

## SB0130S01 compared with SB0130

~~{deleted text}~~ shows text that was in SB0130 but was deleted in SB0130S01.

inserted text shows text that was not in SB0130 but was inserted into SB0130S01.

**DISCLAIMER:** This document is provided to assist you in your comparison of the two bills. Sometimes this automated comparison will NOT be completely accurate. Therefore, you need to read the actual bills. This automatically generated document could contain inaccuracies caused by: limitations of the compare program; bad input data; or other causes.

~~{HEALTH}~~ Senator Kirk A. Cullimore proposes the following substitute bill:

### SOCIAL CARE INFORMATION PRIVACY REQUIREMENTS

2023 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Kirk A. Cullimore**

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

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#### LONG TITLE

##### General Description:

This bill creates requirements for a ~~{governmental entity that uses a closed loop referral system}~~ person who collects, processes, shares, or provides individually identifiable social care information.

##### Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ enacts requirements that certain entities must follow when obtaining consent to access or share ~~{information through a closed loop referral system; and~~  
▶ ~~creates notification requirements for a breach of system security for a closed loop referral system}~~ individually identifiable social care information;
- ▶ requires consent to share an individual's individually identifiable social care

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information; and

- ▶ requires a person who collects, processes, shares, or provides individually identifiable social care information to meet certain information privacy and security requirements with respect to that information.

### Money Appropriated in this Bill:

None

### Other Special Clauses:

None

### Utah Code Sections Affected:

ENACTS:

**63G-26-201**, Utah Code Annotated 1953

REPEALS:

**63G-24-101**, as enacted by Laws of Utah 2020, Chapter 373

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

Section 1. Section **63G-26-201** is enacted to read:

**63G-26-201. Requirements for collection, sharing, processing, and use of ~~{closed loop referral systems by governmental entities}~~social care information.**

(1) As used in this section:

(a) ~~"{Closed loop referral system}" means any system that:~~

~~—— (i) stores individually identifiable social care information for the purpose of referrals; and~~

~~—— (ii) shares individually identifiable social care information with one or more entities that provide social care, including health care providers, health plans, health information exchanges, government entities, and charitable organizations.~~

~~—— (b) "Governmental entity" means the same as that term is defined in Section 63G-3-201.~~

~~—— (c) "~~}~~Individually identifiable social care information" means ~~{~~:~~

~~—— (i) protected health information as defined in 45 C.F.R. Sec. 160.103; and~~

~~—— (ii) ~~}~~ information about an individual that:~~

~~(~~{A}~~i) identifies the individual receiving social care; or~~

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~~{B}ii~~ can be used to identify the individual receiving social care.

~~{ (d) "Participating entity" means a person that is able to create, receive, or update referrals or other information related to the provision of social care in a closed loop referral system:~~

~~— (e) "Regulated entity" means:~~

~~— (i) a governmental entity; or~~

~~— (ii) a person that contracts with a governmental entity, directly or indirectly, to provide social care or to operate a closed loop referral system:~~

~~† (ff)b~~ (i) "Social care" means care, services, goods, or supplies related to an individual's social needs.

(ii) "Social care" includes support and assistance for an individual's food stability and nutritional needs, housing, transportation, economic stability, employment, education access and quality, child care and family relationship needs, or environmental and physical safety.

(2) ~~{(a) A regulated entity may not access or share an individual's}~~ This section applies to a person:

(a) that collects, processes, shares, or provides individually identifiable social care information ~~{through a closed loop referral system unless the individual:~~

~~— (i) (A) is currently receiving services funded through a program operated by the regulated entity entity; or~~

~~— (B) has received services funded through the regulated entity in the previous 12 month period;~~

~~— (ii) gave}~~ with one or more providers of social care; or

(b) provides social care.

(3) Individually identifiable social care information may only be shared between social care providers if the individual about whom the individually identifiable social care information relates:

(a) provides consent for the ~~{governmental entity}~~ person to ~~{access or}~~ share the individual's individually identifiable social care information separately for each provider of social care;

(b) specifies the providers of social care who are able to view the individual's individually identifiable social care information; and

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(c) retains the right to revoke the consent provided under Subsection (3)(a) and (b) at any time.

(4) (a) A provider of social care shall maintain policies and controls necessary for referrals and provision of social care in accordance with ~~Subsection (3)(a) or (b); and~~

~~(iii) has not revoked consent under Subsection (4);~~

~~(3) (a) A regulated entity may not access this section.~~

(b) The policies described in Subsection (4)(a) shall:

(i) allow any individual about whom individually identifiable social care information relates to access the information to ensure uninterrupted and efficient delivery of services and care coordination;

(ii) restrict access to individually identifiable social care information ~~{through a closed loop referral system unless the governmental entity obtains consent from the individual:~~

~~(i) on a separate page, whether physical or in electronic form, that includes the following language: "Do you consent to allow this entity to have access to your individually identifiable social care information and your protected health information, along with information about your referral for services? Please note that you will receive the same services whether or not you sign this form."; and~~

~~(ii) through a separate request for each time that the governmental entity accesses} to those individuals who need access to the individually identifiable social care information {through the closed loop referral system.~~

~~(b) A regulated entity may not share} to complete their duties; and~~

(iii) prohibit staff, volunteers, and other individuals from accessing to individually identifiable social care information ~~{through a closed loop referral system unless the governmental entity obtains consent from the individual:~~

~~(i) on a separate page, whether physical or in electronic form, that includes the following language: "Do you consent to allow this entity to share to your individually identifiable social care information and your protected health information, along with information about your referral for services? Please note that you will receive the same services whether or not you sign this form."; and~~

~~(ii) for each instance of a referral for services through the closed loop referral system.~~

~~(4) (a) An individual may revoke the consent provided under Subsection (3) at any~~

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time.

~~\_\_\_\_\_ (b) If an individual revokes consent under Subsection (4)(a), to the extent allowed under federal and state law, the governmental entity shall delete}~~ when those individuals do not need to access this information to complete their duties.

(5) (a) A provider of social care may not condition the provision, extent, or amount of social care services on an individual's willingness to consent to sharing the individual's individually identifiable social care information {from the closed loop referral system within seven days after the day on which the governmental entity receives the individual's revocation of consent.

~~\_\_\_\_\_ (5) A regulated entity may not access or utilize a closed loop referral system unless the closed loop referral system restricts access to}~~ with employees, partner organizations, or other persons that are not necessary for the provision of the social care services.

(b) A provider of social care may not sell or license individually identifiable social care information {in accordance with the requirements in this section.

~~\_\_\_\_\_ (6) (a) In addition to the requirements in Title 13, Chapter 44, Protection of Personal Information Act, a person who contracts with a regulated entity to operate or administer a closed loop referral system shall begin the process of notifying individuals who are affected by a breach of system security as defined in Section 13-44-102 within 48 hours of becoming aware of the breach of system security.~~

~~\_\_\_\_\_ (b) The notification}~~ without the explicit written consent of each individual about whom the individually identifiable social care information relates.

(c) The consent required under Subsection (5)(b):

(i) shall include, at a minimum, an affirmative act that clearly and conspicuously communicates that the person is requesting the individual's authorization to share or sell the individual's individually identifiable social care information; and

(ii) may not be obtained solely through the checking of a box or a radio button on a website.

(6) (a) A person described in Subsection (2) shall, upon request, provide to the requesting individual any personally identifiable social care information about the requesting individual.

(b) The information described in Subsection (6)(a) shall be provided to ~~each~~

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individual affected by the breach of system security through:

- ~~—— (i) first class mail; or~~
- ~~—— (ii) if an individual provides consent for an alternative form of communication, that form of communication for which the individual provided consent.~~
- ~~—— (7) Nothing}~~ the requesting individual in a portable, readily usable format to the extent that this is technically feasible for the person providing the individually identifiable social care information.

(7) This section does not apply to the extent that the requirements in this section {shall be construed to supersede or preempt the applicability of:

- ~~—— (a) HIPAA as defined in Section 26-18-17;~~
- ~~—— (b) Family Educational Rights and Privacy Act, 20 U.S.C. Sec. 1232g;~~
- ~~—— (c) the Gramm-Leach-Bliley Act of 1999}~~ are duplicative of or inconsistent with the requirements in:

(a) the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. {106-102; or

~~—— (d) any applicable state privacy laws}~~ 104-191, 110 Stat. 1936, as amended;

(b) regulations regarding the confidentiality of substance use disorder patient records under 42 C.F.R. Part 2; or

(c) any other applicable provision of state or federal law.

Section 2. **Repealer.**

This bill repeals:

Section **63G-24-101, Title.**