

**MENTAL HEALTH SYSTEMS AMENDMENTS**

2021 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Todd D. Weiler**

House Sponsor: \_\_\_\_\_

**LONG TITLE**

**General Description:**

This bill addresses mental and behavioral health services in the state.

**Highlighted Provisions:**

This bill:

- ▶ creates and modifies definitions;
- ▶ requires the base budget to include certain appropriations to the Department of Health for insurance plans that contract with the state's Medicaid program for behavioral health services;
- ▶ requires a health benefit plan to reimburse for behavioral telehealth services at a certain percentage of the in-person rate for the services;
- ▶ prohibits the Division of Occupational and Professional Licensing from refusing to issue or taking disciplinary action against the occupational license of certain health care providers based solely on the provider seeking or participating in mental health or substance abuse treatment; and
- ▶ makes technical and conforming changes.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**



28 AMENDS:

29 **26-18-405.5**, as enacted by Laws of Utah 2015, Chapter 288

30 **58-1-401**, as last amended by Laws of Utah 2020, Chapter 289

31 **58-31b-401**, as last amended by Laws of Utah 2019, Chapter 136

32 **58-60-108**, as enacted by Laws of Utah 1994, Chapter 32

33 **58-61-401**, as enacted by Laws of Utah 1994, Chapter 32

34 **58-67-401**, as last amended by Laws of Utah 2011, Chapter 214

35 **58-68-401**, as last amended by Laws of Utah 2011, Chapter 214

36 **58-70a-401**, as enacted by Laws of Utah 1997, Chapter 229

37 ENACTS:

38 **31A-22-649.6**, Utah Code Annotated 1953

39 **58-81-105**, Utah Code Annotated 1953



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

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

43 **26-18-405.5. Base budget appropriations for Medicaid accountable care**  
44 **organizations and mental health plans.**

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

46 (a) ~~["ACOs" means accountable care organizations.]~~ "ACO" means an accountable  
47 care organization that contracts with the state's Medicaid program for physical or behavioral  
48 health services.

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

50 (c) "Current fiscal year fee-for-service cost" means funding for fee-for-service plans  
51 under the department in the current fiscal year.

52 ~~[(c)]~~ (d) "Current fiscal year PMPM" means [per-member-per-month] PMPM funding  
53 for [Medicaid accountable care organizations] ACOs and mental health plans under the  
54 [Department of Health] department in the current fiscal year.

55 (e) "Fee-for-service plan" means a health plan that uses a fee-for-service payment  
56 model and contracts with the state's Medicaid program for behavioral health services.

57 ~~[(d)]~~ (f) "General Fund growth factor" means the amount determined by dividing the  
58 next fiscal year ongoing General Fund revenue estimate by current fiscal year ongoing

59 appropriations from the General Fund.

60 (g) "Mental health plan" means an integrated managed care plan or prepaid mental  
 61 health plan that contracts with the state's Medicaid program for behavioral health services.

62 ~~(e)~~ (h) "Next fiscal year ongoing General Fund revenue estimate" means the next  
 63 fiscal year ongoing General Fund revenue estimate identified by the Executive Appropriations  
 64 Subcommittee, in accordance with legislative rule, for use by the Office of the Legislative  
 65 Fiscal Analyst in preparing budget recommendations.

66 (i) "Next fiscal year fee-for-service cost" means funding for fee-for-service plans under  
 67 the department for the next fiscal year.

68 ~~(f)~~ (j) "Next fiscal year PMPM" means [per-member-per-month] PMPM funding for  
 69 [Medicaid accountable care organizations] ACOs and mental health plans under the  
 70 [Department of Health] department for the next fiscal year.

71 (k) "PMPM" means per-member-per-month.

72 (2) If the General Fund growth factor is less than 100%, the next fiscal year base  
 73 budget shall include an appropriation to the ~~[Department of Health for Medicaid]~~ department:

74 (a) for ACOs and mental health plans in an amount necessary to ensure that the next  
 75 fiscal year PMPM equals the current fiscal year PMPM multiplied by 100%[-]; and

76 (b) for fee-for-service plans in an amount necessary to ensure that the next fiscal year  
 77 fee-for-service cost equals the current fiscal year fee-for-service cost multiplied by 100%.

78 (3) If the General Fund growth factor is greater than or equal to 100%, but less than  
 79 102%, the next fiscal year base budget shall include an appropriation to the ~~[Department of~~  
 80 ~~Health for Medicaid]~~ department:

81 (a) for ACOs and mental health plans in an amount necessary to ensure that the next  
 82 fiscal year PMPM equals the current fiscal year PMPM multiplied by the General Fund growth  
 83 factor[-]; and

84 (b) for fee-for-service plans in an amount necessary to ensure that the next fiscal year  
 85 fee-for-service cost equals the current fiscal year fee-for-service cost multiplied by the General  
 86 Fund growth factor.

87 (4) If the General Fund growth factor is greater than or equal to 102%, the next fiscal  
 88 year base budget shall include an appropriation to the ~~[Department of Health for Medicaid]~~  
 89 department:

90 (a) for ACOs and mental health plans in an amount necessary to ensure that the next  
91 fiscal year PMPM is greater than or equal to the current fiscal year PMPM multiplied by 102%  
92 and less than or equal to the current fiscal year PMPM multiplied by the General Fund growth  
93 factor[-]; and

94 (b) for fee-for-service plans in an amount necessary to ensure that the next fiscal year  
95 fee-for-service cost is greater than or equal to the current fiscal year fee-for-service cost  
96 multiplied by 102% and less than or equal to the current fiscal year fee-for-service cost  
97 multiplied by the General Fund growth factor.

98 (5) In order for the department to estimate the impact of Subsections (2) through (4)  
99 prior to identification of the next fiscal year ongoing General Fund revenue estimate [~~under~~  
100 ~~Subsection (1)(e)~~], the Governor's Office of Management and Budget shall, in cooperation with  
101 the Office of the Legislative Fiscal Analyst, develop an estimate of ongoing General Fund  
102 revenue for the next fiscal year and provide [it] the estimate to the department no later than  
103 September 1 of each year.

104 Section 2. Section **31A-22-649.6** is enacted to read:

105 **31A-22-649.6. Insurance parity for behavioral telehealth services.**

106 (1) As used in this section:

107 (a) "Behavioral health treatment" means a counseling or treatment program that is:

108 (i) necessary to develop, maintain, or restore, to the maximum extent practicable, the  
109 functioning of an individual; and

110 (ii) provided or supervised by an individual licensed under Title 58, Chapter 1,  
111 Division of Occupational and Professional Licensing Act, whose scope of practice includes  
112 mental health services.

113 (b) "Behavioral telehealth services" means telehealth services that are behavioral health  
114 treatment.

115 (c) "Telehealth services" means the same as that term is defined in Section [26-60-102](#).

116 (2) Notwithstanding Section [31A-22-618.5](#), a health benefit plan offered in the  
117 individual market, the small group market, or the large group market and entered into or  
118 renewed on or after January 1, 2022, shall:

119 (a) provide coverage for behavioral telehealth services; and

120 (b) reimburse for the behavioral telehealth services described in Subsection (2)(a) at a

121 rate that is at least 80% of the rate that the state Medicaid program reimburses for behavioral  
122 health treatment that is provided in person.

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

124 **58-1-401. Grounds for denial of license -- Disciplinary proceedings -- Time**  
125 **limitations -- Sanctions.**

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

129 (2) The division may refuse to issue a license to an applicant and may refuse to renew  
130 or may revoke, suspend, restrict, place on probation, issue a public reprimand to, or otherwise  
131 act upon the license of a licensee for the following reasons:

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

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

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

138 (d) subject to Subsections 58-31b-401(7), 58-60-108(2), 58-61-401(2), 58-67-401(2),  
139 58-68-401(2), 58-70a-401(2), and Section 58-81-105, the applicant or licensee is unable to  
140 practice the occupation or profession with reasonable skill and safety because of illness,  
141 drunkenness, excessive use of drugs, narcotics, chemicals, or other type of material, or as a  
142 result of a mental or physical condition, when the condition demonstrates a threat or potential  
143 threat to the public health, safety, or welfare.

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

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

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

151 (b) a person who engages in or represents that the person is engaged in an occupation

152 or profession regulated under this title; and

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

154 (5) The division may impose an administrative penalty in accordance with Section  
155 [58-1-502](#).

156 (6) (a) The division may not take disciplinary action against a person for  
157 unprofessional or unlawful conduct under this title, unless the division enters into a stipulated  
158 agreement or initiates an adjudicative proceeding regarding the conduct within four years after  
159 the conduct is reported to the division, except under Subsection (6)(b).

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

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

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

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

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

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

176 (i) the age of the applicant or licensee when the applicant or licensee committed the  
177 offense;

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

179 (iii) whether the applicant or licensee has completed the applicant's or licensee's  
180 criminal sentence;

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

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

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

187 (vii) the education and training of the applicant or licensee;

188 (viii) the employment history of the applicant or licensee; and

189 (ix) other relevant information provided by the applicant or licensee.

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

191 **58-31b-401. Grounds for denial of licensure or certification and disciplinary**  
 192 **proceedings.**

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

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

197 (2) Grounds for refusal to issue a license to an applicant, for refusal to renew the  
 198 license of a licensee, to revoke, suspend, restrict, or place on probation the license of a licensee,  
 199 to issue a public or private reprimand to a licensee, and to issue cease and desist orders shall be  
 200 in accordance with Section [58-1-401](#).

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

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

209 [~~(3)~~ ~~(a)~~ ~~If~~] (b) (i) Subject to Subsection (7), if the division and the majority of the  
 210 board find reasonable cause to believe a nurse who is not determined judicially to be an  
 211 incapacitated person or to have a mental illness, is incapable of practicing nursing with  
 212 reasonable skill regarding the safety of patients, because of illness, excessive use of drugs or  
 213 alcohol, or as a result of any mental or physical condition, the board shall recommend that the

214 director file a petition with the division, and cause the petition to be served upon the nurse with  
215 a notice of hearing on the sole issue of the capacity of the nurse to competently, safely engage  
216 in the practice of nursing.

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

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

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

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

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

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

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

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

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

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

243 (b) The hearing held under this Subsection (5) shall be conducted in accordance with  
244 Sections 58-1-108 and 58-1-109 for the sole purpose of determining if sufficient basis exists



245 for the continuance of the order of suspension in order to prevent harm to the nurse's patients or  
 246 the general public.

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

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

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

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

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

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

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

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

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

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

269 **58-60-108. Grounds for action regarding license -- Disciplinary proceedings.**

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

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

276 participates in mental health or substance abuse treatment.

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

278 **58-61-401. Grounds for action regarding license -- Disciplinary proceedings.**

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

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

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

287 **58-67-401. Grounds for denial of license -- Disciplinary proceedings.**

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

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

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

294 **58-68-401. Grounds for denial of license -- Disciplinary proceedings.**

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

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

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

301 **58-70a-401. Grounds for denial of license -- Disciplinary proceedings.**

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

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

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

306 [~~(3)~~] (c) revoking, suspending, restricting, or placing on probation the license of a

307 licensee;

308 [~~4~~] (d) issuing a public or private reprimand to a licensee; and

309 [~~5~~] (e) issuing a cease and desist order.

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

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

314 **58-81-105. Grounds for denial of license.**

315 The division may not refuse, revoke, suspend, or in any way restrict the license of a  
316 health care practitioner, as defined in Subsections [58-81-102\(2\)\(c\)](#), (g), (h), (i), (j), and (l),  
317 under this chapter solely because the health care practitioner seeks or participates in mental  
318 health or substance abuse treatment.