

**Senator Todd D. Weiler** proposes the following substitute bill:

**MENTAL HEALTH SYSTEMS AMENDMENTS**

2021 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Todd D. Weiler**

House Sponsor: Steve Eliason

---

---

**LONG TITLE**

**General Description:**

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

**Highlighted Provisions:**

This bill:

- ▶ creates, modifies, and repeals definitions;
- ▶ requires the base budget to include certain appropriations to the Department of Health and the Department of Human Services for insurance plans that contract with the state's Medicaid program for behavioral health services;
- ▶ requires a health benefit plan to:
  - provide coverage for treatment of a mental health condition through telemedicine services if certain conditions are met; and
  - reimburse for the treatment at a certain rate;
- ▶ allows a provider to use the method of technology preferred by the provider for treatment of a mental health condition through telemedicine services if certain conditions are met;
- ▶ 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



26 or substance abuse treatment; and  
27       ▶ makes technical and conforming changes.

28 **Money Appropriated in this Bill:**

29       None

30 **Other Special Clauses:**

31       This bill provides a special effective date.

32       This bill provides a coordination clause.

33 **Utah Code Sections Affected:**

34 AMENDS:

- 35       **26-18-405.5**, as enacted by Laws of Utah 2015, Chapter 288
- 36       **31A-22-649.5**, as enacted by Laws of Utah 2020, Chapter 119
- 37       **58-1-401**, as last amended by Laws of Utah 2020, Chapter 289
- 38       **58-31b-401**, as last amended by Laws of Utah 2019, Chapter 136
- 39       **58-60-108**, as enacted by Laws of Utah 1994, Chapter 32
- 40       **58-61-401**, as enacted by Laws of Utah 1994, Chapter 32
- 41       **58-67-401**, as last amended by Laws of Utah 2011, Chapter 214
- 42       **58-68-401**, as last amended by Laws of Utah 2011, Chapter 214
- 43       **58-70a-401**, as enacted by Laws of Utah 1997, Chapter 229

44 ENACTS:

45       **58-81-105**, Utah Code Annotated 1953

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

47       **31A-22-649.5**, as enacted by Laws of Utah 2020, Chapter 119



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

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

51       **26-18-405.5. Base budget appropriations for Medicaid accountable care**  
52 **organizations and mental health plans.**

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

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

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

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

60 [~~(d)~~ (c) "General Fund growth factor" means the amount determined by dividing the  
61 next fiscal year ongoing General Fund revenue estimate by current fiscal year ongoing  
62 appropriations from the General Fund.

63 (d) "Mental health plan" means an integrated managed care plan, a prepaid mental  
64 health plan, or a health plan that uses a fee-for-service payment model that contracts with the  
65 state's Medicaid program for behavioral health services.

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

70 [~~(f)~~ "Next fiscal year PMPM" means per-member-per-month funding for Medicaid  
71 accountable care organizations under the Department of Health for the next fiscal year.]

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

73 (2) [H] Subject to Subsection (5), if the General Fund growth factor is less than 100%,  
74 the next fiscal year base budget shall include an appropriation:

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

78 (b) to the Department of Human Services for mental health plans under the Department  
79 of Human Services in an amount necessary to ensure that the funding for the mental health  
80 plans in the next fiscal year equals the funding for the mental health plans in the current fiscal  
81 year multiplied by 100%.

82 (3) [H] Subject to Subsection (5), if the General Fund growth factor is greater than or  
83 equal to 100%, but less than 102%, the next fiscal year base budget shall include an  
84 appropriation:

85 (a) to the [~~Department of Health for Medicaid~~] department for ACOs under the  
86 department in an amount necessary to ensure that the next fiscal year PMPM for the ACOs  
87 equals the current fiscal year PMPM for the ACOs multiplied by the General Fund growth

88 factor[-]; and

89 (b) to the Department of Human Services for mental health plans under the Department  
90 of Human Services in an amount necessary to ensure that the funding for the mental health  
91 plans in the next fiscal year equals the funding for the mental health plans in the current fiscal  
92 year multiplied by the General Fund growth factor.

93 (4) [H] Subject to Subsection (5), if the General Fund growth factor is greater than or  
94 equal to 102%, the next fiscal year base budget shall include an appropriation:

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

100 (b) to the Department of Human Services for mental health plans under the Department  
101 of Human Services in an amount necessary to ensure that the funding for the mental health  
102 plans in the next fiscal year is greater than or equal to the funding for the mental health plans in  
103 the current fiscal year multiplied by 102% and less than or equal to the funding for the mental  
104 health plans in the current fiscal year multiplied by the General Fund growth factor.

105 (5) (a) The appropriations provided to the department under this section shall be  
106 reduced by the amount contributed by counties in the current fiscal year for ACOs under the  
107 department in accordance with Subsections 17-43-201(5)(k) and 17-43-301(6)(a)(x).

108 (b) The appropriations provided to the Department of Human Services under this  
109 section shall be reduced by the amount contributed by counties in the current fiscal year for  
110 mental health plans under the Department of Human Services in accordance with Subsections  
111 17-43-201(5)(k) and 17-43-301(6)(a)(x).

112 [(5)] (6) In order for the department and the Department of Human Services to estimate  
113 the impact of Subsections (2) through (4) [prior to] before identification of the next fiscal year  
114 ongoing General Fund revenue estimate [under Subsection (1)(e)], the Governor's Office of  
115 Management and Budget shall, in cooperation with the Office of the Legislative Fiscal Analyst,  
116 develop an estimate of ongoing General Fund revenue for the next fiscal year and provide [it]  
117 the estimate to the department and the Department of Human Services no later than September  
118 1 of each year.

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

120 **31A-22-649.5. Insurance parity for telemedicine services -- Method of technology**  
121 **used.**

122 (1) As used in this section:

123 ~~[(a) "Telehealth services" means the same as that term is defined in Section~~  
124 ~~26-60-102.]~~

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

128 (b) "Telemedicine services" means the same as that term is defined in Section  
129 26-60-102.

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

133 (a) (i) provide coverage for telemedicine services that are covered by Medicare; and

134 ~~[(b)]~~ (ii) except as provided in Subsection (2)(b), reimburse~~[, at a commercially~~  
135 ~~reasonable rate,]~~ a network provider that provides the telemedicine services described in  
136 Subsection ~~[(2)(a)]~~ (2)(a)(i) at a commercially reasonable rate; and

137 (b) (i) provide coverage for treatment of a mental health condition through  
138 telemedicine services if:

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

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

143 (ii) reimburse a network provider that provides the telemedicine services described in  
144 Subsection (2)(b)(i) at the same contracted rate as the in-person services described in  
145 Subsection (2)(b)(i)(A).

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

149 (b) A network provider who provides the telemedicine services described in Subsection

150 (2)(b) may utilize any electronic communication or information technology for the  
151 telemedicine services that the provider prefers if the electronic communication or information  
152 technology is compliant with the federal Health Insurance Portability and Accountability Act of  
153 1996.

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

155 **58-1-401. Grounds for denial of license -- Disciplinary proceedings -- Time**  
156 **limitations -- Sanctions.**

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

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

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

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

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

169 (d) subject to Subsections 58-31b-401(7), 58-60-108(2), 58-61-401(2), 58-67-401(2),  
170 58-68-401(2), 58-70a-401(2), and Section 58-81-105, the applicant or licensee is unable to  
171 practice the occupation or profession with reasonable skill and safety because of illness,  
172 drunkenness, excessive use of drugs, narcotics, chemicals, or other type of material, or as a  
173 result of a mental or physical condition, when the condition demonstrates a threat or potential  
174 threat to the public health, safety, or welfare.

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

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

181 (a) a licensee or applicant who may be disciplined under Subsection (1) or (2);  
182 (b) a person who engages in or represents that the person is engaged in an occupation  
183 or profession regulated under this title; and

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

185 (5) The division may impose an administrative penalty in accordance with Section  
186 58-1-502.

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

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

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

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

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

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

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

207 (i) the age of the applicant or licensee when the applicant or licensee committed the  
208 offense;

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

210 (iii) whether the applicant or licensee has completed the applicant's or licensee's  
211 criminal sentence;

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

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

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

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

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

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

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

222 **58-31b-401. Grounds for denial of licensure or certification and disciplinary**  
223 **proceedings.**

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

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

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

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

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

240 [~~(3)-(a)-If~~] (b) (i) Subject to Subsection (7), if the division and the majority of the  
241 board find reasonable cause to believe a nurse who is not determined judicially to be an  
242 incapacitated person or to have a mental illness, is incapable of practicing nursing with



243 reasonable skill regarding the safety of patients, because of illness, excessive use of drugs or  
244 alcohol, or as a result of any mental or physical condition, the board shall recommend that the  
245 director file a petition with the division, and cause the petition to be served upon the nurse with  
246 a notice of hearing on the sole issue of the capacity of the nurse to competently, safely engage  
247 in the practice of nursing.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

300 **58-60-108. Grounds for action regarding license -- Disciplinary proceedings.**

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

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

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

309           **58-61-401. Grounds for action regarding license -- Disciplinary proceedings.**

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

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

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

318           **58-67-401. Grounds for denial of license -- Disciplinary proceedings.**

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

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

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

325           **58-68-401. Grounds for denial of license -- Disciplinary proceedings.**

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

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

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

332           **58-70a-401. Grounds for denial of license -- Disciplinary proceedings.**

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

335           ~~[+]~~ (a) refusing to issue a license to an applicant;

336 ~~[(2)]~~ (b) refusing to renew the license of a licensee;  
337 ~~[(3)]~~ (c) revoking, suspending, restricting, or placing on probation the license of a  
338 licensee;  
339 ~~[(4)]~~ (d) issuing a public or private reprimand to a licensee; and  
340 ~~[(5)]~~ (e) issuing a cease and desist order.  
341 (2) The division may not refuse, revoke, suspend, or in any way restrict an applicant or  
342 licensee's license under this chapter solely because the applicant or licensee seeks or  
343 participates in mental health or substance abuse treatment.

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

345 **58-81-105. Grounds for denial of license.**

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

350 Section 11. **Effective date.**

351 This bill takes effect on May 5, 2021, except that the amendments to Section  
352 31A-22-649.5, if approved by two-thirds of all the members elected to each house, take effect  
353 upon approval by the governor, or the day following the constitutional time limit of Utah  
354 Constitution, Article VII, Section 8, without the governor's signature, or in the case of a veto,  
355 the date of veto override.

356 Section 12. **Coordinating S.B. 161 with S.B. 41 -- Superseding amendment.**

357 If this S.B. 161 and S.B. 41, Mental Health Access Amendments, both pass and become  
358 law, the Legislature intends that the amendments to Section 31A-22-649.5 in this bill supersede  
359 the amendments to Section [31A-22-649.5](#) in S.B. 41 when the Office of Legislative Research  
360 and General Counsel prepare the Utah Code database for publication.