

- 30 ▶ to Department of Health -- Medicaid Services, as an ongoing appropriation:
- 31 • From Federal Funds, \$3,780,000;
- 32 • From Expendable Receipts, \$340,000; and
- 33 • From Medicaid Expansion Fund, \$36,000;
- 34 ▶ to Department of Health -- Medicaid Services, as a one-time appropriation:
- 35 • From Federal Funds, One-time, (\$2,950,000);
- 36 • From Expendable Receipts, One-time, (\$260,000); and
- 37 • From Medicaid Expansion Fund, One-time, (\$26,000);
- 38 ▶ to Department of Human Services -- Division of Substance Abuse and Mental
- 39 Health, as an ongoing appropriation:
- 40 • From General Fund, \$1,369,100; and
- 41 ▶ to Department of Human Services -- Division of Substance Abuse and Mental
- 42 Health, as a one-time appropriation:
- 43 • From General Fund, One-time, (\$1,066,500).

44 Other Special Clauses:

45 This bill provides a special effective date.

46 This bill provides a coordination clause.

47 Utah Code Sections Affected:

48 AMENDS:

- 49 **26-18-405.5**, as enacted by Laws of Utah 2015, Chapter 288
- 50 **31A-22-649.5**, as enacted by Laws of Utah 2020, Chapter 119
- 51 **58-1-401**, as last amended by Laws of Utah 2020, Chapter 289
- 52 **58-31b-401**, as last amended by Laws of Utah 2019, Chapter 136
- 53 **58-60-108**, as enacted by Laws of Utah 1994, Chapter 32
- 54 **58-61-401**, as enacted by Laws of Utah 1994, Chapter 32
- 55 **58-67-401**, as last amended by Laws of Utah 2011, Chapter 214
- 56 **58-68-401**, as last amended by Laws of Utah 2011, Chapter 214
- 57 **58-70a-401**, as enacted by Laws of Utah 1997, Chapter 229

58 ENACTS:

59 **58-81-105**, Utah Code Annotated 1953

60 **Utah Code Sections Affected by Coordination Clause:**

61 **31A-22-649.5**, as enacted by Laws of Utah 2020, Chapter 119



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

64 Section 1. Section **26-18-405.5** is amended to read:

65 **26-18-405.5. Base budget appropriations for Medicaid accountable care**
66 **organizations and mental health plans.**

67 (1) [~~For purposes of~~] As used in this section:

68 (a) [~~"ACOs" means accountable care organizations.~~] "ACO" means an accountable
69 care organization that contracts with the state's Medicaid program for:

70 (i) physical health services; or

71 (ii) integrated physical and behavioral health services.

72 (b) "Base budget" means the same as that term is defined in legislative rule.

73 [~~(c) "Current fiscal year PMPM" means per-member-per-month funding for Medicaid~~
74 ~~accountable care organizations under the Department of Health in the current fiscal year.]~~

75 [~~(d)~~] (c) "General Fund growth factor" means the amount determined by dividing the
76 next fiscal year ongoing General Fund revenue estimate by current fiscal year ongoing
77 appropriations from the General Fund.

78 (d) "Mental health plan" means a prepaid mental health plan or a health plan that uses a
79 fee-for-service payment model that contracts with the state's Medicaid program for behavioral
80 health services.

81 (e) "Next fiscal year ongoing General Fund revenue estimate" means the next fiscal
82 year ongoing General Fund revenue estimate identified by the Executive Appropriations
83 Subcommittee, in accordance with legislative rule, for use by the Office of the Legislative
84 Fiscal Analyst in preparing budget recommendations.

85 [~~(f) "Next fiscal year PMPM" means per-member-per-month funding for Medicaid~~

86 ~~accountable care organizations under the Department of Health for the next fiscal year.]~~

87 (f) "PMPM" means per-member-per-month funding.

88 (2) If the General Fund growth factor is less than 100%, the next fiscal year base
89 budget shall include an appropriation:

90 (a) to the [~~Department of Health for Medicaid~~] department for ACOs under the
91 department in an amount necessary to ensure that the next fiscal year PMPM for the ACOs
92 equals the current fiscal year PMPM for the ACOs multiplied by 100%[-]; and

93 (b) subject to Subsection (5), to the Department of Human Services for mental health
94 plans under the Department of Human Services in an amount necessary to ensure that the
95 funding for the mental health plans in the next fiscal year equals the funding for the mental
96 health plans in the current fiscal year multiplied by 100%.

97 (3) If the General Fund growth factor is greater than or equal to 100%, but less than
98 102%, the next fiscal year base budget shall include an appropriation:

99 (a) to the [~~Department of Health for Medicaid~~] department for ACOs under the
100 department in an amount necessary to ensure that the next fiscal year PMPM for the ACOs
101 equals the current fiscal year PMPM for the ACOs multiplied by the General Fund growth
102 factor[-]; and

103 (b) subject to Subsection (5), to the Department of Human Services for mental health
104 plans under the Department of Human Services in an amount necessary to ensure that the
105 funding for the mental health plans in the next fiscal year equals the funding for the mental
106 health plans in the current fiscal year multiplied by the General Fund growth factor.

107 (4) If the General Fund growth factor is greater than or equal to 102%, the next fiscal
108 year base budget shall include an appropriation:

109 (a) to the [~~Department of Health for Medicaid~~] department for ACOs under the
110 department in an amount necessary to ensure that the next fiscal year PMPM for the ACOs is
111 greater than or equal to the current fiscal year PMPM for the ACOs multiplied by 102% and
112 less than or equal to the current fiscal year PMPM for the ACOs multiplied by the General
113 Fund growth factor[-]; and

114 (b) subject to Subsection (5), to the Department of Human Services for mental health
 115 plans under the Department of Human Services in an amount necessary to ensure that the
 116 funding for the mental health plans in the next fiscal year is greater than or equal to the funding
 117 for the mental health plans in the current fiscal year multiplied by 102% and less than or equal
 118 to the funding for the mental health plans in the current fiscal year multiplied by the General
 119 Fund growth factor.

120 (5) The appropriations provided to the Department of Human Services under this
 121 section shall be reduced by the amount contributed by counties in the current fiscal year for
 122 mental health plans under the Department of Human Services in accordance with Subsections
 123 17-43-201(5)(k) and 17-43-301(6)(a)(x).

124 ~~[(5)]~~ (6) In order for the department and the Department of Human Services to estimate
 125 the impact of Subsections (2) through (4) ~~[prior to]~~ before identification of the next fiscal year
 126 ongoing General Fund revenue estimate ~~[under Subsection (1)(e)]~~, the Governor's Office of
 127 Management and Budget shall, in cooperation with the Office of the Legislative Fiscal Analyst,
 128 develop an estimate of ongoing General Fund revenue for the next fiscal year and provide ~~[it]~~
 129 the estimate to the department and the Department of Human Services no later than September
 130 1 of each year.

131 Section 2. Section 31A-22-649.5 is amended to read:

132 **31A-22-649.5. Insurance parity for telemedicine services -- Method of technology**
 133 **used.**

134 (1) As used in this section:

135 ~~[(a) "Telehealth services" means the same as that term is defined in Section~~
 136 ~~26-60-102.]~~

137 (a) "Mental health condition" means a mental disorder or a substance-related disorder
 138 that falls under a diagnostic category listed in the Diagnostic and Statistical Manual, as
 139 periodically revised.

140 (b) "Telemedicine services" means the same as that term is defined in Section
 141 26-60-102.

142 (2) Notwithstanding the provisions of Section 31A-22-618.5, a health benefit plan
143 offered in the individual market, the small group market, or the large group market [~~and~~
144 ~~entered into or renewed on or after January 1, 2021,~~] shall:

145 (a) provide coverage for:

146 (i) telemedicine services that are covered by Medicare; and

147 [~~(b) reimburse, at a commercially reasonable rate, a network provider that provides the~~
148 ~~telemedicine services described in Subsection (2)(a).]~~

149 (ii) treatment of a mental health condition through telemedicine services if:

150 (A) the health benefit plan provides coverage for the treatment of the mental health
151 condition through in-person services; and

152 (B) the health benefit plan determines treatment of the mental health condition through
153 telemedicine services meets the appropriate standard of care; and

154 (b) reimburse a network provider that provides the telemedicine services described in
155 Subsection (2)(a) at a negotiated commercially reasonable rate.

156 (3) (a) Notwithstanding Section 31A-45-303, a health benefit plan providing
157 [~~treatment~~] coverage under Subsection (2)(a) may not impose originating site restrictions,
158 geographic restrictions, or distance-based restrictions.

159 (b) A network provider that provides the telemedicine services described in Subsection
160 (2)(a) may utilize any synchronous audiovisual technology for the telemedicine services that is
161 compliant with the federal Health Insurance Portability and Accountability Act of 1996.

162 Section 3. Section 58-1-401 is amended to read:

163 **58-1-401. Grounds for denial of license -- Disciplinary proceedings -- Time**
164 **limitations -- Sanctions.**

165 (1) The division shall refuse to issue a license to an applicant and shall refuse to renew
166 or shall revoke, suspend, restrict, place on probation, or otherwise act upon the license of a
167 licensee who does not meet the qualifications for licensure under this title.

168 (2) The division may refuse to issue a license to an applicant and may refuse to renew
169 or may revoke, suspend, restrict, place on probation, issue a public reprimand to, or otherwise

170 act upon the license of a licensee for the following reasons:

171 (a) subject to the provisions of Subsection (7), the applicant or licensee has engaged in
172 unprofessional conduct, as defined by statute or rule under this title;

173 (b) the applicant or licensee has engaged in unlawful conduct as defined by statute
174 under this title;

175 (c) the applicant or licensee has been determined to be mentally incompetent by a court
176 of competent jurisdiction; or

177 (d) subject to Subsections 58-31b-401(7), 58-60-108(2), 58-61-401(2), 58-67-401(2),
178 58-68-401(2), 58-70a-401(2), and Section 58-81-105, the applicant or licensee is unable to
179 practice the occupation or profession with reasonable skill and safety because of illness,
180 drunkenness, excessive use of drugs, narcotics, chemicals, or other type of material, or as a
181 result of a mental or physical condition, when the condition demonstrates a threat or potential
182 threat to the public health, safety, or welfare.

183 (3) A licensee whose license to practice an occupation or profession regulated by this
184 title has been suspended, revoked, placed on probation, or restricted may apply for
185 reinstatement of the license at reasonable intervals and upon compliance with conditions
186 imposed upon the licensee by statute, rule, or terms of the license suspension, revocation,
187 probation, or restriction.

188 (4) The division may issue cease and desist orders to:

189 (a) a licensee or applicant who may be disciplined under Subsection (1) or (2);

190 (b) a person who engages in or represents that the person is engaged in an occupation
191 or profession regulated under this title; and

192 (c) a person who otherwise violates this title or a rule adopted under this title.

193 (5) The division may impose an administrative penalty in accordance with Section
194 58-1-502.

195 (6) (a) The division may not take disciplinary action against a person for
196 unprofessional or unlawful conduct under this title, unless the division enters into a stipulated
197 agreement or initiates an adjudicative proceeding regarding the conduct within four years after

198 the conduct is reported to the division, except under Subsection (6)(b).

199 (b) (i) The division may not take disciplinary action against a person for unprofessional
200 or unlawful conduct more than 10 years after the occurrence of the conduct, unless the
201 proceeding is in response to a civil or criminal judgment or settlement and the proceeding is
202 initiated within one year following the judgment or settlement.

203 (ii) Notwithstanding Subsection (6)(b)(i), the division may refuse to issue a license due
204 to unprofessional or unlawful conduct that occurred more than 10 years before a request or
205 application for licensure is made.

206 (7) When the division is determining whether to refuse to issue a license to an
207 applicant, or to refuse to renew the license of a licensee, based solely on the criminal
208 conviction of an applicant or licensee, the division shall:

209 (a) provide individualized consideration to the applicant or licensee;

210 (b) determine whether the criminal conviction bears a substantial relationship to the
211 applicant's or licensee's ability to safely or competently practice the occupation or profession;
212 and

213 (c) consider the applicant's or licensee's current circumstances, which may include any
214 of the following:

215 (i) the age of the applicant or licensee when the applicant or licensee committed the
216 offense;

217 (ii) the time that has elapsed since the applicant or licensee committed the offense;

218 (iii) whether the applicant or licensee has completed the applicant's or licensee's
219 criminal sentence;

220 (iv) whether the applicant has completed or is actively participating in rehabilitative
221 drug or alcohol treatment;

222 (v) any testimonials or recommendations from other individuals provided by the
223 applicant or licensee, including a progress report from the applicant's or licensee's probation or
224 parole officer;

225 (vi) other evidence of rehabilitation provided by the applicant or licensee;

- 226 (vii) the education and training of the applicant or licensee;
- 227 (viii) the employment history of the applicant or licensee; and
- 228 (ix) other relevant information provided by the applicant or licensee.

229 Section 4. Section **58-31b-401** is amended to read:

230 **58-31b-401. Grounds for denial of licensure or certification and disciplinary**
 231 **proceedings.**

232 (1) (a) As used in this section, "licensed" or "license" includes certified or certification
 233 under this chapter.

234 (b) A term or condition applied to the word "nurse" under this section applies to a
 235 medication aide certified.

236 (2) Grounds for refusal to issue a license to an applicant, for refusal to renew the
 237 license of a licensee, to revoke, suspend, restrict, or place on probation the license of a licensee,
 238 to issue a public or private reprimand to a licensee, and to issue cease and desist orders shall be
 239 in accordance with Section **58-1-401**.

240 ~~[(2) If]~~ (3) (a) (i) Subject to Subsection (7), if a court of competent jurisdiction
 241 determines a nurse is incapacitated as defined in Section **75-1-201** or that the nurse has a
 242 mental illness, as defined in Section **62A-15-602**, and is unable to safely engage in the practice
 243 of nursing, the director shall immediately suspend the license of the nurse upon the entry of the
 244 judgment of the court, without further proceedings under Title 63G, Chapter 4, Administrative
 245 Procedures Act, regardless of whether an appeal from the court's ruling is pending.

246 (ii) The director shall promptly notify the nurse in writing of ~~[the]~~ a suspension under
 247 Subsection (3)(a)(i).

248 ~~[(3)(a) If]~~ (b) (i) Subject to Subsection (7), if the division and the majority of the
 249 board find reasonable cause to believe a nurse who is not determined judicially to be an
 250 incapacitated person or to have a mental illness, is incapable of practicing nursing with
 251 reasonable skill regarding the safety of patients, because of illness, excessive use of drugs or
 252 alcohol, or as a result of any mental or physical condition, the board shall recommend that the
 253 director file a petition with the division, and cause the petition to be served upon the nurse with

254 a notice of hearing on the sole issue of the capacity of the nurse to competently, safely engage
255 in the practice of nursing.

256 ~~[(b) The]~~ (ii) Except as provided in Subsection (4), the hearing described in
257 Subsection (3)(b)(i) shall be conducted under Section 58-1-109 and Title 63G, Chapter 4,
258 Administrative Procedures Act~~[-, except as provided in Subsection (4)]~~.

259 (4) (a) Every nurse who accepts the privilege of being licensed under this chapter gives
260 consent to:

261 (i) submitting to an immediate mental or physical examination, at the nurse's expense
262 and by a division-approved practitioner selected by the nurse when directed in writing by the
263 division and a majority of the board to do so; and

264 (ii) the admissibility of the reports of the examining practitioner's testimony or
265 examination, and waives all objections on the ground the reports constitute a privileged
266 communication.

267 (b) The examination may be ordered by the division, with the consent of a majority of
268 the board, only upon a finding of reasonable cause to believe:

269 (i) the nurse has a mental illness, is incapacitated, or otherwise unable to practice
270 nursing with reasonable skill and safety; and

271 (ii) immediate action by the division and the board is necessary to prevent harm to the
272 nurse's patients or the general public.

273 (c) (i) Failure of a nurse to submit to the examination ordered under this section is a
274 ground for the division's immediate suspension of the nurse's license by written order of the
275 director.

276 (ii) The division may enter the order of suspension without further compliance with
277 Title 63G, Chapter 4, Administrative Procedures Act, unless the division finds the failure to
278 submit to the examination ordered under this section was due to circumstances beyond the
279 control of the nurse and was not related directly to the illness or incapacity of the nurse.

280 (5) (a) A nurse whose license is suspended under Subsection ~~[(2);~~ (3)~~];~~ or (4)(c) has
281 the right to a hearing to appeal the suspension within 10 days after the license is suspended.

282 (b) The hearing held under this Subsection (5) shall be conducted in accordance with
283 Sections 58-1-108 and 58-1-109 for the sole purpose of determining if sufficient basis exists
284 for the continuance of the order of suspension in order to prevent harm to the nurse's patients or
285 the general public.

286 (6) A nurse whose license is revoked, suspended, or in any way restricted under this
287 section may request the division and the board to consider, at reasonable intervals, evidence
288 presented by the nurse, under procedures established by division rule, regarding any change in
289 the nurse's condition, to determine whether:

290 (a) the nurse is or is not able to safely and competently engage in the practice of
291 nursing; and

292 (b) the nurse is qualified to have the nurse's license to practice under this chapter
293 restored completely or in part.

294 (7) The division may not refuse, revoke, suspend, or in any way restrict an applicant or
295 licensee's license under this chapter solely because the applicant or licensee seeks or
296 participates in mental health or substance abuse treatment.

297 [~~(7) Nothing in~~]

298 (8) Section 63G-2-206 may not be construed as limiting the authority of the division to
299 report current significant investigative information to the coordinated licensure information
300 system for transmission to party states as required of the division by Article VII of the Nurse
301 Licensure Compact - Revised in Section 58-31e-102.

302 [~~(8) For purposes of this section:~~]

303 [~~(a) "licensed" or "license" includes "certified" or "certification" under this chapter;~~
304 ~~and]~~

305 [~~(b) any terms or conditions applied to the word "nurse" in this section also apply to a~~
306 ~~medication aide certified.]~~

307 Section 5. Section 58-60-108 is amended to read:

308 **58-60-108. Grounds for action regarding license -- Disciplinary proceedings.**

309 [~~The~~] (1) Subject to Subsection (2), the division's grounds for refusing to issue a

310 license to an applicant, for refusing to renew the license of a licensee, for revoking, suspending,
311 restricting, or placing on probation the license of a licensee, for issuing a public or private
312 reprimand to a licensee, and for issuing a cease and desist order are under Section 58-1-401.

313 (2) The division may not refuse, revoke, suspend, or in any way restrict an applicant or
314 licensee's license under this chapter solely because the applicant or licensee seeks or
315 participates in mental health or substance abuse treatment.

316 Section 6. Section 58-61-401 is amended to read:

317 **58-61-401. Grounds for action regarding license -- Disciplinary proceedings.**

318 [~~The~~] (1) Subject to Subsection (2), the division's grounds for refusing to issue a
319 license to an applicant, for refusing to renew the license of a licensee, for revoking, suspending,
320 restricting, or placing on probation the license of a licensee, for issuing a public or private
321 reprimand to a licensee, and for issuing a cease and desist order are under Section 58-1-401.

322 (2) The division may not refuse, revoke, suspend, or in any way restrict an applicant or
323 licensee's license under this chapter solely because the applicant or licensee seeks or
324 participates in mental health or substance abuse treatment.

325 Section 7. Section 58-67-401 is amended to read:

326 **58-67-401. Grounds for denial of license -- Disciplinary proceedings.**

327 [~~Grounds~~] (1) Subject to Subsection (2), grounds for division action are set forth in
328 Sections 58-1-401 and 58-67-503.

329 (2) The division may not refuse, revoke, suspend, or in any way restrict an applicant or
330 licensee's license under this chapter solely because the applicant or licensee seeks or
331 participates in mental health or substance abuse treatment.

332 Section 8. Section 58-68-401 is amended to read:

333 **58-68-401. Grounds for denial of license -- Disciplinary proceedings.**

334 [~~Grounds~~] (1) Subject to Subsection (2), grounds for division action are set forth in
335 Sections 58-1-401 and 58-68-503.

336 (2) The division may not refuse, revoke, suspend, or in any way restrict an applicant or
337 licensee's license under this chapter solely because the applicant or licensee seeks or

338 participates in mental health or substance abuse treatment.

339 Section 9. Section **58-70a-401** is amended to read:

340 **58-70a-401. Grounds for denial of license -- Disciplinary proceedings.**

341 [~~Grounds~~] (1) Subject to Subsection (2), grounds for the following division actions
342 regarding a licensee are under Section **58-1-401**:

343 [~~(1)~~] (a) refusing to issue a license to an applicant;

344 [~~(2)~~] (b) refusing to renew the license of a licensee;

345 [~~(3)~~] (c) revoking, suspending, restricting, or placing on probation the license of a
346 licensee;

347 [~~(4)~~] (d) issuing a public or private reprimand to a licensee; and

348 [~~(5)~~] (e) issuing a cease and desist order.

349 (2) The division may not refuse, revoke, suspend, or in any way restrict an applicant or
350 licensee's license under this chapter solely because the applicant or licensee seeks or
351 participates in mental health or substance abuse treatment.

352 Section 10. Section **58-81-105** is enacted to read:

353 **58-81-105. Grounds for denial of license.**

354 The division may not refuse, revoke, suspend, or in any way restrict the license of a
355 health care practitioner, as defined in Subsections **58-81-102**(2)(c), (g), (h), (i), (j), and (l),
356 under this chapter solely because the health care practitioner seeks or participates in mental
357 health or substance abuse treatment.

358 Section 11. **Appropriation.**

359 The following sums of money are appropriated for the fiscal year beginning July 1,
360 2021 and ending June 30, 2022. These are additions to amounts previously appropriated for
361 fiscal year 2022. Under the terms and conditions of Title 63J, Chapter 1, Budgetary Procedures
362 Act, the Legislature appropriates the following sums of money from the funds or accounts
363 indicated for the use and support of the government of the state of Utah.

364 **ITEM 1**

365 To Department of Health -- Medicaid Services

S.B. 161

Enrolled Copy

366	<u>From Federal Funds</u>	<u>\$3,780,000</u>
367	<u>From Federal Funds, One-time</u>	<u>(\$2,950,000)</u>
368	<u>From Expendable Receipts</u>	<u>\$340,000</u>
369	<u>From Expendable Receipts, One-time</u>	<u>(\$260,000)</u>
370	<u>From Medicaid Expansion Fund</u>	<u>\$36,000</u>
371	<u>From Medicaid Expansion Fund, One-time</u>	<u>(\$26,000)</u>

372 Schedule of Programs:

373	<u>Medicaid Expansion</u>	<u>\$80,000</u>
374	<u>Mental Health and Substance Abuse</u>	<u>\$1,142,600</u>

375 The Legislature intends that the Department of Health use the appropriations provided
376 under this item to increase the Medicaid reimbursement rates for mental health plans.

377 ITEM 2

378 To Department of Human Services -- Division of Substance Abuse and Mental Health

379	<u>From General Fund</u>	<u>\$1,369,100</u>
380	<u>From General Fund, One-time</u>	<u>(\$1,066,500)</u>

381 Schedule of Programs:

382	<u>Mental Health Centers</u>	<u>\$302,600</u>
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383 The Legislature intends that the Department of Human Services use the appropriations
384 provided under this item to increase the Medicaid reimbursement rates for mental health plans.

385 **Section 12. Effective date.**

386 (1) Except as provided in Subsections (2) and (3), this bill takes effect on May 5, 2021.

387 (2) The amendments to Section [31A-22-649.5](#), if approved by two-thirds of all the
388 members elected to each house, take effect upon approval by the governor, or the day following
389 the constitutional time limit of Utah Constitution, Article VII, Section 8, without the governor's
390 signature, or in the case of a veto, the date of veto override.

391 (3) The amendments to Section [26-18-405.5](#) take effect on July 1, 2022.

392 **Section 13. Coordinating S.B. 161 with S.B. 41 -- Superseding amendment.**

393 If this S.B. 161 and S.B. 41, Mental Health Access Amendments, both pass and become

394 law, the Legislature intends that the amendments to Section [31A-22-649.5](#) in this bill supersede
395 the amendments to Section [31A-22-649.5](#) in S.B. 41 when the Office of Legislative Research
396 and General Counsel prepare the Utah Code database for publication.