

**Representative Brad M. Daw** proposes the following substitute bill:

**SUBSTANCE USE AND HEALTH CARE AMENDMENTS**

2020 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Brad M. Daw**

Senate Sponsor: Allen M. Christensen

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**LONG TITLE**

**General Description:**

This bill modifies and enacts provisions relating to substance use treatment, mental health treatment, and health care that is provided in a correctional facility and the Utah State Hospital.

**Highlighted Provisions:**

This bill:

- ▶ defines terms;
- ▶ directs the Department of Health to apply for a waiver under the state Medicaid plan to offer a program to provide Medicaid coverage to certain inmates for up to 30 days before release from a correctional facility;
- ▶ requires a county to provide matching funds to the state for Medicaid coverage ~~that~~ **and costs relating to the Medicaid coverage,** that

is provided to certain inmates for up to 30 days before release from a correctional facility;

▶ creates a refundable tax credit for certain practitioners who provide substance use disorder treatment or mental health therapy in a correctional facility or the Utah State Hospital;

▶ creates a substance use and mental health telehealth pilot program to be conducted in one or more county jails; and

**1st Sub. H.B. 38**



26           ▶ makes technical changes.

27 **Money Appropriated in this Bill:**

28           None

29 **Other Special Clauses:**

30           This bill provides a special effective date.

31 **Utah Code Sections Affected:**

32 AMENDS:

33           **58-1-111**, as enacted by Laws of Utah 2016, Chapter 407

34           **59-10-1111**, as enacted by Laws of Utah 2016, Chapter 407

35           **63I-1-262**, as last amended by Laws of Utah 2019, Chapters 246, 257, 440 and last  
36 amended by Coordination Clause, Laws of Utah 2019, Chapter 246

37 ENACTS:

38           **26-18-420**, Utah Code Annotated 1953

39           **62A-15-118**, Utah Code Annotated 1953



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

42           Section 1. Section **26-18-420** is enacted to read:

43           **26-18-420. Medicaid waiver for coverage of qualified inmates leaving prison or**  
44 **jail.**

45           (1) As used in this section:

46           (a) "Correctional facility" means:

47           (i) a county jail;

48           (ii) the Department of Corrections, created in Section [64-13-2](#); or

49           (iii) a prison, penitentiary, or other institution operated by or under contract with the  
50 Department of Corrections for the confinement of an offender, as defined in Section [64-13-1](#).

51           (b) "Qualified inmate" means an individual who:

52           (i) is incarcerated in a correctional facility; and

53           (ii) has:

54           (A) a chronic physical or behavioral health condition;

55           (B) a mental illness, as defined in Section [62A-15-602](#); or

56           (C) an opioid use disorder.

57 (2) Before July 1, 2020, the division shall apply for a Medicaid waiver or a state plan  
 58 amendment with CMS to offer a program to provide Medicaid coverage to a qualified inmate  
 59 for up to 30 days immediately before the day on which the qualified inmate is released from a  
 60 correctional facility.

61 (3) If the waiver or state plan amendment described in Subsection (2) is approved, the  
 62 department shall report to the Health and Human Services Interim Committee each year before  
 63 November 30 while the waiver or state plan amendment is in effect regarding:

64 (a) the number of qualified inmates served under the program;

65 (b) the cost of the program; and

66 (c) the effectiveness of the program, including:

67 (i) any reduction in the number of emergency room visits or hospitalizations by  
 68 inmates after release from a correctional facility;

69 (ii) any reduction in the number of inmates undergoing inpatient treatment after release  
 70 from a correctional facility;

71 (iii) any reduction in overdose rates and deaths of inmates after release from a  
 72 correctional facility; and

73 (iv) any other costs or benefits as a result of the program.

74 (4) If the waiver or state plan amendment described in Subsection (2) is approved, a  
 75 county that is responsible for the cost of a qualified inmate's medical care shall provide the  
 76 required matching funds to the state for ~~§~~ :

76a (a) any costs to enroll the qualified inmate for the Medicaid coverage described in  
 76b Subsection (2); and

76c (b) ~~§~~ the Medicaid coverage ~~§~~ that is ~~§~~ provided to the qualified inmate  
 77 under Subsection (2).

78 Section 2. Section **58-1-111** is amended to read:

79 **58-1-111. Tax credit certificate --Mental health practitioners and substance use**  
 80 **therapists -- Underserved populations.**

81 (1) As used in this section:

82 (a) "Average of 20 hours or more per week" means that the quotient calculated when  
 83 dividing the claimant's total hours providing licensed services, in-custody mental health  
 84 therapy, or in-custody substance use disorder treatment in the state during the taxable year by  
 85 the number of weeks in which the claimant is licensed in the state during the taxable year is  
 86 greater than or equal to 20.

87 ~~[(a)]~~ (b) "Average of 30 hours or more per week" means that the quotient calculated

88 when dividing the claimant's total hours providing licensed services, in-custody mental health  
89 therapy, or in-custody substance use disorder treatment in the state during the taxable year by  
90 the number of weeks in which the claimant is licensed in the state during the taxable year is  
91 greater than or equal to 30.

92 (c) "In-custody mental health therapy" means the provision of behavioral health  
93 treatment within the scope of practice of a mental health therapist in a secure facility in the  
94 state.

95 (d) "In-custody substance use disorder treatment" means the provision of behavioral  
96 health treatment within the scope of practice of a substance use disorder counselor in a secure  
97 facility in the state.

98 ~~(b)~~ (e) "Licensed services" means the provision of behavioral health treatment in the  
99 state ~~and~~ within the scope of practice of:

100 (i) a psychiatrist~~;~~;

101 (ii) a psychiatric mental health nurse practitioner~~;~~; or

102 (iii) a volunteer health practitioner.

103 (f) "Medication-assisted treatment" means treatment of a substance use disorder that  
104 includes the use of a drug that is approved by the federal Food and Drug Administration for the  
105 treatment of a substance use disorder in conjunction with behavioral health therapy.

106 (g) "Mental health therapist" means an individual who is licensed under Chapter 60,  
107 Mental Health Professional Practice Act, for the practice of mental health therapy, as defined in  
108 Section [58-60-102](#).

109 ~~(e)~~ (h) "Psychiatric mental health nurse practitioner" means an individual who:

110 (i) is licensed under Chapter 31b, Nurse Practice Act, for the practice of advanced  
111 practice registered nursing, as ~~that term is~~ defined in Section [58-31b-102](#); and

112 (ii) holds a certification recognized by the American Nurses Credentialing Center of  
113 the American Association of Colleges of Nursing as a psychiatric mental health nurse  
114 practitioner.

115 ~~(d)~~ (i) "Psychiatrist" means an individual who:

116 (i) is licensed as a physician under:

117 (A) Chapter 67, Utah Medical Practice Act;

118 (B) Chapter 67b, Interstate Medical Licensure Compact; or

119 (C) Chapter 68, Utah Osteopathic Medical Practice Act; and  
 120 (ii) is board eligible for a psychiatry specialization recognized by the American Board  
 121 of Medical Specialists or the American Osteopathic Association's Bureau of Osteopathic  
 122 Specialists.

123 (j) "Secure facility" means:  
 124 (i) a county jail;  
 125 (ii) the Department of Corrections, created in Section 64-13-2;  
 126 (iii) a prison, penitentiary, or other institution operated by or under contract with the  
 127 Department of Corrections for the confinement of an offender, as defined in Section 64-13-1;

128 or

129 (iv) the Utah State Hospital, created in Section 62A-15-601.

130 (k) "Substance use disorder counselor" means an individual who is licensed under  
 131 Chapter 60, Mental Health Professional Practice Act, to practice as a licensed advanced  
 132 substance use disorder counselor, as defined in Section 58-60-502.

133 [~~(e)~~] (l) "Underserved population" means:

134 (i) an individual located in a county of the third, fourth, fifth, or sixth class, as  
 135 [~~designated~~] classified in Section 17-50-501; or

136 (ii) a Native American Indian.

137 [~~(f)~~] (m) "Volunteer retired psychiatrist" means an individual:

138 (i) described in Subsection (1)[~~(d)~~](i) who, during the calendar year, did not receive  
 139 payment for providing licensed services; or

140 (ii) (A) licensed under Chapter 81, Retired Volunteer Health Care Practitioner Act; and

141 (B) previously or currently board certified in psychiatry.

142 (2) (a) An individual who seeks to obtain a state income tax credit under Subsections  
 143 59-10-1111(2) through [~~(4)~~] (6) shall file an application with the division with respect to each  
 144 taxable year in which the individual seeks a state income tax credit.

145 (b) An individual may qualify for a tax credit certificate under this section for no more  
 146 than 10 taxable years for each tax credit.

147 (3) The application for a tax credit certificate under Subsection 59-10-1111(2) shall  
 148 require the individual to provide the following to the division:

149 (a) the date on which the individual obtained a license and the specialization described

150 in Subsection (1)~~(e)~~(h)(ii) or ~~(d)~~ (i)(ii);

151 (b) (i) an attestation that the individual was licensed on or after January 1, 2017, to  
152 provide licensed services; or

153 (ii) if the individual was licensed to provide licensed services prior to January 1, 2017,  
154 an attestation:

155 (A) that the individual did not provide licensed services for the two calendar years  
156 before the date the individual initially applied for the income tax credit under this subsection;  
157 and

158 (B) the date on which the individual resumed providing licensed services in the state;  
159 and

160 (c) other information as required by the division by administrative rule adopted in  
161 accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

162 (4) An application for a tax credit certificate under Subsection 59-10-1111(3) shall  
163 require the individual to attest to the division:

164 (a) that the individual averaged 30 or more hours per week during the taxable year  
165 providing licensed services;

166 (b) that the individual devoted 25% or more of the individual's total hours of licensed  
167 services in the taxable year to an underserved population;

168 (c) the type of underserved population for which the individual provided services  
169 during the taxable year; and

170 (d) other information as required by the division by administrative rule adopted in  
171 accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

172 (5) An application for a tax credit certificate under Subsection 59-10-1111(4) shall  
173 require the individual to attest to the division:

174 (a) whether the individual is licensed under Subsection (1)~~(f)~~(m)(i) or (ii);

175 (b) that the individual did not receive payment during the calendar year for providing  
176 licensed services;

177 (c) that during the calendar year, the individual provided at least 300 hours of licensed  
178 services to an underserved population, the homeless population, or veterans without receiving  
179 payment for providing the licensed services;

180 (d) a description of the type of population described in Subsection (5)(c) for which the

181 individual provided licensed services; and

182 (e) other information as required by the division by administrative rule adopted in  
183 accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

184 (6) An application for a tax credit certificate under Subsection 59-10-1111(5) shall  
185 require the individual to attest to the division:

186 (a) that the individual averaged 30 hours or more per week during the taxable year  
187 providing in-custody mental health therapy;

188 (b) a list of each secure facility in which the individual provided in-custody mental  
189 health therapy during the taxable year; and

190 (c) other information as required by the division by administrative rule adopted in  
191 accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

192 (7) An application for a tax credit certificate under Subsection 59-10-1111(6) shall  
193 require the individual to attest to the division:

194 (a) that the individual averaged 20 hours or more per week during the taxable year  
195 providing in-custody substance use disorder treatment;

196 (b) if used, a description of the type of medication-assisted treatment used by the  
197 individual in providing the in-custody substance use disorder treatment;

198 (c) a list of each secure facility in which the individual provided the substance use  
199 disorder treatment during the taxable year; and

200 (d) other information as required by the division by administrative rule adopted in  
201 accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

202 ~~[(6)]~~ (8) (a) The division shall issue a tax credit certificate in accordance with this  
203 subsection.

204 (b) The tax credit certificate may state that an individual is entitled to:

205 (i) a tax credit under Subsection 59-10-1111(2) if the individual meets the  
206 requirements of Subsection (3);

207 (ii) a tax credit under Subsection 59-10-1111(3) if the individual meets the  
208 requirements of Subsection (4);

209 (iii) a tax credit under Subsection 59-10-1111(4) if the individual meets the  
210 requirements of Subsection (5); ~~[or]~~

211 (iv) a tax credit under Subsection 59-10-1111(5) if the individual meets the

212 requirements of Subsection (6);

213 (v) a tax credit under Subsection 59-10-1111(6) if the individual meets the

214 requirements of Subsection (7); or

215 ~~[(iv)]~~ (vi) a tax credit under Subsections 59-10-1111(2) and (3) if the individual meets  
216 the requirements of Subsections (3) and (4).

217 ~~[(7)]~~ (9) (a) The division may issue a tax credit certificate to an individual under  
218 Subsection 59-10-1111(2) for no more than 10 taxable years after the date on which the  
219 individual resumed services under Subsection (3)(b)(ii).

220 (b) The division may issue a tax credit certificate to an individual under Subsections  
221 59-10-1111(3) ~~[and (4)]~~ through (6) for no more than 10 taxable years.

222 ~~[(8)]~~ (10) The division shall provide a copy of a tax credit certificate issued under this  
223 section to the individual and the State Tax Commission.

224 Section 3. Section 59-10-1111 is amended to read:

225 **59-10-1111. Refundable tax credit for mental health practitioners and substance**  
226 **use therapists.**

227 (1) As used in this section:

228 (a) "Mental health therapist" means the same as that term is defined in Section  
229 58-1-111.

230 ~~[(a)]~~ (b) "Psychiatric mental health nurse practitioner" means the same as that term is  
231 defined in Section 58-1-111.

232 ~~[(b)]~~ (c) "Psychiatrist" means the same as that term is defined in Section 58-1-111.

233 (d) "Substance use disorder counselor" means the same as that term is defined in  
234 Section 58-1-111.

235 ~~[(e)]~~ (e) "Tax credit certificate" means a certificate issued by the Division of  
236 Occupational and Professional Licensing under Section 58-1-111 certifying that the claimant is  
237 entitled to a tax credit under this section.

238 ~~[(d)]~~ (f) "Volunteer retired psychiatrist" means the same as that term is defined in  
239 Section 58-1-111.

240 (2) A claimant who is a psychiatrist or a psychiatric mental health nurse practitioner  
241 and who submits a tax credit certificate issued by the Division of Occupational and  
242 Professional Licensing under Subsection 58-1-111(3), may claim a refundable tax credit:



243 (a) as provided in this section; and

244 (b) in the amount of \$10,000.

245 (3) A claimant who is a psychiatrist or a psychiatric mental health nurse practitioner  
246 and who submits a tax credit certificate under Subsection 58-1-111(4) may claim a refundable  
247 tax credit:

248 (a) as provided in this section; and

249 (b) in the amount of \$10,000.

250 (4) A claimant who is a volunteer retired psychiatrist and who submits a tax credit  
251 certificate under Subsection 58-1-111(5) may claim a refundable tax credit:

252 (a) as provided in this section; and

253 (b) in the amount of \$10,000.

254 (5) A claimant who is a mental health therapist and who submits a tax credit certificate  
255 under Subsection 58-1-111(6) may claim a refundable tax credit:

256 (a) as provided in this section; and

257 (b) in the amount of \$10,000.

258 (6) A claimant who is a substance use disorder counselor and who submits a tax credit  
259 certificate under Subsection 58-1-111(7) may claim a refundable tax credit:

260 (a) as provided in this section; and

261 (b) in the amount of \$10,000.

262 ~~[(5)]~~ (7) A claimant may claim a tax credit under Subsections (2) through ~~[(4)]~~ (6) for  
263 no more than 10 taxable years for each tax credit.

264 ~~[(6)]~~ (8) (a) In accordance with any rules prescribed by the commission under  
265 Subsection ~~[(6)]~~ (8)(b), the commission shall make a refund to a claimant who claims a tax  
266 credit under this section if the amount of the tax credit exceeds the claimant's tax liability for  
267 the taxable year.

268 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the  
269 commission may make rules providing procedures for making a refund to a claimant as  
270 required by Subsection ~~[(6)]~~ (8)(a).

271 Section 4. Section 62A-15-118 is enacted to read:

272 **62A-15-118. Substance Use and Mental Health Telehealth Pilot Program.**

273 (1) As used in this section:

- 274 (a) "Inmate" means an individual incarcerated in a rural county jail.  
275 (b) "Project" means a pilot project that provides telehealth services to inmates.  
276 (c) "Rural county" means a county of the second, third, fourth, fifth, or sixth class, as  
277 classified in Section [17-50-501](#).  
278 (d) "Telehealth services" means mental health or substance use disorder treatment  
279 provided remotely through the use of telecommunications technology.  
280 (2) (a) On or before July 1, 2020, the division shall issue a request for proposals in  
281 accordance with this section to award a grant to one or more county jails to develop and  
282 implement a project.  
283 (b) The division shall award all grants under this section before December 31, 2020.  
284 (c) A project shall run for two years.  
285 (3) The purpose of a project is to:  
286 (a) determine how telehealth services can be used in the state to:  
287 (i) increase access to mental health and substance use disorder treatment to inmates;  
288 (ii) reduce the number of deaths in rural county jails due to suicide or withdrawal  
289 symptoms;  
290 (iii) reduce the number of overdose deaths of inmates with a substance use disorder  
291 after release from a rural county jail; and  
292 (iv) reduce the costs associated with providing mental health and substance use  
293 disorder treatment to inmates; and  
294 (b) identify methods of using telehealth services for inmates.  
295 (4) An application for a grant under this section shall:  
296 (a) be submitted jointly by:  
297 (i) a rural county jail;  
298 (ii) a local substance abuse and mental health authority; and  
299 (iii) a provider of telehealth services;  
300 (b) identify the inmate population to which the rural county jail will provide telehealth  
301 services;  
302 (c) identify the type of telehealth services that the rural county jail will provide;  
303 (d) explain how the inmate population described in Subsection (4)(b) will benefit from  
304 the provision of telehealth services;

- 305 (e) provide details regarding:
- 306 (i) how the rural county jail plans to provide telehealth services;
- 307 (ii) how the proposed project will ensure that consideration is given to the capacity and
- 308 availability of the rural county jail and community health care resources;
- 309 (iii) how the rural county jail, telehealth service provider, and local mental health and
- 310 substance abuse authority will coordinate to ensure timely and effective provision of telehealth
- 311 services;
- 312 (iv) the projected costs of the proposed project;
- 313 (v) the sustainability of the proposed project; and
- 314 (vi) the methods the proposed project will use to:
- 315 (A) protect the privacy of each inmate who participates in the proposed project;
- 316 (B) collect nonidentifying data relating to the proposed project; and
- 317 (C) provide transparency on the costs and operation of the proposed project; and
- 318 (f) provide other information requested by the division to ensure that the proposed
- 319 project satisfies the criteria described in Subsection (5).
- 320 (5) In evaluating an application for the grant, the division shall consider:
- 321 (a) the extent to which the proposed project will fulfill the purposes described in
- 322 Subsection (3);
- 323 (b) the extent to which the inmate population described in Subsection (4)(b) is likely to
- 324 benefit from the proposed project;
- 325 (c) the cost of the proposed project;
- 326 (d) the viability and innovation of the proposed project; and
- 327 (e) the extent to which the proposed project will yield useful data to evaluate the
- 328 effectiveness of the proposed project.
- 329 (6) Before June 30, 2021, the division shall report to the Law Enforcement and
- 330 Criminal Justice Interim Committee regarding:
- 331 (a) each county jail that is part of a project; and
- 332 (b) the details and duration of each project.
- 333 (7) Before June 30, 2023, the division shall report to the Law Enforcement and
- 334 Criminal Justice Interim Committee regarding:
- 335 (a) the outcomes of each project;

- 336 (b) data gathered in relation to each project;  
337 (c) knowledge gained relating to the provision of telehealth services in county jails;  
338 (d) recommendations for the future use of telehealth services in county jails; and  
339 (e) obstacles encountered in the provision of telehealth services in rural county jails.

340 Section 5. Section **63I-1-262** is amended to read:

341 **63I-1-262. Repeal dates, Title 62A.**

342 (1) Subsections **62A-1-120**(8)(g), (h), and (i) relating to completion of premarital  
343 counseling or education under Section **30-1-34** are repealed July 1, 2023.

344 (2) Section **62A-3-209** is repealed July 1, 2023.

345 (3) Section **62A-4a-202.9** is repealed December 31, 2021.

346 (4) Section **62A-4a-213** is repealed July 1, 2024.

347 (5) Section **62A-15-114** is repealed December 31, 2021.

348 (6) Subsections **62A-15-116**(1) and (4), the language that states "In consultation with  
349 the SafeUT and School Safety Commission, established in Section **53B-17-1203**," is repealed  
350 January 1, 2023.

351 (7) Section **62A-15-118** is repealed December 31, 2023.

352 [~~7~~](8) Subsections **62A-15-1100**(1) and **62A-15-1101**[~~8~~](9), in relation to the Utah  
353 Substance Use and Mental Health Advisory Council, are repealed January 1, 2023.

354 [~~8~~](9) In relation to the Mental Health Crisis Line Commission, on July 1, 2023:

355 (a) Subsections **62A-15-1301**(1) and **62A-15-1401**(1) are repealed;

356 (b) Subsection **62A-15-1302**(1)(b), the language that states "and in consultation with  
357 the commission" is repealed;

358 (c) Section **62A-15-1303**, the language that states "In consultation with the  
359 commission," is repealed; and

360 (d) Subsection **62A-15-1402**(2)(a), the language that states "With recommendations  
361 from the commission," is repealed.

362 Section 6. **Effective date.**

363 The amendments to Sections **58-1-111** and **59-10-1111** take effect for a taxable year  
364 beginning on or after January 1, 2021.