

**Representative Steve Eliason** proposes the following substitute bill:

**MENTAL HEALTH SYSTEMS AMENDMENTS**

2021 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Todd D. Weiler**

House Sponsor: Steve Eliason

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**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 any synchronous audiovisual technology that is compliant with the federal Health Insurance Portability and Accountability Act of 1996 for certain treatment through telemedicine 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



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:

56       (i) physical health services; or

57 (ii) integrated physical and behavioral health services.

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

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

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

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

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

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

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

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

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

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

83 (3) If the General Fund growth factor is greater than or equal to 100%, but less than  
84 102%, the next fiscal year base budget shall include an 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) subject to Subsection (5), to the Department of Human Services for mental health  
90 plans under the Department of Human Services in an amount necessary to ensure that the  
91 funding for the mental health plans in the next fiscal year equals the funding for the mental  
92 health plans in the current fiscal year multiplied by the General Fund growth factor.

93 (4) If the General Fund growth factor is greater than or equal to 102%, the next fiscal  
94 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) subject to Subsection (5), to the Department of Human Services for mental health  
101 plans under the Department of Human Services in an amount necessary to ensure that the  
102 funding for the mental health plans in the next fiscal year is greater than or equal to the funding  
103 for the mental health plans in the current fiscal year multiplied by 102% and less than or equal  
104 to the funding for the mental health plans in the current fiscal year multiplied by the General  
105 Fund growth factor.

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

110 [(5)] (6) In order for the department and the Department of Human Services to estimate  
111 the impact of Subsections (2) through (4) [~~prior to~~] before identification of the next fiscal year  
112 ongoing General Fund revenue estimate [~~under Subsection (1)(e)], the Governor's Office of~~  
113 Management and Budget shall, in cooperation with the Office of the Legislative Fiscal Analyst,  
114 develop an estimate of ongoing General Fund revenue for the next fiscal year and provide [it]  
115 the estimate to the department and the Department of Human Services no later than September  
116 1 of each year.

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

118 **31A-22-649.5. Insurance parity for telemedicine services -- Method of technology**

119 used.

120 (1) As used in this section:

121 ~~[(a) "Telehealth services" means the same as that term is defined in Section~~  
122 ~~26-60-102.]~~

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

126 (b) "Telemedicine services" means the same as that term is defined in Section  
127 26-60-102.

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

131 (a) provide coverage for:

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

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

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

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

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

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

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

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

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

149 **58-1-401. Grounds for denial of license -- Disciplinary proceedings -- Time**

150 **limitations -- Sanctions.**

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

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

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

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

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

163 (d) subject to Subsections 58-31b-401(7), 58-60-108(2), 58-61-401(2), 58-67-401(2),  
164 58-68-401(2), 58-70a-401(2), and Section 58-81-105, the applicant or licensee is unable to  
165 practice the occupation or profession with reasonable skill and safety because of illness,  
166 drunkenness, excessive use of drugs, narcotics, chemicals, or other type of material, or as a  
167 result of a mental or physical condition, when the condition demonstrates a threat or potential  
168 threat to the public health, safety, or welfare.

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

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

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

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

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

179 (5) The division may impose an administrative penalty in accordance with Section  
180 58-1-502.

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

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

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

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

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

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

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

201 (i) the age of the applicant or licensee when the applicant or licensee committed the  
202 offense;

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

204 (iii) whether the applicant or licensee has completed the applicant's or licensee's  
205 criminal sentence;

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

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

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

- 212 (vii) the education and training of the applicant or licensee;
- 213 (viii) the employment history of the applicant or licensee; and
- 214 (ix) other relevant information provided by the applicant or licensee.

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

216 **58-31b-401. Grounds for denial of licensure or certification and disciplinary**  
217 **proceedings.**

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

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

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

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

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

234 [~~(3)~~ ~~(a)~~ ~~If~~] (b) (i) Subject to Subsection (7), if the division and the majority of the  
235 board find reasonable cause to believe a nurse who is not determined judicially to be an  
236 incapacitated person or to have a mental illness, is incapable of practicing nursing with  
237 reasonable skill regarding the safety of patients, because of illness, excessive use of drugs or  
238 alcohol, or as a result of any mental or physical condition, the board shall recommend that the  
239 director file a petition with the division, and cause the petition to be served upon the nurse with  
240 a notice of hearing on the sole issue of the capacity of the nurse to competently, safely engage  
241 in the practice of nursing.

242 [~~(b)~~ ~~The~~] (ii) Except as provided in Subsection (4), the hearing described in



243 Subsection (3)(b)(i) shall be conducted under Section 58-1-109 and Title 63G, Chapter 4,  
244 Administrative Procedures Act~~[-except as provided in Subsection (4)].~~

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

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

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

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

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

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

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

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

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

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

272 (6) A nurse whose license is revoked, suspended, or in any way restricted under this  
273 section may request the division and the board to consider, at reasonable intervals, evidence

274 presented by the nurse, under procedures established by division rule, regarding any change in  
275 the nurse's condition, to determine whether:

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

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

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

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

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

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

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

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

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

294 **58-60-108. Grounds for action regarding license -- Disciplinary proceedings.**

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

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

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

303 **58-61-401. Grounds for action regarding license -- Disciplinary proceedings.**

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

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

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

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

312 **58-67-401. Grounds for denial of license -- Disciplinary proceedings.**

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

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

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

319 **58-68-401. Grounds for denial of license -- Disciplinary proceedings.**

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

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

326 **58-70a-401. Grounds for denial of license -- Disciplinary proceedings.**

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

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

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

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

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

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

335 (2) The division may not refuse, revoke, suspend, or in any way restrict an applicant or

336 licensee's license under this chapter solely because the applicant or licensee seeks or  
337 participates in mental health or substance abuse treatment.

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

339 **58-81-105. Grounds for denial of license.**

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

344 Section 11. **Effective date.**

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

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

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

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

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