

## SB0161S04 compared with SB0161S03

~~{deleted text}~~ shows text that was in SB0161S03 but was deleted in SB0161S04.

inserted text shows text that was not in SB0161S03 but was inserted into SB0161S04.

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~~{Senator Todd D. Weiler}~~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

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- 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}~~ any synchronous audiovisual technology that is compliant with the federal Health Insurance Portability and Accountability Act of 1996 for certain treatment 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 or substance abuse treatment; and
- ▶ makes technical and conforming changes.

### Money Appropriated in this Bill:

None

### Other Special Clauses:

This bill provides a special effective date.

This bill provides a coordination clause.

### Utah Code Sections Affected:

#### AMENDS:

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

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

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

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

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

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

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

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

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

#### ENACTS:

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

### Utah Code Sections Affected by Coordination Clause:

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

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

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

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

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

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

(i) physical health services; or

(ii) integrated physical and behavioral health services.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) As used in this section:

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

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

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

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

(a) ~~[(i)]~~ provide coverage for:

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

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

~~[(b) (i) provide coverage for (2)(a).]~~

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

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

(B) the health benefit plan determines treatment of the mental health condition through

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telemedicine services meets the appropriate standard of care; and

(~~fi~~~~b~~) reimburse a network provider that provides the telemedicine services described in Subsection (2)(~~b~~~~i~~)~~a~~ at ~~the same contracted rate as the in-person services described in Subsection (2)(b)(i)(A)~~~~a negotiated commercially reasonable rate.~~

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

(b) A network provider ~~who~~that provides the telemedicine services described in Subsection (2)(~~b~~)~~a~~ may utilize any ~~electronic communication or information~~synchronous audiovisual technology for the telemedicine services that ~~the provider prefers if the electronic communication or information technology~~ is compliant with the federal Health Insurance Portability and Accountability Act of 1996.

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

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

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

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

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

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

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

(d) subject to Subsections 58-31b-401(7), 58-60-108(2), 58-61-401(2), 58-67-401(2), 58-68-401(2), 58-70a-401(2), and Section 58-81-105, the applicant or licensee is unable to practice the occupation or profession with reasonable skill and safety because of illness, drunkenness, excessive use of drugs, narcotics, chemicals, or other type of material, or as a

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result of a mental or physical condition, when the condition demonstrates a threat or potential threat to the public health, safety, or welfare.

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

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

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

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

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

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

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

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

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

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

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

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

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and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~[(2)-If]~~ (3) (a) (i) Subject to Subsection (7), if a court of competent jurisdiction determines a nurse is incapacitated as defined in Section 75-1-201 or that the nurse has a mental illness, as defined in Section 62A-15-602, and is unable to safely engage in the practice



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of nursing, the director shall immediately suspend the license of the nurse upon the entry of the judgment of the court, without further proceedings under Title 63G, Chapter 4, Administrative Procedures Act, regardless of whether an appeal from the court's ruling is pending.

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

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

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

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

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

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

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

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

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

(c) (i) Failure of a nurse to submit to the examination ordered under this section is a

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ground for the division's immediate suspension of the nurse's license by written order of the director.

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

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

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

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

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

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

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

~~[(7) Nothing in]~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 11. **Effective date.**

~~[This]~~(1) Except as provided in Subsections (2) and (3), this bill takes effect on May 5, 2021 ~~[, except that the]~~.

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

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

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

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