subsequent law regulating the practice of naturopathy;

(h) a nurse licensed under Title 58, Chapter 31b, Nurse Practice Act, or Title 58, Chapter 44a, Nurse Midwife Practice Act, or a subsequent law regulating the practice of nursing;

(i) an optometrist holding a license under Title 58, Chapter 16a, Utah Optometry Practice Act, or a subsequent law regulating the practice of optometry;

(j) an osteopathic physician or surgeon holding a license under Title 58, Chapter 68, Utah Osteopathic Medical Practice Act, or a subsequent law regulating the practice of osteopathy;

(k) a pharmacist holding a license under Title 58, Chapter 17b, Pharmacy Practice Act, or a subsequent law regulating the practice of pharmacy;

(l) a physician, surgeon, or doctor of medicine holding a license under Title 58, Chapter 67, Utah Medical Practice Act, or a subsequent law regulating the practice of medicine;

(m) a physician assistant holding a license under Title 58, Chapter 70a, Utah Physician Assistant Act, or a subsequent law regulating the practice as a physician assistant;

~~(m)~~ (n) a physical therapist holding a license under Title 58, Chapter 24b, Physical Therapy Practice Act, or a subsequent law regulating the practice of physical therapy;

~~(m)~~ (o) a podiatric physician holding a license under Title 58, Chapter 5a, Podiatric Physician Licensing Act, or a subsequent law regulating the practice of podiatry;

~~(o)~~ (p) a psychologist holding a license under Title 58, Chapter 61, Psychologist Licensing Act, or any subsequent law regulating the practice of psychology;

~~(p)~~ (q) a principal broker, associate broker, or sales agent holding a license under Title 61, Chapter 2f, Real Estate Licensing and Practices Act, or a subsequent law regulating the sale, exchange, purchase, rental, or leasing of real estate;

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~~[(r)]~~ (r) a clinical or certified social worker holding a license under Title 58, Chapter 60, Part 2, Social Worker Licensing Act, or a subsequent law regulating the practice of social work;

~~[(s)]~~ (s) a mental health therapist holding a license under Title 58, Chapter 60, Mental Health Professional Practice Act, or a subsequent law regulating the practice of mental health therapy;

~~[(t)]~~ (t) a veterinarian holding a license under Title 58, Chapter 28, Veterinary Practice Act, or a subsequent law regulating the practice of veterinary medicine; or

~~[(u)]~~ (u) an individual licensed, certified, or registered under Title 61, Chapter 2g, Real Estate Appraiser Licensing and Certification Act, or a subsequent law regulating the practice of appraising real estate.

(2) "Regulating board" means the entity organized pursuant to state law that licenses and regulates the practice of the profession that a limited liability company is organized to provide.

Section ~~38~~36. Section 49-12-601 is amended to read:

49-12-601. Disability retirement -- Medical examinations -- Reemployment of retirant with a disability -- Cancellation of benefit -- Service credit -- Retirant with a disability engaging in gainful employment -- Reduction of allowance -- Refusal to submit to medical examination.

(1) Only members of this system who became eligible for a disability retirement allowance before January 1, 1983, are covered under this section.

(2) (a) The board may, upon the recommendation of the administrator, require any retirant who has been retired for disability and who has not attained the age of 60 years, to undergo a medical examination by a physician, physician assistant, or surgeon, appointed by the board, at the place of residence of the retirant or other place mutually agreed upon.

(b) Upon the basis of the examination, the board shall determine whether the retirant with a disability is still incapacitated, physically or mentally, for service under this chapter.

(c) If the board determines that the retirant is not incapacitated, the retirement allowance shall be cancelled and the retirant shall be reinstated immediately to a position of the same class as that held by the retirant when retired for disability.

(d) If any employing unit is unable to reinstate the retirant, the board shall continue the

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disability retirement allowance of the retirant until employment is available.

(3) (a) If a retirant with a disability under this system reenters covered service and is eligible for membership in the retirement system, the retirement allowance shall be cancelled and the retirant shall immediately become a member of the retirement system.

(b) (i) The member's individual account shall be credited with an amount which is the actuarial equivalent, at the time of reentry, based on a disabled life, of that portion of the member's retirement allowance which was derived from the member's accumulated contributions.

(ii) The amount credited may not exceed the amount of accumulated contributions standing at the time of retirement.

(c) Each member shall receive credit for the service in the member's account at the time of retirement.

(4) If the retirement allowance of any retirant with a disability is cancelled for any cause other than reentry into service, the retirant shall be paid the accumulated contributions less the amounts prescribed by Subsection (6).

(5) (a) If any member retired for disability engages in a gainful occupation prior to attaining age 60, the administrator shall reduce the amount of the retirement allowance to an amount which, when added to the compensation earned monthly by the retirant in that occupation, may not exceed the amount of the final average monthly salary on the basis of which the current service retirement allowance was determined.

(b) If the earning capacity of the retirant is further altered, the administrator may further alter the retirement allowance as provided in this Subsection (5).

(c) In no event, however, may the retirement benefit be reduced below that portion of the retirant's allowance derived from the retirant's own accumulated contributions.

(d) When the retirant reaches age 60, the retirement allowance shall be made equal to the amount upon which the retirant was originally retired and may not again be modified for any cause.

(6) (a) If any member who retired for disability under age 60, refuses to submit to a medical examination, the retirement allowance may be discontinued until the retirant withdraws that refusal.

(b) If the refusal continues for one year the disability status may be cancelled and

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membership terminated.

(c) (i) The retirant's accumulated contribution account shall be the actuarial equivalent on the date of the retirant's change of status, based on a disabled life, of that portion of the disability retirement allowance which was derived from the retirant's accumulated contributions.

(ii) The amount credited may not exceed the amount of the retirant's accumulated contributions at the time of disability retirement.

Section ~~39~~37. Section **49-16-102** is amended to read:

49-16-102. Definitions.

As used in this chapter:

(1) (a) "Compensation" means the total amount of payments that are includable as gross income which are received by a firefighter service employee as base income for the regularly scheduled work period. The participating employer shall establish the regularly scheduled work period. Base income shall be determined prior to the deduction of member contributions or any amounts the firefighter service employee authorizes to be deducted for salary deferral or other benefits authorized by federal law.

(b) "Compensation" includes performance-based bonuses and cost-of-living adjustments.

(c) "Compensation" does not include:

(i) overtime;

(ii) sick pay incentives;

(iii) retirement pay incentives;

(iv) remuneration paid in kind such as a residence, use of equipment, uniforms, travel, or similar payments;

(v) a lump-sum payment or special payments covering accumulated leave; and

(vi) all contributions made by a participating employer under this system or under any other employee benefit system or plan maintained by a participating employer for the benefit of a member or participant.

(d) "Compensation" for purposes of this chapter may not exceed the amount allowed under Section 401(a)(17), Internal Revenue Code.

(2) (a) "Disability" means the complete inability, due to objective medical impairment,

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whether physical or mental, to perform firefighter service.

(b) "Disability" does not include the inability to meet an employer's required standards or tests relating to fitness, physical ability, or agility that is not a result of a disability as defined under Subsection (2)(a).

(3) "Final average salary" means the amount calculated by averaging the highest three years of annual compensation preceding retirement subject to Subsections (3)(a), (b), and (c).

(a) Except as provided in Subsection (3)(b), the percentage increase in annual compensation in any one of the years used may not exceed the previous year's compensation by more than 10% plus a cost-of-living adjustment equal to the decrease in the purchasing power of the dollar during the previous year, as measured by a United States Bureau of Labor Statistics Consumer Price Index average as determined by the board.

(b) In cases where the participating employer provides acceptable documentation to the office the limitation in Subsection (3)(a) may be exceeded if:

(i) the member has transferred from another agency; or

(ii) the member has been promoted to a new position.

(c) The annual compensation used to calculate final average salary shall be based on:

(i) a calendar year for a member employed by a participating employer that is not an educational institution; or

(ii) a contract year for a member employed by an educational institution.

(4) (a) "Firefighter service" means employment normally requiring an average of 2,080 hours of regularly scheduled employment per year rendered by a member who is:

(i) a firefighter service employee trained in firefighter techniques and assigned to a position of hazardous duty with a regularly constituted fire department; or

(ii) the state fire marshal appointed under Section 53-7-103 or a deputy state fire marshal.

(b) "Firefighter service" does not include secretarial staff or other similar employees.

(5) "Firefighter service employee" means an employee of a participating employer who provides firefighter service under this chapter. An employee of a regularly constituted fire department who does not perform firefighter service is not a firefighter service employee.

(6) (a) "Line-of-duty death or disability" means a death or disability resulting from:

(i) external force, violence, or disease directly resulting from firefighter service; or

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(ii) strenuous activity, including a heart attack or stroke, that occurs during strenuous training or another strenuous activity required as an act of duty as a firefighter service employee.

(b) "Line-of-duty death or disability" does not include a death or disability that:

(i) occurs during an activity that is required as an act of duty as a firefighter service employee if the activity is not a strenuous activity, including an activity that is clerical, administrative, or of a nonmanual nature;

(ii) occurs during the commission of a crime committed by the employee;

(iii) occurs when the employee's intoxication or use of alcohol or drugs, whether prescribed or nonprescribed, contributes to the employee's death or disability; or

(iv) occurs in a manner other than as described in Subsection (6)(a).

(c) "Line-of-duty death or disability" includes the death or disability of a paid firefighter resulting from heart disease, lung disease, or a respiratory tract condition if the paid firefighter has five years of firefighter service credit.

(7) "Objective medical impairment" means an impairment resulting from an injury or illness which is diagnosed by a physician or physician assistant and which is based on accepted objective medical tests or findings rather than subjective complaints.

(8) "Participating employer" means an employer which meets the participation requirements of Section 49-16-201.

(9) "Regularly constituted fire department" means a fire department that employs a fire chief who performs firefighter service for at least 2,080 hours of regularly scheduled paid employment per year.

(10) (a) "Strenuous activity" means engagement involving a difficult, stressful, or vigorous fire suppression, rescue, hazardous material response, emergency medical service, physical law enforcement, prison security, disaster relief, or other emergency response activity.

(b) "Strenuous activity" includes participating in a participating employer sanctioned and funded training exercise that involves difficult, stressful, or vigorous physical activity.

(11) "System" means the Firefighters' Retirement System created under this chapter.

(12) (a) "Volunteer firefighter" means any individual that is not regularly employed as a firefighter service employee, but who:

(i) has been trained in firefighter techniques and skills;

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(ii) continues to receive regular firefighter training; and

(iii) is on the rolls of a legally organized volunteer fire department which provides ongoing training and serves a political subdivision of the state.

(b) An individual that volunteers assistance but does not meet the requirements of Subsection (12)(a) is not a volunteer firefighter for purposes of this chapter.

(13) "Years of service credit" means the number of periods, each to consist of 12 full months as determined by the board, whether consecutive or not, during which a firefighter service employee was employed by a participating employer or received full-time pay while on sick leave, including any time the firefighter service employee was absent in the service of the United States on military duty.

Section ~~{40}~~38. Section **49-16-602** is amended to read:

49-16-602. Disability retirement -- Disability allowance eligibility -- Conversion to service retirement -- Examinations -- Reemployment.

(1) A member of this system who applies and is qualified for disability retirement shall receive a disability retirement benefit until the earlier of:

(a) the date the member of this system no longer has a disability;

(b) the date the member of this system has accumulated 20 years of firefighter service credit, including years earned while the member of this system had a disability; or

(c) the date the member of this system has received disability retirement benefits for the following time periods:

(i) if the member is under age 60 on the date of disability, the disability retirement benefit is payable until age 65;

(ii) if the member is 60 or 61 years of age on the date of disability, the disability retirement benefit is payable for five years;

(iii) if the member is 62 or 63 years of age on the date of disability, the disability retirement benefit is payable for four years;

(iv) if the member is 64 or 65 years of age on the date of disability, the disability retirement benefit is payable for three years;

(v) if the member is 66, 67, or 68 years of age on the date of disability, the disability retirement benefit is payable for two years; and

(vi) if the member is 69 years of age or older on the date of disability, the disability

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retirement benefit is payable for one year.

(2) (a) (i) The retiree with a disability shall receive service credit in this system during the period of disability.

(ii) If the retiree with a disability is employed by a participating employer during the period of disability, the retiree with a disability may not receive service credit for that employment.

(b) The disability retirement shall be converted to a service retirement at the time the disability retirement benefits terminate.

(3) The office shall approve or disapprove applications for disability retirement benefits based upon:

(a) the evaluation and recommendations of one or more treating physicians or physician assistants along with medical records relating to the condition;

(b) the evaluation and recommendations of one or more independent physicians or physician assistants selected by the office; and

(c) receipt of documentation by the office from the participating employer that the member is mentally or physically unable to perform firefighter service.

(4) (a) A retiree with a disability who receives benefits under this section shall, upon request of the executive director, submit to a medical examination by one or more physicians or physician assistants as directed by the office.

(b) If, after an examination, the examiners report that the retiree with a disability is physically and mentally able and capable of resuming firefighter service employment, the retiree with a disability shall be reinstated by the participating employer for which the retiree with a disability last worked at the former classification and rank of the retiree with a disability, and the disability retirement benefit shall terminate.

(c) A retiree with a disability may not be required to submit to an examination under this Subsection (4) more than once every year.

(d) A retiree with a disability who returns to firefighter service employment with a participating employer in this system shall immediately begin accruing service credit that shall be added to that service credit that has been previously accrued, including service credit while disabled.

(5) A retiree with a disability is not subject to medical examinations after reaching age

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55.

(6) Refusal or neglect of a member to submit to an examination as requested by the office either before or after a decision regarding disability benefits has been made is sufficient cause for denial, suspension, or discontinuance of benefits and if the refusal or neglect continues for one year, the rights of the member or retiree with a disability to disability retirement benefits may be revoked by the office.

(7) (a) A retiree with a disability who receives benefits under this part shall file a sworn statement with the office on or before March 15 of each year for the first five years a retiree with a disability receives benefits.

(b) The sworn statement shall indicate whether or not the retiree with a disability engaged in any employment during the preceding year and, if so, the amount of earnings received during the calendar year.

(c) If the total amount received in one year by a retiree with a disability for disability retirement benefits and gross earnings from other employment exceeds 125% of the final average salary of the retiree with a disability, the office shall offset the disability retirement benefit paid the following year by the amount in excess of 125% of the final average salary of the retiree with a disability.

(d) (i) If a retiree with a disability refuses or neglects to file a sworn statement as required under this Subsection (7), the executive director may suspend payment of any and all benefits pending receipt of the statement.

(ii) Upon filing the statement, the payments of the retiree with a disability shall be resumed.

(8) The disability retirement benefit shall be improved by the annual cost-of-living increase factor applied to retirees of the system that covered the firefighter service employee at the time of disability.

(9) A line of duty disability allowance paid on or after January 1, 2002, under Section 49-16-601 is exempt from taxation to the extent permitted under federal law.

(10) (a) An active member of this system with five or more years of firefighter service credit shall be eligible for a line-of-duty death or disability benefit resulting from heart disease, lung disease, or respiratory tract disease.

(b) An active member of this system who receives a line-of-duty disability benefit for

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more than six months due to violence or illness other than heart disease, lung disease, or respiratory tract disease, and then returns to paid firefighter service, is not eligible for a line-of-duty death or disability benefit due to those diseases for two years after the member returned to paid firefighter service unless clear and convincing evidence is presented that the heart, lung, or respiratory tract disease was directly a result of firefighter service.

(11) Disability retirement benefits shall be considered an allowance for purposes of Section 49-11-701.

Section ~~41~~39. Section **49-21-402** is amended to read:

49-21-402. Reduction or reimbursement of benefit -- Circumstances --

Application for other benefits required.

(1) A monthly disability benefit may be terminated unless:

(a) the eligible employee is under the ongoing care and treatment of a physician or physician assistant other than the eligible employee; and

(b) the eligible employee provides the information and documentation requested by the office.

(2) (a) The monthly disability benefit shall be reduced or reimbursed by any amount received by, or payable to, the eligible employee for the same injury or illness that is the basis for the monthly disability benefit from the following sources:

(i) workers' compensation indemnity benefits, regardless of whether the amount is received as an ongoing monthly benefit, as a lump sum, or in a settlement with a workers' compensation indemnity carrier;

(ii) any money received by judgment, legal action, or settlement from a third party liable to the employee for the monthly disability benefit;

(iii) automobile no-fault, medical payments, or similar insurance payments;

(iv) any money received by a judgment, settlement, or other payment as a result of a claim against an employer; or

(v) annual leave or similar lump-sum payments.

(b) The monthly disability benefit shall be reduced or reimbursed by any amount received by, or payable to, the eligible employee for the same period of time during which the eligible employee is entitled to receive a monthly disability benefit from the following sources:

(i) social security disability benefits, including all benefits received by the eligible

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employee, the eligible employee's spouse, and the eligible employee's children as determined by the Social Security Administration;

(ii) unemployment compensation benefits;

(iii) sick leave benefits; or

(iv) compensation received for employment, including self-employment, except for eligible amounts from approved rehabilitative employment in accordance with Section 49-21-406.

(3) The monthly disability benefit shall be reduced by any amount in excess of one-third of the eligible employee's regular monthly salary received by, or payable to, the eligible employee from the following sources for the same period of time during which the eligible employee is entitled to receive a monthly disability benefit:

(a) any retirement payment earned through or provided by public or private employment; and

(b) any disability benefit, other than social security or workers' compensation indemnity benefits, resulting from the disability for which benefits are being received under this chapter.

(4) After the date of disability, cost-of-living increases to any of the benefits listed in Subsection (2) or (3) may not be considered in calculating a reduction to the monthly disability benefit.

(5) Any amounts payable to the eligible employee from one or more of the sources under Subsection (2) are considered as amounts received whether or not the amounts were actually received by the eligible employee.

(6) (a) An eligible employee shall first apply for all disability benefits from governmental entities under Subsection (2) to which the eligible employee is or may be entitled, and provide to the office evidence of the applications.

(b) If the eligible employee fails to make application under this Subsection (6), the monthly disability benefit shall be suspended.

(7) During a period of total disability, an eligible employee has an affirmative duty to keep the program informed regarding:

(a) the award or receipt of an amount from a source that could result in the monthly disability benefit being reduced or reimbursed under this section within 10 days of the award or

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receipt of the amount; and

(b) any employment, including self-employment, of the eligible employee and the compensation for that employment within 10 days of beginning the employment or a material change in the compensation from that employment.

(8) The program shall use commercially reasonable means to collect any amounts of overpayments and reimbursements.

(9) (a) If the program is unable to reduce or obtain reimbursement for the required amount from the monthly disability benefit for any reason, the employee will have received an overpayment of monthly disability benefits.

(b) If an eligible employee receives an overpayment of monthly disability benefits, the eligible employee shall repay to the office the amount of the overpayment, plus interest as determined by the program, within 30 days from the date the overpayment is received by:

- (i) the eligible employee; or
- (ii) a third party related to the eligible employee.

(c) The executive director may waive the interest on an overpayment of monthly disability benefits under Subsection (9)(b) if good cause is shown for the delay in repayment of the overpayment of monthly disability benefits.

Section ~~{42}~~40. Section **49-21-406** is amended to read:

**49-21-406. Rehabilitative employment -- Interview by disability specialist --
Maintaining eligibility -- Additional treatment and care.**

(1) (a) If an eligible employee, during a period of total disability for which the monthly disability benefit is payable, engages in approved rehabilitative employment, the monthly disability benefit otherwise payable shall be reduced:

(i) by an amount equal to 50% of the income to which the eligible employee is entitled for the employment during the month; and

(ii) so that the combined amount received from the rehabilitative employment and the monthly disability payment does not exceed 100% of the eligible employee's monthly salary prior to the employee's disability.

(b) This rehabilitative benefit is payable for up to two years or to the end of the maximum benefit period, whichever occurs first.

(2) (a) Each eligible employee receiving a monthly disability benefit shall be

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interviewed by the office.

(b) The office may refer the eligible employee to a rehabilitative or vocational specialist for a review of the eligible employee's condition and a written rehabilitation plan and return to work assistance.

(3) If an eligible employee receiving a monthly disability benefit fails to participate in an office-approved rehabilitation program within the limitations set forth by a physician or physician assistant, the monthly disability benefit may be suspended or terminated.

(4) The office may, as a condition of paying a monthly disability benefit, require that the eligible employee receive medical care and treatment if that treatment is reasonable or usual according to current medical practices.

Section ~~{43}~~41. Section **53-2a-302** is amended to read:

53-2a-302. Definitions.

As used in this part:

(1) "Emergency responder":

(a) means a person in the public or private sector:

(i) who has special skills, qualification, training, knowledge, or experience, whether or not possessing a license, certificate, permit, or other official recognition for the skills, qualification, training, knowledge, or experience, that would benefit a participating political subdivision in responding to a locally declared emergency or in an authorized drill or exercise; and

(ii) whom a participating political subdivision requests or authorizes to assist in responding to a locally declared emergency or in an authorized drill or exercise; and

(b) includes:

(i) a law enforcement officer;

(ii) a firefighter;

(iii) an emergency medical services worker;

(iv) a physician, physician assistant, nurse, or other public health worker;

(v) an emergency management official;

(vi) a public works worker;

(vii) a building inspector;

(viii) an architect, engineer, or other design professional; or

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(ix) a person with specialized equipment operations skills or training or with any other skills needed to provide aid in a declared emergency.

(2) "Participating political subdivision" means each county, municipality, public safety district, and public safety interlocal entity that has not adopted a resolution under Section 53-2a-306 withdrawing itself from the statewide mutual aid system.

(3) "Public safety district" means a local district under Title 17B, Limited Purpose Local Government Entities - Local Districts, or special service district under Title 17D, Chapter 1, Special Service District Act, that provides public safety service.

(4) "Public safety interlocal entity" means an interlocal entity under Title 11, Chapter 13, Interlocal Cooperation Act, that provides public safety service.

(5) "Public safety service" means a service provided to the public to protect life and property and includes fire protection, police protection, emergency medical service, and hazardous material response service.

(6) "Requesting political subdivision" means a participating political subdivision that requests emergency assistance under Section 53-2a-207 from one or more other participating political subdivisions.

(7) "Responding political subdivision" means a participating political subdivision that responds to a request under Section 53-2a-307 from a requesting political subdivision.

(8) "State" means the state of Utah.

(9) "Statewide mutual aid system" or "system" means the aggregate of all participating political subdivisions and the state.

Section ~~{44}~~42. Section **53-3-302** is amended to read:

53-3-302. Definitions.

As used in this part:

(1) "Board" means the Driver License Medical Advisory Board created in Section 53-3-303.

(2) "Health care professional" means a physician [~~or~~], surgeon, or physician assistant licensed to practice [~~medicine~~] in the state, or when recommended by the Medical Advisory Board, may include other health care professionals licensed to conduct physical examinations in this state.

(3) (a) "Impaired person" means a person who has a mental, emotional, or nonstable

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physical disability or disease that may impair the person's ability to exercise reasonable and ordinary control at all times over a motor vehicle while driving on the highways.

(b) "Impaired person" does not include a person having a nonprogressive or stable physical impairment that is objectively observable and that may be evaluated by a functional driving examination.

Section ~~{45}~~43. Section **53-10-405** is amended to read:

53-10-405. DNA specimen analysis -- Saliva sample to be obtained by agency -- Blood sample to be drawn by professional.

(1) (a) A saliva sample shall be obtained by the responsible agency under Subsection 53-10-404(5).

(b) The sample shall be obtained in a professionally acceptable manner, using appropriate procedures to ensure the sample is adequate for DNA analysis.

(2) (a) A blood sample shall be drawn in a medically acceptable manner by any of the following:

(i) a physician;

(ii) a physician assistant;

~~[(ii)]~~ (iii) a registered nurse;

~~[(iii)]~~ (iv) a licensed practical nurse;

~~[(iv)]~~ (v) a paramedic;

~~[(v)]~~ (vi) as provided in Subsection (2)(b), emergency medical service personnel other than paramedics; or

~~[(vi)]~~ (vii) a person with a valid permit issued by the Department of Health under Section 26-1-30.

(b) The Department of Health may designate by rule, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, which emergency medical service personnel, as defined in Section 26-8a-102, are authorized to draw blood under Subsection ~~[(2)(a)(v)]~~ (2)(a)(vi), based on the type of license under Section 26-8a-302.

(c) A person authorized by this section to draw a blood sample may not be held civilly liable for drawing a sample in a medically acceptable manner.

(3) A test result or opinion based upon a test result regarding a DNA specimen may not be rendered inadmissible as evidence solely because of deviations from procedures adopted by

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the department that do not affect the reliability of the opinion or test result.

(4) A DNA specimen is not required to be obtained if:

(a) the court or the responsible agency confirms with the department that the department has previously received an adequate DNA specimen obtained from the person in accordance with this section; or

(b) the court determines that obtaining a DNA specimen would create a substantial and unreasonable risk to the health of the person.

Section ~~{46}~~44. Section ~~{53G-6-204}~~53G-9-203 is amended to read:

~~{~~ **53G-6-204. Minors exempt from school attendance.**

~~_____ (1) (a) A local school board or charter school governing board may excuse a school-age minor from attendance for any of the following reasons:~~

~~_____ (i) a school-age minor over age 16 may receive a partial release from school to enter employment, or attend a trade school, if the school-age minor has completed the eighth grade; or~~

~~_____ (ii) on an annual basis, a school-age minor may receive a full release from attending a public, regularly established private, or part-time school or class if:~~

~~_____ (A) the school-age minor has already completed the work required for graduation from high school, or has demonstrated mastery of required skills and competencies in accordance with Subsection 53F-2-501(1);~~

~~_____ (B) the school-age minor is in a physical or mental condition, certified by a competent physician or physician assistant if required by the local school board or charter school governing board, which renders attendance inexpedient and impracticable;~~

~~_____ (C) proper influences and adequate opportunities for education are provided in connection with the school-age minor's employment; or~~

~~_____ (D) the district superintendent or charter school governing board has determined that a school-age minor over the age of 16 is unable to profit from attendance at school because of inability or a continuing negative attitude toward school regulations and discipline.~~

~~_____ (b) A school-age minor receiving a partial release from school under Subsection (1)(a)(i) is required to attend:~~

~~_____ (i) school part time as prescribed by the local school board or charter school governing board; or~~

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~~—— (ii) a home school part time.~~

~~—— (c) In each case, evidence of reasons for granting an exemption under Subsection (1) must be sufficient to satisfy the local school board or charter school governing board.~~

~~—— (d) A local school board or charter school governing board that excuses a school-age minor from attendance as provided by this Subsection (1) shall issue a certificate that the minor is excused from attendance during the time specified on the certificate.~~

~~—— (2) (a) A local school board shall excuse a school-age minor from attendance, if the school-age minor's parent files a signed and notarized affidavit with the school-age minor's school district of residence, as defined in Section 53G-6-302, that:~~

~~—— (i) the school-age minor will attend a home school; and~~

~~—— (ii) the parent assumes sole responsibility for the education of the school-age minor, except to the extent the school-age minor is dual enrolled in a public school as provided in Section 53G-6-702.~~

~~—— (b) A signed and notarized affidavit filed in accordance with Subsection (2)(a) shall remain in effect as long as:~~

~~—— (i) the school-age minor attends a home school; and~~

~~—— (ii) the school district where the affidavit was filed remains the school-age minor's district of residence.~~

~~—— (c) A parent of a school-age minor who attends a home school is solely responsible for:~~

~~—— (i) the selection of instructional materials and textbooks;~~

~~—— (ii) the time, place, and method of instruction; and~~

~~—— (iii) the evaluation of the home school instruction.~~

~~—— (d) A local school board may not:~~

~~—— (i) require a parent of a school-age minor who attends a home school to maintain records of instruction or attendance;~~

~~—— (ii) require credentials for individuals providing home school instruction;~~

~~—— (iii) inspect home school facilities; or~~

~~—— (iv) require standardized or other testing of home school students.~~

~~—— (e) Upon the request of a parent, a local school board shall identify the knowledge, skills, and competencies a student is recommended to attain by grade level and subject area to assist the parent in achieving college and career readiness through home schooling.~~

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~~— (f) A local school board that excuses a school-age minor from attendance as provided by this Subsection (2) shall annually issue a certificate stating that the school-age minor is excused from attendance for the specified school year.~~

~~— (g) A local school board shall issue a certificate excusing a school-age minor from attendance:~~

~~— (i) within 30 days after receipt of a signed and notarized affidavit filed by the school-age minor's parent pursuant to Subsection (2); and~~

~~— (ii) on or before August 1 each year thereafter unless:~~

~~— (A) the school-age minor enrolls in a school within the school district;~~

~~— (B) the school-age minor's parent or guardian notifies the school district that the school-age minor no longer attends a home school; or~~

~~— (C) the school-age minor's parent or guardian notifies the school district that the school-age minor's school district of residence has changed.~~

~~— (3) A parent who files a signed and notarized affidavit as provided in Subsection (2)(a) is exempt from the application of Subsections 53G-6-202(2), (5), and (6):~~

~~— (4) Nothing in this section may be construed to prohibit or discourage voluntary cooperation, resource sharing, or testing opportunities between a school or school district and a parent or guardian of a minor attending a home school.~~

~~— Section 47. Section 53G-9-203 is amended to read:~~

‡ **53G-9-203. Definitions -- School personnel -- Medical recommendations --
Exceptions -- Penalties.**

(1) As used in this section:

(a) "Health care professional" means a physician, physician assistant, nurse, dentist, or mental health therapist.

(b) "School personnel" means a school district or charter school employee, including a licensed, part-time, contract, or nonlicensed employee.

(2) School personnel may:

(a) provide information and observations to a student's parent or guardian about that student, including observations and concerns in the following areas:

(i) progress;

(ii) health and wellness;

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- (iii) social interactions;
 - (iv) behavior; or
 - (v) topics consistent with Subsection 53E-9-203(6);
 - (b) communicate information and observations between school personnel regarding a child;
 - (c) refer students to other appropriate school personnel and agents, consistent with local school board or charter school policy, including referrals and communication with a school counselor or other mental health professionals working within the school system;
 - (d) consult or use appropriate health care professionals in the event of an emergency while the student is at school, consistent with the student emergency information provided at student enrollment;
 - (e) exercise their authority relating to the placement within the school or readmission of a child who may be or has been suspended or expelled for a violation of Section 53G-8-205; and
 - (f) complete a behavioral health evaluation form if requested by a student's parent or guardian to provide information to a licensed physician or physician assistant.
- (3) School personnel shall:
- (a) report suspected child abuse consistent with Section 62A-4a-403;
 - (b) comply with applicable state and local health department laws, rules, and policies; and
 - (c) conduct evaluations and assessments consistent with the Individuals with Disabilities Education Act, 20 U.S.C. Sec. 1400 et seq., and its subsequent amendments.
- (4) Except as provided in Subsection (2), Subsection (6), and Section 53G-9-604, school personnel may not:
- (a) recommend to a parent or guardian that a child take or continue to take a psychotropic medication;
 - (b) require that a student take or continue to take a psychotropic medication as a condition for attending school;
 - (c) recommend that a parent or guardian seek or use a type of psychiatric or psychological treatment for a child;
 - (d) conduct a psychiatric or behavioral health evaluation or mental health screening,

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test, evaluation, or assessment of a child, except where this Subsection (4)(d) conflicts with the Individuals with Disabilities Education Act, 20 U.S.C. Sec. 1400 et seq., and its subsequent amendments; or

(e) make a child abuse or neglect report to authorities, including the Division of Child and Family Services, solely or primarily on the basis that a parent or guardian refuses to consent to:

(i) a psychiatric, psychological, or behavioral treatment for a child, including the administration of a psychotropic medication to a child; or

(ii) a psychiatric or behavioral health evaluation of a child.

(5) Notwithstanding Subsection (4)(e), school personnel may make a report that would otherwise be prohibited under Subsection (4)(e) if failure to take the action described under Subsection (4)(e) would present a serious, imminent risk to the child's safety or the safety of others.

(6) Notwithstanding Subsection (4), a school counselor or other mental health professional acting in accordance with Title 58, Chapter 60, Mental Health Professional Practice Act, or licensed through the State Board of Education, working within the school system may:

(a) recommend, but not require, a psychiatric or behavioral health evaluation of a child;

(b) recommend, but not require, psychiatric, psychological, or behavioral treatment for a child;

(c) conduct a psychiatric or behavioral health evaluation or mental health screening, test, evaluation, or assessment of a child in accordance with Section 53E-9-203; and

(d) provide to a parent or guardian, upon the specific request of the parent or guardian, a list of three or more health care professionals or providers, including licensed physicians, physician assistants, psychologists, or other health specialists.

(7) Local school boards or charter schools shall adopt a policy:

(a) providing for training of appropriate school personnel on the provisions of this section; and

(b) indicating that an intentional violation of this section is cause for disciplinary action consistent with local school board or charter school policy and under Section 53G-11-513.

(8) Nothing in this section shall be interpreted as discouraging general communication

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not prohibited by this section between school personnel and a student's parent or guardian.

Section ~~{48}~~45. Section **53G-9-208** is amended to read:

53G-9-208. Sunscreen -- Possession -- Administration -- Immunity.

(1) As used in this section, "sunscreen" means a compound topically applied to prevent sunburn.

(2) A public school shall permit a student, without a parent [~~or physician's~~], physician, or physician assistant's authorization, to possess or self-apply sunscreen that is regulated by the Food and Drug Administration.

(3) If a student is unable to self-apply sunscreen, a volunteer school employee may apply the sunscreen on the student if the student's parent or legal guardian provides written consent for the assistance.

(4) A volunteer school employee who applies sunscreen on a student in compliance with Subsection (3) and the volunteer school employee's employer are not liable for:

(a) an adverse reaction suffered by the student as a result of having the sunscreen applied; or

(b) discontinuing the application of the sunscreen at any time.

Section ~~{49}~~46. Section **53G-9-504** is amended to read:

53G-9-504. Administration of glucagon -- Training of volunteer school personnel -- Authority to use glucagon -- Immunity from liability.

(1) As used in this section, "glucagon authorization" means a signed statement from a parent or guardian of a student with diabetes:

(a) certifying that glucagon has been prescribed for the student;

(b) requesting that the student's public school identify and train school personnel who volunteer to be trained in the administration of glucagon in accordance with this section; and

(c) authorizing the administration of glucagon in an emergency to the student in accordance with this section.

(2) (a) A public school shall, within a reasonable time after receiving a glucagon authorization, train two or more school personnel who volunteer to be trained in the administration of glucagon, with training provided by the school nurse or another qualified, licensed medical professional.

(b) A public school shall allow all willing school personnel to receive training in the

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administration of glucagon, and the school shall assist and may not obstruct the identification or training of volunteers under this Subsection (2).

(c) The Utah Department of Health, in cooperation with the state superintendent of public instruction, shall design a glucagon authorization form to be used by public schools in accordance with this section.

(3) (a) Training in the administration of glucagon shall include:

(i) techniques for recognizing the symptoms that warrant the administration of glucagon;

(ii) standards and procedures for the storage and use of glucagon;

(iii) other emergency procedures, including calling the emergency 911 number and contacting, if possible, the student's parent or guardian; and

(iv) written materials covering the information required under this Subsection (3).

(b) A school shall retain for reference the written materials prepared in accordance with Subsection (3)(a)(iv).

(4) A public school shall permit a student or school personnel to possess or store prescribed glucagon so that it will be available for administration in an emergency in accordance with this section.

(5) (a) A person who has received training in accordance with this section may administer glucagon at a school or school activity to a student with a glucagon authorization if:

(i) the student is exhibiting the symptoms that warrant the administration of glucagon; and

(ii) a licensed health care professional is not immediately available.

(b) A person who administers glucagon in accordance with Subsection (5)(a) shall direct a responsible person to call 911 and take other appropriate actions in accordance with the training materials retained under Subsection (3)(b).

(6) School personnel who provide or receive training under this section and act in good faith are not liable in any civil or criminal action for any act taken or not taken under the authority of this section with respect to the administration of glucagon.

(7) Section 53G-9-502 does not apply to the administration of glucagon in accordance with this section.

(8) Section 53G-8-205 does not apply to the possession and administration of glucagon

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in accordance with this section.

(9) The unlawful or unprofessional conduct provisions of Title 58, Occupations and Professions, do not apply to a person licensed as a health professional under Title 58, Occupations and Professions, including a nurse, physician, physician assistant, or pharmacist who, in good faith, trains nonlicensed volunteers to administer glucagon in accordance with this section.

Section ~~50~~47. Section **53G-9-505** is amended to read:

53G-9-505. Trained school employee volunteers -- Administration of seizure rescue medication -- Exemptions from liability.

(1) As used in this section:

(a) "Prescribing health care professional" means:

(i) a physician and surgeon licensed under Title 58, Chapter 67, Utah Medical Practice Act;

(ii) an osteopathic physician and surgeon licensed under Title 58, Chapter 68, Utah Osteopathic Medical Practice Act;

(iii) an advanced practice registered nurse licensed under Title 58, Chapter 31b, Nurse Practice Act; or

(iv) a physician assistant licensed under Title 58, Chapter 70a, Utah Physician Assistant Act.

(b) "Section 504 accommodation plan" means a plan developed pursuant to Section 504 of the Rehabilitation Act of 1973, as amended, to provide appropriate accommodations to an individual with a disability to ensure access to major life activities.

(c) "Seizure rescue authorization" means a student's Section 504 accommodation plan that:

(i) certifies that:

(A) a prescribing health care professional has prescribed a seizure rescue medication for the student;

(B) the student's parent or legal guardian has previously administered the student's seizure rescue medication in a nonmedically-supervised setting without a complication; and

(C) the student has previously ceased having full body prolonged or convulsive seizure activity as a result of receiving the seizure rescue medication;

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(ii) describes the specific seizure rescue medication authorized for the student, including the indicated dose, and instructions for administration;

(iii) requests that the student's public school identify and train school employees who are willing to volunteer to receive training to administer a seizure rescue medication in accordance with this section; and

(iv) authorizes a trained school employee volunteer to administer a seizure rescue medication in accordance with this section.

(d) (i) "Seizure rescue medication" means a medication, prescribed by a prescribing health care professional, to be administered as described in a student's seizure rescue authorization, while the student experiences seizure activity.

(ii) A seizure rescue medication does not include a medication administered intravenously or intramuscularly.

(e) "Trained school employee volunteer" means an individual who:

(i) is an employee of a public school where at least one student has a seizure rescue authorization;

(ii) is at least 18 years old; and

(iii) as described in this section:

(A) volunteers to receive training in the administration of a seizure rescue medication;

(B) completes a training program described in this section;

(C) demonstrates competency on an assessment; and

(D) completes annual refresher training each year that the individual intends to remain a trained school employee volunteer.

(2) (a) The Department of Health shall, with input from the State Board of Education and a children's hospital, develop a training program for trained school employee volunteers in the administration of seizure rescue medications that includes:

(i) techniques to recognize symptoms that warrant the administration of a seizure rescue medication;

(ii) standards and procedures for the storage of a seizure rescue medication;

(iii) procedures, in addition to administering a seizure rescue medication, in the event that a student requires administration of the seizure rescue medication, including:

(A) calling 911; and

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- (B) contacting the student's parent or legal guardian;
 - (iv) an assessment to determine if an individual is competent to administer a seizure rescue medication;
 - (v) an annual refresher training component; and
 - (vi) written materials describing the information required under this Subsection (2)(a).
- (b) A public school shall retain for reference the written materials described in Subsection (2)(a)(vi).
- (c) The following individuals may provide the training described in Subsection (2)(a):
- (i) a school nurse; or
 - (ii) a licensed health care professional.
- (3) (a) A public school shall, after receiving a seizure rescue authorization:
- (i) inform school employees of the opportunity to be a school employee volunteer; and
 - (ii) subject to Subsection (3)(b)(ii), provide training, to each school employee who volunteers, using the training program described in Subsection (2)(a).
- (b) A public school may not:
- (i) obstruct the identification or training of a trained school employee volunteer; or
 - (ii) compel a school employee to become a trained school employee volunteer.
- (4) A trained school employee volunteer may possess or store a prescribed rescue seizure medication, in accordance with this section.
- (5) A trained school employee volunteer may administer a seizure rescue medication to a student with a seizure rescue authorization if:
- (a) the student is exhibiting a symptom, described on the student's seizure rescue authorization, that warrants the administration of a seizure rescue medication; and
 - (b) a licensed health care professional is not immediately available to administer the seizure rescue medication.
- (6) A trained school employee volunteer who administers a seizure rescue medication shall direct an individual to call 911 and take other appropriate actions in accordance with the training described in Subsection (2).
- (7) A trained school employee volunteer who administers a seizure rescue medication in accordance with this section in good faith is not liable in a civil or criminal action for an act taken or not taken under this section.

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(8) Section 53G-9-502 does not apply to the administration of a seizure rescue medication.

(9) Section 53G-8-205 does not apply to the possession of a seizure rescue medication in accordance with this section.

(10) (a) The unlawful or unprofessional conduct provisions of Title 58, Occupations and Professions, do not apply to a person licensed as a health care professional under Title 58, Occupations and Professions, including a nurse, physician, physician assistant, or pharmacist for, in good faith, training a nonlicensed school employee who volunteers to administer a seizure rescue medication in accordance with this section.

(b) Allowing a trained school employee volunteer to administer a seizure rescue medication in accordance with this section does not constitute unlawful or inappropriate delegation under Title 58, Occupations and Professions.

Section ~~(51)~~48. Section **54-8b-10** is amended to read:

54-8b-10. Imposing a surcharge to provide deaf, hard of hearing, and speech impaired individuals with telecommunication devices -- Definitions -- Procedures for establishing program -- Surcharge -- Administration and disposition of surcharge money.

(1) As used in this section:

(a) "Certified deaf, hard of hearing, or severely speech impaired individual" means any state resident who:

(i) is so certified by:

(A) a licensed physician;

(B) a licensed physician assistant;

~~[(B)]~~ (C) an otolaryngologist;

~~[(C)]~~ (D) a speech language pathologist;

~~[(D)]~~ (E) an audiologist; or

~~[(E)]~~ (F) a qualified state agency; and

(ii) qualifies for assistance under any low income public assistance program administered by a state agency.

(b) "Certified interpreter" means a person who is a certified interpreter under Title 35A, Chapter 13, Part 6, Interpreter Services for the Deaf and Hard of Hearing Act.

(c) (i) "Telecommunication device" means any mechanical adaptation device that

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enables a deaf, hard of hearing, or severely speech impaired individual to use the telephone.

(ii) "Telecommunication device" includes:

- (A) telecommunication devices for the deaf (TDD);
- (B) telephone amplifiers;
- (C) telephone signal devices;
- (D) artificial larynxes; and
- (E) adaptive equipment for TDD keyboard access.

(2) The commission shall establish a program whereby a certified deaf, hard of hearing, or severely speech impaired customer of a telecommunications corporation that provides service through a local exchange or of a wireless telecommunications provider may obtain a telecommunication device capable of serving the customer at no charge to the customer beyond the rate for basic service.

(3) (a) The program described in Subsection (2) shall provide a dual party relay system using third party intervention to connect a certified deaf, hard of hearing, or severely speech impaired individual with a normal hearing individual by way of telecommunication devices designed for that purpose.

(b) The commission may, by rule, establish the type of telecommunications device to be provided to ensure functional equivalence.

(4) The commission shall cover the costs of the program described in this section from the Universal Public Telecommunications Service Support Fund created in Section 54-8b-15.

(5) In administering the program described in this section, the commission may use funds from the Universal Public Telecommunications Service Support Fund:

- (a) for the purchase, maintenance, repair, and distribution of telecommunication devices;
- (b) for the acquisition, operation, maintenance, and repair of a dual party relay system;
- (c) for the general administration of the program;
- (d) to train individuals in the use of telecommunications devices; and
- (e) to contract, in compliance with Title 63G, Chapter 6a, Utah Procurement Code,

with:

(i) an institution within the state system of higher education listed in Section 53B-1-102 for a program approved by the Board of Regents that trains persons to qualify as

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certified interpreters; or

(ii) the Utah State Office of Rehabilitation created in Section 35A-1-202 for a program that trains persons to qualify as certified interpreters.

(6) The commission may create disbursement criteria and procedures by rule made under Title 63G, Chapter 3, Utah Administrative Rulemaking Act, for administering funds under Subsection (5).

(7) The commission shall solicit advice, counsel, and physical assistance from deaf, hard of hearing, or severely speech impaired individuals and the organizations serving deaf, hard of hearing, or severely speech impaired individuals in the design and implementation of the program.

Section ~~{52}~~49. Section ~~{58-1-111}~~58-1-307 is amended to read:

~~{~~**58-1-111. Tax credit certificate -- Psychiatrists, physician assistants, and psychiatric mental health nurse practitioners -- Underserved populations.**

~~_____~~(1) As used in this section:

~~_____~~(a) "Average of 30 hours or more per week" means that the quotient calculated when dividing the claimant's total hours providing licensed services in the state during the taxable year by the number of weeks in which the claimant is licensed in the state during the taxable year is greater than or equal to 30.

~~_____~~(b) "Licensed services" means the provision of behavioral health treatment in the state and within the scope of practice of a psychiatrist, a physician assistant, a psychiatric mental health nurse practitioner, or a volunteer health practitioner.

~~_____~~(c) "Physician assistant" means an individual who is licensed under Chapter 70a, Utah Physician Assistant Act.

~~_____~~[(c)] (d) "Psychiatric mental health nurse practitioner" means an individual who:

~~_____~~(i) is licensed under Chapter 31b, Nurse Practice Act, for the practice of advanced practice registered nursing as that term is defined in Section 58-31b-102; and

~~_____~~(ii) holds a certification recognized by the American Nurses Credentialing Center of the American Association of Colleges of Nursing as a psychiatric mental health nurse practitioner.

~~_____~~[(d)] (e) "Psychiatrist" means an individual who:

~~_____~~(i) is licensed as a physician under:

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- ~~—— (A) Chapter 67, Utah Medical Practice Act;~~
- ~~—— (B) Chapter 67b, Interstate Medical Licensure Compact; or~~
- ~~—— (C) Chapter 68, Utah Osteopathic Medical Practice Act; and~~
- ~~—— (ii) is board eligible for a psychiatry specialization recognized by the American Board of Medical Specialists or the American Osteopathic Association's Bureau of Osteopathic Specialists;~~
- ~~—— [(c)] (f) "Underserved population" means:~~
 - ~~—— (i) an individual located in a county of the third, fourth, fifth, or sixth class, as designated in Section 17-50-501; or~~
 - ~~—— (ii) a Native American Indian.~~
- ~~—— [(f)] (g) "Volunteer retired psychiatrist" means an individual:~~
 - ~~—— (i) described in Subsection [(1)(d)] (1)(c) who, during the calendar year, did not receive payment for providing licensed services; or~~
 - ~~—— (ii) (A) licensed under Chapter 81, Retired Volunteer Health Care Practitioner Act; and~~
 - ~~—— (B) previously or currently board certified in psychiatry.~~
- ~~—— (2) (a) An individual who seeks to obtain a state income tax credit under Subsections 59-10-1111(2) through (4) shall file an application with the division with respect to each taxable year in which the individual seeks a state income tax credit.~~
 - ~~—— (b) An individual may qualify for a tax credit certificate under this section for no more than 10 taxable years for each tax credit.~~
- ~~—— (3) The application for a tax credit certificate under Subsection 59-10-1111(2) shall require the individual to provide the following to the division:~~
 - ~~—— (a) the date on which the individual obtained a license and the specialization described in Subsection [(1)(c)(ii) or (d)(ii)] (1)(d)(ii) or (e)(ii);~~
 - ~~—— (b) (i) an attestation that the individual was licensed on or after January 1, 2017, to provide licensed services; or~~
 - ~~—— (ii) if the individual was licensed to provide licensed services prior to January 1, 2017, an attestation:~~
 - ~~—— (A) that the individual did not provide licensed services for the two calendar years before the date the individual initially applied for the income tax credit under this subsection;~~
- ~~and~~

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~~—— (B) the date on which the individual resumed providing licensed services in the state; and~~

~~—— (c) other information as required by the division by administrative rule adopted in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.~~

~~—— (4) An application for a tax credit certificate under Subsection 59-10-1111(3) shall require the individual to attest to the division:~~

~~—— (a) that the individual averaged 30 or more hours per week during the taxable year providing licensed services;~~

~~—— (b) that the individual devoted 25% or more of the individual's total hours of licensed services in the taxable year to an underserved population;~~

~~—— (c) the type of underserved population for which the individual provided services during the taxable year; and~~

~~—— (d) other information as required by the division by administrative rule adopted in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.~~

~~—— (5) An application for a tax credit certificate under Subsection 59-10-1111(4) shall require the individual to attest to the division:~~

~~—— (a) whether the individual is licensed under Subsection [(1)(f)(i)] (1)(g)(i) or (ii);~~

~~—— (b) that the individual did not receive payment during the calendar year for providing licensed services;~~

~~—— (c) that during the calendar year, the individual provided at least 300 hours of licensed services to an underserved population, the homeless population, or veterans without receiving payment for providing the licensed services;~~

~~—— (d) a description of the type of population described in Subsection (5)(c) for which the individual provided licensed services; and~~

~~—— (e) other information as required by the division by administrative rule adopted in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.~~

~~—— (6) (a) The division shall issue a tax credit certificate in accordance with this subsection:~~

~~—— (b) The tax credit certificate may state that an individual is entitled to:~~

~~—— (i) a tax credit under Subsection 59-10-1111(2) if the individual meets the requirements of Subsection (3);~~

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~~—— (ii) a tax credit under Subsection 59-10-1111(3) if the individual meets the requirements of Subsection (4);~~

~~—— (iii) a tax credit under Subsection 59-10-1111(4) if the individual meets the requirements of Subsection (5); or~~

~~—— (iv) a tax credit under Subsections 59-10-1111(2) and (3) if the individual meets the requirements of Subsections (3) and (4);~~

~~—— (7) (a) The division may issue a tax credit certificate to an individual under Subsection 59-10-1111(2) for no more than 10 taxable years after the date on which the individual resumed services under Subsection (3)(b)(ii);~~

~~—— (b) The division may issue a tax credit certificate to an individual under Subsections 59-10-1111(3) and (4) for no more than 10 taxable years.~~

~~—— (8) The division shall provide a copy of a tax credit certificate issued under this section to the individual and the State Tax Commission.~~

~~—— Section 53. Section 58-1-307 is amended to read:~~

‡ **58-1-307. Exemptions from licensure.**

(1) Except as otherwise provided by statute or rule, the following individuals may engage in the practice of their occupation or profession, subject to the stated circumstances and limitations, without being licensed under this title:

(a) an individual serving in the armed forces of the United States, the United States Public Health Service, the United States Department of Veterans Affairs, or other federal agencies while engaged in activities regulated under this chapter as a part of employment with that federal agency if the individual holds a valid license to practice a regulated occupation or profession issued by any other state or jurisdiction recognized by the division;

(b) a student engaged in activities constituting the practice of a regulated occupation or profession while in training in a recognized school approved by the division to the extent the activities are supervised by qualified faculty, staff, or designee and the activities are a defined part of the training program;

(c) an individual engaged in an internship, residency, preceptorship, postceptorship, fellowship, apprenticeship, or on-the-job training program approved by the division while under the supervision of qualified individuals;

(d) an individual residing in another state and licensed to practice a regulated

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occupation or profession in that state, who is called in for a consultation by an individual licensed in this state, and the services provided are limited to that consultation;

(e) an individual who is invited by a recognized school, association, society, or other body approved by the division to conduct a lecture, clinic, or demonstration of the practice of a regulated occupation or profession if the individual does not establish a place of business or regularly engage in the practice of the regulated occupation or profession in this state;

(f) an individual licensed under the laws of this state, other than under this title, to practice or engage in an occupation or profession, while engaged in the lawful, professional, and competent practice of that occupation or profession;

(g) an individual licensed in a health care profession in another state who performs that profession while attending to the immediate needs of a patient for a reasonable period during which the patient is being transported from outside of this state, into this state, or through this state;

(h) an individual licensed in another state or country who is in this state temporarily to attend to the needs of an athletic team or group, except that the practitioner may only attend to the needs of the athletic team or group, including all individuals who travel with the team or group in any capacity except as a spectator;

(i) an individual licensed and in good standing in another state, who is in this state:

(i) temporarily, under the invitation and control of a sponsoring entity;

(ii) for a reason associated with a special purpose event, based upon needs that may exceed the ability of this state to address through its licensees, as determined by the division; and

(iii) for a limited period of time not to exceed the duration of that event, together with any necessary preparatory and conclusionary periods; and

(j) the spouse of an individual serving in the armed forces of the United States while the individual is stationed within this state, provided:

(i) the spouse holds a valid license to practice a regulated occupation or profession issued by any other state or jurisdiction recognized by the division; and

(ii) the license is current and the spouse is in good standing in the state of licensure.

(2) (a) A practitioner temporarily in this state who is exempted from licensure under Subsection (1) shall comply with each requirement of the licensing jurisdiction from which the

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practitioner derives authority to practice.

(b) Violation of a limitation imposed by this section constitutes grounds for removal of exempt status, denial of license, or other disciplinary proceedings.

(3) An individual who is licensed under a specific chapter of this title to practice or engage in an occupation or profession may engage in the lawful, professional, and competent practice of that occupation or profession without additional licensure under other chapters of this title, except as otherwise provided by this title.

(4) Upon the declaration of a national, state, or local emergency, a public health emergency as defined in Section 26-23b-102, or a declaration by the president of the United States or other federal official requesting public health-related activities, the division in collaboration with the board may:

(a) suspend the requirements for permanent or temporary licensure of individuals who are licensed in another state for the duration of the emergency while engaged in the scope of practice for which they are licensed in the other state;

(b) modify, under the circumstances described in this Subsection (4) and Subsection (5), the scope of practice restrictions under this title for individuals who are licensed under this title as:

(i) a physician under Chapter 67, Utah Medical Practice Act, or Chapter 68, Utah Osteopathic Medical Practice Act;

(ii) a nurse under Chapter 31b, Nurse Practice Act, or Chapter 31c, Nurse Licensure Compact;

(iii) a certified nurse midwife under Chapter 44a, Nurse Midwife Practice Act;

(iv) a pharmacist, pharmacy technician, or pharmacy intern under Chapter 17b, Pharmacy Practice Act;

(v) a respiratory therapist under Chapter 57, Respiratory Care Practices Act;

(vi) a dentist and dental hygienist under Chapter 69, Dentist and Dental Hygienist Practice Act; and

(vii) a physician assistant under Chapter 70a, Utah Physician Assistant Act;

(c) suspend the requirements for licensure under this title and modify the scope of practice in the circumstances described in this Subsection (4) and Subsection (5) for medical services personnel or paramedics required to be licensed under Section 26-8a-302;

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(d) suspend requirements in Subsections 58-17b-620(3) through (6) which require certain prescriptive procedures;

(e) exempt or modify the requirement for licensure of an individual who is activated as a member of a medical reserve corps during a time of emergency as provided in Section 26A-1-126; and

(f) exempt or modify the requirement for licensure of an individual who is registered as a volunteer health practitioner as provided in Title 26, Chapter 49, Uniform Emergency Volunteer Health Practitioners Act.

(5) Individuals exempt under Subsection (4)(c) and individuals operating under modified scope of practice provisions under Subsection (4)(b):

(a) are exempt from licensure or subject to modified scope of practice for the duration of the emergency;

(b) must be engaged in the distribution of medicines or medical devices in response to the emergency or declaration; and

(c) must be employed by or volunteering for:

(i) a local or state department of health; or

(ii) a host entity as defined in Section 26-49-102.

(6) In accordance with the protocols established under Subsection (8), upon the declaration of a national, state, or local emergency, the Department of Health or a local health department shall coordinate with public safety authorities as defined in Subsection 26-23b-110(1) and may:

(a) use a vaccine, antiviral, antibiotic, or other prescription medication that is not a controlled substance to prevent or treat a disease or condition that gave rise to, or was a consequence of, the emergency; or

(b) distribute a vaccine, antiviral, antibiotic, or other prescription medication that is not a controlled substance:

(i) if necessary, to replenish a commercial pharmacy in the event that the commercial pharmacy's normal source of the vaccine, antiviral, antibiotic, or other prescription medication is exhausted; or

(ii) for dispensing or direct administration to treat the disease or condition that gave rise to, or was a consequence of, the emergency by:

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- (A) a pharmacy;
- (B) a prescribing practitioner;
- (C) a licensed health care facility;
- (D) a federally qualified community health clinic; or
- (E) a governmental entity for use by a community more than 50 miles from a person

described in Subsections (6)(b)(ii)(A) through (D).

(7) In accordance with protocols established under Subsection (8), upon the declaration of a national, state, or local emergency, the Department of Health shall coordinate the distribution of medications:

- (a) received from the strategic national stockpile to local health departments; and
- (b) from local health departments to emergency personnel within the local health departments' geographic region.

(8) The Department of Health shall establish by rule, made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, protocols for administering, dispensing, and distributing a vaccine, an antiviral, an antibiotic, or other prescription medication that is not a controlled substance in the event of a declaration of a national, state, or local emergency. The protocol shall establish procedures for the Department of Health or a local health department to:

- (a) coordinate the distribution of:
 - (i) a vaccine, an antiviral, an antibiotic, or other prescription medication that is not a controlled substance received by the Department of Health from the strategic national stockpile to local health departments; and
 - (ii) a vaccine, an antiviral, an antibiotic, or other non-controlled prescription medication received by a local health department to emergency personnel within the local health department's geographic region;
- (b) authorize the dispensing, administration, or distribution of a vaccine, an antiviral, an antibiotic, or other prescription medication that is not a controlled substance to the contact of a patient without a patient-practitioner relationship, if the contact's condition is the same as that of the physician's or physician assistant's patient; and
- (c) authorize the administration, distribution, or dispensing of a vaccine, an antiviral, an antibiotic, or other non-controlled prescription medication to an individual who:

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- (i) is working in a triage situation;
 - (ii) is receiving preventative or medical treatment in a triage situation;
 - (iii) does not have coverage for the prescription in the individual's health insurance plan;
 - (iv) is involved in the delivery of medical or other emergency services in response to the declared national, state, or local emergency; or
 - (v) otherwise has a direct impact on public health.
- (9) The Department of Health shall give notice to the division upon implementation of the protocol established under Subsection (8).

Section ~~{54}~~50. Section **58-1-501.5** is amended to read:

58-1-501.5. Anatomic pathology services -- Billing violations.

- (1) As used in this section, the following definitions apply:
- (a) (i) "Anatomic pathology services" including "technical or professional component of anatomic pathology services" means:
 - (A) histopathology or surgical pathology, meaning the gross examination of, histologic processing of, or microscopic examination of human organ tissue performed by a physician or physician assistant, or under the supervision of a physician;
 - (B) cytopathology, meaning the examination of human cells, from fluids, aspirates, washings, brushings, or smears, including the pap test examination performed by a physician, or physician assistant, or under the supervision of a physician;
 - (C) hematology, meaning the microscopic evaluation of human bone marrow aspirates and biopsies performed by a physician or physician assistant, or under the supervision of a physician, and peripheral human blood smears when the attending or treating physician, or physician assistant, or other practitioner of the healing arts or a technologist requests that a blood smear be reviewed by a pathologist;
 - (D) subcellular pathology and molecular pathology; and
 - (E) blood bank services performed by a pathologist.
 - (ii) "Anatomic pathology services" including "technical or professional component of anatomic pathology services" does not include the initial collection or packaging of a sample for transport.
 - (b) "Clinical laboratory" or "laboratory" means a facility for the biological,

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microbiological, serological, chemical, immunohematological, hematological, biophysical, cytological, pathological, or other examination of materials derived from the human body for the purpose of providing information for the diagnosis, prevention, or treatment of any disease or impairment of human beings or the assessment of the health of human beings.

(c) "Health care facility" has the meaning provided in Section 26-21-2.

(d) "Health care provider" includes:

(i) an advanced practice registered nurse licensed under Chapter 31b, Nurse Practice Act;

(ii) a chiropractic physician licensed under Chapter 73, Chiropractic Physician Practice Act;

(iii) a dentist licensed under Chapter 69, Dentist and Dental Hygienist Practice Act;

(iv) a nurse midwife licensed under Chapter 44a, Nurse Midwife Practice Act;

(v) an optometrist licensed under Chapter 16a, Utah Optometry Practice Act;

(vi) an osteopathic physician and surgeon licensed under Chapter 68, Utah Osteopathic Medical Practice Act;

(vii) a podiatric physician licensed under Chapter 5a, Podiatric Physician Licensing Act;

(viii) a physician and surgeon licensed under Chapter 67, Utah Medical Practice Act;

and

(ix) a physician assistant licensed under Chapter 70a, Utah Physician Assistant Act.

(e) "Insurer" includes:

(i) any entity offering accident and health insurance as defined in Section 31A-1-301;

(ii) workers' compensation benefits;

(iii) a health maintenance organization; or

(iv) any self-insurance, as defined in Section 31A-1-301, that offers health care insurance or benefits.

(2) (a) A health care provider who orders anatomic pathology services for a patient from an independent physician or laboratory may not directly or indirectly mark up, charge a commission, or make a profit on the anatomic pathology service provided by the independent physician or laboratory.

(b) Nothing in Subsection (2)(a):

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(i) restricts the ability of a health care provider, who has not performed or supervised either the technical or professional component of the anatomic pathology service, to obtain payment for services related solely to the collection and packaging of a sample and administrative billing costs; or

(ii) restricts the ability of the lab function in the Department of Health to bill for services.

(3) A health care provider when billing a patient directly for anatomic pathology services provided by an independent physician or laboratory shall furnish an itemized bill which conforms with the billing practices of the American Medical Association that conspicuously discloses the charge for each anatomic pathology service, physician or laboratory name, and address for each anatomic pathology service rendered to the patient by the physician or laboratory that performed the anatomic pathology service.

(4) The disclosure to be made under Subsection (3) shall not be required when the anatomic pathology service is being ordered by a hospital, a laboratory performing either the professional or technical component of the service, or a physician or physician assistant performing either the professional or technical component of the service, a public health clinic, or a state or federal agency.

(5) Failure to comply with the requirements of this section shall be considered to be unprofessional conduct.

Section ~~{55}~~51. Section ~~{58-37-6}~~58-41-4 is amended to read:

~~{~~ **~~58-37-6. License to manufacture, produce, distribute, dispense, administer, or conduct research -- Issuance by division -- Denial, suspension, or revocation -- Records required -- Prescriptions.~~**

~~_____ (1) (a) The division may adopt rules relating to the licensing and control of the manufacture, distribution, production, prescription, administration, dispensing, conducting of research with, and performing of laboratory analysis upon controlled substances within this state.~~

~~_____ (b) The division may assess reasonable fees to defray the cost of issuing original and renewal licenses under this chapter pursuant to Section 63J-1-504.~~

~~_____ (2) (a) (i) Every person who manufactures, produces, distributes, prescribes, dispenses, administers, conducts research with, or performs laboratory analysis upon any controlled~~

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~~substance in Schedules I through V within this state, or who proposes to engage in manufacturing, producing, distributing, prescribing, dispensing, administering, conducting research with, or performing laboratory analysis upon controlled substances included in Schedules I through V within this state shall obtain a license issued by the division.~~

~~—— (i) The division shall issue each license under this chapter in accordance with a two-year renewal cycle established by rule. The division may by rule extend or shorten a renewal period by as much as one year to stagger the renewal cycles it administers.~~

~~—— (b) Persons licensed to manufacture, produce, distribute, prescribe, dispense, administer, conduct research with, or perform laboratory analysis upon controlled substances in Schedules I through V within this state may possess, manufacture, produce, distribute, prescribe, dispense, administer, conduct research with, or perform laboratory analysis upon those substances to the extent authorized by their license and in conformity with this chapter.~~

~~—— (c) The following persons are not required to obtain a license and may lawfully possess controlled substances included in Schedules II through V under this section:~~

~~—— (i) an agent or employee, except a sales representative, of any registered manufacturer, distributor, or dispenser of any controlled substance, if the agent or employee is acting in the usual course of the person's business or employment; however, nothing in this subsection shall be interpreted to permit an agent, employee, sales representative, or detail man to maintain an inventory of controlled substances separate from the location of the person's employer's registered and licensed place of business;~~

~~—— (ii) a motor carrier or warehouseman, or an employee of a motor carrier or warehouseman, who possesses any controlled substance in the usual course of the person's business or employment; and~~

~~—— (iii) an ultimate user, or any person who possesses any controlled substance pursuant to a lawful order of a practitioner.~~

~~—— (d) The division may enact rules waiving the license requirement for certain manufacturers, producers, distributors, prescribers, dispensers, administrators, research practitioners, or laboratories performing analysis if consistent with the public health and safety.~~

~~—— (e) A separate license is required at each principal place of business or professional practice where the applicant manufactures, produces, distributes, dispenses, conducts research with, or performs laboratory analysis upon controlled substances.~~

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~~—— (f) The division may enact rules providing for the inspection of a licensee or applicant's establishment, and may inspect the establishment according to those rules.~~

~~—— (3) (a) (i) Upon proper application, the division shall license a qualified applicant to manufacture, produce, distribute, conduct research with, or perform laboratory analysis upon controlled substances included in Schedules I through V, unless it determines that issuance of a license is inconsistent with the public interest.~~

~~—— (ii) The division may not issue a license to any person to prescribe, dispense, or administer a Schedule I controlled substance except under Subsection (3)(a)(i).~~

~~—— (iii) In determining public interest under this Subsection (3)(a), the division shall consider whether or not the applicant has:~~

~~—— (A) maintained effective controls against diversion of controlled substances and any Schedule I or II substance compounded from any controlled substance into other than legitimate medical, scientific, or industrial channels;~~

~~—— (B) complied with applicable state and local law;~~

~~—— (C) been convicted under federal or state laws relating to the manufacture, distribution, or dispensing of substances;~~

~~—— (D) past experience in the manufacture of controlled dangerous substances;~~

~~—— (E) established effective controls against diversion; and~~

~~—— (F) complied with any other factors that the division establishes that promote the public health and safety.~~

~~—— (b) Licenses granted under Subsection (3)(a) do not entitle a licensee to manufacture, produce, distribute, conduct research with, or perform laboratory analysis upon controlled substances in Schedule I other than those specified in the license.~~

~~—— (c) (i) Practitioners shall be licensed to administer, dispense, or conduct research with substances in Schedules II through V if they are authorized to administer, dispense, or conduct research under the laws of this state.~~

~~—— (ii) The division need not require a separate license for practitioners engaging in research with nonnarcotic controlled substances in Schedules II through V where the licensee is already licensed under this chapter in another capacity.~~

~~—— (iii) With respect to research involving narcotic substances in Schedules II through V, or where the division by rule requires a separate license for research of nonnarcotic substances~~

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~~in Schedules II through V, a practitioner shall apply to the division prior to conducting research:~~

~~—— (iv) Licensing for purposes of bona fide research with controlled substances by a practitioner considered qualified may be denied only on a ground specified in Subsection (4), or upon evidence that the applicant will abuse or unlawfully transfer or fail to safeguard adequately the practitioner's supply of substances against diversion from medical or scientific use:~~

~~—— (v) Practitioners registered under federal law to conduct research in Schedule I substances may conduct research in Schedule I substances within this state upon furnishing the division evidence of federal registration:~~

~~—— (d) Compliance by manufacturers, producers, and distributors with the provisions of federal law respecting registration, excluding fees, entitles them to be licensed under this chapter:~~

~~—— (e) The division shall initially license those persons who own or operate an establishment engaged in the manufacture, production, distribution, dispensation, or administration of controlled substances prior to April 3, 1980, and who are licensed by the state:~~

~~—— (4) (a) Any license pursuant to Subsection (2) or (3) may be denied, suspended, placed on probation, or revoked by the division upon finding that the applicant or licensee has:~~

~~—— (i) materially falsified any application filed or required pursuant to this chapter;~~

~~—— (ii) been convicted of an offense under this chapter or any law of the United States, or any state, relating to any substance defined as a controlled substance;~~

~~—— (iii) been convicted of a felony under any other law of the United States or any state within five years of the date of the issuance of the license;~~

~~—— (iv) had a federal registration or license denied, suspended, or revoked by competent federal authority and is no longer authorized to manufacture, distribute, prescribe, or dispense controlled substances;~~

~~—— (v) had the licensee's license suspended or revoked by competent authority of another state for violation of laws or regulations comparable to those of this state relating to the manufacture, distribution, or dispensing of controlled substances;~~

~~—— (vi) violated any division rule that reflects adversely on the licensee's reliability and~~

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~~integrity with respect to controlled substances;~~

~~—— (vii) refused inspection of records required to be maintained under this chapter by a person authorized to inspect them; or~~

~~—— (viii) prescribed, dispensed, administered, or injected an anabolic steroid for the purpose of manipulating human hormonal structure so as to:~~

~~—— (A) increase muscle mass, strength, or weight without medical necessity and without a written prescription by any practitioner in the course of the practitioner's professional practice; or~~

~~—— (B) improve performance in any form of human exercise, sport, or game.~~

~~—— (b) The division may limit revocation or suspension of a license to a particular controlled substance with respect to which grounds for revocation or suspension exist.~~

~~—— (c) (i) Proceedings to deny, revoke, or suspend a license shall be conducted pursuant to this section and in accordance with the procedures set forth in [Title 58,] Chapter 1, Division of Occupational and Professional Licensing Act, and conducted in conjunction with the appropriate representative committee designated by the director of the department.~~

~~—— (ii) Nothing in this Subsection (4)(c) gives the Division of Occupational and Professional Licensing exclusive authority in proceedings to deny, revoke, or suspend licenses, except where the division is designated by law to perform those functions, or, when not designated by law, is designated by the executive director of the Department of Commerce to conduct the proceedings.~~

~~—— (d) (i) The division may suspend any license simultaneously with the institution of proceedings under this section if it finds there is an imminent danger to the public health or safety.~~

~~—— (ii) Suspension shall continue in effect until the conclusion of proceedings, including judicial review, unless withdrawn by the division or dissolved by a court of competent jurisdiction.~~

~~—— (e) (i) If a license is suspended or revoked under this Subsection (4), all controlled substances owned or possessed by the licensee may be placed under seal in the discretion of the division.~~

~~—— (ii) Disposition may not be made of substances under seal until the time for taking an appeal has lapsed, or until all appeals have been concluded, unless a court, upon application,~~

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~~orders the sale of perishable substances and the proceeds deposited with the court.~~

~~—— (iii) If a revocation order becomes final, all controlled substances shall be forfeited.~~

~~—— (f) The division shall notify promptly the Drug Enforcement Administration of all orders suspending or revoking a license and all forfeitures of controlled substances.~~

~~—— (g) If an individual's Drug Enforcement Administration registration is denied, revoked, surrendered, or suspended, the division shall immediately suspend the individual's controlled substance license, which shall only be reinstated by the division upon reinstatement of the federal registration, unless the division has taken further administrative action under Subsection (4)(a)(iv), which would be grounds for the continued denial of the controlled substance license.~~

~~—— (5) (a) Persons licensed under Subsection (2) or (3) shall maintain records and inventories in conformance with the record keeping and inventory requirements of federal and state law and any additional rules issued by the division.~~

~~—— (b) (i) Every physician, physician assistant, dentist, naturopathic physician, veterinarian, practitioner, or other person who is authorized to administer or professionally use a controlled substance shall keep a record of the drugs received by him and a record of all drugs administered, dispensed, or professionally used by him otherwise than by a prescription.~~

~~—— (ii) A person using small quantities or solutions or other preparations of those drugs for local application has complied with this Subsection (5)(b) if the person keeps a record of the quantity, character, and potency of those solutions or preparations purchased or prepared by him, and of the dates when purchased or prepared.~~

~~—— (6) Controlled substances in Schedules I through V may be distributed only by a licensee and pursuant to an order form prepared in compliance with division rules or a lawful order under the rules and regulations of the United States.~~

~~—— (7) (a) A person may not write or authorize a prescription for a controlled substance unless the person is:~~

~~—— (i) a practitioner authorized to prescribe drugs and medicine under the laws of this state or under the laws of another state having similar standards; and~~

~~—— (ii) licensed under this chapter or under the laws of another state having similar standards.~~

~~—— (b) A person other than a pharmacist licensed under the laws of this state, or the~~

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~~pharmacist's licensed intern, as required by Sections 58-17b-303 and 58-17b-304, may not dispense a controlled substance.~~

~~—— (c) (i) A controlled substance may not be dispensed without the written prescription of a practitioner, if the written prescription is required by the federal Controlled Substances Act.~~

~~—— (ii) That written prescription shall be made in accordance with Subsection (7)(a) and in conformity with Subsection (7)(d):~~

~~—— (iii) In emergency situations, as defined by division rule, controlled substances may be dispensed upon oral prescription of a practitioner, if reduced promptly to writing on forms designated by the division and filed by the pharmacy.~~

~~—— (iv) Prescriptions reduced to writing by a pharmacist shall be in conformity with Subsection (7)(d):~~

~~—— (d) Except for emergency situations designated by the division, a person may not issue, fill, compound, or dispense a prescription for a controlled substance unless the prescription is signed by the prescriber in ink or indelible pencil or is signed with an electronic signature of the prescriber as authorized by division rule, and contains the following information:~~

~~—— (i) the name, address, and registry number of the prescriber;~~

~~—— (ii) the name, address, and age of the person to whom or for whom the prescription is issued;~~

~~—— (iii) the date of issuance of the prescription; and~~

~~—— (iv) the name, quantity, and specific directions for use by the ultimate user of the controlled substance:~~

~~—— (e) A prescription may not be written, issued, filled, or dispensed for a Schedule I controlled substance unless:~~

~~—— (i) the person who writes the prescription is licensed under Subsection (2); and~~

~~—— (ii) the prescribed controlled substance is to be used in research.~~

~~—— (f) Except when administered directly to an ultimate user by a licensed practitioner, controlled substances are subject to the restrictions of this Subsection (7)(f):~~

~~—— (i) A prescription for a Schedule II substance may not be refilled.~~

~~—— (ii) A Schedule II controlled substance may not be filled in a quantity to exceed a one-month's supply, as directed on the daily dosage rate of the prescriptions:~~

~~—— (iii) (A) Except as provided in Subsection (7)(f)(iii)(B), a prescription for a Schedule II~~

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~~or Schedule III controlled substance that is an opiate and that is issued for an acute condition shall be completely or partially filled in a quantity not to exceed a seven-day supply as directed on the daily dosage rate of the prescription.~~

~~—— (B) Subsection (7)(f)(iii)(A) does not apply to a prescription issued for a surgery when the practitioner determined that a quantity exceeding seven days is needed, in which case the practitioner may prescribe up to a 30-day supply, with a partial fill at the discretion of the practitioner.~~

~~—— (C) Subsection (7)(f)(iii)(A) does not apply to prescriptions issued for complex or chronic conditions which are documented as being complex or chronic in the medical record.~~

~~—— (D) A pharmacist is not required to verify that a prescription is in compliance with Subsection (7)(f)(iii).~~

~~—— (iv) A Schedule III or IV controlled substance may be filled only within six months of issuance, and may not be refilled more than six months after the date of its original issuance or be refilled more than five times after the date of the prescription unless renewed by the practitioner.~~

~~—— (v) All other controlled substances in Schedule V may be refilled as the prescriber's prescription directs, but they may not be refilled one year after the date the prescription was issued unless renewed by the practitioner.~~

~~—— (vi) Any prescription for a Schedule II substance may not be dispensed if it is not presented to a pharmacist for dispensing by a pharmacist or a pharmacy intern within 30 days after the date the prescription was issued, or 30 days after the dispensing date, if that date is specified separately from the date of issue.~~

~~—— (vii) A practitioner may issue more than one prescription at the same time for the same Schedule II controlled substance, but only under the following conditions:~~

~~—— (A) no more than three prescriptions for the same Schedule II controlled substance may be issued at the same time;~~

~~—— (B) no one prescription may exceed a 30-day supply; and~~

~~—— (C) a second or third prescription shall include the date of issuance and the date for dispensing.~~

~~—— (g) An order for a controlled substance in Schedules II through V for use by an inpatient or an outpatient of a licensed hospital is exempt from all requirements of this~~

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Subsection (7) if the order is:

~~—— (i) issued or made by a prescribing practitioner who holds an unrestricted registration with the federal Drug Enforcement Administration, and an active Utah controlled substance license in good standing issued by the division under this section, or a medical resident who is exempted from licensure under Subsection 58-1-307(1)(c);~~

~~—— (ii) authorized by the prescribing practitioner treating the patient and the prescribing practitioner designates the quantity ordered;~~

~~—— (iii) entered upon the record of the patient, the record is signed by the prescriber affirming the prescriber's authorization of the order within 48 hours after filling or administering the order, and the patient's record reflects the quantity actually administered; and~~

~~—— (iv) filled and dispensed by a pharmacist practicing the pharmacist's profession within the physical structure of the hospital, or the order is taken from a supply lawfully maintained by the hospital and the amount taken from the supply is administered directly to the patient authorized to receive it.~~

~~—— (h) A practitioner licensed under this chapter may not prescribe, administer, or dispense a controlled substance to a child, without first obtaining the consent required in Section 78B-3-406 of a parent, guardian, or person standing in loco parentis of the child except in cases of an emergency. For purposes of this Subsection (7)(h), "child" has the same meaning as defined in Section 78A-6-105, and "emergency" means any physical condition requiring the administration of a controlled substance for immediate relief of pain or suffering.~~

~~—— (i) A practitioner licensed under this chapter may not prescribe or administer dosages of a controlled substance in excess of medically recognized quantities necessary to treat the ailment, malady, or condition of the ultimate user.~~

~~—— (j) A practitioner licensed under this chapter may not prescribe, administer, or dispense any controlled substance to another person knowing that the other person is using a false name, address, or other personal information for the purpose of securing the controlled substance.~~

~~—— (k) A person who is licensed under this chapter to manufacture, distribute, or dispense a controlled substance may not manufacture, distribute, or dispense a controlled substance to another licensee or any other authorized person not authorized by this license.~~

~~—— (l) A person licensed under this chapter may not omit, remove, alter, or obliterate a symbol required by this chapter or by a rule issued under this chapter.~~

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~~—— (m) A person licensed under this chapter may not refuse or fail to make, keep, or furnish any record notification, order form, statement, invoice, or information required under this chapter.~~

~~—— (n) A person licensed under this chapter may not refuse entry into any premises for inspection as authorized by this chapter.~~

~~—— (o) A person licensed under this chapter may not furnish false or fraudulent material information in any application, report, or other document required to be kept by this chapter or willfully make any false statement in any prescription, order, report, or record required by this chapter.~~

~~—— (8) (a) (i) Any person licensed under this chapter who is found by the division to have violated any of the provisions of Subsections (7)(k) through (o) or Subsection (10) is subject to a penalty not to exceed \$5,000. The division shall determine the procedure for adjudication of any violations in accordance with Sections 58-1-106 and 58-1-108.~~

~~—— (ii) The division shall deposit all penalties collected under Subsection (8)(a)(i) in the General Fund as a dedicated credit to be used by the division under Subsection 58-37f-502(1).~~

~~—— (iii) The director may collect a penalty that is not paid by:~~

~~—— (A) referring the matter to a collection agency; or~~

~~—— (B) bringing an action in the district court of the county where the person against whom the penalty is imposed resides or in the county where the office of the director is located.~~

~~—— (iv) A county attorney or the attorney general of the state shall provide legal assistance and advice to the director in an action to collect a penalty.~~

~~—— (v) A court shall award reasonable attorney fees and costs to the prevailing party in an action brought by the division to collect a penalty.~~

~~—— (b) Any person who knowingly and intentionally violates Subsections (7)(h) through (j) or Subsection (10) is:~~

~~—— (i) upon first conviction, guilty of a class B misdemeanor;~~

~~—— (ii) upon second conviction, guilty of a class A misdemeanor; and~~

~~—— (iii) on third or subsequent conviction, guilty of a third degree felony.~~

~~—— (c) Any person who knowingly and intentionally violates Subsections (7)(k) through (o) shall upon conviction be guilty of a third degree felony.~~

~~—— (9) Any information communicated to any licensed practitioner in an attempt to~~

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~~unlawfully procure, or to procure the administration of, a controlled substance is not considered to be a privileged communication.~~

~~—— (10) A person holding a valid license under this chapter who is engaged in medical research may produce, possess, administer, prescribe, or dispense a controlled substance for research purposes as licensed under Subsection (2) but may not otherwise prescribe or dispense a controlled substance listed in Section 58-37-4.2.~~

~~—— Section 56. Section 58-41-4 is amended to read:~~

‡ **58-41-4. Exemptions from chapter.**

(1) In addition to the exemptions from licensure in Section 58-1-307, the following persons may engage in the practice of speech-language pathology and audiology subject to the stated circumstances and limitations without being licensed under this chapter:

(a) a qualified person licensed in this state under any law existing in this state prior to May 13, 1975, ~~[from]~~ engaging in the profession for which he is licensed;

(b) a medical doctor, physician, physician assistant, or surgeon licensed in this state, ~~[from]~~ engaging in his or her specialty in the practice of medicine;

(c) a hearing aid dealer or salesman from selling, fitting, adjusting, and repairing hearing aids, and conducting hearing tests solely for that purpose. However, a hearing aid dealer may not conduct audiologic testing on persons under the age of 18 years except under the direct supervision of an audiologist licensed under this chapter;

(d) a person who has obtained a valid and current credential issued by the State Board of Education while performing specifically the functions of a speech-language pathologist or audiologist, in no way in his own interest, solely within the confines of and under the direction and jurisdiction of and only in the academic interest of the schools by which employed in this state;

(e) a person employed as a speech-language pathologist or audiologist by federal government agencies or subdivisions or, prior to July 1, 1989, by state or local government agencies or subdivisions, while specifically performing speech-language pathology or audiology services in no way in his own interest, solely within the confines of and under the direction and jurisdiction of and in the specific interest of that agency or subdivision;

(f) a person identified in Subsections (1)(d) and (e) may offer lectures for a fee, or monetary or other compensation, without being licensed; however, such person may elect to be

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subject to the requirements of this chapter;

(g) a person employed by accredited colleges or universities as a speech-language pathologist or audiologist from performing the services or functions described in this chapter when they are:

- (i) performed solely as an assigned teaching function of employment;
- (ii) solely in academic interest and pursuit as a function of that employment;
- (iii) in no way for their own interest; and
- (iv) provided for no fee, monetary or otherwise, other than their agreed institutional

salary;

(h) a person pursuing a course of study leading to a degree in speech-language pathology or audiology while enrolled in an accredited college or university, provided those activities constitute an assigned, directed, and supervised part of his curricular study, and in no other interest, and that all examinations, tests, histories, charts, progress notes, reports, correspondence, and all documents and records which he produces be identified clearly as having been conducted and prepared by a student in training and that such a person is obviously identified and designated by appropriate title clearly indicating the training status and provided that he does not hold himself out directly or indirectly as being qualified to practice independently;

(i) a person trained in elementary audiometry and qualified to perform basic audiometric tests while employed by a licensed medical doctor to perform solely for him while under his direct supervision, the elementary conventional audiometric tests of air conduction screening, air conduction threshold testing, and tympanometry;

(j) a person while performing as a speech-language pathologist or audiologist for the purpose of obtaining required professional experience under the provisions of this chapter, if he meets all training requirements and is professionally responsible to and under the supervision of a speech-language pathologist or audiologist who holds the CCC or a state license in speech-language pathology or audiology. This provision is applicable only during the time that person is obtaining the required professional experience;

(k) a corporation, partnership, trust, association, group practice, or like organization engaging in speech-language pathology or audiology services without certification or license, if it acts only through employees or consists only of persons who are licensed under this chapter;

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(l) performance of speech-language pathology or audiology services in this state by a speech-language pathologist or audiologist who is not a resident of this state and is not licensed under this chapter if those services are performed for no more than one month in any calendar year in association with a speech-language pathologist or audiologist licensed under this chapter, and if that person meets the qualifications and requirements for application for licensure described in Section 58-41-5; and

(m) a person certified under Title 53E, Public Education System -- State Administration, as a teacher of the deaf, from providing the services or performing the functions he is certified to perform.

(2) No person is exempt from the requirements of this chapter who performs or provides any services as a speech-language pathologist or audiologist for which a fee, salary, bonus, gratuity, or compensation of any kind paid by the recipient of the service; or who engages any part of his professional work for a fee practicing in conjunction with, by permission of, or apart from his position of employment as speech-language pathologist or audiologist in any branch or subdivision of local, state, or federal government or as otherwise identified in this section.

Section ~~57~~52. Section **58-46a-305** is amended to read:

58-46a-305. Exemptions from licensure.

In addition to the exemptions from licensure in Section 58-1-307, the following persons may engage in acts and practices included within the definition of practice as a hearing instrument specialist or hearing instrument intern, subject to their professional licensure authorization and restrictions, without being licensed under this chapter:

(1) an audiologist licensed under the provisions of [~~Title 58;~~] Chapter 41, Speech-Language Pathology and Audiology Licensing Act; [~~and~~]

(2) a physician and surgeon licensed under the provisions of [~~Title 58;~~] Chapter 67, Utah Medical Practice Act, or osteopathic physician licensed under the provisions of [~~Title 58;~~] Chapter 68, Utah Osteopathic Medical Practice Act[~~;~~]; and

(3) a physician assistant licensed under the provisions of Chapter 70a, Utah Physician Assistant Act.

Section ~~58~~53. Section **58-46a-502** is amended to read:

58-46a-502. Additional requirements for practicing as a hearing instrument

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specialist.

A person engaging in the practice of a hearing instrument specialist shall:

(1) have a regular place or places of business from which the person conducts business as a hearing instrument specialist and the place or places of business shall be represented to a patient and others with whom business is conducted by the street address at which the place of business is located;

(2) include in all advertising or other representation the street address at which the business is located and the telephone number of the business at that street address;

(3) provide as part of each transaction between a licensee and a patient related to testing for hearing loss and selling of a hearing instrument written documentation provided to the patient that includes:

(a) identification of all services and products provided to the patient by the hearing instrument specialist and the charges for each service or product;

(b) a statement whether any hearing instrument provided to a patient is "new," "used," or "reconditioned" and the terms and conditions of any warranty or guarantee that applies to each instrument; and

(c) the identity and license number of each hearing instrument specialist or hearing instrument intern who provided services or products to the patient;

(4) before providing services or products to a patient:

(a) advise the patient regarding services and products offered to the patient, including the expected results of the services and products;

(b) inform each patient who is being offered a hearing instrument about hearing instruments that work with assistive listening systems that are compliant with the ADA Standards for Accessible Design adopted by the United States Department of Justice in accordance with the Americans with Disabilities Act, 42 U.S.C. Sec. 12101 et seq.; and

(c) obtain written informed consent from the patient regarding offered services, products, and the expected results of the services and products in a form approved by the division in collaboration with the board;

(5) refer all individuals under the age of 18 who seek testing of hearing to a physician or surgeon, osteopathic physician, physician assistant, or audiologist, licensed under the provisions of [~~Title 58, Occupations and Professions~~] this title, and shall dispense a hearing aid

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to that individual only on prescription of a physician or surgeon, osteopathic physician, physician assistant, or audiologist;

(6) obtain the patient's informed consent and agreement to purchase the hearing instrument based on that informed consent either by the hearing instrument specialist or the hearing instrument intern, before designating an appropriate hearing instrument; and

(7) if a hearing instrument does not substantially enhance the patient's hearing consistent with the representations of the hearing instrument specialist at the time informed consent was given prior to the sale and fitting of the hearing instrument, provide:

(a) necessary intervention to produce satisfactory hearing recovery results consistent with representations made; or

(b) for the refund of fees paid by the patient for the hearing instrument to the hearing instrument specialist within a reasonable time after finding that the hearing instrument does not substantially enhance the patient's hearing.

Section ~~{59}~~54. Section **58-47b-304** is amended to read:

58-47b-304. Exemptions from licensure.

(1) In addition to the exemptions from licensure in Section 58-1-307, the following individuals may engage in the practice of massage therapy as defined under this chapter, subject to the stated circumstances and limitations, without being licensed, but may not represent themselves as a massage therapist or massage apprentice:

(a) a physician or surgeon licensed under [~~Title 58;~~] Chapter 67, Utah Medical Practice Act;

(b) a physician assistant licensed under Chapter 70a, Utah Physician Assistant Act;

~~(b)~~ (c) a nurse licensed under [~~Title 58;~~] Chapter 31b, Nurse Practice Act, or under [~~Title 58;~~] Chapter 44a, Nurse Midwife Practice Act;

~~(c)~~ (d) a physical therapist licensed under [~~Title 58;~~] Chapter 24b, Physical Therapy Practice Act;

~~(d)~~ (e) a physical therapist assistant licensed under [~~Title 58;~~] Chapter 24b, Physical Therapy Practice Act, while under the general supervision of a physical therapist;

~~(e)~~ (f) an osteopathic physician or surgeon licensed under [~~Title 58;~~] Chapter 68, Utah Osteopathic Medical Practice Act;

~~(f)~~ (g) a chiropractic physician licensed under [~~Title 58;~~] Chapter 73, Chiropractic

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Physician Practice Act;

~~[(g)]~~ (h) a hospital staff member employed by a hospital, who practices massage as part of the staff member's responsibilities;

~~[(h)]~~ (i) an athletic trainer licensed under ~~[Title 58,]~~ Chapter 40a, Athletic Trainer Licensing Act;

~~[(i)]~~ (j) a student in training enrolled in a massage therapy school approved by the division;

~~[(j)]~~ (k) a naturopathic physician licensed under ~~[Title 58,]~~ Chapter 71, Naturopathic Physician Practice Act;

~~[(k)]~~ (l) an occupational therapist licensed under ~~[Title 58,]~~ Chapter 42a, Occupational Therapy Practice Act;

~~[(l)]~~ (m) an individual performing gratuitous massage; and

~~[(m)]~~ (n) an individual:

(i) certified by or through, and in good standing with, an industry organization that is recognized by the division, and that represents a profession with established standards and ethics;

(ii) (A) who limits the manipulation of the soft tissues of the body to the hands, feet, and outer ears only, including the practice of reflexology and foot zone therapy; or

(B) who is certified to practice ortho-bionomy and whose practice is limited to the scope of practice of ortho-bionomy;

(iii) whose clients remain fully clothed from the shoulders to the knees; and

(iv) whose clients do not receive gratuitous massage from the individual.

(2) This chapter may not be construed to authorize any individual licensed under this chapter to engage in any manner in the practice of medicine as defined by the laws of this state.

(3) This chapter may not be construed to:

(a) require insurance coverage or reimbursement for massage therapy from third party payors; or

(b) prevent an insurance carrier from offering coverage for massage therapy.

Section ~~{60}~~ 55. Section ~~{58-60-102}~~ 58-70a-101 is amended to read:

~~{58-60-102. Definitions.~~

~~In addition to the definitions in Section 58-1-102, as used in this chapter:~~

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- ~~(1) "Client" or "patient" means an individual who consults or is examined or interviewed by an individual licensed under this chapter who is acting in the individual's professional capacity.~~
- ~~(2) "Confidential communication" means information obtained by an individual licensed under this chapter, including information obtained by the individual's examination of the client or patient, which is:~~
- ~~(a) (i) transmitted between the client or patient and an individual licensed under this chapter in the course of that relationship; or~~
- ~~(ii) transmitted among the client or patient, an individual licensed under this chapter, and individuals who are participating in the diagnosis or treatment under the direction of an individual licensed under this chapter, including members of the client's or patient's family, and~~
- ~~(b) made in confidence, for the diagnosis or treatment of the client or patient by the individual licensed under this chapter, and by a means not intended to be disclosed to third persons other than those individuals:~~
- ~~(i) present to further the interest of the client or patient in the consultation, examination, or interview;~~
- ~~(ii) reasonably necessary for the transmission of the communications; or~~
- ~~(iii) participating in the diagnosis and treatment of the client or patient under the direction of the mental health therapist.~~
- ~~(3) "Hypnosis" means, when referring to individuals exempted from licensure under this chapter, a process by which an individual induces or assists another individual into a hypnotic state without the use of drugs or other substances and for the purpose of increasing motivation or to assist the individual to alter lifestyles or habits.~~
- ~~(4) "Individual" means a natural person.~~
- ~~(5) "Mental health therapist" means an individual who is practicing within the scope of practice defined in the individual's respective licensing act and is licensed under this title as:~~
- ~~(a) a physician and surgeon, physician assistant, or osteopathic physician engaged in the practice of mental health therapy;~~
- ~~(b) an advanced practice registered nurse, specializing in psychiatric mental health nursing;~~
- ~~(c) an advanced practice registered nurse intern, specializing in psychiatric mental health nursing;~~
- ~~(d) a psychologist qualified to engage in the practice of mental health therapy;~~

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- ~~(e) a certified psychology resident qualifying to engage in the practice of mental health therapy;~~
 - ~~(f) a clinical social worker;~~
 - ~~(g) a certified social worker;~~
 - ~~(h) a marriage and family therapist;~~
 - ~~(i) an associate marriage and family therapist;~~
 - ~~(j) a clinical mental health counselor; or~~
 - ~~(k) an associate clinical mental health counselor.~~
- ~~(6) "Mental illness" means a mental or emotional condition defined in an approved diagnostic and statistical manual for mental disorders generally recognized in the professions of mental health therapy listed under Subsection (5).~~
- ~~(7) "Practice of mental health therapy" means treatment or prevention of mental illness, whether in person or remotely, including:~~
- ~~(a) conducting a professional evaluation of an individual's condition of mental health, mental illness, or emotional disorder consistent with standards generally recognized in the professions of mental health therapy listed under Subsection (5);~~
 - ~~(b) establishing a diagnosis in accordance with established written standards generally recognized in the professions of mental health therapy listed under Subsection (5);~~
 - ~~(c) prescribing a plan for the prevention or treatment of a condition of mental illness or emotional disorder; and~~
 - ~~(d) engaging in the conduct of professional intervention, including psychotherapy by the application of established methods and procedures generally recognized in the professions of mental health therapy listed under Subsection (5).~~
- ~~(8) "Remotely" means communicating via Internet, telephone, or other electronic means that facilitate real-time audio or visual interaction between individuals when they are not physically present in the same room at the same time.~~
- ~~(9) "Unlawful conduct" is as defined in Sections 58-1-501 and 58-60-109.~~
- ~~(10) "Unprofessional conduct" is as defined in Sections 58-1-501 and 58-60-110, and may be further defined by division rule.~~

~~Section 61. Section 58-60-107 is amended to read:~~

~~58-60-107. Exemptions from licensure:~~

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- ~~(1) Except as modified in Section 58-60-103, the exemptions from licensure in Section 58-1-307 apply to this chapter.~~
- ~~(2) In addition to the exemptions from licensure in Section 58-1-307, the following may engage in acts included within the definition of practice as a mental health therapist, subject to the stated circumstances and limitations, without being licensed under this chapter:~~
- ~~(a) the following when practicing within the scope of the license held:~~
- ~~(i) a physician and surgeon or osteopathic physician and surgeon licensed under Chapter 67, Utah Medical Practice Act, or Chapter 68, Utah Osteopathic Medical Practice Act;~~
- ~~(ii) a physician assistant licensed under Chapter 70a, Utah Physician Assistant Act;~~
- ~~[(ii)] [(iii)] an advanced practice registered nurse, specializing in psychiatric mental health nursing, licensed under Chapter 31b, Nurse Practice Act; and~~
- ~~[(iii)] [(iv)] a psychologist licensed under Chapter 61, Psychologist Licensing Act;~~
- ~~(b) a recognized member of the clergy while functioning in a ministerial capacity as long as the member of the clergy does not represent that the member of the clergy is, or use the title of, a license classification in Subsection 58-60-102(5);~~
- ~~(c) an individual who is offering expert testimony in a proceeding before a court, administrative hearing, deposition upon the order of a court or other body having power to order the deposition, or a proceeding before a master, referee, or alternative dispute resolution provider;~~
- ~~(d) an individual engaged in performing hypnosis who is not licensed under this title in a profession which includes hypnosis in its scope of practice, and who:~~
- ~~(i) (A) induces a hypnotic state in a client for the purpose of increasing motivation or altering lifestyles or habits, such as eating or smoking, through hypnosis;~~
- ~~(B) consults with a client to determine current motivation and behavior patterns;~~
- ~~(C) prepares the client to enter hypnotic states by explaining how hypnosis works and what the client will experience;~~
- ~~(D) tests clients to determine degrees of suggestibility;~~
- ~~(E) applies hypnotic techniques based on interpretation of consultation results and analysis of client's motivation and behavior patterns; and~~
- ~~(F) trains clients in self-hypnosis conditioning;~~
- ~~(ii) may not:~~

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- ~~(A) engage in the practice of mental health therapy;~~
- ~~(B) use the title of a license classification in Subsection 58-60-102(5); or~~
- ~~(C) use hypnosis with or treat a medical, psychological, or dental condition defined in generally recognized diagnostic and statistical manuals of medical, psychological, or dental disorders;~~
- ~~(e) an individual's exemption from licensure under Subsection 58-1-307(1)(b) terminates when the student's training is no longer supervised by qualified faculty or staff and the activities are no longer a defined part of the degree program;~~
- ~~(f) an individual holding an earned doctoral degree or master's degree in social work, marriage and family therapy, or clinical mental health counseling, who is employed by an accredited institution of higher education and who conducts research and teaches in that individual's professional field, but only if the individual does not engage in providing or supervising professional services regulated under this chapter to individuals or groups regardless of whether there is compensation for the services;~~
- ~~(g) an individual in an on-the-job training program approved by the division while under the supervision of qualified persons;~~
- ~~(h) an individual providing general education in the subjects of alcohol, drug use, or substance use disorders, including prevention;~~
 - ~~(i) an individual providing advice or counsel to another individual in a setting of their association as friends or relatives and in a nonprofessional and noncommercial relationship, if there is no compensation paid for the advice or counsel; and~~
 - ~~(j) an individual who is licensed, in good standing, to practice mental health therapy or substance use disorder counseling in a state or territory of the United States outside of Utah may provide short term transitional mental health therapy remotely or short term transitional substance use disorder counseling remotely to a client in Utah only if:~~
 - ~~(i) the individual is present in the state or territory where the individual is licensed to practice mental health therapy or substance use disorder counseling;~~
 - ~~(ii) the client relocates to Utah;~~
 - ~~(iii) the client is a client of the individual immediately before the client relocates to Utah;~~
 - ~~(iv) the individual provides the short term transitional mental health therapy or short term transitional substance use disorder counseling remotely to the client only during the 45 day~~

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- ~~period beginning on the day on which the client relocates to Utah;~~
- ~~(v) within 10 days after the day on which the client relocates to Utah, the individual provides written notice to the division of the individual's intent to provide short term transitional mental health therapy or short term transitional substance use disorder counseling remotely to the client; and~~
- ~~(vi) the individual does not engage in unlawful conduct or unprofessional conduct.~~

~~Section 62. Section 58-61-102 is amended to read:~~

~~58-61-102. Definitions:~~

~~In addition to the definitions in Section 58-1-102, as used in this chapter:~~

- ~~(1) "Board" means the Psychologist Licensing Board created in Section 58-61-201.~~
- ~~(2) "Client" or "patient" means an individual who consults or is examined or interviewed by a psychologist acting in his professional capacity.~~
- ~~(3) "Confidential communication" means information, including information obtained by the psychologist's examination of the client or patient, which is:~~
- ~~(a) (i) transmitted between the client or patient and a psychologist in the course of that relationship; or~~
- ~~(ii) transmitted among the client or patient, the psychologist, and individuals who are participating in the diagnosis or treatment under the direction of the psychologist, including members of the client's or patient's family; and~~
- ~~(b) made in confidence, for the diagnosis or treatment of the client or patient by the psychologist, and by a means not intended to be disclosed to third persons other than those individuals:~~
- ~~(i) present to further the interest of the client or patient in the consultation, examination, or interview;~~
- ~~(ii) reasonably necessary for the transmission of the communications; or~~
- ~~(iii) participating in the diagnosis and treatment of the client or patient under the direction of the psychologist.~~
- ~~(4) "Hypnosis" means, regarding individuals exempted from licensure under this chapter, a process by which one individual induces or assists another individual into a hypnotic state without the use of drugs or other substances and for the purpose of increasing motivation or to assist the individual to alter lifestyles or habits.~~

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~~(5) "Individual" means a natural person.~~

~~(6) "Mental health therapist" means an individual licensed under this title as a:~~

~~(a) physician and surgeon, physician assistant, or osteopathic physician engaged in the practice of mental health therapy;~~

~~(b) an advanced practice registered nurse, specializing in psychiatric mental health nursing;~~

~~(c) an advanced practice registered nurse intern, specializing in psychiatric mental health nursing;~~

~~(d) psychologist qualified to engage in the practice of mental health therapy;~~

~~(e) a certified psychology resident qualifying to engage in the practice of mental health therapy;~~

~~(f) clinical social worker;~~

~~(g) certified social worker;~~

~~(h) marriage and family therapist;~~

~~(i) an associate marriage and family therapist;~~

~~(j) a clinical mental health counselor; or~~

~~(k) an associate clinical mental health counselor.~~

~~(7) "Mental illness" means a mental or emotional condition defined in an approved diagnostic and statistical manual for mental disorders generally recognized in the professions of mental health therapy listed under Subsection (6):~~

~~(8) "Practice of mental health therapy" means the treatment or prevention of mental illness, whether in person or remotely, including:~~

~~(a) conducting a professional evaluation of an individual's condition of mental health, mental illness, or emotional disorder;~~

~~(b) establishing a diagnosis in accordance with established written standards generally recognized in the professions of mental health therapy listed under Subsection (6);~~

~~(c) prescribing a plan for the prevention or treatment of a condition of mental illness or emotional disorder; and~~

~~(d) engaging in the conduct of professional intervention, including psychotherapy by the application of established methods and procedures generally recognized in the professions of mental health therapy listed under Subsection (6):~~

~~(9) (a) "Practice of psychology" includes:~~

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- ~~(i) the practice of mental health therapy by means of observation, description, evaluation, interpretation, intervention, and treatment to effect modification of human behavior by the application of generally recognized professional psychological principles, methods, and procedures for the purpose of preventing, treating, or eliminating mental or emotional illness or dysfunction, the symptoms of any of these, or maladaptive behavior;~~
- ~~(ii) the observation, description, evaluation, interpretation, or modification of human behavior by the application of generally recognized professional principles, methods, or procedures requiring the education, training, and clinical experience of a psychologist, for the purpose of assessing, diagnosing, preventing, or eliminating symptomatic, maladaptive, or undesired behavior and of enhancing interpersonal relationships, work and life adjustment, personal effectiveness, behavioral health, and mental health;~~
- ~~(iii) psychological testing and the evaluation or assessment of personal characteristics such as intelligence, personality, abilities, interests, aptitudes, and neuropsychological functioning;~~
- ~~(iv) counseling, marriage and family therapy, psychoanalysis, psychotherapy, hypnosis, and behavior analysis and therapy;~~
- ~~(v) diagnosis and treatment of mental and emotional disorders of disability, alcoholism and substance abuse, disorders of habit or conduct, and the psychological aspects of physical illness, accident, injury, or disability; and~~
- ~~(vi) psychoeducational evaluation, therapy, remediation, and consultation.~~
- ~~(b) An individual practicing psychology may provide services to individuals, couples, families, groups of individuals, members of the public, and individuals or groups within organizations or institutions:~~
- ~~(10) "Remotely" means communicating via Internet, telephone, or other electronic means that facilitate real-time audio or visual interaction between individuals when they are not physically present in the same room at the same time.~~
- ~~(11) "Unlawful conduct" is as defined in Sections 58-1-501 and 58-61-501.~~
- ~~(12) "Unprofessional conduct" is as defined in Sections 58-1-501 and 58-61-502, and may be further defined by division rule.~~

~~Section 63. Section 58-70a-101 is amended to read:~~

~~CHAPTER 70a. UTAH PHYSICIAN ASSISTANT ACT~~

~~58-70a-101. Title.~~

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This chapter is known as the "Utah Physician Assistant Act."

Section ~~{64}~~56. Section ~~{58-70a-201}~~58-70a-305 is amended to read:

~~{~~ ~~58-70a-201~~. **Board:**

~~———— (1) There is created the Physician Assistant Licensing Board, which consists of seven members:~~

~~———— (a) [three] two licensed physicians[, at least two of whom are individuals] who are supervising or who have supervised a physician assistant;~~

~~———— (b) [three] four physician assistants, one of whom is involved in the administration of an approved physician assistant education program within the state; and~~

~~———— (c) one person from the general public.~~

~~———— (2) The board shall be appointed and serve in accordance with Section 58-1-201.~~

~~———— (3) The duties and responsibilities of the board are in accordance with Sections 58-1-202 and 58-1-203. In addition, the board shall designate one of its members on a permanent or rotating basis to:~~

~~———— (a) assist the division in reviewing complaints concerning the unlawful or unprofessional conduct of a licensee; and~~

~~———— (b) advise the division in its investigation of these complaints.~~

~~———— (4) A board member who has, under Subsection (3), reviewed a complaint or advised in its investigation may be disqualified from participating with the board when the board serves as a presiding officer in an adjudicative proceeding concerning the complaint. The board member may be disqualified:~~

~~———— (a) on the member's own motion, due to actual or perceived bias or lack of objectivity;~~

~~or~~

~~———— (b) upon challenge for cause raised on the record by any party to the adjudicative proceeding.~~

~~‡~~ **58-70a-305. Exemptions from licensure.**

In addition to the exemptions from licensure in Section 58-1-307, the following persons may engage in acts included within the definition of practice as a physician assistant, subject to the stated circumstances and limitations, without being licensed under this chapter:

(1) a student enrolled in an accredited physician assistant education program while engaged in activities as a physician assistant:

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- (a) that are a part of the education program;
 - (b) that are conducted at an affiliated medical facility under the direct supervision of a:
 - (i) physician associated with the program; or
 - (ii) licensed physician assistant~~[-, at the request of the supervising physician and on a temporary basis, as defined by rule]~~ associated with the medical facility;
 - (c) for which the program accepts in writing the responsibility for the student; and
- (2) a "medical assistant," as defined in Sections 58-67-102 and 58-68-102, who:
- (a) does not diagnose, advise, independently treat, or prescribe to or on behalf of any person; and
 - (b) for whom the supervising physician accepts responsibility.

Section ~~{65}~~57. Section **58-75-304** is amended to read:

58-75-304. Exemptions from licensure.

In addition to the exemptions from licensure set forth in Section 58-1-307, the following persons may engage in the practice of genetic counseling subject to the stated circumstances and limitations without being licensed under this chapter:

- (1) an individual licensed as a physician and surgeon or osteopathic physician and surgeon under Chapter 67, Utah Medical Practice Act, and Chapter 68, Utah Osteopathic Medical Practice Act; ~~[and]~~
- (2) a commissioned physician or surgeon serving in the armed forces of the United States or other federal agency~~[-];~~ and
- (3) an individual licensed as a physician assistant under Chapter 70a, Utah Physician Assistant Act.

Section ~~{66}~~58. Section **62A-4a-406** is amended to read:

62A-4a-406. Photographs.

- (1) Any physician, surgeon, physician assistant, medical examiner, peace officer, law enforcement official, or public health officer or official may take photographs of the areas of trauma visible on a child and, if medically indicated, perform radiological examinations.
- (2) Photographs may be taken of the premises or of objects relevant to a reported circumstance of abuse or neglect.
- (3) Photographs or X-rays, and all other medical records pertinent to an investigation for abuse or neglect shall be made available to the division, law enforcement officials, and the

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court.

Section ~~{67}~~59. Section ~~{62A-4a-407}~~63G-2-202 is amended to read:

~~{~~ ~~62A-4a-407~~. ~~Protective custody.~~

~~———— (1) A physician or physician assistant examining or treating a child may take the child into protective custody not to exceed 72 hours, without the consent of the child's parent, guardian, or any other person responsible for the child's care or exercising temporary or permanent control over the child, when the physician or physician assistant has reason to believe that the child's life or safety will be in danger unless protective custody is exercised.~~

~~———— (2) The person in charge of a hospital or similar medical facility may retain protective custody of a child suspected of being abused or neglected, when he reasonably believes the facts warrant that retention. This action may be taken regardless of whether additional medical treatment is required, and regardless of whether the person responsible for the child's care requests the child's return.~~

~~———— (3) The division shall be immediately notified of protective custody exercised under this section. Protective custody under this section may not exceed 72 hours without an order of the district or juvenile court.~~

~~———— (4) A person who takes a child into, or retains a child in, protective custody under this section shall document:~~

~~———— (a) the grounds upon which the child was taken into, or retained in, protective custody; and~~

~~———— (b) the nature of, and necessity for, any medical care or treatment provided to the child.~~

~~———— Section 68. Section 62A-5-311 is amended to read:~~

~~———— 62A-5-311. Temporary emergency commitment -- Observation and evaluation.~~

~~———— (1) The director of the division or his designee may temporarily commit an individual to the division and therefore, as a matter of course, to an intermediate care facility for people with an intellectual disability for observation and evaluation upon:~~

~~———— (a) written application by a responsible person who has reason to know that the individual is in need of commitment, stating:~~

~~———— (i) a belief that the individual has an intellectual disability and is likely to cause serious injury to self or others if not immediately committed;~~

~~———— (ii) personal knowledge of the individual's condition; and~~

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~~—— (iii) the circumstances supporting that belief; or~~

~~—— (b) certification by a licensed physician, physician assistant, or designated intellectual disability professional stating that the physician, physician assistant, or designated intellectual disability professional:~~

~~—— (i) has examined the individual within a three-day period immediately preceding the certification; and~~

~~—— (ii) is of the opinion that the individual has an intellectual disability, and that because of the individual's intellectual disability is likely to injure self or others if not immediately committed:~~

~~—— (2) If the individual in need of commitment is not placed in the custody of the director or the director's designee by the person submitting the application, the director's or the director's designee may certify, either in writing or orally that the individual is in need of immediate commitment to prevent injury to self or others:~~

~~—— (3) Upon receipt of the application required by Subsection (1)(a) and the certifications required by Subsections (1)(b) and (2), a peace officer may take the individual named in the application and certificates into custody, and may transport the individual to a designated intermediate care facility for people with an intellectual disability:~~

~~—— (4) (a) An individual committed under this section may be held for a maximum of 24 hours, excluding Saturdays, Sundays, and legal holidays. At the expiration of that time, the individual shall be released unless proceedings for involuntary commitment have been commenced under Section 62A-5-312:~~

~~—— (b) After proceedings for involuntary commitment have been commenced the individual shall be released unless an order of detention is issued in accordance with Section 62A-5-312:~~

~~—— (5) If an individual is committed to the division under this section on the application of any person other than the individual's legal guardian, spouse, parent, or next of kin, the director or his designee shall immediately give notice of the commitment to the individual's legal guardian, spouse, parent, or next of kin, if known:~~

~~—— Section 69. Section **62A-5-312** is amended to read:~~

~~—— **62A-5-312. Involuntary commitment -- Procedures -- Necessary findings**
-- Periodic review.~~

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~~—— (1) Any responsible person who has reason to know that an individual is in need of commitment, who has a belief that the individual has an intellectual disability, and who has personal knowledge of the conditions and circumstances supporting that belief, may commence proceedings for involuntary commitment by filing a written petition with the district court, or if the subject of the petition is less than 18 years of age with the juvenile court, of the county in which the individual to be committed is physically located at the time the petition is filed. The application shall be accompanied by:~~

~~—— (a) a certificate of a licensed physician, physician assistant, or a designated intellectual disability professional, stating that within a seven-day period immediately preceding the certification, the physician, physician assistant, or designated intellectual disability professional examined the individual and believes that the individual has an intellectual disability and is in need of involuntary commitment; or~~

~~—— (b) a written statement by the petitioner that:~~

~~—— (i) states that the individual was requested to, but refused to, submit to an examination for an intellectual disability by a licensed physician, physician assistant, or designated intellectual disability professional, and that the individual refuses to voluntarily go to the division or an intermediate care facility for people with an intellectual disability recommended by the division for treatment;~~

~~—— (ii) is under oath; and~~

~~—— (iii) sets forth the facts on which the statement is based.~~

~~—— (2) Before issuing a detention order, the court may require the petitioner to consult with personnel at the division or at an intermediate care facility for people with an intellectual disability and may direct a designated intellectual disability professional to interview the petitioner and the individual to be committed, to determine the existing facts, and to report them to the court.~~

~~—— (3) The court may issue a detention order and may direct a peace officer to immediately take the individual to an intermediate care facility for people with an intellectual disability to be detained for purposes of an examination if the court finds from the petition, from other statements under oath, or from reports of physicians, physician assistants, or designated intellectual disability professionals that there is a reasonable basis to believe that the individual to be committed:~~

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- ~~—— (a) poses an immediate danger of physical injury to self or others;~~
- ~~—— (b) requires involuntary commitment pending examination and hearing;~~
- ~~—— (c) the individual was requested but refused to submit to an examination by a licensed physician, physician assistant, or designated intellectual disability professional; or~~
- ~~—— (d) the individual refused to voluntarily go to the division or to an intermediate care facility for people with an intellectual disability recommended by the division.~~
- ~~—— (4) (a) If the court issues a detention order based on an application that did not include a certification by a designated intellectual disability professional or physician, physician assistant, in accordance with Subsection (1)(a), the director or his designee shall within 24 hours after issuance of the detention order, excluding Saturdays, Sundays, and legal holidays, examine the individual, report the results of the examination to the court and inform the court:~~
 - ~~—— (i) whether the director or his designee believes that the individual has an intellectual disability; and~~
 - ~~—— (ii) whether appropriate treatment programs are available and will be used by the individual without court proceedings:~~
- ~~—— (b) If the report of the director or his designee is based on an oral report of the examiner, the examiner shall immediately send the results of the examination in writing to the clerk of the court.~~
- ~~—— (5) Immediately after an individual is involuntarily committed under a detention order or under Section 62A-5-311, the director or his designee shall inform the individual, orally and in writing, of his right to communicate with an attorney. If an individual desires to communicate with an attorney, the director or his designee shall take immediate steps to assist the individual in contacting and communicating with an attorney.~~
- ~~—— (6) (a) Immediately after commencement of proceedings for involuntary commitment, the court shall give notice of commencement of the proceedings to:~~
 - ~~—— (i) the individual to be committed;~~
 - ~~—— (ii) the applicant;~~
 - ~~—— (iii) any legal guardian of the individual;~~
 - ~~—— (iv) adult members of the individual's immediate family;~~
 - ~~—— (v) legal counsel of the individual to be committed, if any;~~
 - ~~—— (vi) the division; and~~

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~~—— (vii) any other person to whom the individual requests, or the court designates, notice to be given.~~

~~—— (b) If an individual cannot or refuses to disclose the identity of persons to be notified, the extent of notice shall be determined by the court.~~

~~—— (7) That notice shall:~~

~~—— (a) set forth the allegations of the petition and all supporting facts;~~

~~—— (b) be accompanied by a copy of any detention order issued under Subsection (3), and~~

~~—— (c) state that a hearing will be held within the time provided by law, and give the time and place for that hearing.~~

~~—— (8) The court may transfer the case and the custody of the individual to be committed to any other district court within the state, if:~~

~~—— (a) there are no appropriate facilities for persons with an intellectual disability within the judicial district, and~~

~~—— (b) the transfer will not be adverse to the interests of the individual.~~

~~—— (9) (a) Within 24 hours, excluding Saturdays, Sundays, and legal holidays, after any order or commitment under a detention order, the court shall appoint two designated intellectual disability professionals to examine the individual. If requested by the individual's counsel, the court shall appoint a reasonably available, qualified person designated by counsel to be one of the examining designated intellectual disability professionals. The examinations shall be conducted:~~

~~—— (i) separately;~~

~~—— (ii) at the home of the individual to be committed, a hospital, an intermediate care facility for people with an intellectual disability, or any other suitable place not likely to have a harmful effect on the individual; and~~

~~—— (iii) within a reasonable period of time after appointment of the examiners by the court.~~

~~—— (b) The court shall set a time for a hearing to be held within 10 court days of the appointment of the examiners. However, the court may immediately terminate the proceedings and dismiss the application if, prior to the hearing date, the examiners, the director, or his designee informs the court that:~~

~~—— (i) the individual does not have an intellectual disability; or~~

~~—— (ii) treatment programs are available and will be used by the individual without court~~

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proceedings:

~~—— (10) (a) Each individual has the right to be represented by counsel at the commitment hearing and in all preliminary proceedings. If neither the individual nor others provide counsel, the court shall appoint counsel and allow sufficient time for counsel to consult with the individual prior to any hearing.~~

~~—— (b) If the individual is indigent, the county in which the individual was physically located when taken into custody shall pay reasonable attorney fees as determined by the court.~~

~~—— (11) The division or a designated intellectual disability professional in charge of the individual's care shall provide all documented information on the individual to be committed and to the court at the time of the hearing. The individual's attorney shall have access to all documented information on the individual at the time of and prior to the hearing.~~

~~—— (12) (a) The court shall provide an opportunity to the individual, the petitioner, and all other persons to whom notice is required to be given to appear at the hearing, to testify, and to present and cross-examine witnesses.~~

~~—— (b) The court may, in its discretion:~~

~~—— (i) receive the testimony of any other person;~~

~~—— (ii) allow a waiver of the right to appear only for good cause shown;~~

~~—— (iii) exclude from the hearing all persons not necessary to conduct the proceedings; and~~

~~—— (iv) upon motion of counsel, require the testimony of each examiner to be given out of the presence of any other examiner.~~

~~—— (c) The hearing shall be conducted in as informal a manner as may be consistent with orderly procedure, and in a physical setting that is not likely to have a harmful effect on the individual. The Utah Rules of Evidence apply, and the hearing shall be a matter of court record. A verbatim record of the proceedings shall be maintained.~~

~~—— (13) The court may order commitment if, upon completion of the hearing and consideration of the record, it finds by clear and convincing evidence that all of the following conditions are met:~~

~~—— (a) the individual to be committed has an intellectual disability;~~

~~—— (b) because of the individual's intellectual disability one or more of the following conditions exist:~~

~~—— (i) the individual poses an immediate danger of physical injury to self or others;~~

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~~—— (ii) the individual lacks the capacity to provide the basic necessities of life, such as food, clothing, or shelter; or~~

~~—— (iii) the individual is in immediate need of habilitation, rehabilitation, care, or treatment to minimize the effects of the condition which poses a threat of serious physical or psychological injury to the individual, and the individual lacks the capacity to engage in a rational decision-making process concerning the need for habilitation, rehabilitation, care, or treatment, as evidenced by an inability to weigh the possible costs and benefits of the care or treatment and the alternatives to it;~~

~~—— (c) there is no appropriate, less restrictive alternative reasonably available; and~~

~~—— (d) the division or the intermediate care facility for people with an intellectual disability recommended by the division in which the individual is to be committed can provide the individual with treatment, care, habilitation, or rehabilitation that is adequate and appropriate to the individual's condition and needs;~~

~~—— (14) In the absence of any of the required findings by the court, described in Subsection (13), the court shall dismiss the proceedings;~~

~~—— (15) (a) The order of commitment shall designate the period for which the individual will be committed. An initial commitment may not exceed six months. Before the end of the initial commitment period, the administrator of the intermediate care facility for people with an intellectual disability shall commence a review hearing on behalf of the individual;~~

~~—— (b) At the conclusion of the review hearing, the court may issue an order of commitment for up to a one-year period.~~

~~—— (16) An individual committed under this part has the right to a rehearing, upon filing a petition with the court within 30 days after entry of the court's order. If the petition for rehearing alleges error or mistake in the court's findings, the court shall appoint one impartial licensed physician and two impartial designated intellectual disability professionals who have not previously been involved in the case to examine the individual. The rehearing shall, in all other respects, be conducted in accordance with this part.~~

~~—— (17) (a) The court shall maintain a current list of all individuals under its orders of commitment. That list shall be reviewed in order to determine those patients who have been under an order of commitment for the designated period.~~

~~—— (b) At least two weeks prior to the expiration of the designated period of any~~

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~~commitment order still in effect, the court that entered the original order shall inform the director of the division of the impending expiration of the designated commitment period:~~

~~—— (c) The staff of the division shall immediately:~~

~~—— (i) reexamine the reasons upon which the order of commitment was based and report the results of the examination to the court;~~

~~—— (ii) discharge the resident from involuntary commitment if the conditions justifying commitment no longer exist; and~~

~~—— (iii) immediately inform the court of any discharge.~~

~~—— (d) If the director of the division reports to the court that the conditions justifying commitment no longer exist, and the administrator of the intermediate care facility for people with an intellectual disability does not discharge the individual at the end of the designated period, the court shall order the immediate discharge of the individual, unless involuntary commitment proceedings are again commenced in accordance with this section.~~

~~—— (e) If the director of the division, or the director's designee reports to the court that the conditions designated in Subsection (13) still exist, the court may extend the commitment order for up to one year. At the end of any extension, the individual must be reexamined in accordance with this section, or discharged:~~

~~—— (18) When a resident is discharged under this subsection, the division shall provide any further support services available and required to meet the resident's needs:~~

~~—— Section 70. Section ~~62A-15-301~~ is amended to read:~~

~~—— **62A-15-301. Commitment of minor to secure drug or alcohol facility or program**~~
~~**== Procedures == Review.**~~

~~—— (1) For purposes of this part:~~

~~—— (a) "Approved treatment facility or program" means a public or private secure, inpatient facility or program that is licensed or operated by the department or by the Department of Health to provide drug or alcohol treatment or rehabilitation.~~

~~—— (b) "Drug or alcohol addiction" means that the person has a physical or psychological dependence on drugs or alcohol in a manner not prescribed by a physician or physician assistant.~~

~~—— (2) The parent or legal guardian of a minor under the age of 18 years may submit that child, without the child's consent, to an approved treatment facility or program for treatment or~~

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~~rehabilitation of drug or alcohol addiction, upon application to a facility or program, and after a careful diagnostic inquiry is made by a neutral and detached fact finder, in accordance with the requirements of this section.~~

~~—— (3) The neutral fact finder who conducts the inquiry:~~

~~—— (a) shall be either a physician, physician assistant, psychologist, marriage and family therapist, psychiatric and mental health nurse specialist, or social worker licensed to practice in this state, who is trained and practicing in the area of substance abuse; and~~

~~—— (b) may not profit, financially or otherwise, from the commitment of the child and may not be employed by the proposed facility or program.~~

~~—— (4) The review by a neutral fact finder may be conducted on the premises of the proposed treatment facility or program.~~

~~—— (5) The inquiry conducted by the neutral fact finder shall include a private interview with the child, and an evaluation of the child's background and need for treatment.~~

~~—— (6) The child may be committed to the approved treatment facility or program if it is determined by the neutral fact finder that:~~

~~—— (a) the child is addicted to drugs or alcohol and because of that addiction poses a serious risk of harm to himself or others;~~

~~—— (b) the proposed treatment or rehabilitation is in the child's best interest; and~~

~~—— (c) there is no less restrictive alternative that would be equally as effective, from a clinical standpoint, as the proposed treatment facility or program.~~

~~—— (7) Any approved treatment facility or program that receives a child under this section shall conduct a periodic review, at intervals not to exceed 30 days, to determine whether the criteria described in Subsection (6) continue to exist.~~

~~—— (8) A minor committed under this section shall be released from the facility or program upon the request of his parent or legal guardian.~~

~~—— (9) Commitment of a minor under this section terminates when the minor reaches the age of 18 years.~~

~~—— (10) Nothing in this section requires a program or facility to accept any person for treatment or rehabilitation.~~

~~—— (11) The parent or legal guardian who requests commitment of a minor under this section is responsible to pay any fee associated with the review required by this section and any~~

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~~necessary charges for commitment, treatment, or rehabilitation for a minor committed under this section.~~

~~—— (12) The child shall be released from commitment unless the report of the neutral fact finder is submitted to the juvenile court within 72 hours of commitment and approved by the court.~~

~~—— Section 71. Section **62A-15-602** is amended to read:~~

~~—— **62A-15-602. Definitions.**~~

~~—— As used in this part, Part 7, Commitment of Persons Under Age 18 to Division of Substance Abuse and Mental Health, Part 8, Interstate Compact on Mental Health, Part 9, Utah Forensic Mental Health Facility, Part 10, Declaration for Mental Health Treatment, and Part 12, Essential Treatment and Intervention Act:~~

~~—— (1) "Adult" means an individual 18 years of age or older.~~

~~—— (2) "Approved treatment facility or program" means a treatment provider that meets the standards described in Subsection 62A-15-103(2)(a)(v).~~

~~—— (3) "Commitment to the custody of a local mental health authority" means that an adult is committed to the custody of the local mental health authority that governs the mental health catchment area where the adult resides or is found.~~

~~—— (4) "Community mental health center" means an entity that provides treatment and services to a resident of a designated geographical area, that operates by or under contract with a local mental health authority, and that complies with state standards for community mental health centers.~~

~~—— (5) "Designated examiner" means:~~

~~—— (a) a licensed physician, preferably a psychiatrist, who is designated by the division as specially qualified by training or experience in the diagnosis of mental or related illness, or a licensed physician assistant that works in collaboration with the physician; or~~

~~—— (b) a licensed mental health professional designated by the division as specially qualified by training and who has at least five years' continual experience in the treatment of mental illness.~~

~~—— (6) "Designee" means a physician who has responsibility for medical functions including admission and discharge, an employee of a local mental health authority, or an employee of a person that has contracted with a local mental health authority to provide mental~~

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~~health services under Section 17-43-304.~~

~~—— (7) "Essential treatment" and "essential treatment and intervention" mean court-ordered treatment at a local substance abuse authority or an approved treatment facility or program for the treatment of an adult's substance use disorder.~~

~~—— (8) "Harmful sexual conduct" means the following conduct upon an individual without the individual's consent, including the nonconsensual circumstances described in Subsections 76-5-406(1) through (12):~~

~~—— (a) sexual intercourse;~~

~~—— (b) penetration, however slight, of the genital or anal opening of the individual;~~

~~—— (c) any sexual act involving the genitals or anus of the actor or the individual and the mouth or anus of either individual, regardless of the gender of either participant; or~~

~~—— (d) any sexual act causing substantial emotional injury or bodily pain.~~

~~—— (9) "Institution" means a hospital or a health facility licensed under Section 26-21-8.~~

~~—— (10) "Local substance abuse authority" means the same as that term is defined in Section 62A-15-102 and described in Section 17-43-201.~~

~~—— (11) "Mental health facility" means the Utah State Hospital or other facility that provides mental health services under contract with the division, a local mental health authority, a person that contracts with a local mental health authority, or a person that provides acute inpatient psychiatric services to a patient.~~

~~—— (12) "Mental health officer" means an individual who is designated by a local mental health authority as qualified by training and experience in the recognition and identification of mental illness, to:~~

~~—— (a) apply for and provide certification for a temporary commitment; or~~

~~—— (b) assist in the arrangement of transportation to a designated mental health facility.~~

~~—— (13) "Mental illness" means:~~

~~—— (a) a psychiatric disorder that substantially impairs an individual's mental, emotional, behavioral, or related functioning; or~~

~~—— (b) the same as that term is defined in:~~

~~—— (i) the current edition of the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association; or~~

~~—— (ii) the current edition of the International Statistical Classification of Diseases and~~

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Related Health Problems:

- ~~—— (14) "Patient" means an individual who is:~~
 - ~~—— (a) under commitment to the custody or to the treatment services of a local mental health authority; or~~
 - ~~—— (b) undergoing essential treatment and intervention.~~
- ~~—— (15) "Physician" means an individual who is:~~
 - ~~—— (a) licensed as a physician under Title 58, Chapter 67, Utah Medical Practice Act; or~~
 - ~~—— (b) licensed as a physician under Title 58, Chapter 68, Utah Osteopathic Medical Practice Act.~~
- ~~—— (16) "Serious bodily injury" means bodily injury that involves a substantial risk of death, unconsciousness, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ, or mental faculty.~~
- ~~—— (17) "Substantial danger" means that due to mental illness, an individual is at serious risk of:~~
 - ~~—— (a) suicide;~~
 - ~~—— (b) serious bodily self-injury;~~
 - ~~—— (c) serious bodily injury because the individual is incapable of providing the basic necessities of life, including food, clothing, or shelter;~~
 - ~~—— (d) causing or attempting to cause serious bodily injury to another individual; or~~
 - ~~—— (e) engaging in harmful sexual conduct.~~
- ~~—— (18) "Treatment" means psychotherapy, medication, including the administration of psychotropic medication, or other medical treatments that are generally accepted medical or psychosocial interventions for the purpose of restoring the patient to an optimal level of functioning in the least restrictive environment.~~
- ~~—— Section 72. Section **62A-15-629** is amended to read:~~
 - ~~—— **62A-15-629. Temporary commitment -- Requirements and procedures.**~~
 - ~~—— (1) An adult shall be temporarily, involuntarily committed to a local mental health authority upon:~~
 - ~~—— (a) a written application that:~~
 - ~~—— (i) is completed by a responsible individual who has reason to know, stating a belief that the adult, due to mental illness, is likely to pose substantial danger to self or others if not~~

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~~restrained and stating the personal knowledge of the adult's condition or circumstances that lead to the individual's belief; and~~

~~—— (ii) includes a certification by a licensed physician, physician assistant, or designated examiner stating that the physician, physician assistant, or designated examiner has examined the adult within a three-day period immediately preceding that certification, and that the physician, physician assistant, or designated examiner is of the opinion that, due to mental illness, the adult poses a substantial danger to self or others; or~~

~~—— (b) a peace officer or a mental health officer:~~

~~—— (i) observing an adult's conduct that gives the peace officer or mental health officer probable cause to believe that:~~

~~—— (A) the adult has a mental illness; and~~

~~—— (B) because of the adult's mental illness and conduct, the adult poses a substantial danger to self or others; and~~

~~—— (ii) completing a temporary commitment application that:~~

~~—— (A) is on a form prescribed by the division;~~

~~—— (B) states the peace officer's or mental health officer's belief that the adult poses a substantial danger to self or others;~~

~~—— (C) states the specific nature of the danger;~~

~~—— (D) provides a summary of the observations upon which the statement of danger is based; and~~

~~—— (E) provides a statement of the facts that called the adult to the peace officer's or mental health officer's attention:~~

~~—— (2) If at any time a patient committed under this section no longer meets the commitment criteria described in Subsection (1), the local mental health authority or the local mental health authority's designee shall document the change and release the patient.~~

~~—— (3) A patient committed under this section may be held for a maximum of 24 hours after commitment, excluding Saturdays, Sundays, and legal holidays, unless:~~

~~—— (a) as described in Section 62A-15-631, an application for involuntary commitment is commenced, which may be accompanied by an order of detention described in Subsection 62A-15-631(4); or~~

~~—— (b) the patient makes a voluntary application for admission:~~

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~~—— (4) Upon a written application described in Subsection (1)(a) or the observation and belief described in Subsection (1)(b)(i), the adult shall be:~~

~~—— (a) taken into a peace officer's protective custody, by reasonable means, if necessary for public safety; and~~

~~—— (b) transported for temporary commitment to a facility designated by the local mental health authority, by means of:~~

~~—— (i) an ambulance, if the adult meets any of the criteria described in Section 26-8a-305;~~

~~—— (ii) an ambulance, if a peace officer is not necessary for public safety, and transportation arrangements are made by a physician, physician assistant, designated examiner, or mental health officer;~~

~~—— (iii) the city, town, or municipal law enforcement authority with jurisdiction over the location where the individual to be committed is present, if the individual is not transported by ambulance; or~~

~~—— (iv) the county sheriff, if the designated facility is outside of the jurisdiction of the law enforcement authority described in Subsection (4)(b)(iii) and the individual is not transported by ambulance.~~

~~—— (5) Notwithstanding Subsection (4):~~

~~—— (a) an individual shall be transported by ambulance to an appropriate medical facility for treatment if the individual requires physical medical attention;~~

~~—— (b) if an officer has probable cause to believe, based on the officer's experience and de-escalation training that taking an individual into protective custody or transporting an individual for temporary commitment would increase the risk of substantial danger to the individual or others, a peace officer may exercise discretion to not take the individual into custody or transport the individual, as permitted by policies and procedures established by the officer's law enforcement agency and any applicable federal or state statute, or case law; and~~

~~—— (c) if an officer exercises discretion under Subsection (4)(b) to not take an individual into protective custody or transport an individual, the officer shall document in the officer's report the details and circumstances that led to the officer's decision.~~

~~—— (6) Title 63G, Chapter 7, Governmental Immunity Act of Utah, applies to this section. This section does not create a special duty of care.~~

~~—— Section 73. Section ~~62A-15-631~~ is amended to read:~~

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~~62A-15-631. Involuntary commitment under court order -- Examination --
Hearing -- Power of court -- Findings required -- Costs:~~

~~(1) A responsible person who has reason to know of an adult's mental illness and the condition or circumstances that have led to the adult's need to be involuntarily committed may initiate an involuntary commitment court proceeding by filing, in the district court in the county where the proposed patient resides or is found, a written application that includes:~~

~~(a) unless the court finds that the information is not reasonably available, the proposed patient's:~~

~~(i) name;~~

~~(ii) date of birth; and~~

~~(iii) social security number; and~~

~~(b) (i) a certificate of a licensed physician, physician assistant, or a designated examiner stating that within the seven-day period immediately preceding the certification, the physician, physician assistant, or designated examiner examined the proposed patient and is of the opinion that the proposed patient has a mental illness and should be involuntarily committed; or~~

~~(ii) a written statement by the applicant that:~~

~~(A) the proposed patient has been requested to, but has refused to, submit to an examination of mental condition by a licensed physician, physician assistant, or designated examiner;~~

~~(B) is sworn to under oath; and~~

~~(C) states the facts upon which the application is based:~~

~~(2) (a) Subject to Subsection (2)(b), before issuing a judicial order, the court may require the applicant to consult with the appropriate local mental health authority, and the court may direct a mental health professional from that local mental health authority to interview the applicant and the proposed patient to determine the existing facts and report them to the court.~~

~~(b) The consultation described in Subsection (2)(a):~~

~~(i) may take place at or before the hearing; and~~

~~(ii) is required if the local mental health authority appears at the hearing.~~

~~(3) If the court finds from the application, from any other statements under oath, or from any reports from a mental health professional that there is a reasonable basis to believe~~

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~~that the proposed patient has a mental illness that poses a substantial danger to self or others requiring involuntary commitment pending examination and hearing; or, if the proposed patient has refused to submit to an interview with a mental health professional as directed by the court or to go to a treatment facility voluntarily, the court may issue an order, directed to a mental health officer or peace officer, to immediately place the proposed patient in the custody of a local mental health authority or in a temporary emergency facility as provided in Section 62A-15-634 to be detained for the purpose of examination:~~

~~—— (4) Notice of commencement of proceedings for involuntary commitment, setting forth the allegations of the application and any reported facts, together with a copy of any official order of detention, shall be provided by the court to a proposed patient before, or upon, placement in the custody of a local mental health authority or, with respect to any proposed patient presently in the custody of a local mental health authority whose status is being changed from voluntary to involuntary, upon the filing of an application for that purpose with the court. A copy of that order of detention shall be maintained at the place of detention.~~

~~—— (5) Notice of commencement of those proceedings shall be provided by the court as soon as practicable to the applicant, any legal guardian, any immediate adult family members, legal counsel for the parties involved, the local mental health authority or its designee, and any other persons whom the proposed patient or the court shall designate. That notice shall advise those persons that a hearing may be held within the time provided by law. If the proposed patient has refused to permit release of information necessary for provisions of notice under this subsection, the extent of notice shall be determined by the court.~~

~~—— (6) Proceedings for commitment of an individual under the age of 18 years to a local mental health authority may be commenced in accordance with Part 7, Commitment of Persons Under Age 18 to Division of Substance Abuse and Mental Health:~~

~~—— (7) The district court may, in its discretion, transfer the case to any other district court within this state, provided that the transfer will not be adverse to the interest of the proposed patient:~~

~~—— (8) Within 24 hours, excluding Saturdays, Sundays, and legal holidays, of the issuance of a judicial order, or after commitment of a proposed patient to a local mental health authority or its designee under court order for detention or examination, the court shall appoint two designated examiners:~~

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- ~~—— (a) who did not sign the civil commitment application nor the civil commitment certification under Subsection (1);~~
- ~~—— (b) one of whom is a licensed physician or physician assistant; and~~
- ~~—— (c) one of whom may be designated by the proposed patient or the proposed patient's counsel, if that designated examiner is reasonably available.~~
- ~~—— (9) The court shall schedule a hearing to be held within 10 calendar days of the day on which the designated examiners are appointed.~~
- ~~—— (10) The designated examiners shall:~~
 - ~~—— (a) conduct their examinations separately;~~
 - ~~—— (b) conduct the examinations at the home of the proposed patient, at a hospital or other medical facility, or at any other suitable place that is not likely to have a harmful effect on the proposed patient's health;~~
 - ~~—— (c) inform the proposed patient, if not represented by an attorney:~~
 - ~~—— (i) that the proposed patient does not have to say anything;~~
 - ~~—— (ii) of the nature and reasons for the examination;~~
 - ~~—— (iii) that the examination was ordered by the court;~~
 - ~~—— (iv) that any information volunteered could form part of the basis for the proposed patient's involuntary commitment; and~~
 - ~~—— (v) that findings resulting from the examination will be made available to the court;~~
- ~~and~~
- ~~—— (d) within 24 hours of examining the proposed patient, report to the court, orally or in writing, whether the proposed patient is mentally ill, has agreed to voluntary commitment, as described in Section 62A-15-625, or has acceptable programs available to the proposed patient without court proceedings. If the designated examiner reports orally, the designated examiner shall immediately send a written report to the clerk of the court.~~
- ~~—— (11) If a designated examiner is unable to complete an examination on the first attempt because the proposed patient refuses to submit to the examination, the court shall fix a reasonable compensation to be paid to the examiner.~~
- ~~—— (12) If the local mental health authority, its designee, or a medical examiner determines before the court hearing that the conditions justifying the findings leading to a commitment hearing no longer exist, the local mental health authority, its designee, or the medical examiner~~

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~~shall immediately report that determination to the court.~~

~~—— (13) The court may terminate the proceedings and dismiss the application at any time, including prior to the hearing, if the designated examiners or the local mental health authority or its designee informs the court that the proposed patient:~~

~~—— (a) is not mentally ill;~~

~~—— (b) has agreed to voluntary commitment, as described in Section 62A-15-625; or~~

~~—— (c) has acceptable options for treatment programs that are available without court proceedings.~~

~~—— (14) Before the hearing, an opportunity to be represented by counsel shall be afforded to every proposed patient, and if neither the proposed patient nor others provide counsel, the court shall appoint counsel and allow counsel sufficient time to consult with the proposed patient before the hearing. In the case of an indigent proposed patient, the payment of reasonable attorney fees for counsel, as determined by the court, shall be made by the county in which the proposed patient resides or is found.~~

~~—— (15) (a) The proposed patient, the applicant, and all other persons to whom notice is required to be given shall be afforded an opportunity to appear at the hearing, to testify, and to present and cross-examine witnesses. The court may, in its discretion, receive the testimony of any other person. The court may allow a waiver of the proposed patient's right to appear only for good cause shown, and that cause shall be made a matter of court record.~~

~~—— (b) The court is authorized to exclude all persons not necessary for the conduct of the proceedings and may, upon motion of counsel, require the testimony of each examiner to be given out of the presence of any other examiners.~~

~~—— (c) The hearing shall be conducted in as informal a manner as may be consistent with orderly procedure, and in a physical setting that is not likely to have a harmful effect on the mental health of the proposed patient.~~

~~—— (d) The court shall consider all relevant historical and material information that is offered, subject to the rules of evidence, including reliable hearsay under Rule 1102, Utah Rules of Evidence.~~

~~—— (e) (i) A local mental health authority or its designee, or the physician in charge of the proposed patient's care shall, at the time of the hearing, provide the court with the following information:~~

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- ~~—— (A) the detention order;~~
- ~~—— (B) admission notes;~~
- ~~—— (C) the diagnosis;~~
- ~~—— (D) any doctors' orders;~~
- ~~—— (E) progress notes;~~
- ~~—— (F) nursing notes; and~~
- ~~—— (G) medication records pertaining to the current commitment.~~
- ~~—— (ii) That information shall also be supplied to the proposed patient's counsel at the time of the hearing, and at any time prior to the hearing upon request.~~
- ~~—— (16) The court shall order commitment of a proposed patient who is 18 years of age or older to a local mental health authority if, upon completion of the hearing and consideration of the information presented in accordance with Subsection (15)(d), the court finds by clear and convincing evidence that:~~
 - ~~—— (a) the proposed patient has a mental illness;~~
 - ~~—— (b) because of the proposed patient's mental illness the proposed patient poses a substantial danger to self or others;~~
 - ~~—— (c) the proposed patient lacks the ability to engage in a rational decision-making process regarding the acceptance of mental treatment as demonstrated by evidence of inability to weigh the possible risks of accepting or rejecting treatment;~~
 - ~~—— (d) there is no appropriate less-restrictive alternative to a court order of commitment;~~and
 - ~~—— (e) the local mental health authority can provide the proposed patient with treatment that is adequate and appropriate to the proposed patient's conditions and needs. In the absence of the required findings of the court after the hearing, the court shall dismiss the proceedings.~~
- ~~—— (17) (a) The order of commitment shall designate the period for which the patient shall be treated. When the patient is not under an order of commitment at the time of the hearing, that period may not exceed six months without benefit of a review hearing. Upon such a review hearing, to be commenced prior to the expiration of the previous order, an order for commitment may be for an indeterminate period, if the court finds by clear and convincing evidence that the required conditions in Subsection (16) will last for an indeterminate period.~~
- ~~—— (b) The court shall maintain a current list of all patients under its order of commitment.~~

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~~That list shall be reviewed to determine those patients who have been under an order of commitment for the designated period. At least two weeks prior to the expiration of the designated period of any order of commitment still in effect, the court that entered the original order shall inform the appropriate local mental health authority or its designee. The local mental health authority or its designee shall immediately reexamine the reasons upon which the order of commitment was based. If the local mental health authority or its designee determines that the conditions justifying that commitment no longer exist, it shall discharge the patient from involuntary commitment and immediately report the discharge to the court. Otherwise, the court shall immediately appoint two designated examiners and proceed under Subsections (8) through (14):~~

~~——— (c) The local mental health authority or its designee responsible for the care of a patient under an order of commitment for an indeterminate period shall, at six-month intervals, reexamine the reasons upon which the order of indeterminate commitment was based. If the local mental health authority or its designee determines that the conditions justifying that commitment no longer exist, that local mental health authority or its designee shall discharge the patient from its custody and immediately report the discharge to the court. If the local mental health authority or its designee determines that the conditions justifying that commitment continue to exist, the local mental health authority or its designee shall send a written report of those findings to the court. The patient and the patient's counsel of record shall be notified in writing that the involuntary commitment will be continued, the reasons for that decision, and that the patient has the right to a review hearing by making a request to the court. Upon receiving the request, the court shall immediately appoint two designated examiners and proceed under Subsections (8) through (14):~~

~~——— (18) Any patient committed as a result of an original hearing or a patient's legally designated representative who is aggrieved by the findings, conclusions, and order of the court entered in the original hearing has the right to a new hearing upon a petition filed with the court within 30 days of the entry of the court order. The petition must allege error or mistake in the findings, in which case the court shall appoint three impartial designated examiners previously unrelated to the case to conduct an additional examination of the patient. The new hearing shall, in all other respects, be conducted in the manner otherwise permitted.~~

~~——— (19) Costs of all proceedings under this section shall be paid by the county in which the~~

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~~proposed patient resides or is found:~~

~~Section 74. Section 62A-15-640 is amended to read:~~

~~62A-15-640. Mechanical restraints and medication -- Clinical record.~~

~~(1) Mechanical restraints may not be applied to a patient unless it is determined by the director or his designee to be required by the needs of the patient. Every use of a mechanical restraint and the reasons therefor shall be made a part of the patient's clinical record, under the signature of the director or his designee, and shall be reviewed regularly.~~

~~(2) In no event shall medication be prescribed for a patient unless it is determined by a physician or physician assistant to be required by the patient's medical needs. Every use of a medication and the reasons therefor shall be made a part of the patient's clinical record.~~

~~Section 75. Section 62A-15-703 is amended to read:~~

~~62A-15-703. Residential and inpatient settings -- Commitment proceeding --
Child in physical custody of local mental health authority.~~

~~(1) A child may receive services from a local mental health authority in an inpatient or residential setting only after a commitment proceeding, for the purpose of transferring physical custody, has been conducted in accordance with the requirements of this section.~~

~~(2) That commitment proceeding shall be initiated by a petition for commitment, and shall be a careful, diagnostic inquiry, conducted by a neutral and detached fact finder, pursuant to the procedures and requirements of this section. If the findings described in Subsection (4) exist, the proceeding shall result in the transfer of physical custody to the appropriate local mental health authority, and the child may be placed in an inpatient or residential setting.~~

~~(3) The neutral and detached fact finder who conducts the inquiry:~~

~~(a) shall be a designated examiner, as defined in Section 62A-15-602; and~~

~~(b) may not profit, financially or otherwise, from the commitment or physical placement of the child in that setting.~~

~~(4) Upon determination by a fact finder that the following circumstances clearly exist, the fact finder may order that the child be committed to the physical custody of a local mental health authority:~~

~~(a) the child has a mental illness, as defined in Subsection 62A-15-602(13);~~

~~(b) the child demonstrates a reasonable fear of the risk of substantial danger to self or others;~~

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- ~~—— (c) the child will benefit from care and treatment by the local mental health authority; and~~
- ~~—— (d) there is no appropriate less-restrictive alternative.~~
- ~~—— (5) (a) The commitment proceeding before the neutral and detached fact finder shall be conducted in as informal manner as possible and in a physical setting that is not likely to have a harmful effect on the child.~~
- ~~—— (b) The child, the child's parent or legal guardian, the petitioner, and a representative of the appropriate local mental health authority:~~
 - ~~—— (i) shall receive informal notice of the date and time of the proceeding; and~~
 - ~~—— (ii) may appear and address the petition for commitment.~~
- ~~—— (c) The neutral and detached fact finder may, in the fact finder's discretion, receive the testimony of any other person.~~
- ~~—— (d) The fact finder may allow a child to waive the child's right to be present at the commitment proceeding, for good cause shown. If that right is waived, the purpose of the waiver shall be made a matter of record at the proceeding.~~
- ~~—— (e) At the time of the commitment proceeding, the appropriate local mental health authority, its designee, or the psychiatrist who has been in charge of the child's care prior to the commitment proceeding, shall provide the neutral and detached fact finder with the following information, as it relates to the period of current admission:~~
 - ~~—— (i) the petition for commitment;~~
 - ~~—— (ii) the admission notes;~~
 - ~~—— (iii) the child's diagnosis;~~
 - ~~—— (iv) physicians' or physician assistants' orders;~~
 - ~~—— (v) progress notes;~~
 - ~~—— (vi) nursing notes; and~~
 - ~~—— (vii) medication records.~~
- ~~—— (f) The information described in Subsection (5)(e) shall also be provided to the child's parent or legal guardian upon written request.~~
- ~~—— (g) (i) The neutral and detached fact finder's decision of commitment shall state the duration of the commitment. Any commitment to the physical custody of a local mental health authority may not exceed 180 days. Prior to expiration of the commitment, and if further~~

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~~commitment is sought, a hearing shall be conducted in the same manner as the initial commitment proceeding, in accordance with the requirements of this section.~~

~~—— (ii) At the conclusion of the hearing and subsequently in writing, when a decision for commitment is made, the neutral and detached fact finder shall inform the child and the child's parent or legal guardian of that decision and of the reasons for ordering commitment.~~

~~—— (iii) The neutral and detached fact finder shall state in writing the basis of the decision, with specific reference to each of the criteria described in Subsection (4), as a matter of record.~~

~~—— (6) A child may be temporarily committed for a maximum of 72 hours, excluding Saturdays, Sundays, and legal holidays, to the physical custody of a local mental health authority in accordance with the procedures described in Section 62A-15-629 and upon satisfaction of the risk factors described in Subsection (4). A child who is temporarily committed shall be released at the expiration of the 72 hours unless the procedures and findings required by this section for the commitment of a child are satisfied.~~

~~—— (7) A local mental health authority shall have physical custody of each child committed to it under this section. The parent or legal guardian of a child committed to the physical custody of a local mental health authority under this section, retains legal custody of the child, unless legal custody has been otherwise modified by a court of competent jurisdiction. In cases when the Division of Child and Family Services or the Division of Juvenile Justice Services has legal custody of a child, that division shall retain legal custody for purposes of this part.~~

~~—— (8) The cost of caring for and maintaining a child in the physical custody of a local mental health authority shall be assessed to and paid by the child's parents, according to their ability to pay. For purposes of this section, the Division of Child and Family Services or the Division of Juvenile Justice Services shall be financially responsible, in addition to the child's parents, if the child is in the legal custody of either of those divisions at the time the child is committed to the physical custody of a local mental health authority under this section, unless Medicaid regulation or contract provisions specify otherwise. The Office of Recovery Services shall assist those divisions in collecting the costs assessed pursuant to this section.~~

~~—— (9) Whenever application is made for commitment of a minor to a local mental health authority under any provision of this section by a person other than the child's parent or guardian, the local mental health authority or its designee shall notify the child's parent or guardian. The parents shall be provided sufficient time to prepare and appear at any scheduled~~

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proceeding:

~~—— (10) (a) Each child committed pursuant to this section is entitled to an appeal within 30 days after any order for commitment. The appeal may be brought on the child's own petition or on petition of the child's parent or legal guardian, to the juvenile court in the district where the child resides or is currently physically located. With regard to a child in the custody of the Division of Child and Family Services or the Division of Juvenile Justice Services, the attorney general's office shall handle the appeal, otherwise the appropriate county attorney's office is responsible for appeals brought pursuant to this Subsection (10)(a).~~

~~—— (b) Upon receipt of the petition for appeal, the court shall appoint a designated examiner previously unrelated to the case, to conduct an examination of the child in accordance with the criteria described in Subsection (4), and file a written report with the court. The court shall then conduct an appeal hearing to determine whether the findings described in Subsection (4) exist by clear and convincing evidence.~~

~~—— (c) Prior to the time of the appeal hearing, the appropriate local mental health authority, its designee, or the mental health professional who has been in charge of the child's care prior to commitment, shall provide the court and the designated examiner for the appeal hearing with the following information, as it relates to the period of current admission:~~

~~—— (i) the original petition for commitment;~~

~~—— (ii) admission notes;~~

~~—— (iii) diagnosis;~~

~~—— (iv) physicians' or physician assistants' orders;~~

~~—— (v) progress notes;~~

~~—— (vi) nursing notes; and~~

~~—— (vii) medication records.~~

~~—— (d) Both the neutral and detached fact finder and the designated examiner appointed for the appeal hearing shall be provided with an opportunity to review the most current information described in Subsection (10)(c) prior to the appeal hearing.~~

~~—— (e) The child, the child's parent or legal guardian, the person who submitted the original petition for commitment, and a representative of the appropriate local mental health authority shall be notified by the court of the date and time of the appeal hearing. Those persons shall be afforded an opportunity to appear at the hearing. In reaching its decision, the~~

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~~court shall review the record and findings of the neutral and detached fact finder, the report of the designated examiner appointed pursuant to Subsection (10)(b), and may, in its discretion, allow or require the testimony of the neutral and detached fact finder, the designated examiner, the child, the child's parent or legal guardian, the person who brought the initial petition for commitment, or any other person whose testimony the court deems relevant. The court may allow the child to waive the right to appear at the appeal hearing, for good cause shown. If that waiver is granted, the purpose shall be made a part of the court's record.~~

~~—— (11) Each local mental health authority has an affirmative duty to conduct periodic evaluations of the mental health and treatment progress of every child committed to its physical custody under this section, and to release any child who has sufficiently improved so that the criteria justifying commitment no longer exist.~~

~~—— (12) (a) A local mental health authority or its designee, in conjunction with the child's current treating mental health professional may release an improved child to a less restrictive environment, as they determine appropriate. Whenever the local mental health authority or its designee, and the child's current treating mental health professional, determine that the conditions justifying commitment no longer exist, the child shall be discharged and released to the child's parent or legal guardian. With regard to a child who is in the physical custody of the State Hospital, the treating psychiatrist or clinical director of the State Hospital shall be the child's current treating mental health professional.~~

~~—— (b) A local mental health authority or its designee, in conjunction with the child's current treating mental health professional, is authorized to issue a written order for the immediate placement of a child not previously released from an order of commitment into a more restrictive environment, if the local authority or its designee and the child's current treating mental health professional has reason to believe that the less restrictive environment in which the child has been placed is exacerbating the child's mental illness, or increasing the risk of harm to self or others.~~

~~—— (c) The written order described in Subsection (12)(b) shall include the reasons for placement in a more restrictive environment and shall authorize any peace officer to take the child into physical custody and transport the child to a facility designated by the appropriate local mental health authority in conjunction with the child's current treating mental health professional. Prior to admission to the more restrictive environment, copies of the order shall~~

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~~be personally delivered to the child, the child's parent or legal guardian, the administrator of the more restrictive environment, or the administrator's designee, and the child's former treatment provider or facility:~~

~~—— (d) If the child has been in a less restrictive environment for more than 30 days and is aggrieved by the change to a more restrictive environment, the child or the child's representative may request a review within 30 days of the change, by a neutral and detached fact finder as described in Subsection (3). The fact finder shall determine whether:~~

~~—— (i) the less restrictive environment in which the child has been placed is exacerbating the child's mental illness or increasing the risk of harm to self or others; or~~

~~—— (ii) the less restrictive environment in which the child has been placed is not exacerbating the child's mental illness or increasing the risk of harm to self or others, in which case the fact finder shall designate that the child remain in the less restrictive environment.~~

~~—— (e) Nothing in this section prevents a local mental health authority or its designee, in conjunction with the child's current mental health professional, from discharging a child from commitment or from placing a child in an environment that is less restrictive than that designated by the neutral and detached fact finder.~~

~~—— (13) Each local mental health authority or its designee, in conjunction with the child's current treating mental health professional shall discharge any child who, in the opinion of that local authority, or its designee, and the child's current treating mental health professional, no longer meets the criteria specified in Subsection (4), except as provided by Section 78A-6-120. The local authority and the mental health professional shall assure that any further supportive services required to meet the child's needs upon release will be provided:~~

~~—— (14) Even though a child has been committed to the physical custody of a local mental health authority under this section, the child is still entitled to additional due process proceedings, in accordance with Section 62A-15-704, before any treatment that may affect a constitutionally protected liberty or privacy interest is administered. Those treatments include, but are not limited to, antipsychotic medication, electroshock therapy, and psychosurgery:~~

~~—— Section 76. Section **62A-15-1001** is amended to read:~~

~~—— **62A-15-1001. Definitions.**~~

~~—— As used in this part:~~

~~—— (1) "Attending physician" means a physician licensed to practice medicine in this state~~

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who has primary responsibility for the care and treatment of the declarant.

~~—— (2) "Attorney-in-fact" means an adult properly appointed under this part to make mental health treatment decisions for a declarant under a declaration for mental health treatment.~~

~~—— (3) "Incapable" means that, in the opinion of the court in a guardianship proceeding under Title 75, Utah Uniform Probate Code, or in the opinion of two physicians, or one physician and one physician assistant, a person's ability to receive and evaluate information effectively or communicate decisions is impaired to such an extent that the person currently lacks the capacity to make mental health treatment decisions.~~

~~—— (4) "Mental health facility" means the same as that term is defined in Section 62A-15-602.~~

~~—— (5) "Mental health treatment" means convulsive treatment, treatment with psychoactive medication, or admission to and retention in a facility for a period not to exceed 17 days.~~

~~—— Section 77. Section **62A-15-1002** is amended to read:~~

~~—— **62A-15-1002. Declaration for mental health treatment.**~~

~~—— (1) An adult who is not incapable may make a declaration of preferences or instructions regarding his mental health treatment. The declaration may include, but is not limited to, consent to or refusal of specified mental health treatment.~~

~~—— (2) A declaration for mental health treatment shall designate a capable adult to act as attorney-in-fact to make decisions about mental health treatment for the declarant. An alternative attorney-in-fact may also be designated to act as attorney-in-fact if the original designee is unable or unwilling to act at any time. An attorney-in-fact who has accepted the appointment in writing may make decisions about mental health treatment on behalf of the declarant only when the declarant is incapable. The decisions shall be consistent with any instructions or desires the declarant has expressed in the declaration.~~

~~—— (3) A declaration is effective only if it is signed by the declarant and two capable adult witnesses. The witnesses shall attest that the declarant is known to them, signed the declaration in their presence, appears to be of sound mind and is not under duress, fraud, or undue influence. Persons specified in Subsection 62A-15-1003(6) may not act as witnesses.~~

~~—— (4) A declaration becomes operative when it is delivered to the declarant's physician, physician assistant, or other mental health treatment provider and remains valid until it expires~~

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~~or is revoked by the declarant. The physician, physician assistant, or provider is authorized to act in accordance with an operative declaration when the declarant has been found to be incapable. The physician, physician assistant, or provider shall continue to obtain the declarant's informed consent to all mental health treatment decisions if the declarant is capable of providing informed consent or refusal.~~

~~—— (5) (a) An attorney-in-fact does not have authority to make mental health treatment decisions unless the declarant is incapable.~~

~~—— (b) An attorney-in-fact is not, solely as a result of acting in that capacity, personally liable for the cost of treatment provided to the declarant.~~

~~—— (c) Except to the extent that a right is limited by a declaration or by any federal law, an attorney-in-fact has the same right as the declarant to receive information regarding the proposed mental health treatment and to receive, review, and consent to disclosure of medical records relating to that treatment. This right of access does not waive any evidentiary privilege.~~

~~—— (d) In exercising authority under the declaration, the attorney-in-fact shall act consistently with the instructions and desires of the declarant, as expressed in the declaration. If the declarant's desires are unknown, the attorney-in-fact shall act in what he, in good faith, believes to be the best interest of the declarant.~~

~~—— (e) An attorney-in-fact is not subject to criminal prosecution, civil liability, or professional disciplinary action for any action taken in good faith pursuant to a declaration for mental health treatment.~~

~~—— (6) (a) A declaration for mental health treatment remains effective for a period of three years or until revoked by the declarant. If a declaration for mental health treatment has been invoked and is in effect at the expiration of three years after its execution, the declaration remains effective until the declarant is no longer incapable.~~

~~—— (b) The authority of a named attorney-in-fact and any alternative attorney-in-fact continues in effect as long as the declaration appointing the attorney-in-fact is in effect or until the attorney-in-fact has withdrawn.~~

~~—— (7) A person may not be required to execute or to refrain from executing a declaration as a criterion for insurance, as a condition for receiving mental or physical health services, or as a condition of discharge from a facility.~~

~~—— Section 78. Section **62A-15-1003** is amended to read:~~

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~~62A-15-1003. Physician, physician assistant, and provider responsibilities -- Provision of services contrary to declaration -- Revocation:~~

~~(1) Upon being presented with a declaration, a physician shall make the declaration a part of the declarant's medical record. When acting under authority of a declaration, a physician shall comply with it to the fullest extent possible, consistent with reasonable medical practice, the availability of treatments requested, and applicable law. If the physician, physician assistant, or other provider is unwilling at any time to comply with the declaration, the physician, physician assistant, or provider shall promptly notify the declarant and the attorney-in-fact, and document the notification in the declarant's medical record.~~

~~(2) A physician, physician assistant, or provider may subject a declarant to intrusive treatment in a manner contrary to the declarant's wishes, as expressed in a declaration for mental health treatment if:~~

~~(a) the declarant has been committed to the custody of a local mental health authority in accordance with Part 6, Utah State Hospital and Other Mental Health Facilities; or~~

~~(b) in cases of emergency endangering life or health.~~

~~(3) A declaration does not limit any authority provided in Part 6, Utah State Hospital and Other Mental Health Facilities, to take a person into custody, or admit or retain a person in the custody of a local mental health authority.~~

~~(4) A declaration may be revoked in whole or in part by the declarant at any time so long as the declarant is not incapable. That revocation is effective when the declarant communicates the revocation to the attending physician, physician assistant, or other provider. The attending physician, physician assistant, or other provider shall note the revocation as part of the declarant's medical record.~~

~~(5) A physician or physician assistant who administers or does not administer mental health treatment according to and in good faith reliance upon the validity of a declaration is not subject to criminal prosecution, civil liability, or professional disciplinary action resulting from a subsequent finding that a declaration is invalid.~~

~~(6) None of the following persons may serve as an attorney-in-fact or as witnesses to the signing of a declaration:~~

~~(a) the declarant's attending physician, physician assistant, or mental health treatment provider, or an employee of that physician or provider;~~

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~~_____ (b) an employee of the division; or~~

~~_____ (c) an employee of a local mental health authority or any organization that contracts with a local mental health authority.~~

~~_____ (7) An attorney-in-fact may withdraw by giving notice to the declarant. If a declarant is incapable, the attorney-in-fact may withdraw by giving notice to the attending physician, physician assistant, or provider. The attending physician shall note the withdrawal as part of the declarant's medical record.~~

~~_____ Section 79. Section **62A-15-1004** is amended to read:~~

~~_____ **62A-15-1004. Declaration for mental health treatment -- Form.**~~

~~_____ A declaration for mental health treatment shall be in substantially the following form:~~

~~_____ **DECLARATION FOR MENTAL HEALTH TREATMENT**~~

~~_____ I, _____, being an adult of sound mind, willfully and voluntarily make this declaration for mental health treatment, to be followed if it is determined by a court or by two physicians, or by one physician and one physician assistant, that my ability to receive and evaluate information effectively or to communicate my decisions is impaired to such an extent that I lack the capacity to refuse or consent to mental health treatment. "Mental health treatment" means convulsive treatment, treatment with psychoactive medication, and admission to and retention in a mental health facility for a period up to 17 days.~~

~~_____ I understand that I may become incapable of giving or withholding informed consent for mental health treatment due to the symptoms of a diagnosed mental disorder. These symptoms may include:~~

~~_____

_____~~

~~_____ **PSYCHOACTIVE MEDICATIONS**~~

~~_____ If I become incapable of giving or withholding informed consent for mental health treatment, my wishes regarding psychoactive medications are as follows:~~

~~_____ I consent to the administration of the following medications:~~

~~_____
_____~~

~~in the dosages:~~

~~_____ considered appropriate by my attending physician.~~

~~_____ approved by _____~~

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~~_____ as I hereby direct: _____~~

~~_____ I do not consent to the administration of the following medications:~~

~~_____ CONVULSIVE TREATMENT~~

~~_____ If I become incapable of giving or withholding informed consent for mental health treatment, my wishes regarding convulsive treatment are as follows:~~

~~_____ I consent to the administration of convulsive treatment of the following type:~~

~~_____, the number of treatments to be:~~

~~_____ determined by my attending physician or physician assistant:~~

~~_____ approved by _____~~

~~_____ as follows: _____~~

~~_____ I do not consent to the administration of convulsive treatment.~~

~~_____ My reasons for consenting to or refusing convulsive treatment are as follows:~~

~~_____ ADMISSION TO AND RETENTION IN A MENTAL HEALTH FACILITY~~

~~_____ If I become incapable of giving or withholding informed consent for mental health treatment, my wishes regarding admission to and retention in a mental health facility are as follows:~~

~~_____ I consent to being admitted to the following mental health facilities:~~

~~I may be retained in the facility for a period of time:~~

~~_____ determined by my attending physician or physician assistant:~~

~~_____ approved by _____~~

~~_____ no longer than _____~~

~~This directive cannot, by law, provide consent to retain me in a facility for more than 17 days.~~

~~_____ ADDITIONAL REFERENCES OR INSTRUCTIONS~~

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~~ATTORNEY-IN-FACT~~

~~I hereby appoint:~~

~~NAME _____~~

~~ADDRESS _____~~

~~TELEPHONE # _____~~

~~to act as my attorney-in-fact to make decisions regarding my mental health treatment if I become incapable of giving or withholding informed consent for that treatment.~~

~~If the person named above refuses or is unable to act on my behalf, or if I revoke that person's authority to act as my attorney-in-fact, I authorize the following person to act as my alternative attorney-in-fact:~~

~~NAME _____~~

~~ADDRESS _____~~

~~TELEPHONE # _____~~

~~My attorney-in-fact is authorized to make decisions which are consistent with the wishes I have expressed in this declaration. If my wishes are not expressed, my attorney-in-fact is to act in good faith according to what he or she believes to be in my best interest.~~

(Signature of Declarant/Date)

~~AFFIRMATION OF WITNESSES~~

~~We affirm that the declarant is personally known to us, that the declarant signed or acknowledged the declarant's signature on this declaration for mental health treatment in our presence, that the declarant appears to be of sound mind and does not appear to be under duress, fraud, or undue influence. Neither of us is the person appointed as attorney-in-fact by this document, the attending physician, an employee of the attending physician, an employee of the Division of Substance Abuse and Mental Health within the Department of Human Services, an employee of a local mental health authority, or an employee of any organization that contracts with a local mental health authority.~~

~~Witnessed By:~~

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~~(Signature of Witness/Date) _____ (Printed Name of Witness)~~

~~(Signature of Witness/Date) _____ (Printed Name of Witness)~~

~~ACCEPTANCE OF APPOINTMENT AS ATTORNEY-IN-FACT~~

~~I accept this appointment and agree to serve as attorney-in-fact to make decisions about mental health treatment for the declarant. I understand that I have a duty to act consistently with the desires of the declarant as expressed in the declaration. I understand that this document gives me authority to make decisions about mental health treatment only while the declarant is incapable as determined by a court or two physicians, or by one physician and one physician assistant. I understand that the declarant may revoke this appointment, or the declaration, in whole or in part, at any time and in any manner, when the declarant is not incapable.~~

~~(Signature of Attorney-in-fact/Date) _____ (Printed name)~~

~~(Signature of Alternate Attorney-in-fact/Date) _____ (Printed name)~~

~~NOTICE TO PERSON MAKING A~~

~~DECLARATION FOR MENTAL HEALTH TREATMENT~~

~~This is an important legal document. It is a declaration that allows, or disallows, mental health treatment. Before signing this document, you should know that:~~

~~(1) this document allows you to make decisions in advance about three types of mental health treatment: psychoactive medication, convulsive therapy, and short-term (up to 17 days) admission to a mental health facility;~~

~~(2) the instructions that you include in this declaration will be followed only if a court or two physicians, or one physician and one physician assistant, believe that you are incapable of otherwise making treatment decisions. Otherwise, you will be considered capable to give or withhold consent for treatment;~~

~~(3) you may also appoint a person as your attorney-in-fact to make these treatment decisions for you if you become incapable. The person you appoint has a duty to act consistently with your desires as stated in this document or, if not stated, to make decisions in accordance with what that person believes, in good faith, to be in your best interest. For the~~

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~~appointment to be effective, the person you appoint must accept the appointment in writing.~~

~~The person also has the right to withdraw from acting as your attorney-in-fact at any time;~~

~~—— (4) this document will continue in effect for a period of three years unless you become incapable of participating in mental health treatment decisions. If this occurs, the directive will continue in effect until you are no longer incapable;~~

~~—— (5) you have the right to revoke this document in whole or in part, or the appointment of an attorney-in-fact, at any time you have not been determined to be incapable. YOU MAY NOT REVOKE THE DECLARATION OR APPOINTMENT WHEN YOU ARE~~

~~CONSIDERED INCAPABLE BY A COURT OR TWO PHYSICIANS, OR BY ONE~~

~~PHYSICIAN AND ONE PHYSICIAN ASSISTANT. A revocation is effective when it is communicated to your attending physician, physician assistant, or other provider; and~~

~~—— (6) if there is anything in this document that you do not understand, you should ask an attorney to explain it to you. This declaration is not valid unless it is signed by two qualified witnesses who are personally known to you and who are present when you sign or acknowledge your signature.~~

~~—— Section 80. Section **62A-15-1207** is amended to read:~~

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

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

~~—— (a) an essential treatment examiner has examined the respondent and certified that the respondent meets the criteria described in Section 62A-15-1204; and~~

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

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

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

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

~~Section 81. Section 62A-15-1207.5 is amended to read:~~

~~62A-15-1207.5. Emergency, life saving treatment-- Temporary personal representative:~~

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

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

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

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

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

~~(a) the respondent's:~~

~~(i) legal name;~~

~~(ii) date of birth, if known;~~

~~(iii) social security number, if known; and~~

~~(iv) residence and current location, if known;~~

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

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

~~(d) a statement that the respondent:~~

~~(i) is suffering from a substance use disorder; and~~

~~(ii) has received, within the last 72 hours, emergency, life saving treatment;~~

~~(e) the factual basis for the statement described in Subsection (2)(d); and~~

~~(f) the name of any other individual, if any, who may be designated as the respondent's personal representative.~~

~~(3) A court shall grant a petition for designation as a personal representative, ex parte;~~

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~~if it appears from the petition for designation as a court-designated personal representative that:~~

- ~~—— (a) the respondent is suffering from a substance use disorder;~~
- ~~—— (b) the respondent received emergency, life-saving treatment within 10 days before the day on which the petition for designation as a personal representative is filed;~~
- ~~—— (c) the petitioner is a relative of the respondent; and~~
- ~~—— (d) no other individual is otherwise designated as the respondent's personal representative.~~

~~—— (4) When a court grants, ex parte, a petition for designation as a personal representative, the court:~~

- ~~—— (a) shall provide notice to the respondent;~~
- ~~—— (b) shall order the petitioner to be the respondent's personal representative for 10 days after the day on which the court designates the petitioner as the respondent's personal representative; and~~
- ~~—— (c) may extend the duration of the order:~~
 - ~~—— (i) for good cause shown, after the respondent has been notified and given a proper and sufficient opportunity to respond; or~~
 - ~~—— (ii) if the respondent consents to an extension.~~

~~—— Section 82. Section **63G-2-202** is amended to read:~~

‡ **63G-2-202. Access to private, controlled, and protected documents.**

- (1) Except as provided in Subsection (11)(a), a governmental entity:
 - (a) shall, upon request, disclose a private record to:
 - (i) the subject of the record;
 - (ii) the parent or legal guardian of an unemancipated minor who is the subject of the record;
 - (iii) the legal guardian of a legally incapacitated individual who is the subject of the record;
 - (iv) any other individual who:
 - (A) has a power of attorney from the subject of the record;
 - (B) submits a notarized release from the subject of the record or the individual's legal representative dated no more than 90 days before the date the request is made; or
 - (C) if the record is a medical record described in Subsection 63G-2-302(1)(b), is a

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health care provider, as defined in Section 26-33a-102, if releasing the record or information in the record is consistent with normal professional practice and medical ethics; or

(v) any person to whom the record must be provided pursuant to:

(A) court order as provided in Subsection (7); or

(B) a legislative subpoena as provided in Title 36, Chapter 14, Legislative Subpoena

Powers; and

(b) may disclose a private record described in Subsection 63G-2-302(1)(j) or (k), without complying with Section 63G-2-206, to another governmental entity for a purpose related to:

(i) voter registration; or

(ii) the administration of an election.

(2) (a) Upon request, a governmental entity shall disclose a controlled record to:

(i) a physician, physician assistant, psychologist, certified social worker, insurance provider or producer, or a government public health agency upon submission of:

(A) a release from the subject of the record that is dated no more than 90 days prior to the date the request is made; and

(B) a signed acknowledgment of the terms of disclosure of controlled information as provided by Subsection (2)(b); and

(ii) any person to whom the record must be disclosed pursuant to:

(A) a court order as provided in Subsection (7); or

(B) a legislative subpoena as provided in Title 36, Chapter 14, Legislative Subpoena

Powers.

(b) A person who receives a record from a governmental entity in accordance with Subsection (2)(a)(i) may not disclose controlled information from that record to any person, including the subject of the record.

(3) If there is more than one subject of a private or controlled record, the portion of the record that pertains to another subject shall be segregated from the portion that the requester is entitled to inspect.

(4) Upon request, and except as provided in Subsection (10) or (11)(b), a governmental entity shall disclose a protected record to:

(a) the person that submitted the record;

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(b) any other individual who:

(i) has a power of attorney from all persons, governmental entities, or political subdivisions whose interests were sought to be protected by the protected classification; or

(ii) submits a notarized release from all persons, governmental entities, or political subdivisions whose interests were sought to be protected by the protected classification or from their legal representatives dated no more than 90 days prior to the date the request is made;

(c) any person to whom the record must be provided pursuant to:

(i) a court order as provided in Subsection (7); or

(ii) a legislative subpoena as provided in Title 36, Chapter 14, Legislative Subpoena Powers; or

(d) the owner of a mobile home park, subject to the conditions of Subsection 41-1a-116(5).

(5) Except as provided in Subsection (1)(b), a governmental entity may disclose a private, controlled, or protected record to another governmental entity, political subdivision, state, the United States, or a foreign government only as provided by Section 63G-2-206.

(6) Before releasing a private, controlled, or protected record, the governmental entity shall obtain evidence of the requester's identity.

(7) A governmental entity shall disclose a record pursuant to the terms of a court order signed by a judge from a court of competent jurisdiction, provided that:

(a) the record deals with a matter in controversy over which the court has jurisdiction;

(b) the court has considered the merits of the request for access to the record;

(c) the court has considered and, where appropriate, limited the requester's use and further disclosure of the record in order to protect:

(i) privacy interests in the case of private or controlled records;

(ii) business confidentiality interests in the case of records protected under Subsection 63G-2-305(1), (2), (40)(a)(ii), or (40)(a)(vi); and

(iii) privacy interests or the public interest in the case of other protected records;

(d) to the extent the record is properly classified private, controlled, or protected, the interests favoring access, considering limitations thereon, are greater than or equal to the interests favoring restriction of access; and

(e) where access is restricted by a rule, statute, or regulation referred to in Subsection

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63G-2-201(3)(b), the court has authority independent of this chapter to order disclosure.

(8) (a) Except as provided in Subsection (8)(d), a governmental entity may disclose or authorize disclosure of private or controlled records for research purposes if the governmental entity:

(i) determines that the research purpose cannot reasonably be accomplished without use or disclosure of the information to the researcher in individually identifiable form;

(ii) determines that:

(A) the proposed research is bona fide; and

(B) the value of the research is greater than or equal to the infringement upon personal privacy;

(iii) (A) requires the researcher to assure the integrity, confidentiality, and security of the records; and

(B) requires the removal or destruction of the individual identifiers associated with the records as soon as the purpose of the research project has been accomplished;

(iv) prohibits the researcher from:

(A) disclosing the record in individually identifiable form, except as provided in Subsection (8)(b); or

(B) using the record for purposes other than the research approved by the governmental entity; and

(v) secures from the researcher a written statement of the researcher's understanding of and agreement to the conditions of this Subsection (8) and the researcher's understanding that violation of the terms of this Subsection (8) may subject the researcher to criminal prosecution under Section 63G-2-801.

(b) A researcher may disclose a record in individually identifiable form if the record is disclosed for the purpose of auditing or evaluating the research program and no subsequent use or disclosure of the record in individually identifiable form will be made by the auditor or evaluator except as provided by this section.

(c) A governmental entity may require indemnification as a condition of permitting research under this Subsection (8).

(d) A governmental entity may not disclose or authorize disclosure of a private record for research purposes as described in this Subsection (8) if the private record is a record

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described in Subsection 63G-2-302(1)(u).

(9) (a) Under Subsections 63G-2-201(5)(b) and 63G-2-401(6), a governmental entity may disclose to persons other than those specified in this section records that are:

(i) private under Section 63G-2-302; or

(ii) protected under Section 63G-2-305, subject to Section 63G-2-309 if a claim for business confidentiality has been made under Section 63G-2-309.

(b) Under Subsection 63G-2-403(11)(b), the records committee may require the disclosure to persons other than those specified in this section of records that are:

(i) private under Section 63G-2-302;

(ii) controlled under Section 63G-2-304; or

(iii) protected under Section 63G-2-305, subject to Section 63G-2-309 if a claim for business confidentiality has been made under Section 63G-2-309.

(c) Under Subsection 63G-2-404(7), the court may require the disclosure of records that are private under Section 63G-2-302, controlled under Section 63G-2-304, or protected under Section 63G-2-305 to persons other than those specified in this section.

(10) A record contained in the Management Information System, created in Section 62A-4a-1003, that is found to be unsubstantiated, unsupported, or without merit may not be disclosed to any person except the person who is alleged in the report to be a perpetrator of abuse, neglect, or dependency.

(11) (a) A private record described in Subsection 63G-2-302(2)(f) may only be disclosed as provided in Subsection (1)(e).

(b) A protected record described in Subsection 63G-2-305(43) may only be disclosed as provided in Subsection (4)(c) or Section 62A-3-312.

(12) (a) A private, protected, or controlled record described in Section 62A-16-301 shall be disclosed as required under:

(i) Subsections 62A-16-301(1)(b), (2), and (4)(c); and

(ii) Subsections 62A-16-302(1) and (6).

(b) A record disclosed under Subsection (12)(a) shall retain its character as private, protected, or controlled.

Section ~~83~~60. Section **63N-10-102** is amended to read:

63N-10-102. Definitions.

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As used in this chapter:

(1) "Bodily injury" has the same meaning as defined in Section 76-1-601.

(2) "Boxing" means the sport of attack and defense using the fist, which is covered by an approved boxing glove.

(3) (a) "Club fighting" means any contest of unarmed combat, whether admission is charged or not, where:

(i) the rules of the contest are not approved by the commission;

(ii) a licensed physician [or], osteopath, or physician assistant approved by the commission is not in attendance;

(iii) a correct HIV negative test regarding each contestant has not been provided to the commission;

(iv) the contest is not conducted in accordance with commission rules; or

(v) the contestants are not matched by the weight standards established in accordance with Section 63N-10-316.

(b) "Club fighting" does not include sparring if:

(i) it is conducted for training purposes;

(ii) no tickets are sold to spectators;

(iii) no concessions are available for spectators;

(iv) protective clothing, including protective headgear, a mouthguard, and a protective cup, is worn; and

(v) for boxing, 16 ounce boxing gloves are worn.

(4) "Commission" means the Pete Suazo Utah Athletic Commission created by this chapter.

(5) "Contest" means a live match, performance, or exhibition involving two or more persons engaged in unarmed combat.

(6) "Contestant" means an individual who participates in a contest.

(7) "Designated commission member" means a member of the commission designated to:

(a) attend and supervise a particular contest; and

(b) act on the behalf of the commission at a contest venue.

(8) "Director" means the director appointed by the commission.

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(9) "Elimination unarmed combat contest" means a contest where:

- (a) a number of contestants participate in a tournament;
- (b) the duration is not more than 48 hours; and
- (c) the loser of each contest is eliminated from further competition.

(10) "Exhibition" means an engagement in which the participants show or display their skills without necessarily striving to win.

(11) "Judge" means an individual qualified by training or experience to:

- (a) rate the performance of contestants;
- (b) score a contest; and
- (c) determine with other judges whether there is a winner of the contest or whether the

contestants performed equally, resulting in a draw.

(12) "Licensee" means an individual licensed by the commission to act as a:

- (a) contestant;
- (b) judge;
- (c) manager;
- (d) promoter;
- (e) referee;
- (f) second; or
- (g) other official established by the commission by rule.

(13) "Manager" means an individual who represents a contestant for the purpose of:

- (a) obtaining a contest for a contestant;
- (b) negotiating terms and conditions of the contract under which the contestant will

engage in a contest; or

- (c) arranging for a second for the contestant at a contest.

(14) "Promoter" means a person who engages in producing or staging contests and promotions.

(15) "Promotion" means a single contest or a combination of contests that:

- (a) occur during the same time and at the same location; and
- (b) is produced or staged by a promoter.

(16) "Purse" means any money, prize, remuneration, or any other valuable consideration a contestant receives or may receive for participation in a contest.

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(17) "Referee" means an individual qualified by training or experience to act as the official attending a contest at the point of contact between contestants for the purpose of:

(a) enforcing the rules relating to the contest;

(b) stopping the contest in the event the health, safety, and welfare of a contestant or any other person in attendance at the contest is in jeopardy; and

(c) acting as a judge if so designated by the commission.

(18) "Round" means one of a number of individual time periods that, taken together, constitute a contest during which contestants are engaged in a form of unarmed combat.

(19) "Second" means an individual who attends a contestant at the site of the contest before, during, and after the contest in accordance with contest rules.

(20) "Serious bodily injury" has the same meaning as defined in Section 76-1-601.

(21) "Total gross receipts" means the amount of the face value of all tickets sold to a particular contest plus any sums received as consideration for holding the contest at a particular location.

(22) "Ultimate fighting" means a live contest, whether or not an admission fee is charged, in which:

(a) contest rules permit contestants to use a combination of boxing, kicking, wrestling, hitting, punching, or other combative contact techniques;

(b) contest rules incorporate a formalized system of combative techniques against which a contestant's performance is judged to determine the prevailing contestant;

(c) contest rules divide nonchampionship contests into three equal and specified rounds of no more than five minutes per round with a rest period of one minute between each round;

(d) contest rules divide championship contests into five equal and specified rounds of no more than five minutes per round with a rest period of one minute between each round; and

(e) contest rules prohibit contestants from:

(i) using anything that is not part of the human body, except for boxing gloves, to intentionally inflict serious bodily injury upon an opponent through direct contact or the expulsion of a projectile;

(ii) striking a person who demonstrates an inability to protect himself from the advances of an opponent;

(iii) biting; or

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(iv) direct, intentional, and forceful strikes to the eyes, groin area, Adam's apple area of the neck, and the rear area of the head and neck.

(23) (a) "Unarmed combat" means boxing or any other form of competition in which a blow is usually struck which may reasonably be expected to inflict bodily injury.

(b) "Unarmed combat" does not include a competition or exhibition between participants in which the participants engage in simulated combat for entertainment purposes.

(24) "Unlawful conduct" means organizing, promoting, or participating in a contest which involves contestants that are not licensed under this chapter.

(25) "Unprofessional conduct" means:

(a) entering into a contract for a contest in bad faith;

(b) participating in any sham or fake contest;

(c) participating in a contest pursuant to a collusive understanding or agreement in which the contestant competes in or terminates the contest in a manner that is not based upon honest competition or the honest exhibition of the skill of the contestant;

(d) engaging in an act or conduct that is detrimental to a contest, including any foul or unsportsmanlike conduct in connection with a contest;

(e) failing to comply with any limitation, restriction, or condition placed on a license;

(f) striking of a downed opponent by a contestant while the contestant remains on the contestant's feet, unless the designated commission member or director has exempted the contest and each contestant from the prohibition on striking a downed opponent before the start of the contest;

(g) after entering the ring or contest area, penetrating an area within four feet of an opponent by a contestant, manager, or second before the commencement of the contest; or

(h) as further defined by rules made by the commission under Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(26) "White-collar contest" means a contest conducted at a training facility where no alcohol is served in which:

(a) for boxing:

(i) neither contestant is or has been a licensed contestant in any state or an amateur registered with USA Boxing, Inc.;

(ii) no cash prize, or other prize valued at greater than \$35, is awarded;

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(iii) protective clothing, including protective headgear, a mouthguard, a protective cup, and for a female contestant a chestguard, is worn;

(iv) 16 ounce boxing gloves are worn;

(v) the contest is no longer than three rounds of no longer than three minutes each;

(vi) no winner or loser is declared or recorded; and

(vii) the contestants do not compete in a cage; and

(b) for ultimate fighting:

(i) neither contestant is or has been a licensed contestant in any state or an amateur registered with USA Boxing, Inc.;

(ii) no cash prize, or other prize valued at greater than \$35, is awarded;

(iii) protective clothing, including a protective mouthguard and a protective cup, is worn;

(iv) downward elbow strikes are not allowed;

(v) a contestant is not allowed to stand and strike a downed opponent;

(vi) a closed-hand blow to the head is not allowed while either contestant is on the ground;

(vii) the contest is no longer than three rounds of no longer than three minutes each;

and

(viii) no winner or loser is declared or recorded.

Section ~~{84}~~61. Section **63N-10-301** is amended to read:

63N-10-301. Licensing.

(1) A license is required for a person to act as or to represent that the person is:

(a) a promoter;

(b) a manager;

(c) a contestant;

(d) a second;

(e) a referee;

(f) a judge; or

(g) another official established by the commission by rule.

(2) The commission shall issue to a person who qualifies under this chapter a license in the classifications of:

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- (a) promoter;
 - (b) manager;
 - (c) contestant;
 - (d) second;
 - (e) referee;
 - (f) judge; or
 - (g) another official who meets the requirements established by rule under Subsection (1)(g).
- (3) All money collected under this section and Sections 63N-10-304, 63N-10-307, 63N-10-310, and 63N-10-313 shall be retained as dedicated credits to pay for commission expenses.
- (4) Each applicant for licensure as a promoter shall:
- (a) submit an application in a form prescribed by the commission;
 - (b) pay the fee determined by the commission under Section 63J-1-504;
 - (c) provide to the commission evidence of financial responsibility, which shall include financial statements and other information that the commission may reasonably require to determine that the applicant or licensee is able to competently perform as and meet the obligations of a promoter in this state;
 - (d) make assurances that the applicant:
 - (i) is not engaging in illegal gambling with respect to sporting events or gambling with respect to the promotions the applicant is promoting;
 - (ii) has not been found in a criminal or civil proceeding to have engaged in or attempted to engage in any fraud or misrepresentation in connection with a contest or any other sporting event; and
 - (iii) has not been found in a criminal or civil proceeding to have violated or attempted to violate any law with respect to a contest in any jurisdiction or any law, rule, or order relating to the regulation of contests in this state or any other jurisdiction;
 - (e) acknowledge in writing to the commission receipt, understanding, and intent to comply with this chapter and the rules made under this chapter; and
 - (f) if requested by the commission or the director, meet with the commission or the director to examine the applicant's qualifications for licensure.

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(5) Each applicant for licensure as a contestant shall:

(a) be not less than 18 years of age at the time the application is submitted to the commission;

(b) submit an application in a form prescribed by the commission;

(c) pay the fee established by the commission under Section 63J-1-504;

(d) provide a certificate of physical examination, dated not more than 60 days prior to the date of application for licensure, in a form provided by the commission, completed by a licensed physician and surgeon or physician assistant certifying that the applicant is free from any physical or mental condition that indicates the applicant should not engage in activity as a contestant;

(e) make assurances that the applicant:

(i) is not engaging in illegal gambling with respect to sporting events or gambling with respect to a contest in which the applicant will participate;

(ii) has not been found in a criminal or civil proceeding to have engaged in or attempted to have engaged in any fraud or misrepresentation in connection with a contest or any other sporting event; and

(iii) has not been found in a criminal or civil proceeding to have violated or attempted to violate any law with respect to contests in any jurisdiction or any law, rule, or order relating to the regulation of contests in this state or any other jurisdiction;

(f) acknowledge in writing to the commission receipt, understanding, and intent to comply with this chapter and the rules made under this chapter; and

(g) if requested by the commission or the director, meet with the commission or the director to examine the applicant's qualifications for licensure.

(6) Each applicant for licensure as a manager or second shall:

(a) submit an application in a form prescribed by the commission;

(b) pay a fee determined by the commission under Section 63J-1-504;

(c) make assurances that the applicant:

(i) is not engaging in illegal gambling with respect to sporting events or gambling with respect to a contest in which the applicant is participating;

(ii) has not been found in a criminal or civil proceeding to have engaged in or attempted to have engaged in any fraud or misrepresentation in connection with a contest or

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any other sporting event; and

(iii) has not been found in a criminal or civil proceeding to have violated or attempted to violate any law with respect to a contest in any jurisdiction or any law, rule, or order relating to the regulation of contests in this state or any other jurisdiction;

(d) acknowledge in writing to the commission receipt, understanding, and intent to comply with this chapter and the rules made under this chapter; and

(e) if requested by the commission or director, meet with the commission or the director to examine the applicant's qualifications for licensure.

(7) Each applicant for licensure as a referee or judge shall:

(a) submit an application in a form prescribed by the commission;

(b) pay a fee determined by the commission under Section 63J-1-504;

(c) make assurances that the applicant:

(i) is not engaging in illegal gambling with respect to sporting events or gambling with respect to a contest in which the applicant is participating;

(ii) has not been found in a criminal or civil proceeding to have engaged in or attempted to have engaged in any fraud or misrepresentation in connection with a contest or any other sporting event; and

(iii) has not been found in a criminal or civil proceeding to have violated or attempted to violate any law with respect to contests in any jurisdiction or any law, rule, or order relating to the regulation of contests in this state or any other jurisdiction;

(d) acknowledge in writing to the commission receipt, understanding, and intent to comply with this chapter and the rules made under this chapter;

(e) provide evidence satisfactory to the commission that the applicant is qualified by training and experience to competently act as a referee or judge in a contest; and

(f) if requested by the commission or the director, meet with the commission or the director to examine the applicant's qualifications for licensure.

(8) The commission may make rules concerning the requirements for a license under this chapter, that deny a license to an applicant for the violation of a crime that, in the commission's determination, would have a material affect on the integrity of a contest held under this chapter.

(9) (a) A licensee serves at the pleasure, and under the direction, of the commission

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while participating in any way at a contest.

(b) A licensee's license may be suspended, or a fine imposed, if the licensee does not follow the commission's direction at an event or contest.

Section ~~{85}~~62. Section **67-5b-105** is amended to read:

67-5b-105. Local advisory boards -- Membership.

(1) The cooperating public agencies and other persons shall make up each center's local advisory board, which shall be composed of the following people from the county or area:

- (a) the local center director or the director's designee;
- (b) a district attorney or county attorney having criminal jurisdiction or any designee;
- (c) a representative of the attorney general's office, designated by the attorney general;
- (d) at least one official from a local law enforcement agency or the local law enforcement agency's designee;
- (e) the county executive or the county executive's designee;
- (f) a licensed nurse practitioner, physician assistant, or physician;
- (g) a licensed mental health professional;
- (h) a criminal defense attorney;
- (i) at least four members of the community at large provided, however, that the Advisory Board on Children's Justice may authorize fewer members, although not less than two, if the local advisory board so requests;
- (j) a guardian ad litem or representative of the Office of Guardian Ad Litem, designated by the director;
- (k) a representative of the Division of Child and Family Services within the Department of Human Services, designated by the employee of the division who has supervisory responsibility for the county served by the center;
- (l) if a center serves more than one county, one representative from each county served, appointed by the county executive; and
- (m) additional members appointed as needed by the county executive.

(2) The members on each local advisory board who serve due to public office as provided in Subsections (1)(b) through (e) shall select the remaining members. The members on each local advisory board shall select a chair of the local advisory board.

(3) The local advisory board may not supersede the authority of the contracting county

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as designated in Section 67-5b-104.

(4) Appointees and designees shall serve a term or terms as designated in the bylaws of the local advisory board.

Section ~~86~~63. Section **67-5b-106** is amended to read:

67-5b-106. Advisory Board on Children's Justice -- Membership -- Terms -- Duties -- Authority.

(1) The attorney general shall create an Advisory Board on Children's Justice to advise him about the Children's Justice Center Program.

(2) The board shall be composed of:

- (a) the director of each Children's Justice Center;
- (b) the attorney general or the attorney general's designee;
- (c) a representative of the Utah Sheriffs Association, appointed by the attorney general;
- (d) a chief of police, appointed by the attorney general;
- (e) one juvenile court judge and one district court judge, appointed by the chief justice of the Supreme Court;
- (f) one representative of the Office of Guardian Ad Litem and one representative of the Court Appointed Special Advocates, appointed by the chief justice of the Supreme Court;
- (g) a designated representative of the Division of Child and Family Services within the Department of Human Services, appointed by the director of that division;
- (h) a licensed mental health professional, appointed by the attorney general;
- (i) a person experienced in working with children with disabilities, appointed by the attorney general;
- (j) one criminal defense attorney, licensed by the Utah State Bar and in good standing, appointed by the Utah Bar Commission;
- (k) one criminal prosecutor, licensed by the Utah State Bar and in good standing, appointed by the Utah Prosecution Council;
- (l) a member of the governor's staff, appointed by the governor;
- (m) a member from the public, appointed by the attorney general, who exhibits sensitivity to the concerns of parents;
- (n) a licensed nurse practitioner, physician assistant, or physician, appointed by the attorney general;

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- (o) one senator, appointed by the president of the Senate;
- (p) one representative, appointed by the speaker of the House; and
- (q) additional members appointed as needed by the attorney general.

(3) (a) Except as required by Subsection (3)(b), as terms of current board members expire, the appointing authority shall appoint each new member or reappointed member to a four-year term.

(b) Notwithstanding the requirements of Subsection (3)(a), the appointing authority shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of board members are staggered so that approximately half of the board is appointed every two years.

(4) The Advisory Board on Children's Justice shall:

- (a) coordinate and support the statewide purpose of the program;
- (b) recommend statewide guidelines for the administration of the program;
- (c) recommend training and improvements in training;
- (d) review, evaluate, and make recommendations concerning state investigative, administrative, and judicial handling in child abuse cases;
- (e) recommend programs to improve the prompt and fair resolution of civil and criminal court proceedings; and

(f) recommend changes to state laws and procedures to provide comprehensive protection for children from abuse, child sexual abuse, neglect, and other crimes involving children where the child is a primary victim or a critical witness, such as in drug-related child endangerment cases.

(5) The Advisory Board on Children's Justice may not supersede the authority of contracting counties regarding operation of the centers, including the budget, costs, personnel, and management pursuant to Section 67-5b-104 and Title 51, Chapter 2a, Accounting Reports from Political Subdivisions, Interlocal Organizations, and Other Local Entities Act.

Section ~~{87}~~64. Section ~~{75-5-303}~~76-5-110 is amended to read:

~~{~~ ~~75-5-303. Procedure for court appointment of a guardian of an incapacitated person.~~

~~————— (1) An incapacitated person or any person interested in the incapacitated person's welfare may petition for a finding of incapacity and appointment of a guardian.~~

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~~—— (2) (a) Upon the filing of a petition, the court shall set a date for hearing on the issues of incapacity:~~

~~—— (b) Unless the allegedly incapacitated person has counsel of the person's own choice, the court shall appoint an attorney to represent the person in the proceeding the cost of which shall be paid by the person alleged to be incapacitated, unless the allegedly incapacitated person and the allegedly incapacitated person's parents are indigent:~~

~~—— (c) If the court determines that the petition is without merit, the attorney fees and court costs shall be paid by the person filing the petition.~~

~~—— (d) If the court appoints the petitioner or the petitioner's nominee as guardian of the incapacitated person, regardless of whether the nominee is specified in the moving petition or nominated during the proceedings, the petitioner shall be entitled to receive from the incapacitated person reasonable attorney fees and court costs incurred in bringing, prosecuting, or defending the petition.~~

~~—— (3) The legal representation of the incapacitated person by an attorney shall terminate upon the appointment of a guardian, unless:~~

~~—— (a) there are separate conservatorship proceedings still pending before the court subsequent to the appointment of a guardian;~~

~~—— (b) there is a timely filed appeal of the appointment of the guardian or the determination of incapacity; or~~

~~—— (c) upon an express finding of good cause, the court orders otherwise.~~

~~—— (4) The person alleged to be incapacitated may be examined by a physician or physician assistant appointed by the court who shall submit a report in writing to the court and may be interviewed by a visitor sent by the court. The visitor also may interview the person seeking appointment as guardian, visit the present place of abode of the person alleged to be incapacitated and the place it is proposed that the person will be detained or reside if the requested appointment is made, conduct other investigations or observations as directed by the court, and submit a report in writing to the court.~~

~~—— (5) (a) The person alleged to be incapacitated shall be present at the hearing in person and see or hear all evidence bearing upon the person's condition. If the person seeking the guardianship requests a waiver of presence of the person alleged to be incapacitated, the court shall order an investigation by a court visitor, the costs of which shall be paid by the person~~

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seeking the guardianship:

~~—— (b) The investigation by a court visitor is not required if there is clear and convincing evidence from a physician or physician assistant that the person alleged to be incapacitated has:~~

~~—— (i) fourth stage Alzheimer's Disease;~~

~~—— (ii) extended comatosis; or~~

~~—— (iii) (A) an intellectual disability; and~~

~~—— (B) an intelligence quotient score under 25.~~

~~—— (c) The person alleged to be incapacitated is entitled to be represented by counsel, to present evidence, to cross-examine witnesses, including the court-appointed physician or physician assistant and the visitor, and to trial by jury. The issue may be determined at a closed hearing without a jury if the person alleged to be incapacitated or the person's counsel so requests:~~

~~—— (d) Counsel for the person alleged to be incapacitated, as defined in Subsection 75-1-201(22), is not required if:~~

~~—— (i) the person is the biological or adopted child of the petitioner;~~

~~—— (ii) the value of the person's entire estate does not exceed \$20,000 as established by an affidavit of the petitioner in accordance with Section 75-3-1201;~~

~~—— (iii) the person appears in court with the petitioner;~~

~~—— (iv) the person is given the opportunity to communicate, to the extent possible, the person's acceptance of the appointment of petitioner;~~

~~—— (v) no attorney from the state court's list of attorneys who have volunteered to represent respondents in guardianship proceedings is able to provide counsel to the person within 60 days of the date of the appointment described in Subsection (2);~~

~~—— (vi) the court is satisfied that counsel is not necessary in order to protect the interests of the person; and~~

~~—— (vii) the court appoints a visitor under Subsection (4).~~

~~—— Section 88. Section 75-5-316 is amended to read:~~

~~—— **75-5-316. Expedited guardianship proceedings.**~~

~~—— (1) (a) With regard to persons who are residents of the Utah State Developmental Center, the expedited process provided by this section may be applied to obtain a limited guardianship:~~

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~~—— (b) For purposes of this section:~~

~~—— (i) "Limited guardianship" means a guardianship solely for the purpose of granting consent for medical care and for participation in approval of the ward's individualized program plan:~~

~~—— (ii) "Ward" means a resident of the Utah State Developmental Center who is the subject of guardianship proceedings under this section:~~

~~—— (2) Any person interested in the incapacitated person's welfare may file a petition for a finding of incapacity and appointment of a guardian. That person may seek the limited guardianship pro se, using the forms described in this section. Any fee for filing a petition for a limited guardianship shall be waived if the guardian is proceeding under this section:~~

~~—— (3) Upon filing a petition for limited guardianship under this section, the court shall set a date for hearing:~~

~~—— (4) The ward has the right to be present at the hearing and to see and hear all evidence relating to his condition:~~

~~—— (5) At that hearing the court shall review the affidavit of the superintendent of the Utah State Developmental Center, described in Subsection (11), and determine whether notice has been given to the appropriate persons described in Subsection (6):~~

~~—— (6) If the proposed guardian is not a parent or relative of the ward, personal notice shall be given to the ward's spouse, parents, and any adult children of the ward. Personal notice shall also be given to other persons as the court may direct:~~

~~—— (7) The court may, in its discretion, appoint a guardian ad litem to represent the ward in the hearing, and may request independent evaluation by a physician or physician assistant appointed by the court. The physician or physician assistant shall submit his findings to the court in writing:~~

~~—— (8) The court may grant the petition for a limited guardianship and sign the Order of Appointment if the court finds that:~~

~~—— (a) the appropriate parties have been given notice;~~

~~—— (b) the ward is incapacitated, based on the affidavit of the superintendent of the Utah State Developmental Center and any affidavit or testimony of persons entitled to receive notice or requested to present evidence under this section; and~~

~~—— (c) it is necessary and desirable to establish the guardianship.~~

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~~—— (9) Venue for these expedited guardianship proceedings shall be the same as that described in Section 75-5-302.~~

~~—— (10) A petition for a limited guardianship shall include the following information:~~

~~—— (a) the interest of the petitioner;~~

~~—— (b) the name, age, residence, and address of the ward;~~

~~—— (c) verification that the ward is a resident of the Utah State Developmental Center;~~

~~—— (d) the name and address of the nearest relative of the ward; and~~

~~—— (e) the reason for appointment of guardianship.~~

~~—— (11) The petitioner shall also provide the court with an affidavit of the superintendent of the Utah State Developmental Center that includes the following information:~~

~~—— (a) that the ward is a resident of the Utah State Developmental Center;~~

~~—— (b) the date the ward was originally admitted to the Utah State Developmental Center;~~

~~—— (c) the diagnosis of the ward, including a description of the ward's disabling condition, the level of the ward's intellectual disability, and any medical or physical conditions of the ward;~~

~~—— (d) that the Utah State Developmental Center is certified as an intermediate care facility for people with an intellectual disability;~~

~~—— (e) that because of that certification, the Utah State Developmental Center receives financial participation from the United States Government for its operation and maintenance costs; and~~

~~—— (f) that federal regulations under Title XIX require the ward to have a guardian appointed for the sole purpose of giving consent for medical and dental care and of participation in and approval of the ward's individual program plan.~~

~~—— (12) If the court finds that, under the requirements of this section the proposed limited guardian should be appointed, it shall enter an order establishing that limited guardianship in substantially the following form:~~

~~—— The court finds that:~~

~~—— (a) appointment of a limited guardianship for (named ward) is necessary and desirable as a means of providing continuing care and supervision and to ensure his welfare;~~

~~—— (b) the ward is incapacitated;~~

~~—— (c) (named guardian) is appointed as the limited guardian of (named ward); and~~

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- ~~—— (d) the guardianship is a limited guardianship solely for the purpose of:~~
- ~~—— (i) granting permission for medical and dental care on behalf of the ward; and~~
- ~~—— (ii) participation in the development and approval of the ward's individual program plan.~~
- ~~—— (13) Appointment of guardianship under this section places no additional responsibility or liability on the guardian with regard to the ward. The limited guardianship is solely for consent for medical care and approval of the ward's individualized program plan, and shall not be construed to increase or create liability or responsibility for the guardian.~~
- ~~—— Section 89. Section 75-5-317 is amended to read:~~
- ~~—— **75-5-317. Guardianship proceedings for minor becoming an incapacitated adult.**~~
- ~~—— (1) As used in this section:~~
- ~~—— (a) "Incapacitated" means the same as that term is defined in Section 75-1-201.~~
- ~~—— (b) "Joint legal decision-making" means parents or two individuals, regardless of whether they are married, sharing legal decision-making and no individual's rights or responsibilities being superior except with respect to specified decisions set forth by the court or the individuals in a final judgment or order.~~
- ~~—— (c) "Legal decision-making" means the legal right and responsibility to make all nonemergency legal decisions for a minor including those regarding education, health care, religious training, and personal care decisions.~~
- ~~—— (d) "Minor" means the same as that term is defined in Section 75-1-201.~~
- ~~—— (e) "Physician" means an individual:~~
- ~~—— (i) licensed as a physician under Title 58, Chapter 67, Utah Medical Practice Act; or~~
- ~~—— (ii) licensed as a physician under Title 58, Chapter 68, Utah Osteopathic Medical Practice Act.~~
- ~~—— (f) "Psychologist" means a person licensed under Title 58, Chapter 61, Psychologist Licensing Act, to engage in the practice of psychology as defined in Section 58-61-102.~~
- ~~—— (g) "Sole legal decision-making" means one parent or one individual having the legal right and responsibility to make major decisions for the minor child.~~
- ~~—— (2) (a) Notwithstanding the other provisions of this part, a person who may be a guardian of an incapacitated person under Section 75-5-301 may initiate guardianship proceedings pursuant to this Subsection (2) for a minor who is at least 17 years, six months of~~

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~~age and who is alleged to be incapacitated and request that a guardianship order take effect immediately on the day the minor turns 18 years of age.~~

~~—— (b) The petitioner shall provide with the petition a written report of an evaluation of the minor by a physician, physician assistant, or psychologist that meets the requirements of Subsection (2)(c). If the evaluation is conducted within six months after the date the petition is filed with the court, the petitioner may ask in the petition that the court accept this report in lieu of ordering any additional evaluation and the court may grant the request.~~

~~—— (c) A written report filed pursuant to this section by a physician, physician assistant, or psychologist acting within that person's scope of practice shall include the following information:~~

~~—— (i) a specific description of the physical, psychiatric, or psychological diagnosis of the person;~~

~~—— (ii) a comprehensive assessment listing any functional impairments of the alleged incapacitated person and an explanation of how and to what extent these functional impairments may prevent that person from receiving or evaluating information in making decisions or in communicating informed decisions, with or without assistance, regarding that person;~~

~~—— (iii) an analysis of the tasks of daily living the alleged incapacitated person is capable of performing independently or with assistance;~~

~~—— (iv) a list of the medications the alleged incapacitated person is receiving, the dosage of the medications, and a description of the effects each medication has on the person's behavior to the best of the declarant's knowledge;~~

~~—— (v) a prognosis for improvement in the alleged incapacitated person's condition and a recommendation for the most appropriate rehabilitation plan or care plan; and~~

~~—— (vi) other information the physician, physician assistant, or psychologist considers appropriate.~~

~~—— (3) (a) Notwithstanding the priorities in Section 75-5-311, if the petition for appointment of a guardian for the incapacitated person is filed pursuant to Subsection (2) or within two years after the day the incapacitated person turns 18 years of age, unless the court finds the appointment to be contrary to the incapacitated person's best interest:~~

~~—— (i) the court shall appoint as the incapacitated person's guardian any person who, by~~

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~~court order, had sole legal decision-making of the incapacitated person when the incapacitated person attained 17 years, six months of age; or~~

~~—— (ii) if two individuals had joint legal decision-making of the incapacitated person when the incapacitated person attained 17 years, six months of age, the court shall appoint both individuals as the incapacitated person's coguardians.~~

~~—— (b) If under Subsection (3)(a) the court finds the appointment of an individual described in Subsection (3)(a) is contrary to the incapacitated person's best interest or if the individual is unwilling to be appointed or serve as a guardian, the court may apply the priorities in Section 75-5-311 in appointing a guardian.~~

~~—— (4) The court may appoint more than one person as the incapacitated person's coguardians if the appointment is required by Subsection (3) or the court finds that the appointment is in the incapacitated person's best interest. If the court appoints coguardians, the coguardians shall share legal decision-making for the incapacitated person and neither coguardian's rights or responsibilities are superior except as otherwise ordered by the court.~~

~~—— Section 90. Section 75-9-109 is amended to read:~~

~~—— **75-9-109. When power of attorney is effective.**~~

~~—— (1) A power of attorney is effective when executed unless the principal provides in the power of attorney that it becomes effective at a future date or upon the occurrence of a future event or contingency.~~

~~—— (2) If a power of attorney becomes effective upon the occurrence of a future event or contingency, the principal, in the power of attorney, may authorize one or more persons to determine in a writing or other record that the event or contingency has occurred.~~

~~—— (3) If a power of attorney becomes effective upon the principal's incapacity and the principal has not authorized a person to determine whether the principal is incapacitated, or the person authorized is unable or unwilling to make the determination, the power of attorney becomes effective upon a determination in a writing or other record by:~~

~~—— (a) a physician or physician assistant that the principal is incapacitated within the meaning of Subsection 75-9-102(5)(a); or~~

~~—— (b) an attorney at law, a judge, or an appropriate governmental official that the principal is incapacitated within the meaning of Subsection 75-9-102(5)(b).~~

~~—— (4) A person authorized by the principal in the power of attorney to determine that the~~

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~~principal is incapacitated may act as the principal's personal representative pursuant to the Health Insurance Portability and Accountability Act, Sections 1171 through 1179 of the Social Security Act, 42 U.S.C. Sec. 1320d, and applicable regulations, to obtain access to the principal's health care information and communicate with the principal's health care provider.~~

~~Section 91. Section 76-5-110 is amended to read:~~

‡ **76-5-110. Abuse or neglect of a child with a disability.**

(1) As used in this section:

(a) "Abuse" means:

(i) inflicting physical injury, as that term is defined in Section 76-5-109;

(ii) having the care or custody of a child with a disability, causing or permitting another to inflict physical injury, as that term is defined in Section 76-5-109; or

(iii) unreasonable confinement.

(b) "Caretaker" means:

(i) any parent, legal guardian, or other person having under that person's care and custody a child with a disability; or

(ii) any person, corporation, or public institution that has assumed by contract or court order the responsibility to provide food, shelter, clothing, medical, and other necessities to a child with a disability.

(c) "Child with a disability" means any person under 18 years of age who is impaired because of mental illness, mental deficiency, physical illness or disability, or other cause, to the extent that the person is unable to care for the person's own personal safety or to provide necessities such as food, shelter, clothing, and medical care.

(d) "Neglect" means failure by a caretaker to provide care, nutrition, clothing, shelter, supervision, or medical care.

(2) Any caretaker who intentionally, knowingly, or recklessly abuses or neglects a child with a disability is guilty of a third degree felony.

(3) (a) A parent or legal guardian who provides a child with treatment by spiritual means alone through prayer, in lieu of medical treatment, in accordance with the tenets and practices of an established church or religious denomination of which the parent or legal guardian is a member or adherent shall not, for that reason alone, be considered to be in violation under this section.

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(b) Subject to Subsection 78A-6-117(2)(n)(iii), the exception under Subsection (3)(a) does not preclude a court from ordering medical services from a physician or physician assistant licensed to engage in the practice of medicine to be provided to the child where there is substantial risk of harm to the child's health or welfare if the treatment is not provided.

(c) A caretaker of a child with a disability does not violate this section by selecting a treatment option for a medical condition of a child with a disability, if the treatment option is one that a reasonable caretaker would believe to be in the best interest of the child with a disability.

Section ~~{92}~~65. Section ~~{76-5-111}~~76-5-406 is amended to read:

~~{~~ ~~76-5-111. Abuse, neglect, or exploitation of a vulnerable adult -- Penalties.~~

~~—— (1) As used in this section:~~

~~—— (a) "Abandonment" means a knowing or intentional action or inaction, including desertion, by a person or entity acting as a caretaker for a vulnerable adult that leaves the vulnerable adult without the means or ability to obtain necessary food, clothing, shelter, or medical or other health care.~~

~~—— (b) "Abuse" means:~~

~~—— (i) attempting to cause harm, intentionally or knowingly causing harm, or intentionally or knowingly placing another in fear of imminent harm;~~

~~—— (ii) causing physical injury by knowing or intentional acts or omissions;~~

~~—— (iii) unreasonable or inappropriate use of physical restraint, medication, or isolation that causes or is likely to cause harm to a vulnerable adult that is in conflict with a physician's or physician assistant's orders or used as an unauthorized substitute for treatment, unless that conduct furthers the health and safety of the adult; or~~

~~—— (iv) deprivation of life-sustaining treatment, except:~~

~~—— (A) as provided in Title 75, Chapter 2a, Advance Health Care Directive Act; or~~

~~—— (B) when informed consent, as defined in this section, has been obtained.~~

~~—— (c) "Business relationship" means a relationship between two or more individuals or entities where there exists an oral or written agreement for the exchange of goods or services.~~

~~—— (d) (i) "Caretaker" means any person, entity, corporation, or public institution that assumes the responsibility to provide a vulnerable adult with care, food, shelter, clothing, supervision, medical or other health care, or other necessities.~~

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~~—— (ii) "Caretaker" includes a relative by blood or marriage, a household member, a person who is employed or who provides volunteer work, or a person who contracts or is under court order to provide care.~~

~~—— (e) "Deception" means:~~

~~—— (i) a misrepresentation or concealment:~~

~~—— (A) of a material fact relating to services rendered, disposition of property, or use of property intended to benefit a vulnerable adult;~~

~~—— (B) of the terms of a contract or agreement entered into with a vulnerable adult; or~~

~~—— (C) relating to the existing or preexisting condition of any property involved in a contract or agreement entered into with a vulnerable adult; or~~

~~—— (ii) the use or employment of any misrepresentation, false pretense, or false promise in order to induce, encourage, or solicit a vulnerable adult to enter into a contract or agreement.~~

~~—— (f) "Elder adult" means a person 65 years of age or older.~~

~~—— (g) "Endeavor" means to attempt or try.~~

~~—— (h) "Exploitation" means an offense described in Subsection (4) or Section 76-5b-202.~~

~~—— (i) "Harm" means pain, mental anguish, emotional distress, hurt, physical or psychological damage, physical injury, suffering, or distress inflicted knowingly or intentionally.~~

~~—— (j) "Informed consent" means:~~

~~—— (i) a written expression by the person or authorized by the person, stating that the person fully understands the potential risks and benefits of the withdrawal of food, water, medication, medical services, shelter, cooling, heating, or other services necessary to maintain minimum physical or mental health, and that the person desires that the services be withdrawn. A written expression is valid only if the person is of sound mind when the consent is given, and the consent is witnessed by at least two individuals who do not benefit from the withdrawal of services; or~~

~~—— (ii) consent to withdraw food, water, medication, medical services, shelter, cooling, heating, or other services necessary to maintain minimum physical or mental health, as permitted by court order.~~

~~—— (k) "Intimidation" means communication conveyed through verbal or nonverbal conduct which threatens deprivation of money, food, clothing, medicine, shelter, social~~

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~~interaction, supervision, health care, or companionship, or which threatens isolation or harm.~~

~~—— (l) (i) "Isolation" means knowingly or intentionally preventing a vulnerable adult from having contact with another person by:~~

~~—— (A) preventing the vulnerable adult from receiving visitors, mail, or telephone calls, contrary to the express wishes of the vulnerable adult, including communicating to a visitor that the vulnerable adult is not present or does not want to meet with or talk to the visitor, knowing that communication to be false;~~

~~—— (B) physically restraining the vulnerable adult in order to prevent the vulnerable adult from meeting with a visitor; or~~

~~—— (C) making false or misleading statements to the vulnerable adult in order to induce the vulnerable adult to refuse to receive communication from visitors or other family members.~~

~~—— (ii) The term "isolation" does not include an act intended to protect the physical or mental welfare of the vulnerable adult or an act performed pursuant to the treatment plan or instructions of a physician, physician assistant, or other professional advisor of the vulnerable adult.~~

~~—— (m) "Lacks capacity to consent" means an impairment by reason of mental illness, developmental disability, organic brain disorder, physical illness or disability, chronic use of drugs, chronic intoxication, short-term memory loss, or other cause to the extent that a vulnerable adult lacks sufficient understanding of the nature or consequences of decisions concerning the adult's person or property.~~

~~—— (n) "Neglect" means:~~

~~—— (i) failure of a caretaker to provide nutrition, clothing, shelter, supervision, personal care, or dental or other health care, or failure to provide protection from health and safety hazards or maltreatment;~~

~~—— (ii) failure of a caretaker to provide care to a vulnerable adult in a timely manner and with the degree of care that a reasonable person in a like position would exercise;~~

~~—— (iii) a pattern of conduct by a caretaker, without the vulnerable adult's informed consent, resulting in deprivation of food, water, medication, health care, shelter, cooling, heating, or other services necessary to maintain the vulnerable adult's well being;~~

~~—— (iv) intentional failure by a caretaker to carry out a prescribed treatment plan that results or could result in physical injury or physical harm; or~~

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~~—— (v) abandonment by a caretaker.~~

~~—— (o) "Physical injury" includes damage to any bodily tissue caused by nontherapeutic conduct, to the extent that the tissue must undergo a healing process in order to be restored to a sound and healthy condition, or damage to any bodily tissue to the extent that the tissue cannot be restored to a sound and healthy condition. "Physical injury" includes skin bruising, a dislocation, physical pain, illness, impairment of physical function, a pressure sore, bleeding, malnutrition, dehydration, a burn, a bone fracture, a subdural hematoma, soft tissue swelling, injury to any internal organ, or any other physical condition that imperils the health or welfare of the vulnerable adult and is not a serious physical injury as defined in this section.~~

~~—— (p) "Position of trust and confidence" means the position of a person who:~~

~~—— (i) is a parent, spouse, adult child, or other relative by blood or marriage of a vulnerable adult;~~

~~—— (ii) is a joint tenant or tenant in common with a vulnerable adult;~~

~~—— (iii) has a legal or fiduciary relationship with a vulnerable adult, including a court-appointed or voluntary guardian, trustee, attorney, or conservator; or~~

~~—— (iv) is a caretaker of a vulnerable adult.~~

~~—— (q) "Serious physical injury" means any physical injury or set of physical injuries that:~~

~~—— (i) seriously impairs a vulnerable adult's health;~~

~~—— (ii) was caused by use of a dangerous weapon as defined in Section 76-1-601;~~

~~—— (iii) involves physical torture or causes serious emotional harm to a vulnerable adult; or~~

~~—— (iv) creates a reasonable risk of death.~~

~~—— (r) "Undue influence" occurs when a person uses the person's role, relationship, or power to exploit, or knowingly assist or cause another to exploit, the trust, dependency, or fear of a vulnerable adult, or uses the person's role, relationship, or power to gain control deceptively over the decision making of the vulnerable adult.~~

~~—— (s) "Vulnerable adult" means an elder adult, or an adult 18 years of age or older who has a mental or physical impairment which substantially affects that person's ability to:~~

~~—— (i) provide personal protection;~~

~~—— (ii) provide necessities such as food, shelter, clothing, or medical or other health care;~~

~~—— (iii) obtain services necessary for health, safety, or welfare;~~

~~—— (iv) carry out the activities of daily living;~~

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~~—— (v) manage the adult's own resources; or~~

~~—— (vi) comprehend the nature and consequences of remaining in a situation of abuse, neglect, or exploitation.~~

~~—— (2) Under any circumstances likely to produce death or serious physical injury, any person, including a caretaker, who causes a vulnerable adult to suffer serious physical injury or, having the care or custody of a vulnerable adult, causes or permits that adult's person or health to be injured, or causes or permits a vulnerable adult to be placed in a situation where the adult's person or health is endangered, is guilty of the offense of aggravated abuse of a vulnerable adult as follows:~~

~~—— (a) if done intentionally or knowingly, the offense is a second degree felony;~~

~~—— (b) if done recklessly, the offense is third degree felony; and~~

~~—— (c) if done with criminal negligence, the offense is a class A misdemeanor.~~

~~—— (3) Under circumstances other than those likely to produce death or serious physical injury any person, including a caretaker, who causes a vulnerable adult to suffer harm, abuse, or neglect, or, having the care or custody of a vulnerable adult, causes or permits that adult's person or health to be injured, abused, or neglected, or causes or permits a vulnerable adult to be placed in a situation where the adult's person or health is endangered, is guilty of the offense of abuse of a vulnerable adult as follows:~~

~~—— (a) if done intentionally or knowingly, the offense is a class A misdemeanor;~~

~~—— (b) if done recklessly, the offense is a class B misdemeanor; and~~

~~—— (c) if done with criminal negligence, the offense is a class C misdemeanor.~~

~~—— (4) (a) A person commits the offense of exploitation of a vulnerable adult when the person:~~

~~—— (i) is in a position of trust and confidence, or has a business relationship, with the vulnerable adult or has undue influence over the vulnerable adult and knowingly, by deception or intimidation, obtains or uses, or endeavors to obtain or use, the vulnerable adult's funds, credit, assets, or other property with the intent to temporarily or permanently deprive the vulnerable adult of the use, benefit, or possession of the adult's property, for the benefit of someone other than the vulnerable adult;~~

~~—— (ii) knows or should know that the vulnerable adult lacks the capacity to consent, and obtains or uses, or endeavors to obtain or use, or assists another in obtaining or using or~~

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~~endeavoring to obtain or use, the vulnerable adult's funds, assets, or property with the intent to temporarily or permanently deprive the vulnerable adult of the use, benefit, or possession of his property for the benefit of someone other than the vulnerable adult;~~

~~—— (iii) unjustly or improperly uses or manages the resources of a vulnerable adult for the profit or advantage of someone other than the vulnerable adult;~~

~~—— (iv) unjustly or improperly uses a vulnerable adult's power of attorney or guardianship for the profit or advantage of someone other than the vulnerable adult; or~~

~~—— (v) involves a vulnerable adult who lacks the capacity to consent in the facilitation or furtherance of any criminal activity.~~

~~—— (b) A person is guilty of the offense of exploitation of a vulnerable adult as follows:~~

~~—— (i) if done intentionally or knowingly and the aggregate value of the resources used or the profit made is or exceeds \$5,000, the offense is a second-degree felony;~~

~~—— (ii) if done intentionally or knowingly and the aggregate value of the resources used or the profit made is less than \$5,000 or cannot be determined, the offense is a third-degree felony;~~

~~—— (iii) if done recklessly, the offense is a class A misdemeanor; or~~

~~—— (iv) if done with criminal negligence, the offense is a class B misdemeanor.~~

~~—— (5) It does not constitute a defense to a prosecution for any violation of this section that the accused did not know the age of the victim.~~

~~—— (6) An adult is not considered abused, neglected, or a vulnerable adult for the reason that the adult has chosen to rely solely upon religious, nonmedical forms of healing in lieu of medical care.~~

~~—— Section 93. Section 76-5-406 is amended to read:~~

‡ **76-5-406. Sexual offenses against the victim without consent of victim --
Circumstances.**

An act of sexual intercourse, rape, attempted rape, rape of a child, attempted rape of a child, object rape, attempted object rape, object rape of a child, attempted object rape of a child, sodomy, attempted sodomy, forcible sodomy, attempted forcible sodomy, sodomy on a child, attempted sodomy on a child, forcible sexual abuse, attempted forcible sexual abuse, sexual abuse of a child, attempted sexual abuse of a child, aggravated sexual abuse of a child, attempted aggravated sexual abuse of a child, or simple sexual abuse is without consent of the

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victim under any of the following circumstances:

- (1) the victim expresses lack of consent through words or conduct;
- (2) the actor overcomes the victim through the actual application of physical force or violence;
- (3) the actor is able to overcome the victim through concealment or by the element of surprise;
- (4) (a) (i) the actor coerces the victim to submit by threatening to retaliate in the immediate future against the victim or any other person, and the victim perceives at the time that the actor has the ability to execute this threat; or
(ii) the actor coerces the victim to submit by threatening to retaliate in the future against the victim or any other person, and the victim believes at the time that the actor has the ability to execute this threat;
- (b) as used in this Subsection (4), "to retaliate" includes threats of physical force, kidnapping, or extortion;
- (5) the actor knows the victim is unconscious, unaware that the act is occurring, or physically unable to resist;
- (6) the actor knows or reasonably should know that the victim has a mental disease or defect, which renders the victim unable to:
 - (a) appraise the nature of the act;
 - (b) resist the act;
 - (c) understand the possible consequences to the victim's health or safety; or
 - (d) appraise the nature of the relationship between the actor and the victim.
- (7) the actor knows that the victim submits or participates because the victim erroneously believes that the actor is the victim's spouse;
- (8) the actor intentionally impaired the power of the victim to appraise or control his or her conduct by administering any substance without the victim's knowledge;
- (9) the victim is younger than 14 years of age;
- (10) the victim is younger than 18 years of age and at the time of the offense the actor was the victim's parent, stepparent, adoptive parent, or legal guardian or occupied a position of special trust in relation to the victim as defined in Section 76-5-404.1;
- (11) the victim is 14 years of age or older, but younger than 18 years of age, and the

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actor is more than three years older than the victim and entices or coerces the victim to submit or participate, under circumstances not amounting to the force or threat required under Subsection (2) or (4); or

(12) the actor is a health professional or religious counselor, as those terms are defined in this Subsection (12), the act is committed under the guise of providing professional diagnosis, counseling, or treatment, and at the time of the act the victim reasonably believed that the act was for medically or professionally appropriate diagnosis, counseling, or treatment to the extent that resistance by the victim could not reasonably be expected to have been manifested; for purposes of this Subsection (12):

(a) "health professional" means an individual who is licensed or who holds himself or herself out to be licensed, or who otherwise provides professional physical or mental health services, diagnosis, treatment, or counseling including, but not limited to, a physician, osteopathic physician, physician assistant, nurse, dentist, physical therapist, chiropractor, mental health therapist, social service worker, clinical social worker, certified social worker, marriage and family therapist, professional counselor, psychiatrist, psychologist, psychiatric mental health nurse specialist, or substance abuse counselor; and

(b) "religious counselor" means a minister, priest, rabbi, bishop, or other recognized member of the clergy.

Section ~~{94}~~66. Section ~~{76-10-1506}~~77-23-213 is amended to read:

~~{~~~~76-10-1506. Threatening breach of peace -- Disorderly conduct -- Foul language -- Refusing requests -- Use of controlled substance, liquor, or tobacco -- Ejection of passenger.~~

~~—— (1) A person is guilty of a class C misdemeanor, if the person:~~

~~—— (a) threatens a breach of the peace, is disorderly, or uses obscene, profane, or vulgar language on a bus;~~

~~—— (b) is in or upon any bus while unlawfully under the influence of a controlled substance as defined in Section 58-37-2;~~

~~—— (c) fails to obey a reasonable request or order of a bus driver, bus company representative, a nondrinking designee other than the driver as provided in Subsection 32B-4-415(4)(c)(ii), or other person in charge or control of a bus or terminal;~~

~~—— (d) ingests any controlled substance, unless prescribed by a physician, physician~~

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~~assistant, or medical facility, in or upon any bus, or drinks intoxicating liquor in or upon any bus, except a chartered bus as defined and provided in Sections 32B-1-102 and 41-6a-526; or~~

~~—— (c) smokes tobacco or other products in or upon any bus, except a chartered bus.~~

~~—— (2) If any person violates Subsection (1), the driver of the bus or person in charge thereof may stop at the place where the offense is committed or at the next regular or convenient stopping place and remove such person, using only such force as may be necessary to accomplish the removal, and the driver or person in charge may request the assistance of passengers to assist in the removal.~~

~~—— (3) The driver or person in charge may cause the person so removed to be detained and delivered to the proper authorities.~~

~~—— Section 95. Section 77-23-213 is amended to read:~~

‡ **77-23-213. Blood testing.**

(1) As used in this section:

(a) "Law enforcement purpose" means duties that consist primarily of the prevention and detection of crime and the enforcement of criminal statutes or ordinances of this state or any of this state's political subdivisions.

(b) "Peace officer" means those persons specified in Title 53, Chapter 13, Peace Officer Classification.

(2) A peace officer may require an individual to submit to a blood test for a law enforcement purpose only if:

(a) the individual or legal representative of the individual with authority to give consent gives oral or written consent to the blood test;

(b) the peace officer obtains a warrant to administer the blood test; or

(c) a judicially recognized exception to obtaining a warrant exists as established by the Utah Court of Appeals, Utah Supreme Court, Court of Appeals of the Tenth Circuit, or the Supreme Court of the United States.

(3) (a) Only the following, acting at the request of a peace officer, may draw blood to determine the blood's alcohol or drug content:

(i) a physician;

(ii) a physician assistant;

~~[(ii)]~~ (iii) a registered nurse;

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~~[(iii)]~~ (iv) a licensed practical nurse;

~~[(iv)]~~ (v) a paramedic;

~~[(v)]~~ (vi) as provided in Subsection (3)(b), emergency medical service personnel other than a paramedic; or

~~[(vi)]~~ (vii) a person with a valid permit issued by the Department of Health under Section 26-1-30.

(b) The Department of Health may designate by rule, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, which emergency medical service personnel, as defined in Section 26-8a-102, are authorized to draw blood under Subsection ~~[(3)(a)(v)]~~ (3)(a)(vi), based on the type of license under Section 26-8a-302.

(c) The following are immune from civil or criminal liability arising from drawing a blood sample from a person who a peace officer requests, for law enforcement purposes, if the sample is drawn in accordance with standard medical practice:

(i) a person authorized to draw blood under Subsection (3)(a); and

(ii) if the blood is drawn at a hospital or other medical facility, the medical facility.

Section ~~{96}~~ 67. Section ~~{78A-6-117}~~ 78B-1-137 is amended to read:

~~{~~ **78A-6-117. Adjudication of jurisdiction of juvenile court -- Disposition of cases -- Enumeration of possible court orders -- Considerations of court.**

~~_____ (1) (a) When a minor is found to come within Section 78A-6-103, the court shall so adjudicate. The court shall make a finding of the facts upon which it bases its jurisdiction over the minor. However, in cases within Subsection 78A-6-103(1), findings of fact are not necessary.~~

~~_____ (b) If the court adjudicates a minor for a crime of violence or an offense in violation of Title 76, Chapter 10, Part 5, Weapons, it shall order that notice of the adjudication be provided to the school superintendent of the district in which the minor resides or attends school. Notice shall be made to the district superintendent within three days of the adjudication and shall include:~~

~~_____ (i) the specific offenses for which the minor was adjudicated; and~~

~~_____ (ii) if available, if the victim:~~

~~_____ (A) resides in the same school district as the minor; or~~

~~_____ (B) attends the same school as the minor.~~

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~~—— (c) An adjudicated minor shall undergo a risk screening or, if indicated, a validated risk and needs assessment. Results of the screening or assessment shall be used to inform disposition decisions and case planning. Assessment results, if available, may not be shared with the court before adjudication.~~

~~—— (2) Upon adjudication the court may make the following dispositions by court order:~~

~~—— (a) (i) the court may place the minor on probation or under protective supervision in the minor's own home and upon conditions determined by the court, including community or compensatory service;~~

~~—— (ii) a condition ordered by the court under Subsection (2)(a)(i):~~

~~—— (A) shall be individualized and address a specific risk or need;~~

~~—— (B) shall be based on information provided to the court, including the results of a validated risk and needs assessment conducted under Subsection (1)(c); and~~

~~—— (C) if the court orders treatment, be based on a validated risk and needs assessment conducted under Subsection (1)(c);~~

~~—— (iii) a court may not issue a standard order that contains control-oriented conditions;~~

~~—— (iv) prohibitions on weapon possession, where appropriate, shall be specific to the minor and not the minor's family;~~

~~—— (v) if the court orders probation, the court may direct that notice of the court's order be provided to designated persons in the local law enforcement agency and the school or transferee school, if applicable, that the minor attends. The designated persons may receive the information for purposes of the minor's supervision and student safety; and~~

~~—— (vi) an employee of the local law enforcement agency and the school that the minor attends who discloses the court's order of probation is not:~~

~~—— (A) civilly liable except when the disclosure constitutes fraud or willful misconduct as provided in Section 63G-7-202; and~~

~~—— (B) civilly or criminally liable except when the disclosure constitutes a knowing violation of Section 63G-2-801.~~

~~—— (b) The court may place the minor in the legal custody of a relative or other suitable person, with or without probation or other court-specified child welfare services, but the juvenile court may not assume the function of developing foster home services.~~

~~—— (c) (i) The court shall only vest legal custody of the minor in the Division of Juvenile~~

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~~Justice Services and order the Division of Juvenile Justice Services to provide dispositional recommendations and services if:~~

~~—— (A) nonresidential treatment options have been exhausted or nonresidential treatment options are not appropriate; and~~

~~—— (B) the minor is adjudicated under this section for a felony offense, a misdemeanor when the minor has five prior misdemeanors or felony adjudications arising from separate criminal episodes, or a misdemeanor involving the use of a dangerous weapon as defined in Section 76-1-601.~~

~~—— (ii) The court may not vest legal custody of a minor in the Division of Juvenile Justice Services for:~~

~~—— (A) contempt of court except to the extent permitted under Section 78A-6-1101;~~

~~—— (B) a violation of probation;~~

~~—— (C) failure to pay a fine, fee, restitution, or other financial obligation;~~

~~—— (D) unfinished compensatory or community service hours;~~

~~—— (E) an infraction; or~~

~~—— (F) a status offense.~~

~~—— (iii) (A) A minor who is 18 years old or older, but younger than 21 years old, may petition the court to express the minor's desire to be removed from the jurisdiction of the juvenile court and from the custody of the Division of Child and Family Services if the minor is in the division's custody on grounds of abuse, neglect, or dependency.~~

~~—— (B) If the minor's parent's rights have not been terminated in accordance with Part 5, Termination of Parental Rights Act, the minor's petition shall contain a statement from the minor's parent or guardian agreeing that the minor should be removed from the custody of the Division of Child and Family Services.~~

~~—— (C) The minor and the minor's parent or guardian shall sign the petition.~~

~~—— (D) The court shall review the petition within 14 days.~~

~~—— (E) The court shall remove the minor from the custody of the Division of Child and Family Services if the minor and the minor's parent or guardian have met the requirements described in Subsections (2)(c)(iii)(B) and (C) and if the court finds, based on input from the Division of Child and Family Services, the minor's guardian ad litem, and the Office of the Attorney General, that the minor does not pose an imminent threat to self or others.~~

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~~—— (F) A minor removed from custody under Subsection (2)(c)(iii)(E) may, within 90 days of the date of removal, petition the court to re-enter custody of the Division of Child and Family Services.~~

~~—— (G) Upon receiving a petition under Subsection (2)(c)(iii)(F), the court shall order the Division of Child and Family Services to take custody of the minor based on the findings the court entered when the court originally vested custody in the Division of Child and Family Services.~~

~~—— (d) (i) The court shall only commit a minor to the Division of Juvenile Justice Services for secure confinement if the court finds that the minor poses a risk of harm to others and is adjudicated under this section for:~~

~~—— (A) a felony offense;~~

~~—— (B) a misdemeanor if the minor has five prior misdemeanor or felony adjudications arising from separate criminal episodes; or~~

~~—— (C) a misdemeanor involving use of a dangerous weapon as defined in Section 76-1-601.~~

~~—— (ii) A minor under the jurisdiction of the court solely on the ground of abuse, neglect, or dependency under Subsection 78A-6-103(1)(b) may not be committed to the Division of Juvenile Justice Services.~~

~~—— (iii) The court may not commit a minor to the Division of Juvenile Justice Services for secure confinement for:~~

~~—— (A) contempt of court;~~

~~—— (B) a violation of probation;~~

~~—— (C) failure to pay a fine, fee, restitution, or other financial obligation;~~

~~—— (D) unfinished compensatory or community service hours;~~

~~—— (E) an infraction; or~~

~~—— (F) a status offense.~~

~~—— (e) The court may order nonresidential, diagnostic assessment, including substance use disorder, mental health, psychological, or sexual behavior risk assessment.~~

~~—— (f) (i) The court may commit a minor to a place of detention or an alternative to detention for a period not to exceed 30 cumulative days per adjudication subject to the court retaining continuing jurisdiction over the minor. This commitment may not be suspended upon~~

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~~conditions ordered by the court.~~

~~—— (ii) This Subsection (2)(f) applies only to a minor adjudicated for:~~

~~—— (A) an act which if committed by an adult would be a criminal offense; or~~

~~—— (B) contempt of court under Section 78A-6-1101.~~

~~—— (iii) The court may not commit a minor to a place of detention for:~~

~~—— (A) contempt of court except to the extent allowed under Section 78A-6-1101;~~

~~—— (B) a violation of probation;~~

~~—— (C) failure to pay a fine, fee, restitution, or other financial obligation;~~

~~—— (D) unfinished compensatory or community service hours;~~

~~—— (E) an infraction; or~~

~~—— (F) a status offense.~~

~~—— (iv) (A) Time spent in detention pre-adjudication shall be credited toward the 30 cumulative days eligible as a disposition under Subsection (2)(f)(i). If the minor spent more than 30 days in a place of detention before disposition, the court may not commit a minor to detention under this section.~~

~~—— (B) Notwithstanding Subsection (2)(f)(iv)(A), the court may commit a minor for a maximum of seven days while a minor is awaiting placement under Subsection (2)(c)(i). Only the seven days under this Subsection (2)(f)(iv)(B) may be combined with a nonsecure placement.~~

~~—— (v) Notwithstanding Subsection (2)(t), no more than seven days of detention may be ordered in combination with an order under Subsection (2)(c)(i).~~

~~—— (g) The court may vest legal custody of an abused, neglected, or dependent minor in the Division of Child and Family Services or any other appropriate person in accordance with the requirements and procedures of Title 78A, Chapter 6, Part 3, Abuse, Neglect, and Dependency Proceedings.~~

~~—— (h) (i) The court may order a minor to repair, replace, or otherwise make restitution for material loss caused by the minor's wrongful act or for conduct for which the minor agrees to make restitution.~~

~~—— (ii) A victim has the meaning defined under Subsection 77-38a-102(14). A victim of an offense that involves as an element a scheme, a conspiracy, or a pattern of criminal activity, includes any person directly harmed by the minor's delinquency conduct in the course of the~~

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~~scheme, conspiracy, or pattern.~~

~~—— (iii) If the victim and the minor agree to participate, the court may refer the case to a restorative justice program such as victim offender mediation to address how loss resulting from the adjudicated act may be addressed.~~

~~—— (iv) For the purpose of determining whether and how much restitution is appropriate, the court shall consider the following:~~

~~—— (A) restitution shall only be ordered for the victim's material loss;~~

~~—— (B) restitution may not be ordered if the court finds that the minor is unable to pay or acquire the means to pay; and~~

~~—— (C) any amount paid by the minor to the victim in civil penalty shall be credited against restitution owed.~~

~~—— (v) Any amount paid to the victim in restitution shall be credited against liability in a civil suit.~~

~~—— (vi) The court may also require a minor to reimburse an individual, entity, or governmental agency who offered and paid a reward to a person or persons for providing information resulting in a court adjudication that the minor is within the jurisdiction of the juvenile court due to the commission of a criminal offense.~~

~~—— (vii) If a minor is returned to this state under the Interstate Compact on Juveniles, the court may order the minor to make restitution for costs expended by any governmental entity for the return.~~

~~—— (viii) The prosecutor shall submit a request for restitution to the court at the time of disposition, if feasible, otherwise within three months after disposition.~~

~~—— (ix) A financial disposition ordered shall prioritize the payment of restitution.~~

~~—— (i) The court may issue orders necessary for the collection of restitution and fines ordered by the court, including garnishments, wage withholdings, and executions, except for an order that changes the custody of the minor, including detention or other secure or nonsecure residential placements.~~

~~—— (j) (i) The court may through its probation department encourage the development of nonresidential employment or work programs to enable minors to fulfill their obligations under Subsection (2)(h) and for other purposes considered desirable by the court.~~

~~—— (ii) Consistent with the order of the court, the probation officer may permit a minor~~

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~~found to be within the jurisdiction of the court to participate in a program of work restitution or compensatory service in lieu of paying part or all of the fine imposed by the court.~~

~~—— (iii) The court may order the minor to:~~

~~—— (A) pay a fine, fee, restitution, or other cost; or~~

~~—— (B) complete service hours.~~

~~—— (iv) If the court orders a minor to pay a fine, fee, restitution, or other cost, or to complete service hours, those dispositions shall be considered collectively to ensure that the order is reasonable and prioritizes restitution:~~

~~—— (v) If the court orders a minor to pay a fine, fee, or other cost, or complete service hours, the cumulative order shall be limited per criminal episode as follows:~~

~~—— (A) for children under age 16 at adjudication, the court may impose up to \$180 or up to 24 hours of service; and~~

~~—— (B) for minors 16 and older at adjudication, the court may impose up to \$270 or up to 36 hours of service.~~

~~—— (vi) The cumulative order under Subsection (2)(j)(v) does not include restitution.~~

~~—— (vii) If the court converts a fine, fee, or restitution amount to service hours, the rate of conversion shall be no less than the minimum wage.~~

~~—— (k) (i) In violations of traffic laws within the court's jurisdiction, when the court finds that as part of the commission of the violation the minor was in actual physical control of a motor vehicle, the court may, in addition to any other disposition authorized by this section:~~

~~—— (A) restrain the minor from driving for periods of time the court considers necessary; and~~

~~—— (B) take possession of the minor's driver license.~~

~~—— (ii) The court may enter any other eligible disposition under Subsection (2)(k)(i) except for a disposition under Subsection (2)(c), (d), or (f). However, the suspension of driving privileges for an offense under Section 78A-6-606 is governed only by Section 78A-6-606.~~

~~—— (l) (i) The court may order a minor to complete community or compensatory service hours in accordance with Subsections (2)(j)(iv) and (v).~~

~~—— (ii) When community service is ordered, the presumptive service order shall include between five and 10 hours of service.~~

~~—— (iii) Satisfactory completion of an approved substance use disorder prevention or~~

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~~treatment program or other court-ordered condition may be credited by the court as compensatory service hours:~~

~~—— (iv) When a minor is found within the jurisdiction of the juvenile court under Section 78A-6-103 because of a violation of Section 76-6-106 or 76-6-206 using graffiti, the court may order the minor to clean up graffiti created by the minor or any other person at a time and place within the jurisdiction of the court. Compensatory service ordered under this section may be performed in the presence and under the direct supervision of the minor's parent or legal guardian. The parent or legal guardian shall report completion of the order to the court. The court may also require the minor to perform other alternative forms of restitution or repair to the damaged property pursuant to Subsection (2)(h):~~

~~—— (m) (i) Subject to Subsection (2)(m)(iii), the court may order that a minor:~~

~~—— (A) be examined or treated by a physician, surgeon, physician assistant, psychiatrist, or psychologist, or~~

~~—— (B) receive other special care.~~

~~—— (ii) For purposes of receiving the examination, treatment, or care described in Subsection (2)(m)(i), the court may place the minor in a hospital or other suitable facility that is not a secure facility or secure detention:~~

~~—— (iii) In determining whether to order the examination, treatment, or care described in Subsection (2)(m)(i), the court shall consider:~~

~~—— (A) the desires of the minor;~~

~~—— (B) if the minor is under the age of 18, the desires of the parents or guardian of the minor; and~~

~~—— (C) whether the potential benefits of the examination, treatment, or care outweigh the potential risks and side-effects, including behavioral disturbances, suicidal ideation, brain function impairment, or emotional or physical harm resulting from the compulsory nature of the examination, treatment, or care.~~

~~—— (iv) The Division of Child and Family Services shall take reasonable measures to notify a parent or guardian of any non-emergency health treatment or care scheduled for a child, shall include the parent or guardian as fully as possible in making health care decisions for the child, and shall defer to the parent's or guardian's reasonable and informed decisions regarding the child's health care to the extent that the child's health and well-being are not~~

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~~unreasonably compromised by the parent's or guardian's decision:~~

~~—— (v) The Division of Child and Family Services shall notify the parent or guardian of a child within five business days after a child in the custody of the Division of Child and Family Services receives emergency health care or treatment:~~

~~—— (vi) The Division of Child and Family Services shall use the least restrictive means to accomplish a compelling interest in the care and treatment of a child described in this Subsection (2)(m):~~

~~—— (n) (i) The court may appoint a guardian for the minor if it appears necessary in the interest of the minor, and may appoint as guardian a public or private institution or agency, but not a nonsecure residential placement provider, in which legal custody of the minor is vested:~~

~~—— (ii) In placing a minor under the guardianship or legal custody of an individual or of a private agency or institution, the court shall give primary consideration to the welfare of the minor. When practicable, the court may take into consideration the religious preferences of the minor and of a child's parents:~~

~~—— (o) (i) In support of a decree under Section 78A-6-103, the court may order reasonable conditions to be complied with by a minor's parents or guardian, a minor's custodian, or any other person who has been made a party to the proceedings. Conditions may include:~~

~~—— (A) parent-time by the parents or one parent;~~

~~—— (B) restrictions on the minor's associates;~~

~~—— (C) restrictions on the minor's occupation and other activities; and~~

~~—— (D) requirements to be observed by the parents or custodian:~~

~~—— (ii) A minor whose parents or guardians successfully complete a family or other counseling program may be credited by the court for detention, confinement, or probation time:~~

~~—— (p) The court may order the child to be committed to the physical custody of a local mental health authority, in accordance with the procedures and requirements of Title 62A, Chapter 15, Part 7, Commitment of Persons Under Age 18 to Division of Substance Abuse and Mental Health:~~

~~—— (q) (i) The court may make an order committing a minor within the court's jurisdiction to the Utah State Developmental Center if the minor has an intellectual disability in accordance with Title 62A, Chapter 5, Part 3, Admission to an Intermediate Care Facility for People with an Intellectual Disability:~~

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~~—— (i) The court shall follow the procedure applicable in the district courts with respect to judicial commitments to the Utah State Developmental Center when ordering a commitment under Subsection (2)(q)(i):~~

~~—— (r) The court may terminate all parental rights upon a finding of compliance with Title 78A, Chapter 6, Part 5, Termination of Parental Rights Act.~~

~~—— (s) The court may make other reasonable orders for the best interest of the minor and as required for the protection of the public, except that a child may not be committed to jail, prison, secure detention, or the custody of the Division of Juvenile Justice Services under Subsections (2)(c) and (d):~~

~~—— (t) The court may combine the dispositions listed in this section if it is permissible and they are compatible:~~

~~—— (u) Before depriving any parent of custody, the court shall give due consideration to the rights of parents concerning their child. The court may transfer custody of a minor to another person, agency, or institution in accordance with the requirements and procedures of Title 78A, Chapter 6, Part 3, Abuse, Neglect, and Dependency Proceedings:~~

~~—— (v) Except as provided in Subsection (2)(x)(i), an order under this section for probation or placement of a minor with an individual or an agency shall include a date certain for a review and presumptive termination of the case by the court in accordance with Subsection (6) and Section 62A-7-404. A new date shall be set upon each review.~~

~~—— (w) In reviewing foster home placements, special attention shall be given to making adoptable children available for adoption without delay:~~

~~—— (x) (i) The juvenile court may enter an order of permanent custody and guardianship with an individual or relative of a child where the court has previously acquired jurisdiction as a result of an adjudication of abuse, neglect, or dependency. The juvenile court may enter an order for child support on behalf of the child against the natural or adoptive parents of the child.~~

~~—— (ii) Orders under Subsection (2)(x)(i):~~

~~—— (A) shall remain in effect until the child reaches majority;~~

~~—— (B) are not subject to review under Section 78A-6-118; and~~

~~—— (C) may be modified by petition or motion as provided in Section 78A-6-1103.~~

~~—— (iii) Orders permanently terminating the rights of a parent, guardian, or custodian and~~

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~~permanent orders of custody and guardianship do not expire with a termination of jurisdiction of the juvenile court.~~

~~—— (3) In addition to the dispositions described in Subsection (2), when a minor comes within the court's jurisdiction, the minor may be given a choice by the court to serve in the National Guard in lieu of other sanctions, provided:~~

~~—— (a) the minor meets the current entrance qualifications for service in the National Guard as determined by a recruiter, whose determination is final;~~

~~—— (b) the minor is not under the jurisdiction of the court for any act that:~~

~~—— (i) would be a felony if committed by an adult;~~

~~—— (ii) is a violation of Title 58, Chapter 37, Utah Controlled Substances Act; or~~

~~—— (iii) was committed with a weapon; and~~

~~—— (c) the court retains jurisdiction over the minor under conditions set by the court and agreed upon by the recruiter or the unit commander to which the minor is eventually assigned.~~

~~—— (4) (a) A DNA specimen shall be obtained from a minor who is under the jurisdiction of the court as described in Subsection 53-10-403(3). The specimen shall be obtained by designated employees of the court or, if the minor is in the legal custody of the Division of Juvenile Justice Services, then by designated employees of the division under Subsection 53-10-404(5)(b).~~

~~—— (b) The responsible agency shall ensure that employees designated to collect the saliva DNA specimens receive appropriate training and that the specimens are obtained in accordance with accepted protocol.~~

~~—— (c) Reimbursements paid under Subsection 53-10-404(2)(a) shall be placed in the DNA Specimen Restricted Account created in Section 53-10-407.~~

~~—— (d) Payment of the reimbursement is second in priority to payments the minor is ordered to make for restitution under this section and treatment under Section 78A-6-321.~~

~~—— (5) (a) A disposition made by the court pursuant to this section may not be suspended, except for the following:~~

~~—— (i) If a minor qualifies for commitment to the Division of Juvenile Justice Services under Subsection (2)(c) or (d), the court may suspend a custody order pursuant to Subsection (2)(c) or (d) in lieu of immediate commitment, upon the condition that the minor commit no new misdemeanor or felony offense during the three months following the day of disposition.~~

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~~—— (ii) The duration of a suspended custody order made under Subsection (5)(a)(i) may not exceed three months post-disposition and may not be extended under any circumstance.~~

~~—— (iii) The court may only impose a custody order suspended under Subsection (5)(a)(i) following adjudication of a new misdemeanor or felony offense committed by the minor during the period of suspension set out under Subsection (5)(a)(ii) or if a new assessment or evaluation has been completed and recommends that a higher level of care is needed and nonresidential treatment options have been exhausted or nonresidential treatment options are not appropriate.~~

~~—— (iv) A suspended custody order may not be imposed without notice to the minor, notice to counsel, and a hearing.~~

~~—— (b) The court pursuant to Subsection (5)(a) shall terminate jurisdiction over the minor at the end of the presumptive time frame unless at least one the following circumstances exists:~~

~~—— (i) termination pursuant to Subsection (6)(a)(ii) would interrupt the completion of a program determined to be necessary by the results of a validated risk and needs assessment with completion found by the court after considering the recommendation of a licensed service provider on the basis of the minor completing the goals of the necessary treatment program;~~

~~—— (ii) the minor commits a new misdemeanor or felony offense;~~

~~—— (iii) service hours have not been completed; or~~

~~—— (iv) there is an outstanding fine.~~

~~—— (6) When the court places a minor on probation under Subsection (2)(a) or vests legal custody of the minor in the Division of Juvenile Justice Services under Subsection (2)(c), the court shall do so for a defined period of time pursuant to this section:~~

~~—— (a) For the purposes of placing a minor on probation under Subsection (2)(a), the court shall establish a presumptive term of probation as specified in this Subsection (6):~~

~~—— (i) the presumptive maximum length of intake probation may not exceed three months; and~~

~~—— (ii) the presumptive maximum length of formal probation may not exceed four to six months.~~

~~—— (b) For the purposes of vesting legal custody of the minor in the Division of Juvenile Justice Services under Subsection (2)(c), the court shall establish a maximum term of custody and a maximum term of aftercare as specified in this Subsection (6):~~

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~~—— (i) the presumptive maximum length of out-of-home placement may not exceed three to six months; and~~

~~—— (ii) the presumptive maximum length of aftercare supervision, for those previously placed out-of-home, may not exceed three to four months, and minors may serve the term of aftercare in the home of a qualifying relative or guardian or at an independent living program contracted or operated by the Division of Juvenile Justice Services.~~

~~—— (c) The court pursuant to Subsections (6)(a) and (b), and the Youth Parole Authority pursuant to Subsection (6)(b), shall terminate jurisdiction over the minor at the end of the presumptive time frame unless at least one of the following circumstances exists:~~

~~—— (i) termination pursuant to Subsection (6)(a)(ii) would interrupt the completion of a court ordered program determined to be necessary by the results of a validated assessment, with completion found by the court after considering the recommendations of a licensed service provider or facilitator of court ordered treatment or intervention program on the basis of the minor completing the goals of the necessary treatment program;~~

~~—— (ii) termination pursuant to Subsection (6)(a)(i) or (6)(b) would interrupt the completion of a program determined to be necessary by the results of a validated assessment, with completion determined on the basis of whether the minor has regularly and consistently attended the treatment program and completed the goals of the necessary treatment program as determined by the court or Youth Parole Authority after considering the recommendation of a licensed service provider or facilitator of court ordered treatment or intervention program;~~

~~—— (iii) the minor commits a new misdemeanor or felony offense;~~

~~—— (iv) service hours have not been completed; or~~

~~—— (v) there is an outstanding fine.~~

~~—— (d) (i) Subject to Subsection (6)(g), if one of the circumstances under Subsection (6)(c)(i), (ii), (iii), or (iv) exists, the court may extend jurisdiction for the time needed to address the specific circumstance.~~

~~—— (ii) Subject to Subsection (6)(g), if one of the circumstances under Subsection (6)(c)(i), (ii), (iii), or (iv) exists, and the Youth Parole Authority has jurisdiction, the Youth Parole Authority may extend jurisdiction for the time needed to address the specific circumstance.~~

~~—— (e) If the circumstance under Subsection (6)(c)(iv) exists, the court, or the Youth Parole Authority if the Youth Parole Authority has jurisdiction, may extend jurisdiction one~~

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~~time for up to three months:~~

~~—— (f) Grounds for extension of the presumptive length of supervision or placement and the length of any extension shall be recorded in the court record or records of the Youth Parole Authority if the Youth Parole Authority has jurisdiction, and tracked in the data system used by the Administrative Office of the Courts and the Division of Juvenile Justice Services.~~

~~—— (g) (i) For a minor who is under the supervision of the juvenile court and whose supervision is extended to complete service hours under Subsection (6)(c)(iv), jurisdiction may only be continued under the supervision of intake probation:~~

~~—— (ii) For a minor who is under the jurisdiction of the Youth Parole Authority whose supervision is extended to complete service hours under Subsection (6)(c)(iv), jurisdiction may only be continued on parole and not in secure confinement.~~

~~—— (h) In the event of an unauthorized leave lasting more than 24 hours, the supervision period shall toll until the minor returns.~~

~~—— (7) Subsection (6) does not apply to any minor adjudicated under this section for:~~

~~—— (a) Section 76-5-103, aggravated assault resulting in serious bodily injury to another;~~

~~—— (b) Section 76-5-202, attempted aggravated murder;~~

~~—— (c) Section 76-5-203, murder or attempted murder;~~

~~—— (d) Section 76-5-302, aggravated kidnapping;~~

~~—— (e) Section 76-5-405, aggravated sexual assault;~~

~~—— (f) a felony violation of Section 76-6-103, aggravated arson;~~

~~—— (g) Section 76-6-203, aggravated burglary;~~

~~—— (h) Section 76-6-302, aggravated robbery;~~

~~—— (i) Section 76-10-508.1, felony discharge of a firearm; or~~

~~—— (j) an offense other than those listed in Subsections (7)(a) through (i) involving the use of a dangerous weapon, as defined in Section 76-1-601, that is a felony, and the minor has been previously adjudicated or convicted of an offense involving the use of a dangerous weapon.~~

~~—— Section 97. Section 78A-6-301.5 is amended to read:~~

~~—— **78A-6-301.5. Second medical opinion:**~~

~~—— (1) In cases of alleged medical neglect where the division seeks protective custody, temporary custody, or custody of the child based on the report or testimony of a physician or physician assistant, a parent or guardian shall have a reasonable amount of time, as determined~~

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~~by the court, to obtain a second medical opinion from another physician or physician assistant of the parent's or guardian's choosing who has expertise in the applicable field:~~

~~—— (2) Unless there is an imminent risk of death or a deteriorating condition of the child's health, the child shall remain in the custody of the parent or guardian while the parent or guardian obtains a second medical opinion.~~

~~—— (3) If the second medical opinion results in a different diagnosis or treatment recommendation from that of the opinion of the physician or physician assistant the division used, the court shall give deference to the second medical opinion as long as that opinion is reasonable and informed and is consistent with treatment that is regularly prescribed by medical experts in the applicable field.~~

~~—— (4) Subsections (1) through (3) do not apply to emergency treatment or care when the child faces an immediate threat of death or serious and irreparable harm and when there is insufficient time to safely allow the parent or guardian to provide alternative necessary care and treatment of the parent's or guardian's choosing.~~

~~—— Section 98. Section 78B-1-137 is amended to read:~~

‡ **78B-1-137. Witnesses -- Privileged communications.**

There are particular relations in which it is the policy of the law to encourage confidence and to preserve it inviolate. Therefore, a person cannot be examined as a witness in the following cases:

(1) (a) Neither a wife nor a husband may either during the marriage or afterwards be, without the consent of the other, examined as to any communication made by one to the other during the marriage.

(b) This exception does not apply:

(i) to a civil action or proceeding by one spouse against the other;

(ii) to a criminal action or proceeding for a crime committed by one spouse against the other;

(iii) to the crime of deserting or neglecting to support a spouse or child;

(iv) to any civil or criminal proceeding for abuse or neglect committed against the child of either spouse; or

(v) if otherwise specifically provided by law.

(2) An attorney cannot, without the consent of the client, be examined as to any

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communication made by the client to the attorney or any advice given regarding the communication in the course of the professional employment. An attorney's secretary, stenographer, or clerk cannot be examined, without the consent of the attorney, concerning any fact, the knowledge of which has been acquired as an employee.

(3) A member of the clergy or priest cannot, without the consent of the person making the confession, be examined as to any confession made to either of them in their professional character in the course of discipline enjoined by the church to which they belong.

(4) A physician ~~[or]~~, surgeon, or physician assistant cannot, without the consent of the patient, be examined in a civil action as to any information acquired in attending the patient which was necessary to enable the physician ~~[or]~~, surgeon, or physician assistant to prescribe or act for the patient. However, this privilege shall be waived by the patient in an action in which the patient places the patient's medical condition at issue as an element or factor of the claim or defense. Under those circumstances, a physician ~~[or]~~, surgeon, or physician assistant who has prescribed for or treated that patient for the medical condition at issue may provide information, interviews, reports, records, statements, memoranda, or other data relating to the patient's medical condition and treatment which are placed at issue.

(5) A public officer cannot be examined as to communications made in official confidence when the public interests would suffer by the disclosure.

(6) A sexual assault counselor as defined in Section 77-38-203 cannot, without the consent of the victim, be examined in a civil or criminal proceeding as to any confidential communication as defined in Section 77-38-203 made by the victim.

Section ~~{99}~~68. Section **78B-2-114** is amended to read:

78B-2-114. Separate trial of statute of limitations issue in malpractice actions.

(1) An issue raised by the defense regarding the statute of limitations in a case may be tried separately if the action is for professional negligence or for rendering professional services without consent, and against:

- (a) a physician;
- (b) a surgeon;
- (c) a physician assistant;
- ~~[(c)]~~ (d) a dentist;
- ~~[(d)]~~ (e) an osteopathic physician;

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~~[(e)]~~ (f) a chiropractor;

~~[(f)]~~ (g) a physical therapist;

~~[(g)]~~ (h) a registered nurse;

~~[(h)]~~ (i) a clinical laboratory bioanalyst;

~~[(i)]~~ (j) a clinical laboratory technologist; or

~~[(j)]~~ (k) a licensed hospital, person, firm, or corporation as the employer of any of the persons in Subsection (1)(a) through ~~[(j)]~~ (j).

(2) The issue raised may be tried before any other issues in the case are tried. If the issue raised by the defense of the statute of limitations is finally determined in favor of the plaintiff, the remaining issues shall then be tried.

Section ~~{100}~~69. Section 78B-3-403 is amended to read:

78B-3-403. Definitions.

As used in this part:

(1) "Audiologist" means a person licensed to practice audiology under Title 58, Chapter 41, Speech-Language Pathology and Audiology Licensing Act.

(2) "Certified social worker" means a person licensed to practice as a certified social worker under Section 58-60-205.

(3) "Chiropractic physician" means a person licensed to practice chiropractic under Title 58, Chapter 73, Chiropractic Physician Practice Act.

(4) "Clinical social worker" means a person licensed to practice as a clinical social worker under Section 58-60-205.

(5) "Commissioner" means the commissioner of insurance as provided in Section 31A-2-102.

(6) "Dental hygienist" means a person licensed to engage in the practice of dental hygiene as defined in Section 58-69-102.

(7) "Dentist" means a person licensed to engage in the practice of dentistry as defined in Section 58-69-102.

(8) "Division" means the Division of Occupational and Professional Licensing created in Section 58-1-103.

(9) "Future damages" includes a judgment creditor's damages for future medical treatment, care or custody, loss of future earnings, loss of bodily function, or future pain and

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suffering.

(10) "Health care" means any act or treatment performed or furnished, or which should have been performed or furnished, by any health care provider for, to, or on behalf of a patient during the patient's medical care, treatment, or confinement.

(11) "Health care facility" means general acute hospitals, specialty hospitals, home health agencies, hospices, nursing care facilities, assisted living facilities, birthing centers, ambulatory surgical facilities, small health care facilities, health care facilities owned or operated by health maintenance organizations, and end stage renal disease facilities.

(12) "Health care provider" includes any person, partnership, association, corporation, or other facility or institution who causes to be rendered or who renders health care or professional services as a hospital, health care facility, physician, physician assistant, registered nurse, licensed practical nurse, nurse-midwife, licensed direct-entry midwife, dentist, dental hygienist, optometrist, clinical laboratory technologist, pharmacist, physical therapist, physical therapist assistant, podiatric physician, psychologist, chiropractic physician, naturopathic physician, osteopathic physician, osteopathic physician and surgeon, audiologist, speech-language pathologist, clinical social worker, certified social worker, social service worker, marriage and family counselor, practitioner of obstetrics, licensed athletic trainer, or others rendering similar care and services relating to or arising out of the health needs of persons or groups of persons and officers, employees, or agents of any of the above acting in the course and scope of their employment.

(13) "Hospital" means a public or private institution licensed under Title 26, Chapter 21, Health Care Facility Licensing and Inspection Act.

(14) "Licensed athletic trainer" means a person licensed under Title 58, Chapter 40a, Athletic Trainer Licensing Act.

(15) "Licensed direct-entry midwife" means a person licensed under the Direct-entry Midwife Act to engage in the practice of direct-entry midwifery as defined in Section 58-77-102.

(16) "Licensed practical nurse" means a person licensed to practice as a licensed practical nurse as provided in Section 58-31b-301.

(17) "Malpractice action against a health care provider" means any action against a health care provider, whether in contract, tort, breach of warranty, wrongful death, or

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otherwise, based upon alleged personal injuries relating to or arising out of health care rendered or which should have been rendered by the health care provider.

(18) "Marriage and family therapist" means a person licensed to practice as a marriage therapist or family therapist under Sections 58-60-305 and 58-60-405.

(19) "Naturopathic physician" means a person licensed to engage in the practice of naturopathic medicine as defined in Section 58-71-102.

(20) "Nurse-midwife" means a person licensed to engage in practice as a nurse midwife under Section 58-44a-301.

(21) "Optometrist" means a person licensed to practice optometry under Title 58, Chapter 16a, Utah Optometry Practice Act.

(22) "Osteopathic physician" means a person licensed to practice osteopathy under Title 58, Chapter 68, Utah Osteopathic Medical Practice Act.

(23) "Patient" means a person who is under the care of a health care provider, under a contract, express or implied.

(24) "Periodic payments" means the payment of money or delivery of other property to a judgment creditor at intervals ordered by the court.

(25) "Pharmacist" means a person licensed to practice pharmacy as provided in Section 58-17b-301.

(26) "Physical therapist" means a person licensed to practice physical therapy under Title 58, Chapter 24b, Physical Therapy Practice Act.

(27) "Physical therapist assistant" means a person licensed to practice physical therapy, within the scope of a physical therapist assistant license, under Title 58, Chapter 24b, Physical Therapy Practice Act.

(28) "Physician" means a person licensed to practice medicine and surgery under Title 58, Chapter 67, Utah Medical Practice Act.

(29) "Physician assistant" means a person licensed to practice as a physician assistant under Title 58, Chapter 70a, Utah Physician Assistant Act.

~~(29)~~ (30) "Podiatric physician" means a person licensed to practice podiatry under Title 58, Chapter 5a, Podiatric Physician Licensing Act.

~~(30)~~ (31) "Practitioner of obstetrics" means a person licensed to practice as a physician in this state under Title 58, Chapter 67, Utah Medical Practice Act, or under Title 58,

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Chapter 68, Utah Osteopathic Medical Practice Act.

~~[(31)]~~ (32) "Psychologist" means a person licensed under Title 58, Chapter 61, Psychologist Licensing Act, to engage in the practice of psychology as defined in Section 58-61-102.

~~[(32)]~~ (33) "Registered nurse" means a person licensed to practice professional nursing as provided in Section 58-31b-301.

~~[(33)]~~ (34) "Relative" means a patient's spouse, parent, grandparent, stepfather, stepmother, child, grandchild, brother, sister, half brother, half sister, or spouse's parents. The term includes relationships that are created as a result of adoption.

~~[(34)]~~ (35) "Representative" means the spouse, parent, guardian, trustee, attorney-in-fact, person designated to make decisions on behalf of a patient under a medical power of attorney, or other legal agent of the patient.

~~[(35)]~~ (36) "Social service worker" means a person licensed to practice as a social service worker under Section 58-60-205.

~~[(36)]~~ (37) "Speech-language pathologist" means a person licensed to practice speech-language pathology under Title 58, Chapter 41, Speech-Language Pathology and Audiology Licensing Act.

~~[(37)]~~ (38) "Tort" means any legal wrong, breach of duty, or negligent or unlawful act or omission proximately causing injury or damage to another.

~~[(38)]~~ (39) "Unanticipated outcome" means the outcome of a medical treatment or procedure that differs from an expected result.