

SB0208S01 compared with SB0208

~~{deleted text}~~ shows text that was in SB0208 but was deleted in SB0208S01.

inserted text shows text that was not in SB0208 but was inserted into SB0208S01.

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.

Representative Raymond P. Ward proposes the following substitute bill:

HEALTH AND HUMAN SERVICES RECODIFICATION ~~{}~~

CROSS REFERENCES, TITLES ~~{58-63J}~~58-63J

2023 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Jacob L. Anderegg

House Sponsor: Raymond P. Ward

LONG TITLE

General Description:

This bill updates ~~{cross-references}~~cross references to the Utah Health and Human Services Code in Titles 58 through 63J.

Highlighted Provisions:

This bill:

- ▶ makes technical updates in Titles 58 through 63J to cross references to the Utah Health and Human Services Code that are renumbered and amended in:
 - S.B. 38, Health and Human Services Recodification - Administration, Licensing, and Recovery Services;
 - S.~~{B. 39, Health and Human Services Recodification - Prevention, Supports,~~

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~~Substance Use and Mental Health;~~

— • ~~S.}B. {40}~~39, Health and Human Services Recodification - Health Care Assistance and Data;~~{and}~~

- S.B. ~~{41}~~40, Health and Human Services Recodification - Health Care Delivery and Repeals; and
 - S.B. 41, Health and Human Services Recodification - Prevention, Supports, Substance Use and Mental Health; and
- makes technical and corresponding changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides coordination clauses.

This bill provides revisor instructions.

Utah Code Sections Affected:

AMENDS:

58-17b-622, as last amended by Laws of Utah 2021, Chapter 340

58-17b-701, as last amended by Laws of Utah 2013, Chapter 364

58-17b-902, as last amended by Laws of Utah 2022, Chapters 253, 255

58-17b-1002, as enacted by Laws of Utah 2020, Chapter 372

58-17b-1004, as last amended by Laws of Utah 2020, Fifth Special Session, Chapter 4

58-28-502, as last amended by Laws of Utah 2022, Chapter 103

58-31b-102, as last amended by Laws of Utah 2022, Chapter 277

58-31b-305, as last amended by Laws of Utah 2019, Chapter 447

58-31b-401, as last amended by Laws of Utah 2021, Chapter 404

58-31b-502, as last amended by Laws of Utah 2022, Chapter 290

58-31b-703, as last amended by Laws of Utah 2016, Chapters 202, 207 and 208 and
last amended by Coordination Clause, Laws of Utah 2016, Chapter 202

58-37-3.6, as last amended by Laws of Utah 2018, Third Special Session, Chapter 1

58-37-3.7, as last amended by Laws of Utah 2021, Chapters 337, 350 and further
amended by Revisor Instructions, Laws of Utah 2021, Chapter 337

58-37-3.8, as last amended by Laws of Utah 2019, First Special Session, Chapter 5

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58-37-3.9, as last amended by Laws of Utah 2021, Chapter 350
58-37-6.5, as last amended by Laws of Utah 2021, Chapter 337
58-37-7, as last amended by Laws of Utah 2018, Chapter 145
58-37-8, as last amended by Laws of Utah 2022, Chapters 116, 415 and 430
58-37-19, as enacted by Laws of Utah 2019, Chapter 130
58-37-22, as enacted by Laws of Utah 2021, Chapter 165
58-37f-102, as last amended by Laws of Utah 2013, Chapter 130
58-37f-201, as last amended by Laws of Utah 2022, Chapter 116
58-37f-301, as last amended by Laws of Utah 2021, Chapters 104, 315
58-37f-702, as last amended by Laws of Utah 2019, Chapter 128
58-41-4, as last amended by Laws of Utah 2022, Chapter 415
58-57-7, as last amended by Laws of Utah 2011, Chapter 340
58-60-114, as last amended by Laws of Utah 2022, Chapter 335
58-60-509, as last amended by Laws of Utah 2022, Chapter 335
58-61-602, as last amended by Laws of Utah 2021, Chapter 283
58-61-704, as last amended by Laws of Utah 2022, Chapter 415
58-61-713, as last amended by Laws of Utah 2022, Chapter 335
58-67-302, as last amended by Laws of Utah 2020, Chapter 339
58-67-304, as last amended by Laws of Utah 2020, Chapters 12, 339
58-67-502, as last amended by Laws of Utah 2021, Chapter 337
58-67-601, as last amended by Laws of Utah 2017, Chapter 299
58-67-702, as last amended by Laws of Utah 2016, Chapters 202, 207 and 208 and last amended by Coordination Clause, Laws of Utah 2016, Chapter 202
58-68-302, as last amended by Laws of Utah 2020, Chapter 339
58-68-304, as last amended by Laws of Utah 2020, Chapters 12, 339
58-68-502, as last amended by Laws of Utah 2021, Chapter 337
58-68-601, as last amended by Laws of Utah 2017, Chapter 299
58-68-702, as last amended by Laws of Utah 2016, Chapters 202, 207 and 208 and last amended by Coordination Clause, Laws of Utah 2016, Chapter 202
58-69-601, as last amended by Laws of Utah 2013, Chapter 364
58-69-702, as enacted by Laws of Utah 2016, Chapter 207 and last amended by

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Coordination Clause, Laws of Utah 2016, Chapter 207

58-70a-102, as last amended by Laws of Utah 2021, Chapters 312, 313

58-70a-303, as last amended by Laws of Utah 2018, Third Special Session, Chapter 1

58-70a-503, as last amended by Laws of Utah 2022, Chapter 290

58-70a-505, as last amended by Laws of Utah 2016, Chapters 202, 207 and 208 and last amended by Coordination Clause, Laws of Utah 2016, Chapter 202

58-71-601, as last amended by Laws of Utah 2013, Chapter 364

58-80a-601, as renumbered and amended by Laws of Utah 2010, Chapter 127

58-85-104, as last amended by Laws of Utah 2018, Third Special Session, Chapter 1

58-88-201, as enacted by Laws of Utah 2022, Chapter 353

59-1-210, as last amended by Laws of Utah 2010, Chapter 278

59-1-403, as last amended by Laws of Utah 2022, Chapter 447

59-2-1901, as enacted by Laws of Utah 2019, Chapter 453

59-10-529, as last amended by Laws of Utah 2021, Chapter 260

59-10-1004, as renumbered and amended by Laws of Utah 2006, Chapter 223

59-10-1308, as last amended by Laws of Utah 2010, Chapter 278

59-10-1320, as enacted by Laws of Utah 2018, Chapter 414

59-12-102, as last amended by Laws of Utah 2021, Chapters 64, 367 and 414 and last amended by Coordination Clause, Laws of Utah 2021, Chapter 367

59-12-103, as last amended by Laws of Utah 2022, Chapters 77, 106 and 433

59-12-104.10, as last amended by Laws of Utah 2019, First Special Session, Chapter 5

59-12-801, as last amended by Laws of Utah 2014, Chapter 50

59-14-807, as last amended by Laws of Utah 2020, Fifth Special Session, Chapter 20

61-1-13, as last amended by Laws of Utah 2020, Chapter 77

61-1-201, as enacted by Laws of Utah 2018, Chapter 159

~~{ **62A-2-101**, as last amended by Laws of Utah 2022, Chapters 334, 468~~

~~— **62A-2-106**, as last amended by Laws of Utah 2021, Chapter 400~~

~~— **62A-2-110**, as last amended by Laws of Utah 2005, Chapter 188~~

~~— **62A-3-322**, as enacted by Laws of Utah 2018, Third Special Session, Chapter 1~~

~~— **62A-5a-102**, as last amended by Laws of Utah 2019, Chapter 187~~

~~— **62A-11-103**, as last amended by Laws of Utah 2012, Chapter 41~~

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† **63A-5b-303**, as last amended by Laws of Utah 2022, Chapters 169, 421
63A-5b-607, as last amended by Laws of Utah 2022, Chapters 169, 443
63A-5b-910, as last amended by Laws of Utah 2022, Chapter 421
63A-9-701, as last amended by Laws of Utah 2003, Chapter 22
63A-13-102, as last amended by Laws of Utah 2022, Chapter 255
63A-13-204, as last amended by Laws of Utah 2016, Chapters 222, 348
63A-13-301, as last amended by Laws of Utah 2016, Chapter 225
63A-16-803, as renumbered and amended by Laws of Utah 2021, Chapter 344
63A-17-806, as last amended by Laws of Utah 2022, Chapter 169
63A-17-1001, as renumbered and amended by Laws of Utah 2021, Chapter 344
63B-16-401, as last amended by Laws of Utah 2013, Chapter 465
63C-9-403, as last amended by Laws of Utah 2022, Chapters 421, 443
63C-18-102, as last amended by Laws of Utah 2020, Chapter 303
63C-18-202, as last amended by Laws of Utah 2021, Chapter 76
63C-18-203, as last amended by Laws of Utah 2021, Chapter 76
63G-2-202, as last amended by Laws of Utah 2021, Chapter 231
63G-2-302, as last amended by Laws of Utah 2022, Chapters 169, 334
63G-2-305, as last amended by Laws of Utah 2022, Chapters 11, 109, 198, 201, 303, 335, 388, 391, and 415
63G-3-501, as last amended by Laws of Utah 2022, Chapter 443
63G-4-102, as last amended by Laws of Utah 2022, Chapter 307
63G-7-201, as last amended by Laws of Utah 2021, Chapter 352
63I-1-262, as last amended by Laws of Utah 2022, Chapters 34, 35, 149, 257, and 335
63I-2-262, as last amended by Laws of Utah 2022, Chapters 114, 334
63J-1-315, as last amended by Laws of Utah 2022, Chapter 255

RENUMBERS AND AMENDS:

63A-5b-1109, (Renumbered from 26-29-1, as last amended by Laws of Utah 2022, Chapter 421)

REPEALS AND REENACTS:

63I-1-226, as last amended by Laws of Utah 2022, Chapters 194, 206, 224, 253, 255, 347, and 451

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63I-2-226, as last amended by Laws of Utah 2022, Chapters 255, 365

Utah Code Sections Affected by Coordination Clause:

63I-1-226, as last amended by Laws of Utah 2022, Chapters 194, 206, 224, 253, 255, 347, and 451

63I-1-262, as last amended by Laws of Utah 2022, Chapters 34, 35, 149, 257, and 335

63I-2-226, as last amended by Laws of Utah 2022, Chapters 255 and 365

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

Section 1. Section **58-17b-622** is amended to read:

58-17b-622. Pharmacy benefit management services -- Auditing of pharmacy records -- Appeals.

(1) For purposes of this section:

(a) "Audit" means a review of the records of a pharmacy by or on behalf of an entity that finances or reimburses the cost of health care services or pharmaceutical products.

(b) "Audit completion date" means:

(i) for an audit that does not require an on-site visit at the pharmacy, the date on which the pharmacy, in response to the initial audit request, submits records or other documents to the entity conducting the audit, as determined by:

(A) postmark or other evidence of the date of mailing; or

(B) the date of transmission if the records or other documents are transmitted electronically; and

(ii) for an audit that requires an on-site visit at a pharmacy, the date on which the auditing entity completes the on-site visit, including any follow-up visits or analysis which shall be completed within 60 days after the day on which the on-site visit begins.

(c) "Entity" includes:

(i) a pharmacy benefits manager or coordinator;

(ii) a health benefit plan;

(iii) a third party administrator as defined in Section 31A-1-301;

(iv) a state agency; or

(v) a company, group, or agent that represents, or is engaged by, one of the entities described in Subsections (1)(c)(i) through (iv).

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(d) "Fraud" means an intentional act of deception, misrepresentation, or concealment in order to gain something of value.

(e) "Health benefit plan" means:

(i) a health benefit plan as defined in Section 31A-1-301; or

(ii) a health, dental, medical, Medicare supplement, or conversion program offered under Title 49, Chapter 20, Public Employees' Benefit and Insurance Program Act.

(2) (a) Except as provided in Subsection (2)(b), this section applies to:

(i) a contract for the audit of a pharmacy entered into, amended, or renewed on or after July 1, 2012; and

(ii) an entity that conducts an audit of the pharmacy records of a pharmacy licensed under this chapter.

(b) This section does not apply to an audit of pharmacy records:

(i) for a federally funded prescription drug program, including:

(A) the state Medicaid program;

(B) the Medicare Part D program;

(C) a Department of Defense prescription drug program; and

(D) a Veterans Affairs prescription drug program; or

(ii) when fraud or other intentional and willful misrepresentation is alleged and the pharmacy audit entity has evidence that the pharmacy's actions reasonably indicate fraud or intentional and willful misrepresentation.

(3) (a) An audit that involves clinical or professional judgment shall be conducted by or in consultation with a pharmacist who is employed by or working with the auditing entity and who is licensed in the state or another state.

(b) If an audit is conducted on site at a pharmacy, the entity conducting the audit:

(i) shall give the pharmacy 10 days advanced written notice of:

(A) the audit; and

(B) the range of prescription numbers or a date range included in the audit; and

(ii) may not audit a pharmacy during the first five business days of the month, unless the pharmacy agrees to the timing of the audit.

(c) An entity may not audit claims:

(i) submitted more than 18 months prior to the audit, unless:

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(A) required by federal law; or

(B) the originating prescription is dated in the preceding six months; or

(ii) that exceed 200 selected prescription claims.

(4) (a) An entity may not:

(i) include dispensing fees in the calculations of overpayments unless the prescription is considered a misfill;

(ii) recoup funds for prescription clerical or recordkeeping errors, including typographical errors, scrivener's errors, and computer errors on a required document or record unless the audit entity is alleging fraud or other intentional or willful misrepresentation and the audit entity has evidence that the pharmacy's actions reasonably indicate fraud or intentional and willful misrepresentation;

(iii) recoup funds for refills dispensed in accordance with Section 58-17b-608.1, unless the health benefit plan does not cover the prescription drug dispensed by the pharmacy;

(iv) collect any funds, charge-backs, or penalties until the audit and all appeals are final, unless the audit entity is alleging fraud or other intentional or willful misrepresentation and the audit entity has evidence that the pharmacy's actions reasonably indicate fraud or intentional and willful misrepresentation; or

(v) recoup funds or collect any funds, charge-backs, or penalties from a pharmacy in response to a request for audit unless the pharmacy confirms to the entity the date on which the pharmacy received the request for audit.

(b) Auditors shall only have access to previous audit reports on a particular pharmacy if the previous audit was conducted by the same entity except as required for compliance with state or federal law.

(5) A pharmacy subject to an audit:

(a) may use one or more of the following to validate a claim for a prescription, refill, or change in a prescription:

(i) electronic or physical copies of records of a health care facility, or a health care provider with prescribing authority;

(ii) any prescription that complies with state law;

(iii) the pharmacy's own physical or electronic records; or

(iv) the physical or electronic records, or valid copies of the physical or electronic

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records, of a practitioner or health care facility as defined in Section [26-21-2] 26B-2-201; and

(b) may not be required to provide the following records to validate a claim for a prescription, refill, or change in a prescription:

(i) if the prescription was handwritten, the physical handwritten version of the prescription; or

(ii) a note from the practitioner regarding the patient or the prescription that is not otherwise required for a prescription under state or federal law.

(6) (a) (i) An entity that audits a pharmacy shall establish:

(A) a maximum time for the pharmacy to submit records or other documents to the entity following receipt of an audit request for records or documents; and

(B) a maximum time for the entity to provide the pharmacy with a preliminary audit report following submission of records under Subsection (6)(a)(i)(A).

(ii) The time limits established under Subsections (6)(a)(i)(A) and (B):

(A) shall be identical; and

(B) may not be less than seven days or more than 60 days.

(iii) An entity that audits a pharmacy may not, after the audit completion date, request additional records or other documents from the pharmacy to complete the preliminary audit report described in Subsection (6)(b).

(b) An entity that audits a pharmacy shall provide the pharmacy with a preliminary audit report, delivered to the pharmacy or its corporate office of record, within the time limit established under Subsection (6)(a)(i)(B).

(c) (i) Except as provided in Subsection (6)(c)(ii), a pharmacy has 30 days following receipt of the preliminary audit report to respond to questions, provide additional documentation, and comment on and clarify findings of the audit.

(ii) An entity may grant a reasonable extension under Subsection (6)(c)(i) upon request by the pharmacy.

(iii) Receipt of the report under Subsection (6)(c)(i) shall be determined by:

(A) postmark or other evidence of the date of mailing; or

(B) the date of transmission if the report is transmitted electronically.

(iv) If a dispute exists between the records of the auditing entity and the pharmacy, the records maintained by the pharmacy shall be presumed valid for the purpose of the audit.

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(7) If an audit results in the dispute or denial of a claim, the entity conducting the audit shall allow:

(a) the pharmacy to resubmit a claim using any commercially reasonable method, including fax, mail, or electronic claims submission provided that the period of time when a claim may be resubmitted has not expired under the rules of the plan sponsor; and

(b) the health benefit plan or other entity that finances or reimburses the cost of health care services or pharmaceutical products to rerun the claim if the health benefit plan or other entity chooses to rerun the claim at no cost to the pharmacy.

(8) (a) Within 60 days after the completion of the appeals process under Subsection (9), a final audit report shall be delivered to the pharmacy or its corporate office of record.

(b) The final audit report shall include a disclosure of any money recovered by the entity that conducted the audit.

(9) (a) An entity that audits a pharmacy shall establish a written appeals process for appealing a preliminary audit report and a final audit report, and shall provide the pharmacy with notice of the written appeals process.

(b) If the pharmacy benefit manager's contract or provider manual contains the information required by this Subsection (9), the requirement for notice is met.

Section 2. Section **58-17b-701** is amended to read:

58-17b-701. Mentally incompetent or incapacitated pharmacist -- Division action and procedures.

(1) As used in this section:

(a) "Incapacitated person" is a person who is incapacitated, as defined in Section 75-1-201.

(b) "Mental illness" is as defined in Section ~~[62A-15-602]~~ 26B-5-301.

(2) If a court of competent jurisdiction determines a pharmacist is an incapacitated person, or that the pharmacist has a mental illness and is unable to safely engage in the practice of pharmacy, the director shall immediately suspend the license of the pharmacist 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. The director shall promptly notify the pharmacist, in writing, of the suspension.

(3) (a) If the division and a majority of the board find reasonable cause to believe a

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pharmacist, who is not determined judicially to be an incapacitated person or to have a mental illness, is incapable of practicing pharmacy 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 pharmacist with a notice of hearing on the sole issue of the capacity of the pharmacist to competently and safely engage in the practice of pharmacy.

(b) The hearing 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 pharmacist who accepts the privilege of being licensed under this chapter gives consent to:

(i) submitting at the pharmacist's own expense to an immediate mental or physical examination when directed in writing by the division, with the consent of a majority of the board, to do so; and

(ii) the admissibility of the reports of the examining practitioner's testimony or examination in any proceeding regarding the license of the pharmacist, 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 pharmacist has a mental illness, is incapacitated or otherwise unable to practice pharmacy with reasonable skill and safety; and

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

(c) (i) Failure of a pharmacist to submit to the examination ordered under this section is a ground for the division's immediate suspension of the pharmacist'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 pharmacist and was not related directly to the illness or incapacity of the pharmacist.

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(5) (a) A pharmacist whose license is suspended under Subsection (2) or (4) 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 pharmacist's patients or the general public.

(6) A pharmacist 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 pharmacist, under procedures established by division rule, regarding any change in the pharmacist's condition, to determine whether:

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

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

Section 3. Section **58-17b-902** is amended to read:

58-17b-902. Definitions.

As used in this part:

(1) "Assisted living facility" means the same as that term is defined in Section ~~[26-21-2]~~ 26B-2-201.

(2) "Cancer drug" means a drug that controls or kills neoplastic cells and includes a drug used in chemotherapy to destroy cancer cells.

(3) "Charitable clinic" means a charitable nonprofit corporation that:

(a) holds a valid exemption from federal income taxation issued under Section 501(a), Internal Revenue Code;

(b) is exempt from federal income taxation under Section 501(c)(3), Internal Revenue Code;

(c) provides, on an outpatient basis, for a period of less than 24 consecutive hours, to an individual not residing or confined at a facility owned or operated by the charitable nonprofit corporation:

(i) advice;

(ii) counseling;

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- (iii) diagnosis;
- (iv) treatment;
- (v) surgery; or
- (vi) care or services relating to the preservation or maintenance of health; and
- (d) has a licensed outpatient pharmacy.

(4) "Charitable pharmacy" means an eligible pharmacy that is operated by a charitable clinic.

(5) "County health department" means the same as that term is defined in Section 26A-1-102.

(6) "Donated prescription drug" means a prescription drug that an eligible donor or individual donates to an eligible pharmacy under the program.

(7) "Eligible donor" means a donor that donates a prescription drug from within the state and is:

- (a) a nursing care facility;
- (b) an assisted living facility;
- (c) a licensed intermediate care facility for people with an intellectual disability;
- (d) a manufacturer;
- (e) a pharmaceutical wholesale distributor;
- (f) an eligible pharmacy; or
- (g) a physician's office.

(8) "Eligible pharmacy" means a pharmacy that:

- (a) is registered by the division as eligible to participate in the program; and
- (b) (i) is licensed in the state as a Class A retail pharmacy; or
- (ii) is operated by:
 - (A) a county;
 - (B) a county health department;
 - (C) a pharmacy under contract with a county health department;
 - (D) the Department of Health and Human Services created in Section 26B-1-201; or
 - (E) a charitable clinic.

(9) (a) "Eligible prescription drug" means a prescription drug, described in Section 58-17b-904, that is not:

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(i) except as provided in Subsection (9)(b), a controlled substance; or

(ii) a drug that can only be dispensed to a patient registered with the drug's manufacturer in accordance with federal Food and Drug Administration requirements.

(b) "Eligible prescription drug" includes a medication-assisted treatment drug that may be accepted, transferred, and dispensed under the program in accordance with federal law.

(10) "Licensed intermediate care facility for people with an intellectual disability" means the same as that term is defined in Section 58-17b-503.

(11) "Medically indigent individual" means an individual who:

(a) (i) does not have health insurance; and

(ii) lacks reasonable means to purchase prescribed medications; or

(b) (i) has health insurance; and

(ii) lacks reasonable means to pay the insured's portion of the cost of the prescribed medications.

(12) "Medication-assisted treatment drug" means buprenorphine prescribed to treat substance use withdrawal symptoms or an opiate use disorder.

(13) "Nursing care facility" means the same as that term is defined in Section ~~[26-18-501]~~ 26B-2-201.

(14) "Physician's office" means a fixed medical facility that:

(a) is staffed by a physician, physician's assistant, nurse practitioner, or registered nurse, licensed under ~~[Title 58, Occupations and Professions]~~ this title; and

(b) treats an individual who presents at, or is transported to, the facility.

(15) "Program" means the Charitable Prescription Drug Recycling Program created in Section 58-17b-903.

(16) "Unit pack" means the same as that term is defined in Section 58-17b-503.

(17) "Unlawful conduct" means the same as that term is defined in Sections 58-1-501 and 58-17b-501.

(18) "Unprofessional conduct" means the same as that term is defined in Sections 58-1-501 and 58-17b-502.

Section 4. Section **58-17b-1002** is amended to read:

58-17b-1002. Definitions.

As used in this part:

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(1) "Epinephrine auto-injector" means the same as that term is defined in Section ~~[26-41-102]~~ 26B-4-401.

(2) "Local health department" means the same as that term is defined in Section 26A-1-102.

(3) "Physician" means the same as that term is defined in Section 58-67-102.

(4) "Qualified adult" means the same as that term is defined in Section ~~[26-41-102]~~ 26B-4-401.

(5) "Qualified epinephrine auto-injector entity" means the same as that term is defined in Section ~~[26-41-102]~~ 26B-4-401.

(6) "Qualified stock albuterol entity" means the same as that term is defined in Section ~~[26-41-102]~~ 26B-4-401.

(7) "Stock albuterol" means the same as that term is defined in Section ~~[26-41-102]~~ 26B-4-401.

Section 5. Section **58-17b-1004** is amended to read:

58-17b-1004. Authorization to dispense an epinephrine auto-injector and stock albuterol pursuant to a standing order.

(1) Notwithstanding any other provision of this chapter, a pharmacist or pharmacy intern may dispense an epinephrine auto-injector:

(a) (i) to a qualified adult for use in accordance with ~~[Title 26, Chapter 41, Emergency Response for Life-threatening Conditions]~~ Title 26B, Chapter 4, Part 4, School Health; or

(ii) to a qualified epinephrine auto-injector entity for use in accordance with ~~[Title 26, Chapter 41, Emergency Response for Life-threatening Conditions]~~ Title 26B, Chapter 4, Part 4, School Health;

(b) pursuant to a standing prescription drug order made in accordance with Section 58-17b-1005;

(c) without any other prescription drug order from a person licensed to prescribe an epinephrine auto-injector; and

(d) in accordance with the dispensing guidelines in Section 58-17b-1006.

(2) Notwithstanding any other provision of this chapter, a pharmacist or pharmacy intern may dispense stock albuterol:

(a) (i) to a qualified adult for use in accordance with ~~[Title 26, Chapter 41, Emergency~~

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~~Response for Life-threatening Conditions]~~ Title 26B, Chapter 4, Part 4, School Health; or

(ii) to a qualified stock albuterol entity for use in accordance with [~~Title 26, Chapter 41, Emergency Response for Life-threatening Conditions]~~ Title 26B, Chapter 4, Part 4, School Health;

(b) pursuant to a standing prescription drug order made in accordance with Section 58-17b-1005;

(c) without any other prescription drug order from a person licensed to prescribe stock albuterol; and

(d) in accordance with the dispensing guidelines in Section 58-17b-1006.

Section 6. Section **58-28-502** is amended to read:

58-28-502. Unprofessional conduct.

(1) "Unprofessional conduct" includes, in addition to the definitions in Section 58-1-501:

(a) applying unsanitary methods or procedures in the treatment of any animal, contrary to rules adopted by the board and approved by the division;

(b) procuring any fee or recompense on the assurance that a manifestly incurable diseased condition of the body of an animal can be permanently cured;

(c) selling any biologics containing living or dead organisms or products or such organisms, except in a manner which will prevent indiscriminate use of such biologics;

(d) swearing falsely in any testimony or affidavit, relating to, or in the course of, the practice of veterinary medicine, surgery, or dentistry;

(e) willful failure to report any dangerous, infectious, or contagious disease, as required by law;

(f) willful failure to report the results of any medical tests, as required by law, or rule adopted pursuant to law;

(g) violating Chapter 37, Utah Controlled Substances Act;

(h) delegating tasks to unlicensed assistive personnel in violation of standards of the profession and in violation of Subsection (2); and

(i) making any unsubstantiated claim of superiority in training or skill as a veterinarian in the performance of professional services.

(2) (a) "Unprofessional conduct" does not include the following:

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(i) delegating to a veterinary technologist, while under the indirect supervision of a veterinarian licensed under this chapter, patient care and treatment that requires a technical understanding of veterinary medicine if written or oral instructions are provided to the technologist by the veterinarian;

(ii) delegating to a state certified veterinary technician, while under the direct or indirect supervision of a veterinarian licensed under this chapter, patient care and treatment that requires a technical understanding of veterinary medicine if the veterinarian provides written or oral instructions to the state certified veterinary technician;

(iii) delegating to a veterinary technician, while under the direct supervision of a veterinarian licensed under this chapter, patient care and treatment that requires a technical understanding of veterinary medicine if written or oral instructions are provided to the technician by the veterinarian;

(iv) delegating to a veterinary assistant, under the immediate supervision of a licensed veterinarian, tasks that are consistent with the standards and ethics of the profession;

(v) delegating to an individual described in Subsection 58-28-307(16), under the direct supervision of a licensed veterinarian, the administration of a sedative drug for teeth floating; or

(vi) discussing the effects of the following on an animal with the owner of an animal:

(A) a cannabinoid or industrial hemp product, as those terms are defined in Section 4-41-102; or

(B) THC or medical cannabis, as those terms are defined in Section ~~[26-61a-102]~~
26B-4-201.

(b) The delegation of tasks permitted under Subsections (2)(a)(i) through (v) does not include:

(i) diagnosing;

(ii) prognosing;

(iii) surgery; or

(iv) prescribing drugs, medicines, or appliances.

(3) Notwithstanding any provision of this section, a veterinarian licensed under this chapter is not prohibited from engaging in a discussion described in Subsection (2)(a)(vi).

Section 7. Section **58-31b-102** is amended to read:

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58-31b-102. Definitions.

In addition to the definitions in Section 58-1-102, as used in this chapter:

(1) "Administrative penalty" means a monetary fine or citation imposed by the division for acts or omissions determined to be unprofessional or unlawful conduct in accordance with a fine schedule established by division rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, and as a result of an adjudicative proceeding conducted in accordance with Title 63G, Chapter 4, Administrative Procedures Act.

(2) "Applicant" means an individual who applies for licensure or certification under this chapter by submitting a completed application for licensure or certification and the required fees to the department.

(3) "Approved education program" means a nursing education program that is accredited by an accrediting body for nursing education that is approved by the United States Department of Education.

(4) "Board" means the Board of Nursing created in Section 58-31b-201.

(5) "Diagnosis" means the identification of and discrimination between physical and psychosocial signs and symptoms essential to the effective execution and management of health care.

(6) "Examinee" means an individual who applies to take or does take any examination required under this chapter for licensure.

(7) "Licensee" means an individual who is licensed or certified under this chapter.

(8) "Long-term care facility" means any of the following facilities licensed by the ~~[Department of Health pursuant to Title 26, Chapter 21, Health Care Facility Licensing and Inspection Act]~~ Department of Health and Human Services pursuant to Title 26B, Chapter 2, Part 2, Health Care Facility Licensing and Inspection:

- (a) a nursing care facility;
 - (b) a small health care facility;
 - (c) an intermediate care facility for people with an intellectual disability;
 - (d) an assisted living facility Type I or II; or
 - (e) a designated swing bed unit in a general hospital.
- (9) "Medication aide certified" means a certified nurse aide who:
- (a) has a minimum of 2,000 hours experience working as a certified nurse aide;

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(b) has received a minimum of 60 hours of classroom and 40 hours of practical training that is approved by the division in collaboration with the board, in administering routine medications to patients or residents of long-term care facilities; and

(c) is certified by the division as a medication aide certified.

(10) (a) "Practice as a medication aide certified" means the limited practice of nursing under the supervision, as defined by the division by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, of a licensed nurse, involving routine patient care that requires minimal or limited specialized or general knowledge, judgment, and skill, to an individual who:

(i) is ill, injured, infirm, has a physical, mental, developmental, or intellectual disability; and

(ii) is in a regulated long-term care facility.

(b) "Practice as a medication aide certified":

(i) includes:

(A) providing direct personal assistance or care; and

(B) administering routine medications to patients in accordance with a formulary and protocols to be defined by the division by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act; and

(ii) does not include assisting a resident of an assisted living facility, a long term care facility, or an intermediate care facility for people with an intellectual disability to self administer a medication, as regulated by the Department of [~~Health~~] Health and Human Services by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(11) "Practice of advanced practice registered nursing" means the practice of nursing within the generally recognized scope and standards of advanced practice registered nursing as defined by rule and consistent with professionally recognized preparation and education standards of an advanced practice registered nurse by a person licensed under this chapter as an advanced practice registered nurse. "Practice of advanced practice registered nursing" includes:

(a) maintenance and promotion of health and prevention of disease;

(b) diagnosis, treatment, correction, consultation, and referral;

(c) prescription or administration of prescription drugs or devices including:

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- (i) local anesthesia;
- (ii) Schedule III-V controlled substances; and
- (iii) Subject to Section 58-31b-803, Schedule II controlled substances; or
- (d) the provision of preoperative, intraoperative, and postoperative anesthesia care and related services upon the request of a licensed health care professional by an advanced practice registered nurse specializing as a certified registered nurse anesthetist, including:
 - (i) preanesthesia preparation and evaluation including:
 - (A) performing a preanesthetic assessment of the patient;
 - (B) ordering and evaluating appropriate lab and other studies to determine the health of the patient; and
 - (C) selecting, ordering, or administering appropriate medications;
 - (ii) anesthesia induction, maintenance, and emergence, including:
 - (A) selecting and initiating the planned anesthetic technique;
 - (B) selecting and administering anesthetics and adjunct drugs and fluids; and
 - (C) administering general, regional, and local anesthesia;
 - (iii) postanesthesia follow-up care, including:
 - (A) evaluating the patient's response to anesthesia and implementing corrective actions; and
 - (B) selecting, ordering, or administering the medications and studies listed in this Subsection (11)(d);
 - (iv) other related services within the scope of practice of a certified registered nurse anesthetist, including:
 - (A) emergency airway management;
 - (B) advanced cardiac life support; and
 - (C) the establishment of peripheral, central, and arterial invasive lines; and
 - (v) for purposes of this Subsection (11)(d), "upon the request of a licensed health care professional":
 - (A) means a health care professional practicing within the scope of the health care professional's license, requests anesthesia services for a specific patient; and
 - (B) does not require an advanced practice registered nurse specializing as a certified registered nurse anesthetist to obtain additional authority to select, administer, or provide

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preoperative, intraoperative, or postoperative anesthesia care and services.

(12) "Practice of nursing" means assisting individuals or groups to maintain or attain optimal health, implementing a strategy of care to accomplish defined goals and evaluating responses to care and treatment, and requires substantial specialized or general knowledge, judgment, and skill based upon principles of the biological, physical, behavioral, and social sciences. "Practice of nursing" includes:

- (a) initiating and maintaining comfort measures;
- (b) promoting and supporting human functions and responses;
- (c) establishing an environment conducive to well-being;
- (d) providing health counseling and teaching;
- (e) collaborating with health care professionals on aspects of the health care regimen;
- (f) performing delegated procedures only within the education, knowledge, judgment, and skill of the licensee;
- (g) delegating nursing tasks that may be performed by others, including an unlicensed assistive personnel; and
- (h) supervising an individual to whom a task is delegated under Subsection (12)(g) as the individual performs the task.

(13) "Practice of practical nursing" means the performance of nursing acts in the generally recognized scope of practice of licensed practical nurses as defined by division rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, and as provided in this Subsection (13) by an individual licensed under this chapter as a licensed practical nurse and under the direction of a registered nurse, licensed physician, or other specified health care professional as defined by division rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act. Practical nursing acts include:

- (a) contributing to the assessment of the health status of individuals and groups;
- (b) participating in the development and modification of the strategy of care;
- (c) implementing appropriate aspects of the strategy of care;
- (d) maintaining safe and effective nursing care rendered to a patient directly or indirectly; and
- (e) participating in the evaluation of responses to interventions.

(14) "Practice of registered nursing" means performing acts of nursing as provided in

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this Subsection (14) by an individual licensed under this chapter as a registered nurse within the generally recognized scope of practice of registered nurses as defined by division rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act. Registered nursing acts include:

- (a) assessing the health status of individuals and groups;
- (b) identifying health care needs;
- (c) establishing goals to meet identified health care needs;
- (d) planning a strategy of care;
- (e) prescribing nursing interventions to implement the strategy of care;
- (f) implementing the strategy of care;
- (g) maintaining safe and effective nursing care that is rendered to a patient directly or

indirectly;

- (h) evaluating responses to interventions;
- (i) teaching the theory and practice of nursing; and
- (j) managing and supervising the practice of nursing.

(15) "Registered nurse apprentice" means an individual licensed under Subsection 58-31b-301(2)(b) who is learning and engaging in the practice of registered nursing under the indirect supervision of an individual licensed under:

- (a) Subsection 58-31b-301(2)(c), (e), or (f);
- (b) Chapter 67, Utah Medical Practice Act; or
- (c) Chapter 68, Utah Osteopathic Medical Practice Act.

(16) "Routine medications":

(a) means established medications administered to a medically stable individual as determined by a licensed health care practitioner or in consultation with a licensed medical practitioner; and

(b) is limited to medications that are administered by the following routes:

- (i) oral;
- (ii) sublingual;
- (iii) buccal;
- (iv) eye;
- (v) ear;

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- (vi) nasal;
- (vii) rectal;
- (viii) vaginal;
- (ix) skin ointments, topical including patches and transdermal;
- (x) premeasured medication delivered by aerosol/nebulizer; and
- (xi) medications delivered by metered hand-held inhalers.

(17) "Unlawful conduct" means the same as that term is defined in Sections 58-1-501 and 58-31b-501.

(18) "Unlicensed assistive personnel" means any unlicensed individual, regardless of title, who is delegated a task by a licensed nurse as permitted by division rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, and the standards of the profession.

(19) "Unprofessional conduct" means the same as that term is defined in Sections 58-1-501 and 58-31b-502 and as may be further defined by division rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

Section 8. Section **58-31b-305** is amended to read:

58-31b-305. Term of license -- Expiration -- Renewal.

(1) (a) The division shall issue each license or certification under this chapter in accordance with a two-year renewal cycle established by rule.

(b) The division may by rule extend or shorten a renewal period by as much as one year to stagger the renewal cycles the division administers.

(2) The division shall renew the license of a licensee who, at the time of renewal:

(a) completes and submits an application for renewal in a form prescribed by the division;

(b) pays a renewal fee established by the division under Section 63J-1-504;

(c) views a suicide prevention video described in Section 58-1-601 and submits proof in the form required by the division; and

(d) meets continuing competency requirements as established by rule.

(3) In addition to the renewal requirements under Subsection (2), a person licensed as an advanced practice registered nurse shall be currently certified by a program approved by the division in collaboration with the board and submit evidence satisfactory to the division of that

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qualification or if licensed prior to July 1, 1992, meet the requirements established by rule.

(4) In addition to the requirements described in Subsections (2) and (3), an advanced practice registered nurse licensee specializing in psychiatric mental health nursing who, as of the day on which the division originally issued the licensee's license had not completed the division's clinical practice requirements in psychiatric and mental health nursing, shall, to qualify for renewal:

(a) if renewing less than two years after the day on which the division originally issued the license, demonstrate satisfactory progress toward completing the clinical practice requirements; or

(b) have completed the clinical practice requirements.

(5) Each license or certification automatically expires on the expiration date shown on the license or certification unless renewed in accordance with Section 58-1-308.

(6) The division shall accept and apply toward an hour requirement that the division establishes under Subsection (2)(d) continuing education that an advanced practice registered nurse completes in accordance with Section ~~[26-61a-106]~~ 26B-4-204.

Section 9. 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.

(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]~~ 26B-5-301, and is unable to safely engage in the practice 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

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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 a suspension under Subsection (3)(a)(i).

(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.

(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.

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

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(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 (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.

(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.

Section 10. Section **58-31b-502** is amended to read:

58-31b-502. Unprofessional conduct.

(1) "Unprofessional conduct" includes:

(a) failure to safeguard a patient's right to privacy as to the patient's person, condition, diagnosis, personal effects, or any other matter about which the licensee is privileged to know because of the licensee's or person with a certification's position or practice as a nurse or

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practice as a medication aide certified;

(b) failure to provide nursing service or service as a medication aide certified in a manner that demonstrates respect for the patient's human dignity and unique personal character and needs without regard to the patient's race, religion, ethnic background, socioeconomic status, age, sex, or the nature of the patient's health problem;

(c) engaging in sexual relations with a patient during any:

(i) period when a generally recognized professional relationship exists between the person licensed or certified under this chapter and the patient; or

(ii) extended period when a patient has reasonable cause to believe a professional relationship exists between the person licensed or certified under the provisions of this chapter and the patient;

(d) (i) as a result of any circumstance under Subsection (1)(c), exploiting or using information about a patient or exploiting the licensee's or the person with a certification's professional relationship between the licensee or holder of a certification under this chapter and the patient; or

(ii) exploiting the patient by use of the licensee's or person with a certification's knowledge of the patient obtained while acting as a nurse or a medication aide certified;

(e) unlawfully obtaining, possessing, or using any prescription drug or illicit drug;

(f) unauthorized taking or personal use of nursing supplies from an employer;

(g) unauthorized taking or personal use of a patient's personal property;

(h) unlawful or inappropriate delegation of nursing care;

(i) failure to exercise appropriate supervision of persons providing patient care services under supervision of the licensed nurse;

(j) employing or aiding and abetting the employment of an unqualified or unlicensed person to practice as a nurse;

(k) failure to file or record any medical report as required by law, impeding or obstructing the filing or recording of such a report, or inducing another to fail to file or record such a report;

(l) breach of a statutory, common law, regulatory, or ethical requirement of confidentiality with respect to a person who is a patient, unless ordered by a court;

(m) failure to pay a penalty imposed by the division;

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- (n) prescribing a Schedule II controlled substance without complying with the requirements in Section 58-31b-803, if applicable;
- (o) violating Section 58-31b-801;
- (p) violating the dispensing requirements of Section 58-17b-309 or Chapter 17b, Part 8, Dispensing Medical Practitioner and Dispensing Medical Practitioner Clinic Pharmacy, if applicable;
- (q) falsely making an entry in, or altering, a medical record with the intent to conceal:
 - (i) a wrongful or negligent act or omission of an individual licensed under this chapter or an individual under the direction or control of an individual licensed under this chapter; or
 - (ii) conduct described in Subsections (1)(a) through (o) or Subsection 58-1-501(1); or
 - (r) violating the requirements of [~~Title 26, Chapter 61a, Utah Medical Cannabis Act~~]
Title 26B, Chapter 4, Part 2, Cannabinoid Research and Medical Cannabis.
- (2) "Unprofessional conduct" does not include, in accordance with [~~Title 26, Chapter 61a, Utah Medical Cannabis Act~~]
Title 26B, Chapter 4, Part 2, Cannabinoid Research and Medical Cannabis, when registered as a qualified medical provider, or acting as a limited medical provider, as those terms are defined in Section [~~26-61a-102~~]
26B-4-201, recommending the use of medical cannabis.

(3) Notwithstanding Subsection (2), the division, in consultation with the board and in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, shall define unprofessional conduct for an advanced practice registered nurse described in Subsection (2).

Section 11. Section **58-31b-703** is amended to read:

58-31b-703. Opiate antagonist -- Exclusion from unprofessional or unlawful conduct.

- (1) As used in this section:
 - (a) "Dispense" means the same as that term is defined in Section 58-17b-102.
 - (b) "Increased risk" means the same as that term is defined in Section [~~26-55-102~~]
26B-4-501.
 - (c) "Opiate antagonist" means the same as that term is defined in Section [~~26-55-102~~]
26B-4-501.
 - (d) "Opiate-related drug overdose event" means the same as that term is defined in Section [~~26-55-102~~]
26B-4-501.

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(e) "Prescribe" means the same as that term is defined in Section 58-17b-102.

(2) The prescribing or dispensing of an opiate antagonist by a licensee under this chapter is not unprofessional or unlawful conduct if the licensee prescribed or dispensed the opiate antagonist:

(a) in a good faith effort to assist:

(i) an individual who is at increased risk of experiencing an opiate-related drug overdose event; or

(ii) a family member of, friend of, or other person, including a person described in Subsections ~~[26-55-107(1)(a)(i)(A)]~~ 26B-4-512(1)(a)(i)(A) through (1)(a)(i)(F), that is in a position to assist an individual who is at increased risk of experiencing an opiate-related drug overdose event; or

(b) to an overdose outreach provider pursuant to ~~[Subsection (f)]~~ 26-55-104(2)(a)(iii)] Section 26B-4-509.

(3) The provisions of this section and ~~[Title 26, Chapter 55, Opiate Overdose Response Act]~~ Title 26B, Chapter 4, Part 5, Treatment Access, do not establish a duty or standard of care in the prescribing, dispensing, or administration of an opiate antagonist.

Section 12. Section **58-37-3.6** is amended to read:

58-37-3.6. Exemption for possession or distribution of a cannabinoid product or expanded cannabinoid product pursuant to an approved study.

(1) As used in this section:

(a) "Cannabinoid product" means a product intended for human ingestion that:

(i) contains an extract or concentrate that is obtained from cannabis;

(ii) is prepared in a medicinal dosage form; and

(iii) contains at least 10 units of cannabidiol for every one unit of tetrahydrocannabinol.

(b) "Cannabis" means any part of the plant cannabis sativa, whether growing or not.

(c) "Drug paraphernalia" means the same as that term is defined in Section 58-37a-3.

(d) "Expanded cannabinoid product" means a product intended for human ingestion that:

(i) contains an extract or concentrate that is obtained from cannabis;

(ii) is prepared in a medicinal dosage form; and

(iii) contains less than 10 units of cannabidiol for every one unit of

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tetrahydrocannabinol.

(e) "Medicinal dosage form" means:

- (i) a tablet;
- (ii) a capsule;
- (iii) a concentrated oil;
- (iv) a liquid suspension;
- (v) a transdermal preparation; or
- (vi) a sublingual preparation.

(f) "Tetrahydrocannabinol" means a substance derived from cannabis that meets the description in Subsection 58-37-4(2)(a)(iii)(AA).

(2) Notwithstanding any other provision of this chapter an individual who possesses or distributes a cannabinoid product or an expanded cannabinoid product is not subject to the penalties described in this title for the possession or distribution of marijuana or tetrahydrocannabinol to the extent that the individual's possession or distribution of the cannabinoid product or expanded cannabinoid product complies with ~~Title 26, Chapter 61, Cannabinoid Research Act.~~ Title 26B, Chapter 4, Part 2, Cannabinoid Research and Medical Cannabis.

Section 13. Section **58-37-3.7** is amended to read:

58-37-3.7. Medical cannabis decriminalization.

(1) As used in this section:

(a) "Cannabis" means the same as that term is defined in Section ~~[26-61a-102]~~ 26B-4-201.

(b) "Cannabis product" means the same as that term is defined in Section ~~[26-61a-102]~~ 26B-4-201.

(c) "Legal dosage limit" means the same as that term is defined in Section ~~[26-61a-102]~~ 26B-4-201.

(d) "Medical cannabis card" means the same as that term is defined in Section ~~[26-61a-102]~~ 26B-4-201.

(e) "Medical cannabis device" means the same as that term is defined in Section ~~[26-61a-102]~~ 26B-4-201.

(f) "Medicinal dosage form" means the same as that term is defined in Section

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[26-61a-102] 26B-4-201.

(g) "Nonresident patient" means the same as that term is defined in Section

[26-61a-102] 26B-4-201.

(h) "Qualifying condition" means the same as that term is defined in Section

[26-61a-102] 26B-4-201.

(i) "Tetrahydrocannabinol" means the same as that term is defined in Section 58-37-3.9.

(2) Before July 1, 2021, including during the period between January 1, 2021, and March 17, 2021, an individual is not guilty under this chapter for the use or possession of marijuana, tetrahydrocannabinol, or marijuana drug paraphernalia if:

(a) at the time of the arrest or citation, the individual:

(i) for possession, was a medical cannabis cardholder; or

(ii) for use, was a medical cannabis patient cardholder or a minor with a provisional patient card under the supervision of a medical cannabis guardian cardholder; and

(b) (i) for use or possession of marijuana or tetrahydrocannabinol, the marijuana or tetrahydrocannabinol is one of the following in an amount that does not exceed the legal dosage limit:

(A) unprocessed cannabis in a medicinal dosage form; or

(B) a cannabis product in a medicinal dosage form; and

(ii) for use or possession of marijuana drug paraphernalia, the paraphernalia is a medical cannabis device.

(3) A nonresident patient is not guilty under this chapter for the use or possession of marijuana, tetrahydrocannabinol, or marijuana drug paraphernalia under this chapter if:

(a) for use or possession of marijuana or tetrahydrocannabinol, the marijuana or tetrahydrocannabinol is one of the following in an amount that does not exceed the legal dosage limit:

(i) unprocessed cannabis in a medicinal dosage form; or

(ii) a cannabis product in a medicinal dosage form; and

(b) for use or possession of marijuana drug paraphernalia, the paraphernalia is a medical cannabis device.

(4) (a) There is a rebuttable presumption against an allegation of use or possession of

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marijuana or tetrahydrocannabinol if:

(i) an individual fails a drug test based on the presence of tetrahydrocannabinol in the sample; and

(ii) the individual provides evidence that the individual possessed or used cannabidiol or a cannabidiol product.

(b) The presumption described in Subsection (4)(a) may be rebutted with evidence that the individual purchased or possessed marijuana or tetrahydrocannabinol that is not authorized under:

(i) Section 4-41-402; or

(ii) ~~[Title 26, Chapter 61a, Utah Medical Cannabis Act]~~ Title 26B, Chapter 4, Part 2, Cannabinoid Research and Medical Cannabis.

(5) (a) An individual is not guilty under this chapter for the use or possession of marijuana drug paraphernalia if the drug paraphernalia is a medical cannabis device.

(b) Nothing in this section prohibits a person, either within the state or outside the state, from selling a medical cannabis device within the state.

(c) A person is not required to hold a license under Title 4, Chapter 41a, Cannabis Production Establishments, or ~~[Title 26, Chapter 61a, Utah Medical Cannabis Act]~~ Title 26B, Chapter 4, Part 2, Cannabinoid Research and Medical Cannabis, to qualify for the protections of this section to sell a medical cannabis device.

Section 14. Section ~~58-37-3.8~~ is amended to read:

58-37-3.8. Enforcement.

(1) A law enforcement officer, as that term is defined in Section 53-13-103, except for an officially designated drug enforcement task force regarding conduct that is not in accordance with ~~[Title 26, Chapter 61a, Utah Medical Cannabis Act]~~ Title 26B, Chapter 4, Part 2, Cannabinoid Research and Medical Cannabis, may not expend any state or local resources, including the officer's time, to:

(a) effect any arrest or seizure of cannabis, as that term is defined in Section ~~[26-61a-102]~~ 26B-4-201, or conduct any investigation, on the sole basis of activity the officer believes to constitute a violation of federal law if the officer has reason to believe that the activity is in compliance with the state medical cannabis laws;

(b) enforce a law that restricts an individual's right to acquire, own, or possess a

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firearm based solely on the individual's possession or use of cannabis in accordance with state medical cannabis laws; or

(c) provide any information or logistical support related to an activity described in Subsection (1)(a) to any federal law enforcement authority or prosecuting entity.

(2) An agency or political subdivision of the state may not take an adverse action against a person for providing a professional service to a medical cannabis pharmacy, as that term is defined in Section ~~[26-61a-102]~~ 26B-4-201, the state central patient portal, as that term is defined in Section ~~[26-61a-102]~~ 26B-4-201, or a cannabis production establishment, as that term is defined in Section 4-41a-102, on the sole basis that the service is a violation of federal law.

Section 15. Section **58-37-3.9** is amended to read:

58-37-3.9. Exemption for possession or use of cannabis to treat a qualifying illness.

(1) As used in this section:

(a) "Cannabis" means marijuana.

(b) "Cannabis product" means the same as that term is defined in Section ~~[26-61a-102]~~ 26B-4-201.

(c) "Drug paraphernalia" means the same as that term is defined in Section 58-37a-3.

(d) "Medical cannabis cardholder" means the same as that term is defined in Section ~~[26-61a-102]~~ 26B-4-201.

(e) "Medical cannabis device" means the same as that term is defined in Section ~~[26-61a-102]~~ 26B-4-201.

(f) "Medicinal dosage form" means the same as that term is defined in Section ~~[26-61a-102]~~ 26B-4-201.

(g) "Tetrahydrocannabinol" means a substance derived from cannabis or a synthetic description as described in Subsection 58-37-4(2)(a)(iii)(AA).

(2) Notwithstanding any other provision of law, except as otherwise provided in this section:

(a) an individual is not guilty of a violation of this title for the following conduct if the individual engages in the conduct in accordance with Title 4, Chapter 41a, Cannabis Production Establishments, or ~~[Title 26, Chapter 61a, Utah Medical Cannabis Act]~~ Title 26B,

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Chapter 4, Part 2, Cannabinoid Research and Medical Cannabis:

(i) possessing, ingesting, inhaling, producing, manufacturing, dispensing, distributing, selling, or offering to sell cannabis or a cannabis product; or

(ii) possessing cannabis or a cannabis product with the intent to engage in the conduct described in Subsection (2)(a)(i); and

(b) an individual is not guilty of a violation of this title regarding drug paraphernalia if the individual, in accordance with Title 4, Chapter 41a, Cannabis Production Establishments, and ~~[Title 26, Chapter 61a, Utah Medical Cannabis Act]~~ Title 26B, Chapter 4, Part 2,

Cannabinoid Research and Medical Cannabis:

(i) possesses, manufactures, distributes, sells, or offers to sell a medical cannabis device; or

(ii) possesses a medical cannabis device with the intent to engage in any of the conduct described in Subsection (2)(b)(i).

(3) (a) As used in this Subsection (3), "smoking" does not include the vaporization or heating of medical cannabis.

(b) ~~[Title 26, Chapter 61a, Utah Medical Cannabis Act]~~ Title 26B, Chapter 4, Part 2, Cannabinoid Research and Medical Cannabis, does not authorize a medical cannabis cardholder to smoke or combust cannabis or to use a device to facilitate the smoking or combustion of cannabis.

(c) A medical cannabis cardholder or a nonresident patient who smokes cannabis or engages in any other conduct described in Subsection (3)(b):

(i) does not possess the cannabis in accordance with ~~[Title 26, Chapter 61a, Utah Medical Cannabis Act]~~ Title 26B, Chapter 4, Part 2, Cannabinoid Research and Medical Cannabis; and

(ii) is, for the use or possession of marijuana, tetrahydrocannabinol, or marijuana drug paraphernalia for the conduct described in Subsection (3)(b):

(A) for the first offense, guilty of an infraction and subject to a fine of up to \$100; and

(B) for a second or subsequent offense, subject to charges under this chapter.

(4) An individual who is assessed a penalty or convicted of a crime under Title 4, Chapter 41a, Cannabis Production Establishments, or ~~[Title 26, Chapter 61a, Utah Medical Cannabis Act]~~ Title 26B, Chapter 4, Part 2, Cannabinoid Research and Medical Cannabis, is

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not, based on the conduct underlying that penalty or conviction, subject to a penalty described in this chapter for:

(a) the possession, manufacture, sale, or offer for sale of cannabis or a cannabis product; or

(b) the possession, manufacture, sale, or offer for sale of drug paraphernalia.

(5) (a) Nothing in this section prohibits a person, either within the state or outside the state, from selling a medical cannabis device within the state.

(b) A person is not required to hold a license under Title 4, Chapter 41a, Cannabis Production Establishments, or [~~Title 26, Chapter 61a, Utah Medical Cannabis Act~~] Title 26B, Chapter 4, Part 2, Cannabinoid Research and Medical Cannabis, to qualify for the protections of this section to sell a medical cannabis device.

Section 16. Section ~~58-37-6.5~~ is amended to read:

58-37-6.5. Continuing education for controlled substance prescribers.

(1) For the purposes of this section:

(a) "Controlled substance prescriber" means an individual, other than a veterinarian, who:

(i) is licensed to prescribe a controlled substance under [~~Title 58, Chapter 37, Utah Controlled Substances Act~~] this chapter; and

(ii) possesses the authority, in accordance with the individual's scope of practice, to prescribe schedule II controlled substances and schedule III controlled substances that are applicable to opioid narcotics, hypnotic depressants, or psychostimulants.

(b) "D.O." means an osteopathic physician and surgeon licensed under [~~Title 58,~~] Chapter 68, Utah Osteopathic Medical Practice Act.

(c) "FDA" means the United States Food and Drug Administration.

(d) "M.D." means a physician and surgeon licensed under [~~Title 58,~~] Chapter 67, Utah Medical Practice Act.

(e) "SBIRT" means the Screening, Brief Intervention, and Referral to Treatment approach used by the federal Substance Abuse and Mental Health Services Administration or defined by the division, in consultation with the [~~Division of Substance Abuse~~] Office of Substance Use and Mental Health, by administrative rule, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

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(2) (a) Beginning with the licensing period that begins after January 1, 2014, as a condition precedent for license renewal, each controlled substance prescriber shall complete at least 3.5 continuing education hours per licensing period that satisfy the requirements of Subsection (3).

(b) (i) Beginning with the licensing period that begins after January 1, 2024, as a condition precedent for license renewal, each controlled substance prescriber shall complete at least 3.5 continuing education hours in an SBIRT-training class that satisfies the requirements of Subsection (4).

(ii) Completion of the SBIRT-training class, in compliance with Subsection (2)(b)(i), fulfills the continuing education hours requirement in Subsection (3) for the licensing period in which the class was completed.

(iii) A controlled substance prescriber:

(A) need only take the SBIRT-training class once during the controlled substance prescriber's licensure in the state; and

(B) shall provide a completion record of the SBIRT-training class in order to be reimbursed for SBIRT services to patients, in accordance with Sections ~~[26-18-22]~~ 26B-3-131 and 49-20-416.

(3) A controlled substance prescriber shall complete at least 3.5 hours of continuing education in one or more controlled substance prescribing classes, except dentists who shall complete at least two hours, that satisfy the requirements of Subsections (4) and (6).

(4) A controlled substance prescribing class shall:

(a) satisfy the division's requirements for the continuing education required for the renewal of the controlled substance prescriber's respective license type;

(b) be delivered by an accredited or approved continuing education provider recognized by the division as offering continuing education appropriate for the controlled substance prescriber's respective license type; and

(c) include a postcourse knowledge assessment.

(5) An M.D. or D.O. completing continuing professional education hours under Subsection (4) shall complete those hours in classes that qualify for the American Medical Association Physician's Recognition Award Category 1 Credit.

(6) The 3.5 hours of the controlled substance prescribing classes under Subsection (4)

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shall include educational content covering the following:

- (a) the scope of the controlled substance abuse problem in Utah and the nation;
- (b) all elements of the FDA Blueprint for Prescriber Education under the FDA's Extended-Release and Long-Acting Opioid Analgesics Risk Evaluation and Mitigation Strategy, as published July 9, 2012, or as it may be subsequently revised;
- (c) the national and Utah-specific resources available to prescribers to assist in appropriate controlled substance and opioid prescribing;
- (d) patient record documentation for controlled substance and opioid prescribing;
- (e) office policies, procedures, and implementation; and
- (f) some training regarding medical cannabis, as that term is defined in Section ~~[26-61a-102]~~ 26B-4-201.

(7) (a) The division, in consultation with the Utah Medical Association Foundation, shall determine whether a particular controlled substance prescribing class satisfies the educational content requirements of Subsections (4) and (6) for an M.D. or D.O.

(b) The division, in consultation with the applicable professional licensing boards, shall determine whether a particular controlled substance prescribing class satisfies the educational content requirements of Subsections (4) and (6) for a controlled substance prescriber other than an M.D. or D.O.

(c) The division may by rule establish a committee that may audit compliance with the Utah Risk Evaluation and Mitigation Strategy (REMS) Educational Programming Project grant, that satisfies the educational content requirements of Subsections (4) and (6) for a controlled substance prescriber.

(d) The division shall consult with the Department of ~~[Health]~~ Health and Human Services regarding the medical cannabis training described in Subsection (6)(f).

- (8) A controlled substance prescribing class required under this section:
- (a) may be held:
 - (i) in conjunction with other continuing professional education programs; and
 - (ii) online; and
 - (b) does not increase the total number of state-required continuing professional education hours required for prescriber licensing.

(9) The division may establish rules, in accordance with Title 63G, Chapter 3, Utah

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Administrative Rulemaking Act, to implement this section.

(10) A controlled substance prescriber who, on or after July 1, 2017, obtains a waiver to treat opioid dependency with narcotic medications, in accordance with the Drug Addiction Treatment Act of 2000, 21 U.S.C. Sec. 823 et seq., may use the waiver to satisfy the 3.5 hours of the continuing education requirement under Subsection (3) for two consecutive licensing periods.

Section 17. Section **58-37-7** is amended to read:

58-37-7. Labeling and packaging controlled substance -- Informational pamphlet for opiates.

(1) A person licensed pursuant to this act may not distribute a controlled substance unless it is packaged and labeled in compliance with the requirements of Section 305 of the Federal Comprehensive Drug Abuse Prevention and Control Act of 1970.

(2) No person except a pharmacist for the purpose of filling a prescription shall alter, deface, or remove any label affixed by the manufacturer.

(3) Whenever a pharmacist sells or dispenses any controlled substance on a prescription issued by a practitioner, the pharmacist shall affix to the container in which the substance is sold or dispensed:

(a) a label showing the:

(i) pharmacy name and address;

(ii) serial number; and

(iii) date of initial filling;

(b) the prescription number, the name of the patient, or if the patient is an animal, the name of the owner of the animal and the species of the animal;

(c) the name of the practitioner by whom the prescription was written;

(d) any directions stated on the prescription; and

(e) any directions required by rules and regulations promulgated by the department.

(4) Whenever a pharmacist sells or dispenses a Schedule II or Schedule III controlled substance that is an opiate, a pharmacist shall affix a warning to the container or the lid for the container in which the substance is sold or dispensed that contains the following text:

(a) "Caution: Opioid. Risk of overdose and addiction"; or

(b) any other language that is approved by the Department of [~~Health~~] Health and

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Human Services.

(5) (a) A pharmacist who sells or dispenses a Schedule II or Schedule III controlled substance that is an opiate shall, if available from the Department of [~~Health~~] Health and Human Services, prominently display at the point of sale the informational pamphlet developed by the Department of [~~Health~~] Health and Human Services under Section [~~26-55-109~~] 26B-4-514.

(b) The board and the Department of [~~Health~~] Health and Human Services shall encourage pharmacists to use the informational pamphlet to engage in patient counseling regarding the risks associated with taking opiates.

(c) The requirement in Subsection (5)(a) does not apply to a pharmacist if the pharmacist is unable to obtain the informational pamphlet from the Department of [~~Health~~] Health and Human Services for any reason.

(6) A person may not alter the face or remove any label so long as any of the original contents remain.

(7) (a) An individual to whom or for whose use any controlled substance has been prescribed, sold, or dispensed by a practitioner and the owner of any animal for which any controlled substance has been prescribed, sold, or dispensed by a veterinarian may lawfully possess it only in the container in which it was delivered to the individual by the person selling or dispensing it.

(b) It is a defense to a prosecution under this subsection that the person being prosecuted produces in court a valid prescription for the controlled substance or the original container with the label attached.

Section 18. Section **58-37-8** is amended to read:

58-37-8. Prohibited acts -- Penalties.

(1) Prohibited acts A -- Penalties and reporting:

(a) Except as authorized by this chapter, it is unlawful for a person to knowingly and intentionally:

(i) produce, manufacture, or dispense, or to possess with intent to produce, manufacture, or dispense, a controlled or counterfeit substance;

(ii) distribute a controlled or counterfeit substance, or to agree, consent, offer, or arrange to distribute a controlled or counterfeit substance;

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(iii) possess a controlled or counterfeit substance with intent to distribute; or

(iv) engage in a continuing criminal enterprise where:

(A) the person participates, directs, or engages in conduct that results in a violation of Chapter 37, Utah Controlled Substances Act, Chapter 37a, Utah Drug Paraphernalia Act, Chapter 37b, Imitation Controlled Substances Act, Chapter 37c, Utah Controlled Substance Precursor Act, or Chapter 37d, Clandestine Drug Lab Act, that is a felony; and

(B) the violation is a part of a continuing series of two or more violations of Chapter 37, Utah Controlled Substances Act, Chapter 37a, Utah Drug Paraphernalia Act, Chapter 37b, Imitation Controlled Substances Act, Chapter 37c, Utah Controlled Substance Precursor Act, or Chapter 37d, Clandestine Drug Lab Act, on separate occasions that are undertaken in concert with five or more persons with respect to whom the person occupies a position of organizer, supervisor, or any other position of management.

(b) A person convicted of violating Subsection (1)(a) with respect to:

(i) a substance or a counterfeit of a substance classified in Schedule I or II, a controlled substance analog, or gammahydroxybutyric acid as listed in Schedule III is guilty of a second degree felony, punishable by imprisonment for not more than 15 years, and upon a second or subsequent conviction is guilty of a first degree felony;

(ii) a substance or a counterfeit of a substance classified in Schedule III or IV, or marijuana, or a substance listed in Section 58-37-4.2 is guilty of a third degree felony, and upon a second or subsequent conviction is guilty of a second degree felony; or

(iii) a substance or a counterfeit of a substance classified in Schedule V is guilty of a class A misdemeanor and upon a second or subsequent conviction is guilty of a third degree felony.

(c) A person who has been convicted of a violation of Subsection (1)(a)(ii) or (iii) may be sentenced to imprisonment for an indeterminate term as provided by law, but if the trier of fact finds a firearm as defined in Section 76-10-501 was used, carried, or possessed on the person or in the person's immediate possession during the commission or in furtherance of the offense, the court shall additionally sentence the person convicted for a term of one year to run consecutively and not concurrently; and the court may additionally sentence the person convicted for an indeterminate term not to exceed five years to run consecutively and not concurrently.

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(d) (i) A person convicted of violating Subsection (1)(a)(iv) is guilty of a first degree felony punishable by imprisonment for an indeterminate term of not less than:

(A) seven years and which may be for life; or

(B) 15 years and which may be for life if the trier of fact determined that the defendant knew or reasonably should have known that any subordinate under Subsection (1)(a)(iv)(B) was under 18 years old.

(ii) Imposition or execution of the sentence may not be suspended, and the person is not eligible for probation.

(iii) Subsection (1)(d)(i)(B) does not apply to any defendant who, at the time of the offense, was under 18 years old.

(e) The Administrative Office of the Courts shall report to the Division of Professional Licensing the name, case number, date of conviction, and if known, the date of birth of each person convicted of violating Subsection (1)(a).

(2) Prohibited acts B -- Penalties and reporting:

(a) It is unlawful:

(i) for a person knowingly and intentionally to possess or use a controlled substance analog or a controlled substance, unless it was obtained under a valid prescription or order, directly from a practitioner while acting in the course of the person's professional practice, or as otherwise authorized by this chapter;

(ii) for an owner, tenant, licensee, or person in control of a building, room, tenement, vehicle, boat, aircraft, or other place knowingly and intentionally to permit them to be occupied by persons unlawfully possessing, using, or distributing controlled substances in any of those locations; or

(iii) for a person knowingly and intentionally to possess an altered or forged prescription or written order for a controlled substance.

(b) A person convicted of violating Subsection (2)(a)(i) with respect to:

(i) marijuana, if the amount is 100 pounds or more, is guilty of a second degree felony; or

(ii) a substance classified in Schedule I or II, or a controlled substance analog, is guilty of a class A misdemeanor on a first or second conviction, and on a third or subsequent conviction if each prior offense was committed within seven years before the date of the

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offense upon which the current conviction is based is guilty of a third degree felony.

(c) Upon a person's conviction of a violation of this Subsection (2) subsequent to a conviction under Subsection (1)(a), that person shall be sentenced to a one degree greater penalty than provided in this Subsection (2).

(d) A person who violates Subsection (2)(a)(i) with respect to all other controlled substances not included in Subsection (2)(b)(i) or (ii), including a substance listed in Section 58-37-4.2, or marijuana, is guilty of a class B misdemeanor.

(i) Upon a third conviction the person is guilty of a class A misdemeanor, if each prior offense was committed within seven years before the date of the offense upon which the current conviction is based.

(ii) Upon a fourth or subsequent conviction the person is guilty of a third degree felony if each prior offense was committed within seven years before the date of the offense upon which the current conviction is based.

(e) A person convicted of violating Subsection (2)(a)(i) while inside the exterior boundaries of property occupied by a correctional facility as defined in Section 64-13-1 or a public jail or other place of confinement shall be sentenced to a penalty one degree greater than provided in Subsection (2)(b), and if the conviction is with respect to controlled substances as listed in:

(i) Subsection (2)(b), the person may be sentenced to imprisonment for an indeterminate term as provided by law, and:

(A) the court shall additionally sentence the person convicted to a term of one year to run consecutively and not concurrently; and

(B) the court may additionally sentence the person convicted for an indeterminate term not to exceed five years to run consecutively and not concurrently; and

(ii) Subsection (2)(d), the person may be sentenced to imprisonment for an indeterminate term as provided by law, and the court shall additionally sentence the person convicted to a term of six months to run consecutively and not concurrently.

(f) A person convicted of violating Subsection (2)(a)(ii) or (iii) is:

(i) on a first conviction, guilty of a class B misdemeanor;

(ii) on a second conviction, guilty of a class A misdemeanor; and

(iii) on a third or subsequent conviction, guilty of a third degree felony.

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(g) The Administrative Office of the Courts shall report to the Division of Professional Licensing the name, case number, date of conviction, and if known, the date of birth of each person convicted of violating Subsection (2)(a).

(3) Prohibited acts C -- Penalties:

(a) It is unlawful for a person knowingly and intentionally:

(i) to use in the course of the manufacture or distribution of a controlled substance a license number which is fictitious, revoked, suspended, or issued to another person or, for the purpose of obtaining a controlled substance, to assume the title of, or represent oneself to be, a manufacturer, wholesaler, apothecary, physician, dentist, veterinarian, or other authorized person;

(ii) to acquire or obtain possession of, to procure or attempt to procure the administration of, to obtain a prescription for, to prescribe or dispense to a person known to be attempting to acquire or obtain possession of, or to procure the administration of a controlled substance by misrepresentation or failure by the person to disclose receiving a controlled substance from another source, fraud, forgery, deception, subterfuge, alteration of a prescription or written order for a controlled substance, or the use of a false name or address;

(iii) to make a false or forged prescription or written order for a controlled substance, or to utter the same, or to alter a prescription or written order issued or written under the terms of this chapter; or

(iv) to make, distribute, or possess a punch, die, plate, stone, or other thing designed to print, imprint, or reproduce the trademark, trade name, or other identifying mark, imprint, or device of another or any likeness of any of the foregoing upon any drug or container or labeling so as to render a drug a counterfeit controlled substance.

(b) (i) A first or second conviction under Subsection (3)(a)(i), (ii), or (iii) is a class A misdemeanor.

(ii) A third or subsequent conviction under Subsection (3)(a)(i), (ii), or (iii) is a third degree felony.

(c) A violation of Subsection (3)(a)(iv) is a third degree felony.

(4) Prohibited acts D -- Penalties:

(a) Notwithstanding other provisions of this section, a person not authorized under this chapter who commits any act that is unlawful under Subsection (1)(a) or Section 58-37b-4 is

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upon conviction subject to the penalties and classifications under this Subsection (4) if the trier of fact finds the act is committed:

(i) in a public or private elementary or secondary school or on the grounds of any of those schools during the hours of 6 a.m. through 10 p.m.;

(ii) in a public or private vocational school or postsecondary institution or on the grounds of any of those schools or institutions during the hours of 6 a.m. through 10 p.m.;

(iii) in or on the grounds of a preschool or child-care facility during the preschool's or facility's hours of operation;

(iv) in a public park, amusement park, arcade, or recreation center when the public or amusement park, arcade, or recreation center is open to the public;

(v) in or on the grounds of a house of worship as defined in Section 76-10-501;

(vi) in or on the grounds of a library when the library is open to the public;

(vii) within an area that is within 100 feet of any structure, facility, or grounds included in Subsections (4)(a)(i), (ii), (iii), (iv), (v), and (vi);

(viii) in the presence of a person younger than 18 years old, regardless of where the act occurs; or

(ix) for the purpose of facilitating, arranging, or causing the transport, delivery, or distribution of a substance in violation of this section to an inmate or on the grounds of a correctional facility as defined in Section 76-8-311.3.

(b) (i) A person convicted under this Subsection (4) is guilty of a first degree felony and shall be imprisoned for a term of not less than five years if the penalty that would otherwise have been established but for this Subsection (4) would have been a first degree felony.

(ii) Imposition or execution of the sentence may not be suspended, and the person is not eligible for probation.

(c) If the classification that would otherwise have been established would have been less than a first degree felony but for this Subsection (4), a person convicted under this Subsection (4) is guilty of one degree more than the maximum penalty prescribed for that offense.

(d) (i) If the violation is of Subsection (4)(a)(ix):

(A) the person may be sentenced to imprisonment for an indeterminate term as

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provided by law, and the court shall additionally sentence the person convicted for a term of one year to run consecutively and not concurrently; and

(B) the court may additionally sentence the person convicted for an indeterminate term not to exceed five years to run consecutively and not concurrently; and

(ii) the penalties under this Subsection (4)(d) apply also to a person who, acting with the mental state required for the commission of an offense, directly or indirectly solicits, requests, commands, coerces, encourages, or intentionally aids another person to commit a violation of Subsection (4)(a)(ix).

(e) It is not a defense to a prosecution under this Subsection (4) that:

(i) the actor mistakenly believed the individual to be 18 years old or older at the time of the offense or was unaware of the individual's true age; or

(ii) the actor mistakenly believed that the location where the act occurred was not as described in Subsection (4)(a) or was unaware that the location where the act occurred was as described in Subsection (4)(a).

(5) A violation of this chapter for which no penalty is specified is a class B misdemeanor.

(6) (a) For purposes of penalty enhancement under Subsections (1) and (2), a plea of guilty or no contest to a violation or attempted violation of this section or a plea which is held in abeyance under Title 77, Chapter 2a, Pleas in Abeyance, is the equivalent of a conviction, even if the charge has been subsequently reduced or dismissed in accordance with the plea in abeyance agreement.

(b) A prior conviction used for a penalty enhancement under Subsection (2) shall be a conviction that is:

(i) from a separate criminal episode than the current charge; and

(ii) from a conviction that is separate from any other conviction used to enhance the current charge.

(7) A person may be charged and sentenced for a violation of this section, notwithstanding a charge and sentence for a violation of any other section of this chapter.

(8) (a) A penalty imposed for violation of this section is in addition to, and not in lieu of, a civil or administrative penalty or sanction authorized by law.

(b) When a violation of this chapter violates a federal law or the law of another state,

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conviction or acquittal under federal law or the law of another state for the same act is a bar to prosecution in this state.

(9) In any prosecution for a violation of this chapter, evidence or proof that shows a person or persons produced, manufactured, possessed, distributed, or dispensed a controlled substance or substances, is prima facie evidence that the person or persons did so with knowledge of the character of the substance or substances.

(10) This section does not prohibit a veterinarian, in good faith and in the course of the veterinarian's professional practice only and not for humans, from prescribing, dispensing, or administering controlled substances or from causing the substances to be administered by an assistant or orderly under the veterinarian's direction and supervision.

(11) Civil or criminal liability may not be imposed under this section on:

(a) a person registered under this chapter who manufactures, distributes, or possesses an imitation controlled substance for use as a placebo or investigational new drug by a registered practitioner in the ordinary course of professional practice or research; or

(b) a law enforcement officer acting in the course and legitimate scope of the officer's employment.

(12) (a) Civil or criminal liability may not be imposed under this section on any Indian, as defined in Section 58-37-2, who uses, possesses, or transports peyote for bona fide traditional ceremonial purposes in connection with the practice of a traditional Indian religion as defined in Section 58-37-2.

(b) In a prosecution alleging violation of this section regarding peyote as defined in Section 58-37-4, it is an affirmative defense that the peyote was used, possessed, or transported by an Indian for bona fide traditional ceremonial purposes in connection with the practice of a traditional Indian religion.

(c) (i) The defendant shall provide written notice of intent to claim an affirmative defense under this Subsection (12) as soon as practicable, but not later than 10 days before trial.

(ii) The notice shall include the specific claims of the affirmative defense.

(iii) The court may waive the notice requirement in the interest of justice for good cause shown, if the prosecutor is not unfairly prejudiced by the lack of timely notice.

(d) The defendant shall establish the affirmative defense under this Subsection (12) by

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a preponderance of the evidence. If the defense is established, it is a complete defense to the charges.

(13) (a) It is an affirmative defense that the person produced, possessed, or administered a controlled substance listed in Section 58-37-4.2 if the person was:

- (i) engaged in medical research; and
- (ii) a holder of a valid license to possess controlled substances under Section 58-37-6.

(b) It is not a defense under Subsection (13)(a) that the person prescribed or dispensed a controlled substance listed in Section 58-37-4.2.

(14) It is an affirmative defense that the person possessed, in the person's body, a controlled substance listed in Section 58-37-4.2 if:

- (a) the person was the subject of medical research conducted by a holder of a valid license to possess controlled substances under Section 58-37-6; and
- (b) the substance was administered to the person by the medical researcher.

(15) The application of any increase in penalty under this section to a violation of Subsection (2)(a)(i) may not result in any greater penalty than a second degree felony. This Subsection (15) takes precedence over any conflicting provision of this section.

(16) (a) It is an affirmative defense to an allegation of the commission of an offense listed in Subsection (16)(b) that the person or bystander:

(i) reasonably believes that the person or another person is experiencing an overdose event due to the ingestion, injection, inhalation, or other introduction into the human body of a controlled substance or other substance;

(ii) reports, or assists a person who reports, in good faith the overdose event to a medical provider, an emergency medical service provider as defined in Section ~~[26-8a-102]~~ 26B-4-101, a law enforcement officer, a 911 emergency call system, or an emergency dispatch system, or the person is the subject of a report made under this Subsection (16);

(iii) provides in the report under Subsection (16)(a)(ii) a functional description of the actual location of the overdose event that facilitates responding to the person experiencing the overdose event;

(iv) remains at the location of the person experiencing the overdose event until a responding law enforcement officer or emergency medical service provider arrives, or remains at the medical care facility where the person experiencing an overdose event is located until a

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responding law enforcement officer arrives;

(v) cooperates with the responding medical provider, emergency medical service provider, and law enforcement officer, including providing information regarding the person experiencing the overdose event and any substances the person may have injected, inhaled, or otherwise introduced into the person's body; and

(vi) is alleged to have committed the offense in the same course of events from which the reported overdose arose.

(b) The offenses referred to in Subsection (16)(a) are:

(i) the possession or use of less than 16 ounces of marijuana;

(ii) the possession or use of a scheduled or listed controlled substance other than marijuana; and

(iii) any violation of Chapter 37a, Utah Drug Paraphernalia Act, or Chapter 37b, Imitation Controlled Substances Act.

(c) As used in this Subsection (16) and in Section 76-3-203.11, "good faith" does not include seeking medical assistance under this section during the course of a law enforcement agency's execution of a search warrant, execution of an arrest warrant, or other lawful search.

(17) If any provision of this chapter, or the application of any provision to any person or circumstances, is held invalid, the remainder of this chapter shall be given effect without the invalid provision or application.

(18) A legislative body of a political subdivision may not enact an ordinance that is less restrictive than any provision of this chapter.

(19) If a minor who is under 18 years old is found by a court to have violated this section or Subsection 76-5-102.1(2)(b) or 76-5-207(2)(b), the court may order the minor to complete:

(a) a screening as defined in Section 41-6a-501;

(b) an assessment as defined in Section 41-6a-501 if the screening indicates an assessment to be appropriate; and

(c) an educational series as defined in Section 41-6a-501 or substance use disorder treatment as indicated by an assessment.

Section 19. Section **58-37-19** is amended to read:

58-37-19. Opiate prescription consultation.

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(1) As used in this section:

(a) "Hospice" means the same as that term is defined in Section ~~[26-21-2]~~ 26B-2-201.

(b) "Initial opiate prescription" means a prescription for an opiate to a patient who:

(i) has never previously been issued a prescription for an opiate; or

(ii) was previously issued a prescription for an opiate, but the date on which the current prescription is being issued is more than one year after the date on which an opiate was previously prescribed or administered to the patient.

(c) "Prescriber" means an individual authorized to prescribe a controlled substance under this chapter.

(2) Except as provided in Subsection (3), a prescriber may not issue an initial opiate prescription without discussing with the patient, or the patient's parent or guardian if the patient is under 18 years ~~[of age]~~ old and is not an emancipated minor:

(a) the risks of addiction and overdose associated with opiate drugs;

(b) the dangers of taking opiates with alcohol, benzodiazepines, and other central nervous system depressants;

(c) the reasons why the prescription is necessary;

(d) alternative treatments that may be available; and

(e) other risks associated with the use of the drugs being prescribed.

(3) This section does not apply to a prescription for:

(a) a patient who is currently in active treatment for cancer;

(b) a patient who is receiving hospice care from a licensed hospice; or

(c) a medication that is being prescribed to a patient for the treatment of the patient's substance abuse or opiate dependence.

Section 20. Section **58-37-22** is amended to read:

58-37-22. Electronic prescriptions for controlled substances.

(1) Beginning January 1, 2022, each prescription issued for a controlled substance shall be transmitted electronically as an electronic prescription unless the prescription is:

(a) for a patient residing in an assisted living facility as that term is defined in Section ~~[26-21-2]~~ 26B-2-201, a long-term care facility as that term is defined in Section 58-31b-102, or a correctional facility as that term is defined in Section 64-13-1;

(b) issued by a veterinarian licensed under ~~[Title 58,]~~ Chapter 28, Veterinary Practice

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Act;

(c) dispensed by a Department of Veterans Affairs pharmacy;

(d) issued during a temporary technical or electronic failure at the practitioner's or pharmacy's location; or

(e) issued in an emergency situation.

(2) The division, in collaboration with the appropriate boards that govern the licensure of the licensees who are authorized by the division to prescribe or to dispense controlled substances, shall make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to:

(a) require that controlled substances prescribed or dispensed under Subsection (1)(d) indicate on the prescription that the prescribing practitioner or the pharmacy is experiencing a technical difficulty or an electronic failure;

(b) define an emergency situation for purposes of Subsection (1)(e);

(c) establish additional exemptions to the electronic prescription requirements established in this section;

(d) establish guidelines under which a prescribing practitioner or a pharmacy may obtain an extension of up to two additional years to comply with Subsection (1);

(e) establish a protocol to follow if the pharmacy that receives the electronic prescription is not able to fill the prescription; and

(f) establish requirements that comply with federal laws and regulations for software used to issue and dispense electronic prescriptions.

(3) Beginning July 1, 2024, a pharmacy software program for receiving an electronic prescription for a controlled substance shall be capable of electronically transferring a prescription to a different pharmacy:

(a) upon the request of the patient or the practitioner;

(b) with the approval of a pharmacist at the originating pharmacy; and

(c) if the prescription is unfilled.

Section 21. Section **58-37f-102** is amended to read:

58-37f-102. Definitions.

(1) The definitions in Section 58-37-2 apply to this chapter.

(2) As used in this chapter:

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- (a) "Board" means the Utah State Board of Pharmacy created in Section 58-17b-201.
- (b) "Business associate" is as defined under the HIPAA privacy, security, and breach notification rules in 45 C.F.R. 164.502(a), 164.504(e), and 164.532(d) and (e).
- (c) "Database" means the controlled substance database created in Section 58-37f-201.
- (d) "De-identified" is as defined in 45 C.F.R. 164.502(d) and 164.514(a), (b), and (c).
- (e) "Health care facility" is as defined in Section ~~[26-21-2]~~ 26B-2-201.
- (f) "Mental health therapist" is as defined in Section 58-60-102.
- (g) "Pharmacy" or "pharmaceutical facility" is as defined in Section 58-17b-102.
- (h) "Prospective patient" means an individual who:
 - (i) is seeking medical advice, medical treatment, or medical services from a practitioner; and
 - (ii) the practitioner described in Subsection (2)(h)(i) is considering accepting as a patient.
- (i) "Substance abuse treatment program" is as defined in Section ~~[62A-2-101]~~ 26B-2-101.

Section 22. Section **58-37f-201** is amended to read:

58-37f-201. Controlled substance database -- Creation -- Purpose.

- (1) There is created within the division a controlled substance database.
- (2) The division shall administer and direct the functioning of the database in accordance with this chapter.
- (3) The division may, under state procurement laws, contract with another state agency or a private entity to establish, operate, or maintain the database.
- (4) The division shall, in collaboration with the board, determine whether to operate the database within the division or contract with another entity to operate the database, based on an analysis of costs and benefits.
- (5) The purpose of the database is to contain:
 - (a) the data described in Section 58-37f-203 regarding prescriptions for dispensed controlled substances;
 - (b) data reported to the division under Section ~~[26-21-26]~~ ~~{26B-2-201}~~ 26B-2-225 regarding poisoning or overdose;
 - (c) data reported to the division under Subsection 41-6a-502(4) or 41-6a-502.5(5)(b)

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regarding convictions for driving under the influence of a prescribed controlled substance or impaired driving; and

(d) data reported to the division under Subsection 58-37-8(1)(e) or 58-37-8(2)(g) regarding certain violations of ~~the~~ Chapter 37, Utah Controlled Substances Act.

(6) The division shall maintain the database in an electronic file or by other means established by the division to facilitate use of the database for identification of:

(a) prescribing practices and patterns of prescribing and dispensing controlled substances;

(b) practitioners prescribing controlled substances in an unprofessional or unlawful manner;

(c) individuals receiving prescriptions for controlled substances from licensed practitioners, and who subsequently obtain dispensed controlled substances from a drug outlet in quantities or with a frequency inconsistent with generally recognized standards of dosage for that controlled substance;

(d) individuals presenting forged or otherwise false or altered prescriptions for controlled substances to a pharmacy;

(e) individuals admitted to a general acute hospital for poisoning or overdose involving a prescribed controlled substance; and

(f) individuals convicted for:

(i) driving under the influence of a prescribed controlled substance that renders the individual incapable of safely operating a vehicle;

(ii) driving while impaired, in whole or in part, by a prescribed controlled substance; or

(iii) certain violations of ~~the~~ Chapter 37, Utah Controlled Substances Act.

Section 23. Section **58-37f-301** is amended to read:

58-37f-301. Access to database.

(1) The division shall make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to:

(a) effectively enforce the limitations on access to the database as described in this part; and

(b) establish standards and procedures to ensure accurate identification of individuals requesting information or receiving information without request from the database.

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(2) The division shall make information in the database and information obtained from other state or federal prescription monitoring programs by means of the database available only to the following individuals, in accordance with the requirements of this chapter and division rules:

(a) (i) personnel of the division specifically assigned to conduct investigations related to controlled substance laws under the jurisdiction of the division; and

(ii) the following law enforcement officers, but the division may only provide nonidentifying information, limited to gender, year of birth, and postal ZIP code, regarding individuals for whom a controlled substance has been prescribed or to whom a controlled substance has been dispensed:

(A) a law enforcement agency officer who is engaged in a joint investigation with the division; and

(B) a law enforcement agency officer to whom the division has referred a suspected criminal violation of controlled substance laws;

(b) authorized division personnel engaged in analysis of controlled substance prescription information as a part of the assigned duties and responsibilities of their employment;

(c) a board member if:

(i) the board member is assigned to monitor a licensee on probation; and

(ii) the board member is limited to obtaining information from the database regarding the specific licensee on probation;

(d) a person the division authorizes to obtain that information on behalf of the Utah Professionals Health Program established in Subsection 58-4a-103(1) if:

(i) the person the division authorizes is limited to obtaining information from the database regarding the person whose conduct is the subject of the division's consideration; and

(ii) the conduct that is the subject of the division's consideration includes a violation or a potential violation of Chapter 37, Utah Controlled Substances Act, or another relevant violation or potential violation under this title;

(e) in accordance with a written agreement entered into with the department, employees of the Department of ~~[Health]~~ Health and Human Services:

(i) whom the director of the Department of ~~[Health]~~ Health and Human Services

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assigns to conduct scientific studies regarding the use or abuse of controlled substances, if the identity of the individuals and pharmacies in the database are confidential and are not disclosed in any manner to any individual who is not directly involved in the scientific studies;

(ii) when the information is requested by the Department of [~~Health~~] Health and Human Services in relation to a person or provider whom the Department of [~~Health~~] Health and Human Services suspects may be improperly obtaining or providing a controlled substance; or

(iii) in the medical examiner's office;

(f) in accordance with a written agreement entered into with the department, a designee of the director of the Department of [~~Health~~] Health and Human Services, who is not an employee of the Department of [~~Health~~] Health and Human Services, whom the director of the Department of [~~Health~~] Health and Human Services assigns to conduct scientific studies regarding the use or abuse of controlled substances pursuant to an application process established in rule by the Department of [~~Health~~] Health and Human Services, if:

(i) the designee provides explicit information to the Department of [~~Health~~] Health and Human Services regarding the purpose of the scientific studies;

(ii) the scientific studies to be conducted by the designee:

(A) fit within the responsibilities of the Department of [~~Health~~] Health and Human Services for health and welfare;

(B) are reviewed and approved by an Institutional Review Board that is approved for human subject research by the United States Department of Health and Human Services;

(C) are not conducted for profit or commercial gain; and

(D) are conducted in a research facility, as defined by division rule, that is associated with a university or college accredited by one or more regional or national accrediting agencies recognized by the United States Department of Education;

(iii) the designee protects the information as a business associate of the Department of [~~Health~~] Health and Human Services; and

(iv) the identity of the prescribers, patients, and pharmacies in the database are de-identified, confidential, and not disclosed in any manner to the designee or to any individual who is not directly involved in the scientific studies;

(g) in accordance with a written agreement entered into with the department and the

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Department of ~~[Health]~~ Health and Human Services, authorized employees of a managed care organization, as defined in 42 C.F.R. Sec. 438, if:

(i) the managed care organization contracts with the Department of ~~[Health]~~ Health and Human Services under the provisions of Section ~~[26-18-405]~~ 26B-3-202 and the contract includes provisions that:

(A) require a managed care organization employee who will have access to information from the database to submit to a criminal background check; and

(B) limit the authorized employee of the managed care organization to requesting either the division or the Department of ~~[Health]~~ Health and Human Services to conduct a search of the database regarding a specific Medicaid enrollee and to report the results of the search to the authorized employee; and

(ii) the information is requested by an authorized employee of the managed care organization in relation to a person who is enrolled in the Medicaid program with the managed care organization, and the managed care organization suspects the person may be improperly obtaining or providing a controlled substance;

(h) a licensed practitioner having authority to prescribe controlled substances, to the extent the information:

(i) (A) relates specifically to a current or prospective patient of the practitioner; and

(B) is provided to or sought by the practitioner for the purpose of:

(I) prescribing or considering prescribing any controlled substance to the current or prospective patient;

(II) diagnosing the current or prospective patient;

(III) providing medical treatment or medical advice to the current or prospective patient; or

(IV) determining whether the current or prospective patient:

(Aa) is attempting to fraudulently obtain a controlled substance from the practitioner;

or

(Bb) has fraudulently obtained, or attempted to fraudulently obtain, a controlled substance from the practitioner;

(ii) (A) relates specifically to a former patient of the practitioner; and

(B) is provided to or sought by the practitioner for the purpose of determining whether

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the former patient has fraudulently obtained, or has attempted to fraudulently obtain, a controlled substance from the practitioner;

(iii) relates specifically to an individual who has access to the practitioner's Drug Enforcement Administration identification number, and the practitioner suspects that the individual may have used the practitioner's Drug Enforcement Administration identification number to fraudulently acquire or prescribe a controlled substance;

(iv) relates to the practitioner's own prescribing practices, except when specifically prohibited by the division by administrative rule;

(v) relates to the use of the controlled substance database by an employee of the practitioner, described in Subsection (2)(i); or

(vi) relates to any use of the practitioner's Drug Enforcement Administration identification number to obtain, attempt to obtain, prescribe, or attempt to prescribe, a controlled substance;

(i) in accordance with Subsection (3)(a), an employee of a practitioner described in Subsection (2)(h), for a purpose described in Subsection (2)(h)(i) or (ii), if:

(i) the employee is designated by the practitioner as an individual authorized to access the information on behalf of the practitioner;

(ii) the practitioner provides written notice to the division of the identity of the employee; and

(iii) the division:

(A) grants the employee access to the database; and

(B) provides the employee with a password that is unique to that employee to access the database in order to permit the division to comply with the requirements of Subsection 58-37f-203(7) with respect to the employee;

(j) an employee of the same business that employs a licensed practitioner under Subsection (2)(h) if:

(i) the employee is designated by the practitioner as an individual authorized to access the information on behalf of the practitioner;

(ii) the practitioner and the employing business provide written notice to the division of the identity of the designated employee; and

(iii) the division:

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(A) grants the employee access to the database; and

(B) provides the employee with a password that is unique to that employee to access the database in order to permit the division to comply with the requirements of Subsection 58-37f-203(7) with respect to the employee;

(k) a licensed pharmacist having authority to dispense a controlled substance, or a licensed pharmacy intern or pharmacy technician working under the general supervision of a licensed pharmacist, to the extent the information is provided or sought for the purpose of:

(i) dispensing or considering dispensing any controlled substance;

(ii) determining whether a person:

(A) is attempting to fraudulently obtain a controlled substance from the pharmacy, practitioner, or health care facility; or

(B) has fraudulently obtained, or attempted to fraudulently obtain, a controlled substance from the pharmacy, practitioner, or health care facility;

(iii) reporting to the controlled substance database; or

(iv) verifying the accuracy of the data submitted to the controlled substance database on behalf of a pharmacy where the licensed pharmacist, pharmacy intern, or pharmacy technician is employed;

(l) pursuant to a valid search warrant, federal, state, and local law enforcement officers and state and local prosecutors who are engaged in an investigation related to:

(i) one or more controlled substances; and

(ii) a specific person who is a subject of the investigation;

(m) subject to Subsection (7), a probation or parole officer, employed by the Department of Corrections or by a political subdivision, to gain access to database information necessary for the officer's supervision of a specific probationer or parolee who is under the officer's direct supervision;

(n) employees of the Office of Internal Audit ~~and Program Integrity~~ within the Department of ~~Health~~ Health and Human Services who are engaged in their specified duty of ensuring Medicaid program integrity under Section ~~[26-18-2.3]~~ 26B-3-104;

(o) a mental health therapist, if:

(i) the information relates to a patient who is:

(A) enrolled in a licensed substance abuse treatment program; and

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(B) receiving treatment from, or under the direction of, the mental health therapist as part of the patient's participation in the licensed substance abuse treatment program described in Subsection (2)(o)(i)(A);

(ii) the information is sought for the purpose of determining whether the patient is using a controlled substance while the patient is enrolled in the licensed substance abuse treatment program described in Subsection (2)(o)(i)(A); and

(iii) the licensed substance abuse treatment program described in Subsection (2)(o)(i)(A) is associated with a practitioner who:

(A) is a physician, a physician assistant, an advance practice registered nurse, or a pharmacist; and

(B) is available to consult with the mental health therapist regarding the information obtained by the mental health therapist, under this Subsection (2)(o), from the database;

(p) an individual who is the recipient of a controlled substance prescription entered into the database, upon providing evidence satisfactory to the division that the individual requesting the information is in fact the individual about whom the data entry was made;

(q) an individual under Subsection (2)(p) for the purpose of obtaining a list of the persons and entities that have requested or received any information from the database regarding the individual, except if the individual's record is subject to a pending or current investigation as authorized under this Subsection (2);

(r) the inspector general, or a designee of the inspector general, of the Office of Inspector General of Medicaid Services, for the purpose of fulfilling the duties described in Title 63A, Chapter 13, Part 2, Office and Powers;

(s) the following licensed physicians for the purpose of reviewing and offering an opinion on an individual's request for workers' compensation benefits under Title 34A, Chapter 2, Workers' Compensation Act, or Title 34A, Chapter 3, Utah Occupational Disease Act:

(i) a member of the medical panel described in Section 34A-2-601;

(ii) a physician employed as medical director for a licensed workers' compensation insurer or an approved self-insured employer; or

(iii) a physician offering a second opinion regarding treatment;

(t) members of Utah's Opioid Fatality Review Committee, for the purpose of reviewing a specific fatality due to opioid use and recommending policies to reduce the frequency of

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opioid use fatalities;

(u) a licensed pharmacist who is authorized by a managed care organization as defined in Section 31A-1-301 to access the information on behalf of the managed care organization, if:

(i) the managed care organization believes that an enrollee of the managed care organization has obtained or provided a controlled substance in violation of a medication management program contract between the enrollee and the managed care organization; and

(ii) the managed care organization included a description of the medication management program in the enrollee's outline of coverage described in Subsection 31A-22-605(7); and

(v) the Utah Medicaid Fraud Control Unit of the attorney general's office for the purpose of investigating active cases, in exercising the unit's authority to investigate and prosecute Medicaid fraud, abuse, neglect, or exploitation under 42 U.S.C. Sec. 1396b(q).

(3) (a) A practitioner described in Subsection (2)(h) may designate one or more employees to access information from the database under Subsection (2)(i), (2)(j), or (4)(c).

(b) The division shall make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to:

(i) establish background check procedures to determine whether an employee designated under Subsection (2)(i), (2)(j), or (4)(c) should be granted access to the database;

(ii) establish the information to be provided by an emergency department employee under Subsection (4); and

(iii) facilitate providing controlled substance prescription information to a third party under Subsection (5).

(c) The division shall grant an employee designated under Subsection (2)(i), (2)(j), or (4)(c) access to the database, unless the division determines, based on a background check, that the employee poses a security risk to the information contained in the database.

(4) (a) An individual who is employed in the emergency department of a hospital may exercise access to the database under this Subsection (4) on behalf of a licensed practitioner if the individual is designated under Subsection (4)(c) and the licensed practitioner:

(i) is employed or privileged to work in the emergency department;

(ii) is treating an emergency department patient for an emergency medical condition;

and

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(iii) requests that an individual employed in the emergency department and designated under Subsection (4)(c) obtain information regarding the patient from the database as needed in the course of treatment.

(b) The emergency department employee obtaining information from the database shall, when gaining access to the database, provide to the database the name and any additional identifiers regarding the requesting practitioner as required by division administrative rule established under Subsection (3)(b).

(c) An individual employed in the emergency department under this Subsection (4) may obtain information from the database as provided in Subsection (4)(a) if:

(i) the employee is designated by the hospital as an individual authorized to access the information on behalf of the emergency department practitioner;

(ii) the hospital operating the emergency department provide written notice to the division of the identity of the designated employee; and

(iii) the division:

(A) grants the employee access to the database; and

(B) provides the employee with a password that is unique to that employee to access the database.

(d) The division may impose a fee, in accordance with Section 63J-1-504, on a practitioner who designates an employee under Subsection (2)(i), (2)(j), or (4)(c) to pay for the costs incurred by the division to conduct the background check and make the determination described in Subsection (3)(b).

(5) (a) (i) An individual may request that the division provide the information under Subsection (5)(b) to a third party who is designated by the individual each time a controlled substance prescription for the individual is dispensed.

(ii) The division shall upon receipt of the request under this Subsection (5)(a) advise the individual in writing that the individual may direct the division to discontinue providing the information to a third party and that notice of the individual's direction to discontinue will be provided to the third party.

(b) The information the division shall provide under Subsection (5)(a) is:

(i) the fact a controlled substance has been dispensed to the individual, but without identifying the controlled substance; and

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(ii) the date the controlled substance was dispensed.

(c) (i) An individual who has made a request under Subsection (5)(a) may direct that the division discontinue providing information to the third party.

(ii) The division shall:

(A) notify the third party that the individual has directed the division to no longer provide information to the third party; and

(B) discontinue providing information to the third party.

(6) (a) An individual who is granted access to the database based on the fact that the individual is a licensed practitioner or a mental health therapist shall be denied access to the database when the individual is no longer licensed.

(b) An individual who is granted access to the database based on the fact that the individual is a designated employee of a licensed practitioner shall be denied access to the database when the practitioner is no longer licensed.

(7) A probation or parole officer is not required to obtain a search warrant to access the database in accordance with Subsection (2)(m).

(8) The division shall review and adjust the database programming which automatically logs off an individual who is granted access to the database under Subsections (2)(h), (2)(i), (2)(j), and (4)(c) to maximize the following objectives:

(a) to protect patient privacy;

(b) to reduce inappropriate access; and

(c) to make the database more useful and helpful to a person accessing the database under Subsections (2)(h), (2)(i), (2)(j), and (4)(c), especially in high usage locations such as an emergency department.

(9) Any person who knowingly and intentionally accesses the database without express authorization under this section is guilty of a class A misdemeanor.

Section 24. Section **58-37f-702** is amended to read:

58-37f-702. Reporting prescribed controlled substance poisoning or overdose to a practitioner.

(1) (a) The division shall take the actions described in Subsection (1)(b) if the division receives a report from a general acute hospital under Section ~~[26-21-26]~~ 26B-2-225 regarding admission to a general acute hospital for poisoning or overdose involving a prescribed

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controlled substance.

(b) The division shall, within three business days after the day on which a report in Subsection (1)(a) is received:

(i) attempt to identify, through the database, each practitioner who may have prescribed the controlled substance to the patient; and

(ii) provide each practitioner identified under Subsection ~~[(1)(a)]~~ [(1)(b)(i)] with:

(A) a copy of the report provided by the general acute hospital under Section ~~[26-21-26]~~ 26B-2-225; and

(B) the information obtained from the database that led the division to determine that the practitioner receiving the information may have prescribed the controlled substance to the person named in the report.

(2) (a) When the division receives a report from the medical examiner under Section ~~[26-4-10.5]~~ 26B-8-210 regarding a death caused by poisoning or overdose involving a prescribed controlled substance, for each practitioner identified by the medical examiner under Subsection ~~[26-4-10.5(1)(c)]~~ 26B-8-210(1)(~~(c)~~), the division:

(i) shall, within five business days after the day on which the division receives the report, provide the practitioner with a copy of the report; and

(ii) may offer the practitioner an educational visit to review the report.

(b) A practitioner may decline an educational visit described in Subsection (2)(a)(ii).

(c) The division may not use, in a licensing investigation or action by the division:

(i) information from an educational visit described in Subsection (2)(a)(ii); or

(ii) a practitioner's decision to decline an educational visit described in Subsection (2)(a)(ii).

(3) It is the intent of the Legislature that the information provided under Subsection (1) or (2) is provided for the purpose of assisting the practitioner in:

(a) discussing with the patient or others issues relating to the poisoning or overdose;

(b) advising the patient or others of measures that may be taken to avoid a future poisoning or overdose; and

(c) making decisions regarding future prescriptions written for the patient or others.

(4) Any record created by the division as a result of an educational visit described in Subsection (2)(a)(ii) is a protected record for purposes of Title 63G, Chapter 2, Government

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Records Access and Management Act.

(5) Beginning on July 1, 2010, the division shall, in accordance with Section 63J-1-504, increase the licensing fee described in Subsection 58-37-6(1)(b) to pay the startup and ongoing costs of the division for complying with the requirements of this section.

Section 25. Section **58-41-4** is amended to read:

58-41-4. Exemptions from chapter.

(1) In addition to the exemptions from licensure in Section 58-1-307, the following persons may engage in the practice of speech-language pathology and audiology subject to the stated circumstances and limitations without being licensed under this chapter:

(a) a qualified person licensed in this state under any law existing in this state prior to May 13, 1975, engaging in the profession for which the person is licensed;

(b) a medical doctor, physician, physician assistant, or surgeon licensed in this state, engaging in his or her specialty in the practice of medicine;

(c) a hearing aid dealer or salesperson selling, fitting, adjusting, and repairing hearing aids, and conducting hearing tests solely for that purpose. However, a hearing aid dealer may not conduct audiologic testing on persons younger than 18 years old except under the direct supervision of an audiologist licensed under this chapter;

(d) a person who has obtained a valid and current credential issued by the State Board of Education while specifically performing the functions of a speech-language pathologist or audiologist solely within the confines of, under the direction and jurisdiction of, and in the academic interest of the school employing the person;

(e) a person employed as a speech-language pathologist or audiologist by federal government agencies or subdivisions or, prior to July 1, 1989, by state or local government agencies or subdivisions, while specifically performing speech-language pathology or audiology services solely within the confines of, under the direction and jurisdiction of, and in the specific interest of the agency or subdivision;

(f) a person identified in Subsections (1)(d) and (e) may offer lectures for a fee, or monetary or other compensation, without being licensed;

(g) a person employed by an accredited college or university as a speech-language pathologist or audiologist performing the services or functions described in this chapter if the services or functions are:

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- (i) performed solely as an assigned teaching function of the person's employment;
- (ii) solely in academic interest and pursuit as a function of the person's employment;
- (iii) in no way for the person's own interest; and
- (iv) provided for no fee, monetary or otherwise, other than the person's agreed institutional salary;

(h) a person pursuing a course of study leading to a degree in speech-language pathology or audiology while enrolled in an accredited college or university, provided:

- (i) those activities constitute an assigned, directed, and supervised part of the person's curricular study, and in no other interest;

- (ii) that all examinations, tests, histories, charts, progress notes, reports, correspondence, documents, and records the person produces be identified clearly as having been conducted and prepared by a student in training;

- (iii) that the person is obviously identified and designated by appropriate title clearly indicating the person's training status; and

- (iv) that the person does not hold out directly or indirectly to the public or otherwise represent that the person is qualified to practice independently;

- (i) a person trained in elementary audiometry and qualified to perform basic audiometric tests while employed by and under the direct supervision of a licensed medical doctor to perform solely for the licensed medical doctor, the elementary conventional audiometric tests of air conduction screening, air conduction threshold testing, and tympanometry;

- (j) a person performing the functions of a speech-language pathologist or audiologist for the sole purpose of obtaining required professional experience under the provisions of this chapter and only during the period the person is obtaining the required professional experience, if the person:

- (i) meets all training requirements; and

- (ii) is professionally responsible to and under the supervision of a speech-language pathologist or audiologist who holds the CCC or a state license in speech-language pathology or audiology;

- (k) a corporation, partnership, trust, association, group practice, or similar organization engaging in speech-language pathology or audiology services without certification or license, if

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acting only through employees or consisting only of persons who are licensed under this chapter;

(l) a person who is not a resident of this state performing speech-language pathology or audiology services in this state if:

(i) the services are performed for no more than one month in any calendar year in association with a speech-language pathologist or audiologist licensed under this chapter; and

(ii) the person meets the qualifications and requirements for application for licensure described in Section 58-41-5;

(m) a person certified under Title 53E, Public Education System -- State Administration, as a teacher of the deaf, from providing the services or performing the functions the person is certified to perform; and

(n) a person who is:

(i) trained in newborn hearing screening as described in rules made by the Department of Health and Human Services in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act; and

(ii) is working under the indirect supervision of a licensed audiologist responsible for a newborn hearing screening program established by the Department of Health and Human Services under Section ~~[26-10-6]~~ 26B-4-319.

(2) No person is exempt from the requirements of this chapter who performs or provides any services as a speech-language pathologist or audiologist for which a fee, salary, bonus, gratuity, or compensation of any kind paid by the recipient of the service; or who engages any part of his professional work for a fee practicing in conjunction with, by permission of, or apart from his position of employment as speech-language pathologist or audiologist in any branch or subdivision of local, state, or federal government or as otherwise identified in this section.

Section 26. Section **58-57-7** is amended to read:

58-57-7. Exemptions from licensure.

(1) (a) For purposes of Subsection (2)(b), "qualified" means an individual who is a registered polysomnographic technologist or a Diplomate certified by the American Board of Sleep Medicine.

(b) For purposes of Subsections (2)(f) and (g), "supervision" means one of the

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following will be immediately available for consultation in person or by phone:

- (i) a practitioner;
- (ii) a respiratory therapist;
- (iii) a Diplomate of the American Board of Sleep Medicine; or
- (iv) a registered polysomnographic technologist.

(2) In addition to the exemptions from licensure in Section 58-1-307, the following persons may engage in the practice of respiratory therapy subject to the stated circumstances and limitations without being licensed under this chapter:

(a) any person who provides gratuitous care for a member of his immediate family without representing himself as a licensed respiratory care practitioner;

(b) any person who is a licensed or qualified member of another health care profession, if this practice is consistent with the accepted standards of the profession and if the person does not represent himself as a respiratory care practitioner;

(c) any person who serves in the Armed Forces of the United States or any other agency of the federal government and is engaged in the performance of his official duties;

(d) any person who acts under a certification issued pursuant to [~~Title 26, Chapter 8a, Utah Emergency Medical Services System Act~~] Title 26B, Chapter 4, Part 1, Utah Emergency Medical Services System, while providing emergency medical services;

(e) any person who delivers, installs, or maintains respiratory related durable medical equipment and who gives instructions regarding the use of that equipment in accordance with Subsections 58-57-2(3) and (6), except that this exemption does not include any clinical evaluation or treatment of the patient;

(f) any person who is working in a practitioner's office, acting under supervision; and

(g) a polysomnographic technician or trainee, acting under supervision, as long as the technician or trainee administers the following only in a sleep lab, sleep center, or sleep facility:

- (i) oxygen titration; and
- (ii) positive airway pressure that does not include mechanical ventilation.

(3) Nothing in this chapter permits a respiratory care practitioner to engage in the unauthorized practice of other health disciplines.

Section 27. Section **58-60-114** is amended to read:

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58-60-114. Confidentiality -- Exemptions.

(1) Notwithstanding Title 63G, Chapter 2, Government Records Access and Management Act, a mental health therapist under this chapter may not disclose any confidential communication with a client or patient without the express written consent of:

- (a) the client or patient;
- (b) the parent or legal guardian of a minor client or patient; or
- (c) a person authorized to consent to the disclosure of the confidential communication

by the client or patient in a written document:

- (i) that is signed by the client or the patient; and
- (ii) in which the client's or the patient's signature is reasonably verifiable.

(2) A mental health therapist under this chapter is not subject to Subsection (1) if:

(a) the mental health therapist is permitted or required by state or federal law, rule, regulation, or order to report or disclose any confidential communication, including:

(i) reporting under [~~Title 62A, Chapter 3, Part 3, Abuse, Neglect, or Exploitation of a Vulnerable Adult~~] Title 26B, Chapter 6, Part 2, ~~+~~ Abuse, Neglect, or Exploitation of a Vulnerable Adult;

(ii) reporting under Title 80, Chapter 2, Part 6, Child Abuse and Neglect Reports;

(iii) reporting under Title 78B, Chapter 3, Part 5, Limitation of Therapist's Duty to Warn; or

(iv) reporting of a communicable disease as required under Section [~~26-6-6~~] 26B-7-206;

(b) the disclosure is part of an administrative, civil, or criminal proceeding and is made under an exemption from evidentiary privilege under Rule 506, Utah Rules of Evidence; or

(c) the disclosure is made under a generally recognized professional or ethical standard that authorizes or requires the disclosure.

Section 28. Section **58-60-509** is amended to read:

58-60-509. Confidentiality -- Exemptions.

(1) A licensee under this part may not disclose any confidential communication with a client or patient without the express consent of:

- (a) the client or patient;
- (b) the parent or legal guardian of a minor client or patient; or

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(c) the authorized agent of a client or patient.

(2) A licensee under this part is not subject to Subsection (1) if:

(a) the licensee is permitted or required by state or federal law, rule, regulation, or order to report or disclose any confidential communication, including:

(i) reporting under [~~Title 62A, Chapter 3, Part 3, Abuse, Neglect, or Exploitation of a Vulnerable Adult~~] Title 26B, Chapter 6, Part 2, Abuse, Neglect, or Exploitation of a Vulnerable Adult;

(ii) reporting under Title 80, Chapter 2, Part 6, Child Abuse and Neglect Reports;

(iii) reporting under Title 78B, Chapter 3, Part 5, Limitation of Therapist's Duty to Warn; or

(iv) reporting of a communicable disease as required under Section [~~26-6-6~~] 26B-7-206;

(b) the disclosure is part of an administrative, civil, or criminal proceeding and is made under an exemption from evidentiary privilege under Rule 506, Utah Rules of Evidence; or

(c) the disclosure is made under a generally recognized professional or ethical standard that authorizes or requires the disclosure.

Section 29. Section **58-61-602** is amended to read:

58-61-602. Confidentiality -- Exemptions.

(1) Notwithstanding Title 63G, Chapter 2, Government Records Access and Management Act, a psychologist under this chapter may not disclose any confidential communication with a client or patient without the express written consent of:

(a) the client or patient;

(b) the parent or legal guardian of a minor client or patient; or

(c) a person authorized to consent to the disclosure of the confidential communication by the client or patient in a written document:

(i) that is signed by the client or the patient; and

(ii) in which the client's or the patient's signature is reasonably verifiable.

(2) A psychologist under this chapter is not subject to Subsection (1) if:

(a) the psychologist is permitted or required by state or federal law, rule, regulation, or order to report or disclose any confidential communication, including:

(i) reporting under [~~Title 62A, Chapter 3, Part 3, Abuse, Neglect, or Exploitation of a~~

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~~Vulnerable Adult]~~ Title ~~(26B)80~~, Chapter ~~(6)2~~, Part ~~(2)6~~, Child Abuse and Neglect, or Exploitation of a Vulnerable Adult Reports;

(ii) reporting under ~~[Title 62A, Chapter 4a, Part 4, Child Abuse or Neglect Reporting Requirements]~~ Title 80, Chapter 2, Part 6, Child Abuse and Neglect Reports;

(iii) reporting under Title 78B, Chapter 3, Part 5, Limitation of Therapist's Duty to Warn; or

(iv) reporting of a communicable disease as required under Section ~~[26-6-6]~~ 26B-7-206;

(b) the disclosure is part of an administrative, civil, or criminal proceeding and is made under an exemption from evidentiary privilege under Rule 506, Utah Rules of Evidence; or

(c) the disclosure is made under a generally recognized professional or ethical standard that authorizes or requires the disclosure.

Section 30. Section **58-61-704** is amended to read:

58-61-704. Term of license or registration.

(1) (a) The division shall issue each license under this part with a two-year renewal cycle established by division rule.

(b) The division may by rule extend or shorten a renewal cycle by as much as one year to stagger the renewal cycles it administers.

(2) At the time of renewal, the licensed individual shall show satisfactory evidence of renewal requirements as required under this part.

(3) Each license or registration expires on the expiration date shown on the license unless renewed by the licensed individual in accordance with Section 58-1-308.

(4) (a) A registration as a registered behavior specialist or a registered assistant behavior specialist:

(i) expires on the day the individual is no longer employed in accordance with Subsection 58-61-705(5)(d) or (6)(d); and

(ii) may not be renewed.

(b) The Department of ~~[Human Services]~~ Health and Human Services, or an organization contracted with a division of the Department of ~~[Human Services]~~ Health and Human Services, shall notify the Division of Professional Licensing when a person registered under this part is no longer employed as a registered behavior specialist or a registered assistant

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behavior specialist.

Section 31. Section **58-61-713** is amended to read:

58-61-713. Confidentiality -- Exemptions.

(1) A behavior analyst or behavior specialist under this chapter may not disclose any confidential communication with a client or patient without the express written consent of:

- (a) the client or patient;
- (b) the parent or legal guardian of a minor client or patient; or
- (c) a person authorized to consent to the disclosure of the confidential communication

by the client or patient in a written document:

- (i) that is signed by the client or the patient; and
- (ii) in which the client's or the patient's signature is reasonably verifiable.

(2) A behavior analyst or behavior specialist is not subject to Subsection (1) if:

(a) the behavior analyst or behavior specialist is permitted or required by state or federal law, rule, regulation, or order to report or disclose any confidential communication, including:

(i) reporting under ~~[Title 62A, Chapter 3, Part 3]~~ Title 26B, Chapter 6, Part 2, Abuse, Neglect, or Exploitation of a Vulnerable Adult;

(ii) reporting under Title 80, Chapter 2, Part 6, Child Abuse and Neglect Reports;

(iii) reporting under Title 78B, Chapter 3, Part 5, Limitation of Therapist's Duty to Warn; or

(iv) reporting of a communicable disease as required under Section ~~[26-6-6]~~ 26B-7-206;

(b) the disclosure is part of an administrative, civil, or criminal proceeding and is made under an exemption from evidentiary privilege under Utah Rules of Evidence, Rule 506; or

(c) the disclosure is made under a generally recognized professional or ethical standard that authorizes or requires the disclosure.

Section 32. Section **58-67-302** is amended to read:

58-67-302. Qualifications for licensure.

(1) An applicant for licensure as a physician and surgeon, except as set forth in Subsection (2), shall:

- (a) submit an application in a form prescribed by the division, which may include:

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(i) submissions by the applicant of information maintained by practitioner data banks, as designated by division rule, with respect to the applicant;

(ii) a record of professional liability claims made against the applicant and settlements paid by or on behalf of the applicant; and

(iii) authorization to use a record coordination and verification service approved by the division in collaboration with the board;

(b) pay a fee determined by the department under Section 63J-1-504;

(c) if the applicant is applying to participate in the Interstate Medical Licensure Compact under Chapter 67b, Interstate Medical Licensure Compact, consent to a criminal background check in accordance with Section 58-67-302.1 and any requirements established by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;

(d) provide satisfactory documentation of having successfully completed a program of professional education preparing an individual as a physician and surgeon, as evidenced by:

(i) having received an earned degree of doctor of medicine from an LCME accredited medical school or college; or

(ii) if the applicant graduated from a medical school or college located outside the United States or its territories, submitting a current certification by the Educational Commission for Foreign Medical Graduates or any successor organization approved by the division in collaboration with the board;

(e) satisfy the division and board that the applicant:

(i) has successfully completed 24 months of progressive resident training in a program approved by the ACGME, the Royal College of Physicians and Surgeons, the College of Family Physicians of Canada, or any similar body in the United States or Canada approved by the division in collaboration with the board; or

(ii) (A) has successfully completed 12 months of resident training in an ACGME approved program after receiving a degree of doctor of medicine as required under Subsection (1)(d);

(B) has been accepted in and is successfully participating in progressive resident training in an ACGME approved program within Utah, in the applicant's second or third year of postgraduate training; and

(C) has agreed to surrender to the division the applicant's license as a physician and

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surgeon without any proceedings under Title 63G, Chapter 4, Administrative Procedures Act, and has agreed the applicant's license as a physician and surgeon will be automatically revoked by the division if the applicant fails to continue in good standing in an ACGME approved progressive resident training program within the state;

(f) pass the licensing examination sequence required by division rule made in collaboration with the board;

(g) be able to read, write, speak, understand, and be understood in the English language and demonstrate proficiency to the satisfaction of the board if requested by the board;

(h) meet with the board and representatives of the division, if requested, for the purpose of evaluating the applicant's qualifications for licensure;

(i) designate:

(i) a contact person for access to medical records in accordance with the federal Health Insurance Portability and Accountability Act; and

(ii) an alternate contact person for access to medical records, in the event the original contact person is unable or unwilling to serve as the contact person for access to medical records; and

(j) establish a method for notifying patients of the identity and location of the contact person and alternate contact person, if the applicant will practice in a location with no other persons licensed under this chapter.

(2) An applicant for licensure as a physician and surgeon by endorsement who is currently licensed to practice medicine in any state other than Utah, a district or territory of the United States, or Canada shall:

(a) be currently licensed with a full unrestricted license in good standing in any state, district, or territory of the United States, or Canada;

(b) have been actively engaged in the legal practice of medicine in any state, district, or territory of the United States, or Canada for not less than 6,000 hours during the five years immediately preceding the date of application for licensure in Utah;

(c) comply with the requirements for licensure under Subsections (1)(a) through (d), (1)(e)(i), and (1)(g) through (j);

(d) have passed the licensing examination sequence required in Subsection ~~(1)(e)~~ (1)(f) or another medical licensing examination sequence in another state, district or territory of

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the United States, or Canada that the division in collaboration with the board by rulemaking determines is equivalent to its own required examination;

(e) not have any investigation or action pending against any health care license of the applicant, not have a health care license that was suspended or revoked in any state, district or territory of the United States, or Canada, and not have surrendered a health care license in lieu of a disciplinary action, unless:

(i) the license was subsequently reinstated as a full unrestricted license in good standing; or

(ii) the division in collaboration with the board determines to its satisfaction, after full disclosure by the applicant, that:

(A) the conduct has been corrected, monitored, and resolved; or

(B) a mitigating circumstance exists that prevents its resolution, and the division in collaboration with the board is satisfied that, but for the mitigating circumstance, the license would be reinstated;

(f) submit to a records review, a practice history review, and comprehensive assessments, if requested by the division in collaboration with the board; and

(g) produce satisfactory evidence that the applicant meets the requirements of this Subsection (2) to the satisfaction of the division in collaboration with the board.

(3) An applicant for licensure by endorsement may engage in the practice of medicine under a temporary license while the applicant's application for licensure is being processed by the division, provided:

(a) the applicant submits a complete application required for temporary licensure to the division;

(b) the applicant submits a written document to the division from:

(i) a health care facility licensed under [~~Title 26, Chapter 21, Health Care Facility Licensing and Inspection Act~~] Title 26B, Chapter 2, Part 2, Health Care Facility Licensing and Inspection, stating that the applicant is practicing under the:

(A) invitation of the health care facility; and

(B) the general supervision of a physician practicing at the facility; or

(ii) two individuals licensed under this chapter, whose license is in good standing and who practice in the same clinical location, both stating that:

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(A) the applicant is practicing under the invitation and general supervision of the individual; and

(B) the applicant will practice at the same clinical location as the individual;

(c) the applicant submits a signed certification to the division that the applicant meets the requirements of Subsection (2);

(d) the applicant does not engage in the practice of medicine until the division has issued a temporary license;

(e) the temporary license is only issued for and may not be extended or renewed beyond the duration of one year from issuance; and

(f) the temporary license expires immediately and prior to the expiration of one year from issuance, upon notification from the division that the applicant's application for licensure by endorsement is denied.

(4) The division shall issue a temporary license under Subsection (3) within 15 business days after the applicant satisfies the requirements of Subsection (3).

(5) The division may not require the following requirements for licensure:

(a) a post-residency board certification; or

(b) a cognitive test when the physician reaches a specified age, unless:

(i) the screening is based on evidence of cognitive changes associated with aging that are relevant to physician performance;

(ii) the screening is based on principles of medical ethics;

(iii) physicians are involved in the development of standards for assessing competency;

(iv) guidelines, procedures, and methods of assessment, which may include cognitive screening, are relevant to physician practice and to the physician's ability to perform the tasks specifically required in the physician's practice environment;

(v) the primary driver for establishing assessment results is the ethical obligation of the profession to the health of the public and patient safety;

(vi) the goal of the assessment is to optimize physician competency and performance through education, remediation, and modifications to a physician's practice environment or scope;

(vii) a credentialing committee determines that public health or patient safety is directly threatened, the screening permits a physician to retain the right to modify the

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physician's practice environment to allow the physician to continue to provide safe and effective care;

(viii) guidelines, procedures, and methods of assessment are transparent to physicians and physicians' representatives, if requested by a physician or a physician's representative, and physicians are made aware of the specific methods used, performance expectations and standards against which performance will be judged, and the possible outcomes of the screening or assessment;

(ix) education or remediation practices that result from screening or assessment procedures are:

(A) supportive of physician wellness;

(B) ongoing; and

(C) proactive; and

(x) procedures and screening mechanisms that are distinctly different from for cause assessments do not result in undue cost or burden to senior physicians providing patient care.

Section 33. Section **58-67-304** is amended to read:

58-67-304. License renewal requirements.

(1) As a condition precedent for license renewal, each licensee shall, during each two-year licensure cycle or other cycle defined by division rule:

(a) complete qualified continuing professional education requirements in accordance with the number of hours and standards defined by division rule made in collaboration with the board;

(b) appoint a contact person for access to medical records and an alternate contact person for access to medical records in accordance with Subsection 58-67-302(1)(i);

(c) if the licensee practices medicine in a location with no other persons licensed under this chapter, provide some method of notice to the licensee's patients of the identity and location of the contact person and alternate contact person for the licensee; and

(d) if the licensee is an associate physician licensed under Section 58-67-302.8, successfully complete the educational methods and programs described in Subsection 58-67-807(4).

(2) If a renewal period is extended or shortened under Section 58-67-303, the continuing education hours required for license renewal under this section are increased or

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decreased proportionally.

(3) An application to renew a license under this chapter shall:

(a) require a physician to answer the following question: "Do you perform elective abortions in Utah in a location other than a hospital?"; and

(b) immediately following the question, contain the following statement: "For purposes of the immediately preceding question, elective abortion means an abortion other than one of the following: removal of a dead fetus, removal of an ectopic pregnancy, an abortion that is necessary to avert the death of a woman, an abortion that is necessary to avert a serious risk of substantial and irreversible impairment of a major bodily function of a woman, an abortion of a fetus that has a defect that is uniformly diagnosable and uniformly lethal, or an abortion where the woman is pregnant as a result of rape or incest."

(4) In order to assist the Department of [~~Health~~] Health and Human Services in fulfilling its responsibilities relating to the licensing of an abortion clinic and the enforcement of Title 76, Chapter 7, Part 3, Abortion, if a physician responds positively to the question described in Subsection (3)(a), the division shall, within 30 days after the day on which it renews the physician's license under this chapter, inform the Department of [~~Health~~] Health and Human Services in writing:

(a) of the name and business address of the physician; and

(b) that the physician responded positively to the question described in Subsection (3)(a).

(5) The division shall accept and apply toward the hour requirement in Subsection (1)(a) any continuing education that a physician completes in accordance with Sections [~~26-61a-106~~] 26B-4-204 and [~~26-61a-403~~] 26B-4-219.

Section 34. Section **58-67-502** is amended to read:

58-67-502. Unprofessional conduct.

(1) "Unprofessional conduct" includes, in addition to the definition in Section 58-1-501:

(a) using or employing the services of any individual to assist a licensee in any manner not in accordance with the generally recognized practices, standards, or ethics of the profession, state law, or division rule;

(b) making a material misrepresentation regarding the qualifications for licensure under

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Section 58-67-302.7 or Section 58-67-302.8;

(c) violating the dispensing requirements of Chapter 17b, Part 8, Dispensing Medical Practitioner and Dispensing Medical Practitioner Clinic Pharmacy, if applicable;

(d) violating the requirements of [~~Title 26, Chapter 61a, Utah Medical Cannabis Act~~] Title 26B, Chapter 4, Part 2, Cannabinoid Research and Medical Cannabis; or

(e) falsely making an entry in, or altering, a medical record with the intent to conceal:

(i) a wrongful or negligent act or omission of an individual licensed under this chapter or an individual under the direction or control of an individual licensed under this chapter; or

(ii) conduct described in Subsections (1)(a) through (d) or Subsection 58-1-501(1).

(2) "Unprofessional conduct" does not include:

(a) in compliance with Section 58-85-103:

(i) obtaining an investigational drug or investigational device;

(ii) administering the investigational drug to an eligible patient; or

(iii) treating an eligible patient with the investigational drug or investigational device;

or

(b) in accordance with [~~Title 26, Chapter 61a, Utah Medical Cannabis Act~~] Title 26B, Chapter 4, Part 2, ~~Cannabinoid~~ Cannabinoid Research and Medical Cannabis:

(i) when registered as a qualified medical provider or acting as a limited medical provider, as those terms are defined in Section [~~26-61a-102~~] 26B-4-201, recommending the use of medical cannabis;

(ii) when registered as a pharmacy medical provider, as that term is defined in Section [~~26-61a-102~~] 26B-4-201, providing pharmacy medical provider services in a medical cannabis pharmacy; or

(iii) when registered as a state central patient portal medical provider, as that term is defined in Section [~~26-61a-102~~] 26B-4-201, providing state central patient portal medical provider services.

(3) Notwithstanding Subsection (2)(b), the division, in consultation with the board and in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, shall define unprofessional conduct for a physician described in Subsection (2)(b).

Section 35. Section ~~58-67-601~~ is amended to read:

58-67-601. Mentally incompetent or incapacitated physician.

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(1) As used in this section:

(a) "Incapacitated person" means a person who is incapacitated, as defined in Section 75-1-201.

(b) "Mental illness" means the same as that term is defined in Section [~~62A-15-602~~]
26B-5-301.

(c) "Physician" means an individual licensed under this chapter.

(2) If a court of competent jurisdiction determines a physician is an incapacitated person or that the physician has a mental illness and is unable to safely engage in the practice of medicine, the director shall immediately suspend the license of the physician 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. The director shall promptly notify the physician, in writing, of the suspension.

(3) (a) If the division and a majority of the board find reasonable cause to believe a physician, who is not determined judicially to be an incapacitated person or to have a mental illness, is incapable of practicing medicine 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 physician with a notice of hearing on the sole issue of the capacity of the physician to competently and safely engage in the practice of medicine.

(b) The hearing 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 physician who accepts the privilege of being licensed under this chapter gives consent to:

(i) submitting at the physician's own expense to an immediate mental or physical examination 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 physician'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 physician has a mental illness, is incapacitated, or otherwise unable to practice

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medicine with reasonable skill and safety; and

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

(c) (i) Failure of a physician to submit to the examination ordered under this section is a ground for the division's immediate suspension of the physician'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 physician and was not related directly to the illness or incapacity of the physician.

(5) (a) A physician whose license is suspended under Subsection (2) or (3) 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 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 physician's patients or the general public.

(6) A physician 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 physician, under procedures established by division rule, regarding any change in the physician's condition, to determine whether:

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

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

Section 36. Section **58-67-702** is amended to read:

58-67-702. Opiate antagonist -- Exclusion from unlawful or unprofessional conduct.

(1) As used in this section:

(a) "Dispense" means the same as that term is defined in Section 58-17b-102.

(b) "Increased risk" means the same as that term is defined in Section [26-55-102]

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(c) "Opiate antagonist" means the same as that term is defined in Section ~~[26-55-102]~~

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(d) "Opiate-related drug overdose event" means the same as that term is defined in Section ~~[26-55-102]~~ 26B-4-501.

(e) "Prescribe" means the same as that term is defined in Section 58-17b-102.

(2) The prescribing or dispensing of an opiate antagonist by a licensee under this chapter is not unprofessional or unlawful conduct if the licensee prescribed or dispensed the opiate antagonist:

(a) in a good faith effort to assist:

(i) an individual who is at increased risk of experiencing an opiate-related drug overdose event; or

(ii) a family member of, friend of, or other person, including a person described in Subsections ~~[26-55-107(1)(a)(i)(A)]~~ 26B-4-512(1)(a)(i)(A) through (1)(a)(i)(F), that is in a position to assist an individual who is at increased risk of experiencing an opiate-related drug overdose event; or

(b) to an overdose outreach provider pursuant to Subsection ~~[26-55-104(2)(a)(iii)]~~ 26B-4-509(2)(a)(iii).

(3) The provisions of this section and ~~[Title 26, Chapter 55, Opiate Overdose Response Act]~~ Title 26B, Chapter 4, Part 5, Treatment Access, do not establish a duty or standard of care in the prescribing, dispensing, or administration of an opiate antagonist.

Section 37. Section **58-68-302** is amended to read:

58-68-302. Qualifications for licensure.

(1) An applicant for licensure as an osteopathic physician and surgeon, except as set forth in Subsection (2), shall:

(a) submit an application in a form prescribed by the division, which may include:

(i) submissions by the applicant of information maintained by practitioner data banks, as designated by division rule, with respect to the applicant;

(ii) a record of professional liability claims made against the applicant and settlements paid by or on behalf of the applicant; and

(iii) authorization to use a record coordination and verification service approved by the

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division in collaboration with the board;

(b) pay a fee determined by the department under Section 63J-1-504;

(c) if the applicant is applying to participate in the Interstate Medical Licensure Compact under Chapter 67b, Interstate Medical Licensure Compact, consent to a criminal background check in accordance with Section 58-68-302.1 and any requirements established by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;

(d) provide satisfactory documentation of having successfully completed a program of professional education preparing an individual as an osteopathic physician and surgeon, as evidenced by:

(i) having received an earned degree of doctor of osteopathic medicine from an AOA approved medical school or college; or

(ii) submitting a current certification by the Educational Commission for Foreign Medical Graduates or any successor organization approved by the division in collaboration with the board, if the applicant is graduated from an osteopathic medical school or college located outside of the United States or its territories which at the time of the applicant's graduation, met criteria for accreditation by the AOA;

(e) satisfy the division and board that the applicant:

(i) has successfully completed 24 months of progressive resident training in an ACGME or AOA approved program after receiving a degree of doctor of osteopathic medicine required under Subsection (1)(d); or

(ii) (A) has successfully completed 12 months of resident training in an ACGME or AOA approved program after receiving a degree of doctor of osteopathic medicine as required under Subsection (1)(d);

(B) has been accepted in and is successfully participating in progressive resident training in an ACGME or AOA approved program within Utah, in the applicant's second or third year of postgraduate training; and

(C) has agreed to surrender to the division the applicant's license as an osteopathic physician and surgeon without any proceedings under Title 63G, Chapter 4, Administrative Procedures Act, and has agreed the applicant's license as an osteopathic physician and surgeon will be automatically revoked by the division if the applicant fails to continue in good standing in an ACGME or AOA approved progressive resident training program within the state;

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(f) pass the licensing examination sequence required by division rule, as made in collaboration with the board;

(g) be able to read, write, speak, understand, and be understood in the English language and demonstrate proficiency to the satisfaction of the board, if requested by the board;

(h) meet with the board and representatives of the division, if requested for the purpose of evaluating the applicant's qualifications for licensure;

(i) designate:

(i) a contact person for access to medical records in accordance with the federal Health Insurance Portability and Accountability Act; and

(ii) an alternate contact person for access to medical records, in the event the original contact person is unable or unwilling to serve as the contact person for access to medical records; and

(j) establish a method for notifying patients of the identity and location of the contact person and alternate contact person, if the applicant will practice in a location with no other persons licensed under this chapter.

(2) An applicant for licensure as an osteopathic physician and surgeon by endorsement who is currently licensed to practice osteopathic medicine in any state other than Utah, a district or territory of the United States, or Canada shall:

(a) be currently licensed with a full unrestricted license in good standing in any state, district or territory of the United States, or Canada;

(b) have been actively engaged in the legal practice of osteopathic medicine in any state, district or territory of the United States, or Canada for not less than 6,000 hours during the five years immediately preceding the day on which the applicant applied for licensure in Utah;

(c) comply with the requirements for licensure under Subsections (1)(a) through (d), (1)(e)(i), and (1)(g) through (j);

(d) have passed the licensing examination sequence required in Subsection (1)(f) or another medical licensing examination sequence in another state, district or territory of the United States, or Canada that the division in collaboration with the board by rulemaking determines is equivalent to its own required examination;

(e) not have any investigation or action pending against any health care license of the

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applicant, not have a health care license that was suspended or revoked in any state, district or territory of the United States, or Canada, and not have surrendered a health care license in lieu of a disciplinary action, unless:

- (i) the license was subsequently reinstated as a full unrestricted license in good standing; or
- (ii) the division in collaboration with the board determines, after full disclosure by the applicant, that:
 - (A) the conduct has been corrected, monitored, and resolved; or
 - (B) a mitigating circumstance exists that prevents its resolution, and the division in collaboration with the board is satisfied that, but for the mitigating circumstance, the license would be reinstated;
- (f) submit to a records review, a practice review history, and physical and psychological assessments, if requested by the division in collaboration with the board; and
- (g) produce evidence that the applicant meets the requirements of this Subsection (2) to the satisfaction of the division in collaboration with the board.

(3) An applicant for licensure by endorsement may engage in the practice of medicine under a temporary license while the applicant's application for licensure is being processed by the division, provided:

- (a) the applicant submits a complete application required for temporary licensure to the division;
- (b) the applicant submits a written document to the division from:
 - (i) a health care facility licensed under [~~Title 26, Chapter 21, Health Care Facility Licensing and Inspection Act~~] Title 26B, Chapter 2, Part 2, Health Care Facility Licensing and Inspection, stating that the applicant is practicing under the:
 - (A) invitation of the health care facility; and
 - (B) the general supervision of a physician practicing at the health care facility; or
 - (ii) two individuals licensed under this chapter, whose license is in good standing and who practice in the same clinical location, both stating that:
 - (A) the applicant is practicing under the invitation and general supervision of the individual; and
 - (B) the applicant will practice at the same clinical location as the individual;

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(c) the applicant submits a signed certification to the division that the applicant meets the requirements of Subsection (2);

(d) the applicant does not engage in the practice of medicine until the division has issued a temporary license;

(e) the temporary license is only issued for and may not be extended or renewed beyond the duration of one year from issuance; and

(f) the temporary license expires immediately and prior to the expiration of one year from issuance, upon notification from the division that the applicant's application for licensure by endorsement is denied.

(4) The division shall issue a temporary license under Subsection (3) within 15 business days after the applicant satisfies the requirements of Subsection (3).

(5) The division may not require a:

(a) post-residency board certification; or

(b) a cognitive test when the physician reaches a specified age, unless the test reflects the standards described in Subsections 58-67-302(5)(b)(i) through (x).

Section 38. Section **58-68-304** is amended to read:

58-68-304. License renewal requirements.

(1) As a condition precedent for license renewal, each licensee shall, during each two-year licensure cycle or other cycle defined by division rule:

(a) complete qualified continuing professional education requirements in accordance with the number of hours and standards defined by division rule in collaboration with the board;

(b) appoint a contact person for access to medical records and an alternate contact person for access to medical records in accordance with Subsection 58-68-302(1)(i);

(c) if the licensee practices osteopathic medicine in a location with no other persons licensed under this chapter, provide some method of notice to the licensee's patients of the identity and location of the contact person and alternate contact person for access to medical records for the licensee in accordance with Subsection 58-68-302(1)(j); and

(d) if the licensee is an associate physician licensed under Section 58-68-302.5, successfully complete the educational methods and programs described in Subsection 58-68-807(4).

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(2) If a renewal period is extended or shortened under Section 58-68-303, the continuing education hours required for license renewal under this section are increased or decreased proportionally.

(3) An application to renew a license under this chapter shall:

(a) require a physician to answer the following question: "Do you perform elective abortions in Utah in a location other than a hospital?"; and

(b) immediately following the question, contain the following statement: "For purposes of the immediately preceding question, elective abortion means an abortion other than one of the following: removal of a dead fetus, removal of an ectopic pregnancy, an abortion that is necessary to avert the death of a woman, an abortion that is necessary to avert a serious risk of substantial and irreversible impairment of a major bodily function of a woman, an abortion of a fetus that has a defect that is uniformly diagnosable and uniformly lethal, or an abortion where the woman is pregnant as a result of rape or incest."

(4) In order to assist the Department of [~~Health~~] Health and Human Services in fulfilling its responsibilities relating to the licensing of an abortion clinic, if a physician responds positively to the question described in Subsection (3)(a), the division shall, within 30 days after the day on which it renews the physician's license under this chapter, inform the Department of [~~Health~~] Health and Human Services in writing:

(a) of the name and business address of the physician; and

(b) that the physician responded positively to the question described in Subsection (3)(a).

(5) The division shall accept and apply toward the hour requirement in Subsection (1)(a) any continuing education that a physician completes in accordance with Sections [~~26-61a-106~~] 26B-4-204 and [~~26-61a-403~~] 26B-4-219.

Section 39. Section **58-68-502** is amended to read:

58-68-502. Unprofessional conduct.

(1) "Unprofessional conduct" includes, in addition to the definition in Section 58-1-501:

(a) using or employing the services of any individual to assist a licensee in any manner not in accordance with the generally recognized practices, standards, or ethics of the profession, state law, or division rule;

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(b) violating the dispensing requirements of Chapter 17b, Part 8, Dispensing Medical Practitioner and Dispensing Medical Practitioner Clinic Pharmacy, if applicable;

(c) making a material misrepresentation regarding the qualifications for licensure under Section 58-68-302.5;

(d) violating the requirements of [~~Title 26, Chapter 61a, Utah Medical Cannabis Act~~] Title 26B, Chapter 4, Part 2, Cannabinoid Research and Medical Cannabis; or

(e) falsely making an entry in, or altering, a medical record with the intent to conceal:

(i) a wrongful or negligent act or omission of an individual licensed under this chapter or an individual under the direction or control of an individual licensed under this chapter; or

(ii) conduct described in Subsections (1)(a) through (d) or Subsection 58-1-501(1).

(2) "Unprofessional conduct" does not include:

(a) in compliance with Section 58-85-103:

(i) obtaining an investigational drug or investigational device;

(ii) administering the investigational drug to an eligible patient; or

(iii) treating an eligible patient with the investigational drug or investigational device;

or

(b) in accordance with [~~Title 26, Chapter 61a, Utah Medical Cannabis Act~~] Title 26B, Chapter 4, Part 2, Cannabinoid Research and Medical Cannabis:

(i) when registered as a qualified medical provider or acting as a limited medical provider, as those terms are defined in Section [~~26-61a-102~~] 26B-4-201, recommending the use of medical cannabis;

(ii) when registered as a pharmacy medical provider, as that term is defined in Section [~~26-61a-102~~] 26B-4-201, providing pharmacy medical provider services in a medical cannabis pharmacy; or

(iii) when registered as a state central patient portal medical provider, as that term is defined in Section [~~26-61a-102~~] 26B-4-201, providing state central patient portal medical provider services.

(3) Notwithstanding Subsection (2)(b), the division, in consultation with the board and in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, shall define unprofessional conduct for a physician described in Subsection (2)(b).

Section 40. Section ~~58-68-601~~ is amended to read:

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58-68-601. Mentally incompetent or incapacitated osteopathic physician.

(1) As used in this section:

(a) "Incapacitated person" means a person who is incapacitated, as defined in Section 75-1-201.

(b) "Licensee" means an individual licensed under this chapter.

(c) "Mental illness" means the same as that term is defined in Section ~~[62A-15-602]~~ 26B-5-301.

(2) If a court of competent jurisdiction determines a licensee is an incapacitated person or that the licensee has a mental illness and is unable to safely engage in the practice of medicine, the director shall immediately suspend the license of the licensee 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. The director shall promptly notify the licensee, in writing, of the suspension.

(3) (a) If the division and a majority of the board find reasonable cause to believe a licensee, who is not determined judicially to be an incapacitated person or to have a mental illness, is incapable of practicing osteopathic medicine 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 licensee with a notice of hearing on the sole issue of the capacity of the licensee to competently and safely engage in the practice of medicine.

(b) The hearing 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 individual who accepts the privilege of being licensed under this chapter gives consent to:

(i) submitting at the licensee's own expense to an immediate mental or physical examination 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 physician'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

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the board, only upon a finding of reasonable cause to believe:

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

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

(c) (i) Failure of a licensee to submit to the examination ordered under this section is a ground for the division's immediate suspension of the licensee'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 licensee and was not related directly to the illness or incapacity of the licensee.

(5) (a) A licensee whose license is suspended under Subsection (2) or (3) 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 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 licensee's patients or the general public.

(6) A licensee 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 licensee, under procedures established by division rule, regarding any change in the licensee's condition, to determine whether:

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

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

Section 41. Section **58-68-702** is amended to read:

58-68-702. Opiate antagonist -- Exclusion from unlawful or unprofessional conduct.

(1) As used in this section:

(a) "Dispense" means the same as that term is defined in Section 58-17b-102.

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(b) "Increased risk" means the same as that term is defined in Section ~~[26-55-102]~~ 26B-4-501.

(c) "Opiate antagonist" means the same as that term is defined in Section ~~[26-55-102]~~ 26B-4-501.

(d) "Opiate-related drug overdose event" means the same as that term is defined in Section ~~[26-55-102]~~ 26B-4-501.

(e) "Prescribe" means the same as that term is defined in Section 58-17b-102.

(2) The prescribing or dispensing of an opiate antagonist by a licensee under this chapter is not unprofessional or unlawful conduct if the licensee prescribed or dispensed the opiate antagonist:

(a) in a good faith effort to assist:

(i) an individual who is at increased risk of experiencing an opiate-related drug overdose event; or

(ii) a family member of, friend of, or other person, including a person described in Subsections ~~[26-55-107(1)(a)(i)(A)]~~ 26B-4-512(1)(a)(i)(A) through (1)(a)(i)(F), that is in a position to assist an individual who is at increased risk of experiencing an opiate-related drug overdose event; or

(b) to an overdose outreach provider pursuant to Subsection ~~[26-55-104(2)(a)(iii)]~~ 26B-4-504(2)(a)(iii).

(3) The provisions of this section and ~~[Title 26, Chapter 55, Opiate Overdose Response Act]~~ Title 26B, Chapter 4, Part 5, Treatment Access, do not establish a duty or standard of care in the prescribing, dispensing, or administration of an opiate antagonist.

Section 42. Section ~~58-69-601~~ is amended to read:

58-69-601. Mentally incompetent or incapacitated dentist or dental hygienist.

(1) As used in this section:

(a) "Incapacitated person" means a person who is incapacitated, as defined in Section 75-1-201.

(b) "Mental illness" is as defined in Section ~~[62A-15-602]~~ 26B-5-301.

(2) If a court of competent jurisdiction determines a dentist or dental hygienist is an incapacitated person or that the dentist or hygienist has a mental illness and is unable to safely engage in the practice of dentistry or dental hygiene, the director shall immediately suspend the

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license of the dentist or dental hygienist 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. The director shall promptly notify the dentist or dental hygienist, in writing, of the suspension.

(3) (a) If the division and a majority of the board find reasonable cause to believe a dentist or dental hygienist, who is not determined judicially to be an incapacitated person or to have a mental illness, is incapable of practicing dentistry or dental hygiene 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 dentist or dental hygienist with a notice of hearing on the sole issue of the capacity of the dentist or dental hygienist to competently and safely engage in the practice of dentistry or dental hygiene.

(b) The hearing 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 dentist or dental hygienist who accepts the privilege of being licensed under this chapter gives consent to:

(i) submitting at the dentist or dental hygienist's own expense to an immediate mental or physical examination 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 dentist or dental hygienist has a mental illness, is incapacitated, or otherwise unable to practice dentistry or dental hygiene with reasonable skill and safety; and

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

(c) (i) Failure of a dentist or dental hygienist to submit to the examination ordered under this section is a ground for the division's immediate suspension of the dentist's or dental hygienist's license by written order of the director.

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(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 dentist or dental hygienist and was not related directly to the illness or incapacity of the dentist or dental hygienist.

(5) (a) A dentist or dental hygienist whose license is suspended under Subsection (2) or (3) 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 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 dentist's or dental hygienist's patients or the general public.

(6) A dentist or dental hygienist 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 dentist or dental hygienist, under procedures established by division rule, regarding any change in the dentist's or dental hygienist's condition, to determine whether:

(a) the dentist or dental hygienist is or is not able to safely and competently engage in the practice of dentistry or dental hygiene; and

(b) the dentist or dental hygienist is qualified to have the dentist or dental hygienist's licensure to practice under this chapter restored completely or in part.

Section 43. Section **58-69-702** is amended to read:

58-69-702. Opiate antagonist -- Exclusion from unlawful or unprofessional conduct.

(1) As used in this section:

(a) "Dispense" means the same as that term is defined in Section 58-17b-102.

(b) "Increased risk" means the same as that term is defined in Section ~~[26-55-102]~~
26B-4-501.

(c) "Opiate antagonist" means the same as that term is defined in Section ~~[26-55-102]~~
26B-4-501.

(d) "Opiate-related drug overdose event" means the same as that term is defined in

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Section ~~[26-55-102]~~ 26B-4-501.

(e) "Prescribe" means the same as that term is defined in Section 58-17b-102.

(2) The prescribing or dispensing of an opiate antagonist by an individual licensed under this chapter to engage in the practice of dentistry is not unprofessional or unlawful conduct if the licensee prescribed or dispensed the opiate antagonist:

(a) in a good faith effort to assist:

(i) an individual who is at increased risk of experiencing an opiate-related drug overdose event; or

(ii) a family member of, friend of, or other person, including a person described in Subsections ~~[26-55-107(1)(a)(i)(A)]~~ 26B-55-107(1)(a)(i)(A) through (1)(a)(i)(F), that is in a position to assist an individual who is at increased risk of experiencing an opiate-related drug overdose event; or

(b) to an overdose outreach provider pursuant to Subsection ~~[26-55-104(2)(a)(iii)]~~ 26B-4-509(2)(a)(iii).

(3) The provisions of this section and ~~[Title 26, Chapter 55, Opiate Overdose Response Act]~~ Title 26B, Chapter 4, Part 5, Treatment Access, do not establish a duty or standard of care in the prescribing, dispensing, or administration of an opiate antagonist.

Section 44. Section **58-70a-102** is amended to read:

58-70a-102. Definitions.

In addition to the definitions in Section 58-1-102, as used in this chapter:

(1) "Board" means the Physician Assistant Licensing Board created in Section 58-70a-201.

(2) "Competence" means possessing the requisite cognitive, non-cognitive, and communicative abilities and qualities to perform effectively within the scope of practice of the physician assistant's practice while adhering to professional and ethical standards.

(3) "Health care facility" means the same as that term is defined in Section ~~[26-21-2]~~ 26B-2-201.

(4) "Mental health therapist" means the same as that term is defined in Section 58-60-102.

(5) "Physician" means the same as that term is defined in Section 58-67-102.

(6) "Physician assistant" means an individual who is licensed to practice under this

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chapter.

(7) "Practice as a physician assistant" means the professional activities and conduct of a physician assistant, also known as a PA, in diagnosing, treating, advising, or prescribing for any human disease, ailment, injury, infirmity, deformity, pain, or other condition under the provisions of this chapter.

(8) "Practice of mental health therapy" means the same as that term is defined in Section 58-60-102.

(9) "Unlawful conduct" means the same as that term is defined in Sections 58-1-501 and 58-70a-502.

(10) "Unprofessional conduct" means "unprofessional conduct":

(a) as defined in Sections 58-1-501 and 58-70a-503; and

(b) as further defined by the division by rule.

Section 45. Section **58-70a-303** is amended to read:

58-70a-303. Term of license -- Expiration -- Renewal.

(1) (a) The division shall issue each license under this chapter in accordance with a two-year renewal cycle established by division rule.

(b) The division may by rule extend or shorten a renewal period by as much as one year to stagger the renewal cycles it administers.

(2) At the time of renewal, the licensee shall show compliance with continuing education renewal requirements.

(3) Each license issued under this chapter expires on the expiration date shown on the license unless renewed in accordance with Section 58-1-308.

(4) The division shall accept and apply toward an hour requirement that the division establishes under Subsection (2) continuing education that a physician assistant completes in accordance with Section ~~[26-61a-106]~~ 26B-4-204.

Section 46. Section **58-70a-503** is amended to read:

58-70a-503. Unprofessional conduct.

(1) "Unprofessional conduct" includes:

(a) violation of a patient confidence to any person who does not have a legal right and a professional need to know the information concerning the patient;

(b) knowingly prescribing, selling, giving away, or directly or indirectly administering,

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or offering to prescribe, sell, furnish, give away, or administer any prescription drug except for a legitimate medical purpose upon a proper diagnosis indicating use of that drug in the amounts prescribed or provided;

(c) prescribing prescription drugs for oneself or administering prescription drugs to oneself, except those that have been legally prescribed for the physician assistant by a licensed practitioner and that are used in accordance with the prescription order for the condition diagnosed;

(d) in a practice that has physician assistant ownership interests, failure to allow a physician the independent final decision making authority on treatment decisions for the physician's patient;

(e) violating the dispensing requirements of Chapter 17b, Part 8, Dispensing Medical Practitioner and Dispensing Medical Practitioner Clinic Pharmacy, if applicable;

(f) falsely making an entry in, or altering, a medical record with the intent to conceal:

(i) a wrongful or negligent act or omission of an individual licensed under this chapter or an individual under the direction or control of an individual licensed under this chapter; or

(ii) conduct described in Subsections (1)(a) through (e) or Subsection 58-1-501(1); and

(g) violating the requirements of [~~Title 26, Chapter 61a, Utah Medical Cannabis Act~~] Title 26B, Chapter 4, Part 2, Cannabinoid Research and Medical Cannabis.

(2) (a) "Unprofessional conduct" does not include, in accordance with [~~Title 26, Chapter 61a, Utah Medical Cannabis Act~~] Title 26B, Chapter 4, Part 2, Cannabinoid Research and Medical Cannabis, when registered as a qualified medical provider or acting as a limited medical provider, as those terms are defined in Section [~~26-61a-102~~] 26B-4-201, recommending the use of medical cannabis.

(b) Notwithstanding Subsection (2)(a), the division, in consultation with the board and in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, shall define unprofessional conduct for a physician assistant described in Subsection (2)(a).

Section 47. Section ~~58-70a-505~~ is amended to read:

58-70a-505. Opiate antagonist -- Exclusion from unlawful or unprofessional conduct.

(1) As used in this section:

(a) "Dispense" means the same as that term is defined in Section 58-17b-102.

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(b) "Increased risk" means the same as that term is defined in Section ~~[26-55-102]~~ 26B-4-501.

(c) "Opiate antagonist" means the same as that term is defined in Section ~~[26-55-102]~~ 26B-4-501.

(d) "Opiate-related drug overdose event" means the same as that term is defined in Section ~~[26-55-102]~~ 26B-4-501.

(e) "Prescribe" means the same as that term is defined in Section 58-17b-102.

(2) The prescribing or dispensing of an opiate antagonist by a licensee under this chapter is not unprofessional or unlawful conduct if the licensee prescribed or dispensed the opiate antagonist:

(a) in a good faith effort to assist:

(i) an individual who is at increased risk of experiencing an opiate-related drug overdose event; or

(ii) a family member of, friend of, or other person, including a person described in Subsections ~~[26-55-107(1)(a)(i)(A)]~~ 26B-4-512(1)(a)(i)(A) through (1)(a)(i)(F), that is in a position to assist an individual who is at increased risk of experiencing an opiate-related drug overdose event; or

(b) to an overdose outreach provider pursuant to Subsection ~~[26-55-104(2)(a)(iii)]~~ 26B-4-509(2)(a)(iii).

(3) The provisions of this section and ~~[Title 26, Chapter 55, Opiate Overdose Response Act]~~ Title 26B, Chapter 4, Part 5, Treatment Access, do not establish a duty or standard of care in the prescribing, dispensing, or administration of an opiate antagonist.

Section 48. Section ~~58-71-601~~ is amended to read:

58-71-601. Mentally incompetent or incapacitated naturopathic physician.

(1) As used in this section:

(a) "Incapacitated person" means a person who is incapacitated, as defined in Section 75-1-201.

(b) "Mental illness" is as defined in Section ~~[62A-15-602]~~ 26B-5-303.

(2) If a court of competent jurisdiction determines a naturopathic physician is an incapacitated person or that the physician has a mental illness and is unable to safely engage in the practice of medicine, the director shall immediately suspend the license of the naturopathic

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physician 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. The director shall promptly notify the naturopathic physician, in writing, of the suspension.

(3) (a) If the division and a majority of the board find reasonable cause to believe a naturopathic physician, who is not determined judicially to be an incapacitated person or to have a mental illness, is incapable of practicing medicine 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 naturopathic physician with a notice of hearing on the sole issue of the capacity of the naturopathic physician to competently and safely engage in the practice of medicine.

(b) The hearing 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 naturopathic physician who accepts the privilege of being licensed under this chapter gives consent to:

(i) submitting at the physician's own expense to an immediate mental or physical examination 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 physician'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 naturopathic physician has a mental illness, is incapacitated, or otherwise unable to practice medicine with reasonable skill and safety; and

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

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

(ii) The division may enter the order of suspension without further compliance with

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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 naturopathic physician and was not related directly to the illness or incapacity of the naturopathic physician.

(5) (a) A naturopathic physician whose license is suspended under Subsection (2) or (3) 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 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 naturopathic physician's patients or the general public.

(6) A naturopathic physician 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 naturopathic physician, under procedures established by division rule, regarding any change in the naturopathic physician's condition, to determine whether:

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

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

Section 49. Section **58-80a-601** is amended to read:

58-80a-601. Priority for certified medical language interpreter.

The [~~Department of Health and the Department of Human Services~~] Department of Health and Human Services may give priority to contracting with companies that use certified medical language interpreters.

Section 50. Section **58-85-104** is amended to read:

58-85-104. Standard of care -- Medical practitioners not liable -- No private right of action.

(1) It is not a breach of the applicable standard of care for a physician, other licensed health care provider, or hospital to treat an eligible patient with an investigational drug or investigational device under this chapter.

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(2) A physician, other licensed health care provider, or hospital that treats an eligible patient with an investigational drug or investigational device under this chapter may not, for any harm done to the eligible patient by the investigational drug or device, be subject to:

- (a) civil liability;
- (b) criminal liability; or
- (c) licensure sanctions under:
 - (i) for a physician:

(A) ~~[Title 58,]~~ Chapter 67, Utah Medical Practice Act; or

(B) ~~[Title 58,]~~ Chapter 68, Utah Osteopathic Medical Practice Act;

(ii) for the other licensed health care provider, the act governing the other licensed health care provider's license; or

(iii) for the hospital, ~~[Title 26, Chapter 21, Health Care Facility Licensing and Inspection Act]~~ Title 26B, Chapter 2, Part 2, Health Care Facility Licensing and Inspection.

(3) This chapter does not:

(a) require a manufacturer of an investigational drug or investigational device to agree to make an investigational drug or investigational device available to an eligible patient or an eligible patient's physician;

(b) require a physician to agree to:

(i) administer an investigational drug to an eligible patient under this chapter; or

(ii) treat an eligible patient with an investigational device under this chapter; or

(c) create a private right of action for an eligible patient:

(i) against a physician or hospital, for the physician's or hospital's refusal to:

(A) administer an investigational drug to an eligible patient under this chapter; or

(B) treat an eligible patient with an investigational device under this chapter; or

(ii) against a manufacturer, for the manufacturer's refusal to provide an eligible patient with an investigational drug or an investigational device under this chapter.

Section 51. Section **58-88-201** is amended to read:

58-88-201. Definitions.

As used in this part:

(1) (a) "Dispense" means the delivery by a prescriber of a prescription drug or device to a patient, including the packaging, labeling, and security necessary to prepare and safeguard the

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drug or device for supplying to a patient.

(b) "Dispense" does not include:

- (i) prescribing or administering a drug or device; or
- (ii) delivering to a patient a sample packaged for individual use by a licensed

manufacturer or re-packager of a drug or device.

(2) "Dispensing practitioner" means an individual who:

(a) is currently licensed as:

- (i) a physician and surgeon under Chapter 67, Utah Medical Practice Act;
- (ii) an osteopathic physician and surgeon under Chapter 68, Utah Osteopathic Medical

Practice Act;

(iii) an advanced practice registered nurse under Subsection 58-31b-301(2)(d); or

(iv) a physician assistant under Chapter 70a, Utah Physician Assistant Act;

(b) is authorized by state law to prescribe and administer drugs in the course of professional practice; and

(c) practices at a licensed dispensing practice.

(3) "Drug" means the same as that term is defined in Section 58-17b-102.

(4) "Health care practice" means:

(a) a health care facility as defined in Section ~~[26-21-2]~~ 26B-2-201; or

(b) the offices of one or more private prescribers, whether for individual or group practice.

(5) "Licensed dispensing practice" means a health care practice that is licensed as a dispensing practice under Section 58-88-202.

Section 52. Section **59-1-210** is amended to read:

59-1-210. General powers and duties.

The powers and duties of the commission are as follows:

(1) to sue and be sued in its own name;

(2) to adopt rules and policies consistent with the Constitution and laws of this state to govern the commission, executive director, division directors, and commission employees in the performance of their duties;

(3) to adopt rules and policies consistent with the Constitution and laws of the state, to govern county boards and officers in the performance of any duty relating to assessment,

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equalization, and collection of taxes;

(4) to prescribe the use of forms relating to the assessment of property for state or local taxation, the equalization of those assessments, the reporting of property or income for state or local taxation purposes, or for the computation of those taxes and the reporting of any information, statistics, or data required by the commission;

(5) to administer and supervise the tax laws of the state;

(6) to prepare and maintain from year to year a complete record of all lands subject to taxation in this state, and all machinery used in mining and all property or surface improvements upon or appurtenant to mines or mining claims;

(7) to exercise general supervision over assessors and county boards of equalization including the authority to enforce Section 59-2-303.1, and over other county officers in the performance of their duties relating to the assessment of property and collection of taxes, so that all assessments of property are just and equal, according to fair market value, and that the tax burden is distributed without favor or discrimination;

(8) to reconvene any county board of equalization which, when reconvened, may only address business approved by the commission and extend the time for which any county board of equalization may sit for the equalization of assessments;

(9) to confer with, advise, and direct county treasurers, assessors, and other county officers in matters relating to the assessment and equalization of property for taxation and the collection of taxes;

(10) to provide for and hold annually at such time and place as may be convenient a district or state convention of county assessors, auditors, and other county officers to consider and discuss matters relative to taxation, uniformity of valuation, and changes in the law relative to taxation and methods of assessment, to which county assessors and other officers called to attend shall attend at county expense;

(11) to direct proceedings, actions, and prosecutions to enforce the laws relating to the penalties, liabilities, and punishments of public officers, persons, and officers or agents of corporations for failure or neglect to comply with the statutes governing the reporting, assessment, and taxation of property;

(12) to cause complaints to be made in the proper court seeking removal from office of assessors, auditors, members of county boards, and other assessing, taxing, or disbursing

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officers, who are guilty of official misconduct or neglect of duty;

(13) to require county attorneys to immediately institute and prosecute actions and proceedings in respect to penalties, forfeitures, removals, and punishments for violations of the laws relating to the assessment and taxation of property in their respective counties;

(14) to require any person to furnish any information required by the commission to ascertain the value and the relative burden borne by all kinds of property in the state, and to require from all state and local officers any information necessary for the proper discharge of the duties of the commission;

(15) to examine all records relating to the valuation of property of any person;

(16) to subpoena witnesses to appear and give testimony and produce records relating to any matter before the commission;

(17) to cause depositions of witnesses to be taken as in civil actions at the request of the commission or any party to any matter or proceeding before the commission;

(18) to authorize any member or employee of the commission to administer oaths and affirmations in any matter or proceeding relating to the exercise of the powers and duties of the commission;

(19) to visit periodically each county of the state, to investigate and direct the work and methods of local assessors and other officials in the assessment, equalization, and taxation of property, and to ascertain whether the law requiring the assessment of all property not exempt from taxation, and the collection of taxes, have been properly administered and enforced;

(20) to carefully examine all cases where evasion or violation of the laws for assessment and taxation of property is alleged, to ascertain whether existing laws are defective or improperly administered;

(21) to furnish to the governor from time to time such assistance and information as the governor requires;

(22) to transmit to the governor and to each member of the Legislature recommendations as to legislation which will correct or eliminate defects in the operation of the tax laws and will equalize the burden of taxation within the state;

(23) to correct any error in any assessment made by it at any time before the tax is due and report the correction to the county auditor, who shall enter the corrected assessment upon the assessment roll;

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(24) to compile and publish statistics relating to taxation in the state and prepare and submit an annual budget to the governor for inclusion in the state budget to be submitted to the Legislature;

(25) to perform any further duties imposed by law, and exercise all powers necessary in the performance of its duties;

(26) to adopt a schedule of fees assessed for services provided by the commission, unless otherwise provided by statute. The fee shall be reasonable and fair, and shall reflect the cost of services provided. Each fee established in this manner shall be submitted to and approved by the Legislature as part of the commission's annual appropriations request. The commission may not charge or collect any fee proposed in this manner without approval by the Legislature;

(27) to comply with the procedures and requirements of Title 63G, Chapter 4, Administrative Procedures Act, in its adjudicative proceedings; and

(28) to distribute the money deposited into the Rural Health Care Facilities Account as required by Section ~~[26-9-4]~~ 26B-1-308.

Section 53. Section **59-1-403** is amended to read:

59-1-403. Confidentiality -- Exceptions -- Penalty -- Application to property tax.

(1) As used in this section:

(a) "Distributed tax, fee, or charge" means a tax, fee, or charge:

(i) the commission administers under:

(A) this title, other than a tax under Chapter 12, Part 2, Local Sales and Use Tax Act;

(B) Title 10, Chapter 1, Part 3, Municipal Energy Sales and Use Tax Act;

(C) Title 10, Chapter 1, Part 4, Municipal Telecommunications License Tax Act;

(D) Section 19-6-805;

(E) Section 63H-1-205; or

(F) Title 69, Chapter 2, Part 4, Prepaid Wireless Telecommunications Service Charges;

and

(ii) with respect to which the commission distributes the revenue collected from the tax, fee, or charge to a qualifying jurisdiction.

(b) "Qualifying jurisdiction" means:

(i) a county, city, town, or metro township; or

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(ii) the military installation development authority created in Section 63H-1-201.

(2) (a) Any of the following may not divulge or make known in any manner any information gained by that person from any return filed with the commission:

(i) a tax commissioner;

(ii) an agent, clerk, or other officer or employee of the commission; or

(iii) a representative, agent, clerk, or other officer or employee of any county, city, or town.

(b) An official charged with the custody of a return filed with the commission is not required to produce the return or evidence of anything contained in the return in any action or proceeding in any court, except:

(i) in accordance with judicial order;

(ii) on behalf of the commission in any action or proceeding under:

(A) this title; or

(B) other law under which persons are required to file returns with the commission;

(iii) on behalf of the commission in any action or proceeding to which the commission is a party; or

(iv) on behalf of any party to any action or proceeding under this title if the report or facts shown by the return are directly involved in the action or proceeding.

(c) Notwithstanding Subsection (2)(b), a court may require the production of, and may admit in evidence, any portion of a return or of the facts shown by the return, as are specifically pertinent to the action or proceeding.

(3) This section does not prohibit:

(a) a person or that person's duly authorized representative from receiving a copy of any return or report filed in connection with that person's own tax;

(b) the publication of statistics as long as the statistics are classified to prevent the identification of particular reports or returns; and

(c) the inspection by the attorney general or other legal representative of the state of the report or return of any taxpayer:

(i) who brings action to set aside or review a tax based on the report or return;

(ii) against whom an action or proceeding is contemplated or has been instituted under this title; or

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(iii) against whom the state has an unsatisfied money judgment.

(4) (a) Notwithstanding Subsection (2) and for purposes of administration, the commission may by rule, made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, provide for a reciprocal exchange of information with:

(i) the United States Internal Revenue Service; or

(ii) the revenue service of any other state.

(b) Notwithstanding Subsection (2) and for all taxes except individual income tax and corporate franchise tax, the commission may by rule, made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, share information gathered from returns and other written statements with the federal government, any other state, any of the political subdivisions of another state, or any political subdivision of this state, except as limited by Sections 59-12-209 and 59-12-210, if the political subdivision, other state, or the federal government grant substantially similar privileges to this state.

(c) Notwithstanding Subsection (2) and for all taxes except individual income tax and corporate franchise tax, the commission may by rule, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, provide for the issuance of information concerning the identity and other information of taxpayers who have failed to file tax returns or to pay any tax due.

(d) Notwithstanding Subsection (2), the commission shall provide to the director of the Division of Environmental Response and Remediation, as defined in Section 19-6-402, as requested by the director of the Division of Environmental Response and Remediation, any records, returns, or other information filed with the commission under Chapter 13, Motor and Special Fuel Tax Act, or Section 19-6-410.5 regarding the environmental assurance program participation fee.

(e) Notwithstanding Subsection (2), at the request of any person the commission shall provide that person sales and purchase volume data reported to the commission on a report, return, or other information filed with the commission under:

(i) Chapter 13, Part 2, Motor Fuel; or

(ii) Chapter 13, Part 4, Aviation Fuel.

(f) Notwithstanding Subsection (2), upon request from a tobacco product manufacturer, as defined in Section 59-22-202, the commission shall report to the manufacturer:

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(i) the quantity of cigarettes, as defined in Section 59-22-202, produced by the manufacturer and reported to the commission for the previous calendar year under Section 59-14-407; and

(ii) the quantity of cigarettes, as defined in Section 59-22-202, produced by the manufacturer for which a tax refund was granted during the previous calendar year under Section 59-14-401 and reported to the commission under Subsection 59-14-401(1)(a)(v).

(g) Notwithstanding Subsection (2), the commission shall notify manufacturers, distributors, wholesalers, and retail dealers of a tobacco product manufacturer that is prohibited from selling cigarettes to consumers within the state under Subsection 59-14-210(2).

(h) Notwithstanding Subsection (2), the commission may:

(i) provide to the Division of Consumer Protection within the Department of Commerce and the attorney general data:

(A) reported to the commission under Section 59-14-212; or

(B) related to a violation under Section 59-14-211; and

(ii) upon request, provide to any person data reported to the commission under Subsections 59-14-212(1)(a) through (c) and Subsection 59-14-212(1)(g).

(i) Notwithstanding Subsection (2), the commission shall, at the request of a committee of the Legislature, the Office of the Legislative Fiscal Analyst, or the Governor's Office of Planning and Budget, provide to the committee or office the total amount of revenues collected by the commission under Chapter 24, Radioactive Waste Facility Tax Act, for the time period specified by the committee or office.

(j) Notwithstanding Subsection (2), the commission shall make the directory required by Section 59-14-603 available for public inspection.

(k) Notwithstanding Subsection (2), the commission may share information with federal, state, or local agencies as provided in Subsection 59-14-606(3).

(l) (i) Notwithstanding Subsection (2), the commission shall provide the Office of Recovery Services within the Department of [~~Human Services~~] Health and Human Services any relevant information obtained from a return filed under Chapter 10, Individual Income Tax Act, regarding a taxpayer who has become obligated to the Office of Recovery Services.

(ii) The information described in Subsection (4)(l)(i) may be provided by the Office of Recovery Services to any other state's child support collection agency involved in enforcing

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that support obligation.

(m) (i) Notwithstanding Subsection (2), upon request from the state court administrator, the commission shall provide to the state court administrator, the name, address, telephone number, county of residence, and social security number on resident returns filed under Chapter 10, Individual Income Tax Act.

(ii) The state court administrator may use the information described in Subsection (4)(m)(i) only as a source list for the master jury list described in Section 78B-1-106.

(n) (i) As used in this Subsection (4)(n):

(A) "GO Utah office" means the Governor's Office of Economic Opportunity created in Section 63N-1a-301.

(B) "Income tax information" means information gained by the commission that is required to be attached to or included in a return filed with the commission under Chapter 7, Corporate Franchise and Income Taxes, or Chapter 10, Individual Income Tax Act.

(C) "Other tax information" means information gained by the commission that is required to be attached to or included in a return filed with the commission except for a return filed under Chapter 7, Corporate Franchise and Income Taxes, or Chapter 10, Individual Income Tax Act.

(D) "Tax information" means income tax information or other tax information.

(ii) (A) Notwithstanding Subsection (2) and except as provided in Subsection (4)(n)(ii)(B) or (C), the commission shall at the request of the GO Utah office provide to the GO Utah office all income tax information.

(B) For purposes of a request for income tax information made under Subsection (4)(n)(ii)(A), the GO Utah office may not request and the commission may not provide to the GO Utah office a person's address, name, social security number, or taxpayer identification number.

(C) In providing income tax information to the GO Utah office, the commission shall in all instances protect the privacy of a person as required by Subsection (4)(n)(ii)(B).

(iii) (A) Notwithstanding Subsection (2) and except as provided in Subsection (4)(n)(iii)(B), the commission shall at the request of the GO Utah office provide to the GO Utah office other tax information.

(B) Before providing other tax information to the GO Utah office, the commission

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shall redact or remove any name, address, social security number, or taxpayer identification number.

(iv) The GO Utah office may provide tax information received from the commission in accordance with this Subsection (4)(n) only:

(A) as a fiscal estimate, fiscal note information, or statistical information; and

(B) if the tax information is classified to prevent the identification of a particular return.

(v) (A) A person may not request tax information from the GO Utah office under Title 63G, Chapter 2, Government Records Access and Management Act, or this section, if the GO Utah office received the tax information from the commission in accordance with this Subsection (4)(n).

(B) The GO Utah office may not provide to a person that requests tax information in accordance with Subsection (4)(n)(v)(A) any tax information other than the tax information the GO Utah office provides in accordance with Subsection (4)(n)(iv).

(o) Notwithstanding Subsection (2), the commission may provide to the governing board of the agreement or a taxing official of another state, the District of Columbia, the United States, or a territory of the United States:

(i) the following relating to an agreement sales and use tax:

(A) information contained in a return filed with the commission;

(B) information contained in a report filed with the commission;

(C) a schedule related to Subsection (4)(o)(i)(A) or (B); or

(D) a document filed with the commission; or

(ii) a report of an audit or investigation made with respect to an agreement sales and use tax.

(p) Notwithstanding Subsection (2), the commission may provide information concerning a taxpayer's state income tax return or state income tax withholding information to the Driver License Division if the Driver License Division:

(i) requests the information; and

(ii) provides the commission with a signed release form from the taxpayer allowing the Driver License Division access to the information.

(q) Notwithstanding Subsection (2), the commission shall provide to the Utah

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Communications Authority, or a division of the Utah Communications Authority, the information requested by the authority under Sections 63H-7a-302, 63H-7a-402, and 63H-7a-502.

(r) Notwithstanding Subsection (2), the commission shall provide to the Utah Educational Savings Plan information related to a resident or nonresident individual's contribution to a Utah Educational Savings Plan account as designated on the resident or nonresident's individual income tax return as provided under Section 59-10-1313.

(s) Notwithstanding Subsection (2), for the purpose of verifying eligibility under Sections ~~[26-18-2.5]~~ 26B-3-106 and ~~[26-40-105]~~ 26B-3-903, the commission shall provide an eligibility worker with the Department of ~~[Health]~~ Health and Human Services or its designee with the adjusted gross income of an individual if:

(i) an eligibility worker with the Department of ~~[Health]~~ Health and Human Services or its designee requests the information from the commission; and

(ii) the eligibility worker has complied with the identity verification and consent provisions of Sections ~~[26-18-2.5]~~ 26B-3-106 and ~~[26-40-105]~~ 26B-3-903.

(t) Notwithstanding Subsection (2), the commission may provide to a county, as determined by the commission, information declared on an individual income tax return in accordance with Section 59-10-103.1 that relates to eligibility to claim a residential exemption authorized under Section 59-2-103.

(u) Notwithstanding Subsection (2), the commission shall provide a report regarding any access line provider that is over 90 days delinquent in payment to the commission of amounts the access line provider owes under Title 69, Chapter 2, Part 4, Prepaid Wireless Telecommunications Service Charges, to the board of the Utah Communications Authority created in Section 63H-7a-201.

(v) Notwithstanding Subsection (2), the commission shall provide the Department of Environmental Quality a report on the amount of tax paid by a radioactive waste facility for the previous calendar year under Section 59-24-103.5.

(w) Notwithstanding Subsection (2), the commission may, upon request, provide to the Department of Workforce Services any information received under Chapter 10, Part 4, Withholding of Tax, that is relevant to the duties of the Department of Workforce Services.

(x) Notwithstanding Subsection (2), the commission may provide the Public Service

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Commission or the Division of Public Utilities information related to a seller that collects and remits to the commission a charge described in Subsection 69-2-405(2), including the seller's identity and the number of charges described in Subsection 69-2-405(2) that the seller collects.

(y) (i) Notwithstanding Subsection (2), the commission shall provide to each qualifying jurisdiction the collection data necessary to verify the revenue collected by the commission for a distributed tax, fee, or charge collected within the qualifying jurisdiction.

(ii) In addition to the information provided under Subsection (4)(y)(i), the commission shall provide a qualifying jurisdiction with copies of returns and other information relating to a distributed tax, fee, or charge collected within the qualifying jurisdiction.

(iii) (A) To obtain the information described in Subsection (4)(y)(ii), the chief executive officer or the chief executive officer's designee of the qualifying jurisdiction shall submit a written request to the commission that states the specific information sought and how the qualifying jurisdiction intends to use the information.

(B) The information described in Subsection (4)(y)(ii) is available only in official matters of the qualifying jurisdiction.

(iv) Information that a qualifying jurisdiction receives in response to a request under this subsection is:

(A) classified as a private record under Title 63G, Chapter 2, Government Records Access and Management Act; and

(B) subject to the confidentiality requirements of this section.

(z) Notwithstanding Subsection (2), the commission shall provide the Alcoholic Beverage Services Commission, upon request, with taxpayer status information related to state tax obligations necessary to comply with the requirements described in Section 32B-1-203.

(5) (a) Each report and return shall be preserved for at least three years.

(b) After the three-year period provided in Subsection (5)(a) the commission may destroy a report or return.

(6) (a) Any individual who violates this section is guilty of a class A misdemeanor.

(b) If the individual described in Subsection (6)(a) is an officer or employee of the state, the individual shall be dismissed from office and be disqualified from holding public office in this state for a period of five years thereafter.

(c) Notwithstanding Subsection (6)(a) or (b), the GO Utah office, when requesting

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information in accordance with Subsection (4)(n)(iii), or an individual who requests information in accordance with Subsection (4)(n)(v):

- (i) is not guilty of a class A misdemeanor; and
 - (ii) is not subject to:
 - (A) dismissal from office in accordance with Subsection (6)(b); or
 - (B) disqualification from holding public office in accordance with Subsection (6)(b).
 - (7) Except as provided in Section 59-1-404, this part does not apply to the property tax.
- Section 54. Section **59-2-1901** is amended to read:

59-2-1901. Definitions.

As used in this section:

- (1) "Active component of the United States Armed Forces" means the same as that term is defined in Section 59-10-1027.
- (2) "Active duty claimant" means a member of an active component of the United States Armed Forces or a reserve component of the United States Armed Forces who:
 - (a) performed qualifying active duty military service; and
 - (b) applies for an exemption described in Section 59-2-1902.
- (3) "Adjusted taxable value limit" means:
 - (a) for the calendar year that begins on January 1, 2015, \$252,126; or
 - (b) for each calendar year after the calendar year that begins on January 1, 2015, the amount of the adjusted taxable value limit for the previous year plus an amount calculated by multiplying the amount of the adjusted taxable value limit for the previous year by the actual percent change in the consumer price index during the previous calendar year.
- (4) "Consumer price index" means the same as that term is described in Section 1(f)(4), Internal Revenue Code, and defined in Section 1(f)(5), Internal Revenue Code.
- (5) "Deceased veteran with a disability" means a deceased individual who was a veteran with a disability at the time the individual died.
- (6) "Military entity" means:
 - (a) the United States Department of Veterans Affairs;
 - (b) an active component of the United States Armed Forces; or
 - (c) a reserve component of the United States Armed Forces.
- (7) "Primary residence" includes the residence of a individual who does not reside in

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the residence if the individual:

(a) does not reside in the residence because the individual is admitted as an inpatient at a health care facility as defined in Section ~~[26-55-102]~~ 26B-4-501; and

(b) otherwise meets the requirements of this part.

(8) "Qualifying active duty military service" means at least 200 days, regardless of whether consecutive, in any continuous 365-day period of active duty military service outside the state in an active component of the United States Armed Forces or a reserve component of the United States Armed Forces, if the days of active duty military service:

(a) were completed in the year before an individual applies for an exemption described in Section 59-2-1902; and

(b) have not previously been counted as qualifying active duty military service for purposes of qualifying for an exemption described in Section 59-2-1902 or applying for the exemption described in Section 59-2-1902.

(9) "Statement of disability" means the statement of disability described in Section 59-2-1904.

(10) "Reserve component of the United States Armed Forces" means the same as that term is defined in Section 59-10-1027.

(11) "Residence" means real property where an individual resides, including:

(a) a mobile home, as defined in Section 41-1a-102; or

(b) a manufactured home, as defined in Section 41-1a-102.

(12) "Veteran claimant" means one of the following individuals who applies for an exemption described in Section 59-2-1903:

(a) a veteran with a disability;

(b) the unmarried surviving spouse:

(i) of a deceased veteran with a disability; or

(ii) a veteran who was killed in action or died in the line of duty; or

(c) a minor orphan:

(i) of a deceased veteran with a disability; or

(ii) a veteran who was killed in action or died in the line of duty.

(13) "Veteran who was killed in action or died in the line of duty" means an individual who was killed in action or died in the line of duty in an active component of the United States

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Armed Forces or a reserve component of the United States Armed Forces, regardless of whether that individual had a disability at the time that individual was killed in action or died in the line of duty.

(14) "Veteran with a disability" means an individual with a disability who, during military training or a military conflict, acquired a disability in the line of duty in an active component of the United States Armed Forces or a reserve component of the United States Armed Forces, as determined by a military entity.

Section 55. Section **59-10-529** is amended to read:

59-10-529. Overpayment of tax -- Credits -- Refunds.

(1) If there has been an overpayment of any tax imposed by this chapter, the amount of overpayment is credited as follows:

(a) against an income tax due from a taxpayer;

(b) against:

(i) the amount of a judgment against a taxpayer, including a final judgment or order requiring payment of a fine or of restitution to a victim under Title 77, Chapter 38b, Crime Victims Restitution Act, obtained through due process of law by an entity of state or local government; or

(ii) subject to Subsection (4)(a)(i), a child support obligation that is due or past due, as determined by the Office of Recovery Services in the Department of ~~[Human Services]~~ Health and Human Services and after notice and an opportunity for an adjudicative proceeding, as provided in Subsection (4)(a)(iii); or

(c) subject to Subsections (3), (5), (6), and (7), as bail to ensure the appearance of a taxpayer before the appropriate authority to resolve an outstanding warrant against the taxpayer for which bail is due, if a court of competent jurisdiction has not approved an alternative form of payment.

(2) If a balance remains after an overpayment is credited in accordance with Subsection (1), the balance shall be refunded to the taxpayer.

(3) Bail described in Subsection (1)(c) may be applied to any fine or forfeiture:

(a) that is due and related to a warrant that is outstanding on or after February 16, 1984; and

(b) in accordance with Subsections (5) and (6).

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(4) (a) The amount of an overpayment may be credited against an obligation described in Subsection (1)(b)(ii) if the Office of Recovery Services has sent written notice to the taxpayer's last-known address or the address on file under Section [~~62A-11-304.4~~] 26B-9-207, stating:

(i) the amount of child support that is due or past due as of the date of the notice or other specified date;

(ii) that any overpayment shall be applied to reduce the amount of due or past-due child support specified in the notice; and

(iii) that the taxpayer may contest the amount of past-due child support specified in the notice by filing a written request for an adjudicative proceeding with the office within 15 days of the notice being sent.

(b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the Office of Recovery Services shall establish rules to implement this Subsection (4), including procedures, in accordance with the other provisions of this section, to ensure:

(i) prompt reimbursement to a taxpayer of any amount of an overpayment that was credited against a child support obligation in error; and

(ii) prompt distribution of properly credited funds to the obligee parent.

(5) The amount of an overpayment may be credited against bail described in Subsection (1)(c) if:

(a) a court has issued a warrant for the arrest of the taxpayer for failure to post bail, appear, or otherwise satisfy the terms of a citation, summons, or court order; and

(b) a notice of intent to apply the overpayment as bail on the issued warrant has been sent to the taxpayer's current address on file with the commission.

(6) (a) (i) The commission shall deliver an overpayment applied as bail to the court that issued the warrant of arrest.

(ii) The clerk of the court is authorized to endorse the check or commission warrant of payment on behalf of the payees and deposit the money in the court treasury.

(b) (i) The court receiving an overpayment applied as bail shall order withdrawal of the warrant for arrest of the taxpayer if:

(A) the case is a case for which a personal appearance of the taxpayer is not required; and

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(B) the dollar amount of the overpayment represents the full dollar amount of bail.

(ii) In a case except for a case described in Subsection (6)(b)(i):

(A) the court receiving the overpayment applied as bail is not required to order the withdrawal of the warrant of arrest of the taxpayer during the 40-day period; and

(B) the taxpayer may be arrested on the warrant.

(c) (i) If a taxpayer fails to respond to the notice required by Subsection (5)(b), or to resolve the warrant within 40 days after the notice is sent under Subsection (5)(b), the overpayment applied as bail is forfeited.

(ii) A court may issue another warrant or allow the original warrant to remain in force if:

(A) the taxpayer has not complied with an order of the court;

(B) the taxpayer has failed to appear and respond to a criminal charge for which a personal appearance is required; or

(C) the taxpayer has paid partial but not full bail in a case for which a personal appearance is not required.

(d) If the alleged violations named in a warrant are later resolved in favor of the taxpayer, the bail amount shall be remitted to the taxpayer.

(7) The fine and bail forfeiture provisions of this section apply to all warrants, fines, fees, and surcharges issued in cases charging a taxpayer with a felony, a misdemeanor, or an infraction described in this section, which are outstanding on or after February 16, 1984.

(8) If the amount allowed as a credit for tax withheld from a taxpayer exceeds the tax to which the credit relates, the excess is considered an overpayment.

(9) (a) Subject to Subsection (9)(b), a taxpayer shall claim a credit or refund of an overpayment that is attributable to a net operating loss carry back or carry forward within three years after the day on which the return for the taxable year of the net operating loss is due.

(b) The three-year period described in Subsection (9)(a) shall be extended by any extension of time provided in statute for filing the return described in Subsection (9)(a).

(10) If there is no tax liability for a period in which an amount is paid under this chapter, the amount is an overpayment.

(11) If a tax under this chapter is assessed or collected after the expiration of the applicable period of limitation, that amount is an overpayment.

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(12) (a) A taxpayer may file a claim for a credit or refund of an overpayment within two years after the day on which a notice of change, notice of correction, or amended return is required to be filed with the commission if the taxpayer is required to:

(i) report a change or correction in income reported on the taxpayer's federal income tax return;

(ii) report a change or correction that is treated in the same manner as if the change or correction were an overpayment for federal income tax purposes; or

(iii) file an amended return with the commission.

(b) If a report or amended return is not filed within 90 days after the day on which the report or amended return is due, interest on any resulting refund or credit ceases to accrue after the 90-day period.

(c) The amount of the credit or refund may not exceed the amount of the reduction in tax attributable to the federal change, correction, or items amended on the taxpayer's amended federal income tax return.

(d) Except as provided in Subsection (12)(a), this Subsection (12) does not affect the amount or the time within which a claim for credit or refund may be filed.

(13) A credit or refund may not be allowed or made if an overpayment is less than \$1.

(14) In the case of an overpayment of tax by an employer under Part 4, Withholding of Tax, an employer shall receive a refund or credit only to the extent that the amount of the overpayment is not deducted and withheld from wages under this chapter.

(15) (a) If a taxpayer that is allowed a refund under this chapter dies, the commission may make payment to the personal representative of the taxpayer's estate.

(b) If there is no personal representative of the taxpayer's estate, the commission may make payment to those persons that establish entitlement to inherit the property of the decedent in the proportions established in Title 75, Utah Uniform Probate Code.

(16) If an overpayment relates to a change in net income described in Subsection 59-10-536(2)(a), a credit may be allowed or a refund paid any time before the expiration of the period within which a deficiency may be assessed.

(17) An overpayment of a tax imposed by this chapter shall accrue interest at the rate and in the manner prescribed in Section 59-1-402.

(18) A pass-through entity may claim a refund of qualifying excess withholding in

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accordance with Section 59-10-1403.3 in lieu of a pass-through entity taxpayer claiming a tax credit under Section 59-7-614.4 or Section 59-10-1103.

Section 56. Section **59-10-1004** is amended to read:

59-10-1004. Tax credit for cash contributions to sheltered workshops.

(1) For tax years beginning January 1, 1983, and thereafter, in computing the tax due the state under Section 59-10-104 there shall be a nonrefundable tax credit allowed for cash contributions made by a claimant, estate, or trust within the taxable year to nonprofit rehabilitation sheltered workshop facilities for persons with a disability operating in Utah that are certified by the Department of [~~Human Services~~] Health and Human Services as a qualifying facility.

(2) The allowable tax credit is an amount equal to 50% of the aggregate amount of the cash contributions to the qualifying rehabilitation facilities, but the allowed tax credit may not exceed \$200.

(3) The amount of contribution claimed as a tax credit under this section may not also be claimed as a charitable deduction in determining net taxable income.

Section 57. Section **59-10-1308** is amended to read:

59-10-1308. Children's organ transplants contribution -- Credit to Kurt Oscarson Children's Organ Transplant Account.

(1) Except as provided in Section 59-10-1304, a resident or nonresident individual that files an individual income tax return under this chapter may designate on the resident or nonresident individual's individual income tax return a contribution to the Kurt Oscarson Children's Organ Transplant Account created by Section [~~26-18a-4~~] 26B-1-311.

(2) The commission shall:

(a) determine annually the total amount of contributions designated in accordance with this section; and

(b) credit the amount described in Subsection (2)(a) to the Kurt Oscarson Children's Organ Transplant Account created by Section [~~26-18a-4~~] 26B-1-311.

Section 58. Section **59-10-1320** is amended to read:

59-10-1320. Contribution to the Governor's Suicide Prevention Fund.

(1) Except as provided in Section 59-10-1304, a resident or nonresident individual that files an individual income tax return under this chapter may designate on the resident or

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nonresident individual's individual income tax return a contribution to the Governor's Suicide Prevention Fund as provided in this part.

(2) The commission shall:

(a) determine annually the total amount of contributions designated in accordance with this section; and

(b) credit the amount described in Subsection (2)(a) to the Governor's Suicide Prevention Fund created by Section [~~62A-15-1103~~] 26B-1-325.

Section 59. Section **59-12-102** is amended to read:

59-12-102. Definitions.

As used in this chapter:

(1) "800 service" means a telecommunications service that:

(a) allows a caller to dial a toll-free number without incurring a charge for the call; and

(b) is typically marketed:

(i) under the name 800 toll-free calling;

(ii) under the name 855 toll-free calling;

(iii) under the name 866 toll-free calling;

(iv) under the name 877 toll-free calling;

(v) under the name 888 toll-free calling; or

(vi) under a name similar to Subsections (1)(b)(i) through (v) as designated by the

Federal Communications Commission.

(2) (a) "900 service" means an inbound toll telecommunications service that:

(i) a subscriber purchases;

(ii) allows a customer of the subscriber described in Subsection (2)(a)(i) to call in to the subscriber's:

(A) prerecorded announcement; or

(B) live service; and

(iii) is typically marketed:

(A) under the name 900 service; or

(B) under a name similar to Subsection (2)(a)(iii)(A) as designated by the Federal Communications Commission.

(b) "900 service" does not include a charge for:

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- (i) a collection service a seller of a telecommunications service provides to a subscriber; or
- (ii) the following a subscriber sells to the subscriber's customer:
 - (A) a product; or
 - (B) a service.
- (3) (a) "Admission or user fees" includes season passes.
- (b) "Admission or user fees" does not include:
 - (i) annual membership dues to private organizations; or
 - (ii) a lesson, including a lesson that involves as part of the lesson equipment or a facility listed in Subsection 59-12-103(1)(f).
- (4) "Affiliate" or "affiliated person" means a person that, with respect to another person:
 - (a) has an ownership interest of more than 5%, whether direct or indirect, in that other person; or
 - (b) is related to the other person because a third person, or a group of third persons who are affiliated persons with respect to each other, holds an ownership interest of more than 5%, whether direct or indirect, in the related persons.
- (5) "Agreement" means the Streamlined Sales and Use Tax Agreement adopted on November 12, 2002, including amendments made to the Streamlined Sales and Use Tax Agreement after November 12, 2002.
- (6) "Agreement combined tax rate" means the sum of the tax rates:
 - (a) listed under Subsection (7); and
 - (b) that are imposed within a local taxing jurisdiction.
- (7) "Agreement sales and use tax" means a tax imposed under:
 - (a) Subsection 59-12-103(2)(a)(i)(A);
 - (b) Subsection 59-12-103(2)(b)(i);
 - (c) Subsection 59-12-103(2)(c)(i);
 - (d) Subsection 59-12-103(2)(d);
 - (e) Subsection 59-12-103(2)(e)(i)(A)(I);
 - (f) Section 59-12-204;
 - (g) Section 59-12-401;

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- (h) Section 59-12-402;
- (i) Section 59-12-402.1;
- (j) Section 59-12-703;
- (k) Section 59-12-802;
- (l) Section 59-12-804;
- (m) Section 59-12-1102;
- (n) Section 59-12-1302;
- (o) Section 59-12-1402;
- (p) Section 59-12-1802;
- (q) Section 59-12-2003;
- (r) Section 59-12-2103;
- (s) Section 59-12-2213;
- (t) Section 59-12-2214;
- (u) Section 59-12-2215;
- (v) Section 59-12-2216;
- (w) Section 59-12-2217;
- (x) Section 59-12-2218;
- (y) Section 59-12-2219; or
- (z) Section 59-12-2220.

(8) "Aircraft" means the same as that term is defined in Section 72-10-102.

(9) "Aircraft maintenance, repair, and overhaul provider" means a business entity:

(a) except for:

(i) an airline as defined in Section 59-2-102; or

(ii) an affiliated group, as defined in Section 59-7-101, except that "affiliated group"

includes a corporation that is qualified to do business but is not otherwise doing business in the state, of an airline; and

(b) that has the workers, expertise, and facilities to perform the following, regardless of whether the business entity performs the following in this state:

(i) check, diagnose, overhaul, and repair:

(A) an onboard system of a fixed wing turbine powered aircraft; and

(B) the parts that comprise an onboard system of a fixed wing turbine powered aircraft;

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(ii) assemble, change, dismantle, inspect, and test a fixed wing turbine powered aircraft engine;

(iii) perform at least the following maintenance on a fixed wing turbine powered aircraft:

(A) an inspection;

(B) a repair, including a structural repair or modification;

(C) changing landing gear; and

(D) addressing issues related to an aging fixed wing turbine powered aircraft;

(iv) completely remove the existing paint of a fixed wing turbine powered aircraft and completely apply new paint to the fixed wing turbine powered aircraft; and

(v) refurbish the interior of a fixed wing turbine powered aircraft in a manner that results in a change in the fixed wing turbine powered aircraft's certification requirements by the authority that certifies the fixed wing turbine powered aircraft.

(10) "Alcoholic beverage" means a beverage that:

(a) is suitable for human consumption; and

(b) contains .5% or more alcohol by volume.

(11) "Alternative energy" means:

(a) biomass energy;

(b) geothermal energy;

(c) hydroelectric energy;

(d) solar energy;

(e) wind energy; or

(f) energy that is derived from:

(i) coal-to-liquids;

(ii) nuclear fuel;

(iii) oil-impregnated diatomaceous earth;

(iv) oil sands;

(v) oil shale;

(vi) petroleum coke; or

(vii) waste heat from:

(A) an industrial facility; or

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(B) a power station in which an electric generator is driven through a process in which water is heated, turns into steam, and spins a steam turbine.

(12) (a) Subject to Subsection (12)(b), "alternative energy electricity production facility" means a facility that:

- (i) uses alternative energy to produce electricity; and
- (ii) has a production capacity of two megawatts or greater.

(b) A facility is an alternative energy electricity production facility regardless of whether the facility is:

- (i) connected to an electric grid; or
- (ii) located on the premises of an electricity consumer.

(13) (a) "Ancillary service" means a service associated with, or incidental to, the provision of telecommunications service.

(b) "Ancillary service" includes:

- (i) a conference bridging service;
- (ii) a detailed communications billing service;
- (iii) directory assistance;
- (iv) a vertical service; or
- (v) a voice mail service.

(14) "Area agency on aging" means the same as that term is defined in Section ~~[62A-3-101]~~ 26B-6-101.

(15) "Assisted amusement device" means an amusement device, skill device, or ride device that is started and stopped by an individual:

- (a) who is not the purchaser or renter of the right to use or operate the amusement device, skill device, or ride device; and
- (b) at the direction of the seller of the right to use the amusement device, skill device, or ride device.

(16) "Assisted cleaning or washing of tangible personal property" means cleaning or washing of tangible personal property if the cleaning or washing labor is primarily performed by an individual:

- (a) who is not the purchaser of the cleaning or washing of the tangible personal property; and

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(b) at the direction of the seller of the cleaning or washing of the tangible personal property.

(17) "Authorized carrier" means:

(a) in the case of vehicles operated over public highways, the holder of credentials indicating that the vehicle is or will be operated pursuant to both the International Registration Plan and the International Fuel Tax Agreement;

(b) in the case of aircraft, the holder of a Federal Aviation Administration operating certificate or air carrier's operating certificate; or

(c) in the case of locomotives, freight cars, railroad work equipment, or other rolling stock, a person who uses locomotives, freight cars, railroad work equipment, or other rolling stock in more than one state.

(18) (a) Except as provided in Subsection (18)(b), "biomass energy" means any of the following that is used as the primary source of energy to produce fuel or electricity:

(i) material from a plant or tree; or

(ii) other organic matter that is available on a renewable basis, including:

(A) slash and brush from forests and woodlands;

(B) animal waste;

(C) waste vegetable oil;

(D) methane or synthetic gas produced at a landfill, as a byproduct of the treatment of wastewater residuals, or through the conversion of a waste material through a nonincineration, thermal conversion process;

(E) aquatic plants; and

(F) agricultural products.

(b) "Biomass energy" does not include:

(i) black liquor; or

(ii) treated woods.

(19) (a) "Bundled transaction" means the sale of two or more items of tangible personal property, products, or services if the tangible personal property, products, or services are:

(i) distinct and identifiable; and

(ii) sold for one nonitemized price.

(b) "Bundled transaction" does not include:

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(i) the sale of tangible personal property if the sales price varies, or is negotiable, on the basis of the selection by the purchaser of the items of tangible personal property included in the transaction;

(ii) the sale of real property;

(iii) the sale of services to real property;

(iv) the retail sale of tangible personal property and a service if:

(A) the tangible personal property:

(I) is essential to the use of the service; and

(II) is provided exclusively in connection with the service; and

(B) the service is the true object of the transaction;

(v) the retail sale of two services if:

(A) one service is provided that is essential to the use or receipt of a second service;

(B) the first service is provided exclusively in connection with the second service; and

(C) the second service is the true object of the transaction;

(vi) a transaction that includes tangible personal property or a product subject to taxation under this chapter and tangible personal property or a product that is not subject to taxation under this chapter if the:

(A) seller's purchase price of the tangible personal property or product subject to taxation under this chapter is de minimis; or

(B) seller's sales price of the tangible personal property or product subject to taxation under this chapter is de minimis; and

(vii) the retail sale of tangible personal property that is not subject to taxation under this chapter and tangible personal property that is subject to taxation under this chapter if:

(A) that retail sale includes:

(I) food and food ingredients;

(II) a drug;

(III) durable medical equipment;

(IV) mobility enhancing equipment;

(V) an over-the-counter drug;

(VI) a prosthetic device; or

(VII) a medical supply; and

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(B) subject to Subsection (19)(f):

(I) the seller's purchase price of the tangible personal property subject to taxation under this chapter is 50% or less of the seller's total purchase price of that retail sale; or

(II) the seller's sales price of the tangible personal property subject to taxation under this chapter is 50% or less of the seller's total sales price of that retail sale.

(c) (i) For purposes of Subsection (19)(a)(i), tangible personal property, a product, or a service that is distinct and identifiable does not include:

(A) packaging that:

(I) accompanies the sale of the tangible personal property, product, or service; and

(II) is incidental or immaterial to the sale of the tangible personal property, product, or service;

(B) tangible personal property, a product, or a service provided free of charge with the purchase of another item of tangible personal property, a product, or a service; or

(C) an item of tangible personal property, a product, or a service included in the definition of "purchase price."

(ii) For purposes of Subsection (19)(c)(i)(B), an item of tangible personal property, a product, or a service is provided free of charge with the purchase of another item of tangible personal property, a product, or a service if the sales price of the purchased item of tangible personal property, product, or service does not vary depending on the inclusion of the tangible personal property, product, or service provided free of charge.

(d) (i) For purposes of Subsection (19)(a)(ii), property sold for one nonitemized price does not include a price that is separately identified by tangible personal property, product, or service on the following, regardless of whether the following is in paper format or electronic format:

(A) a binding sales document; or

(B) another supporting sales-related document that is available to a purchaser.

(ii) For purposes of Subsection (19)(d)(i), a binding sales document or another supporting sales-related document that is available to a purchaser includes:

(A) a bill of sale;

(B) a contract;

(C) an invoice;

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- (D) a lease agreement;
- (E) a periodic notice of rates and services;
- (F) a price list;
- (G) a rate card;
- (H) a receipt; or
- (I) a service agreement.

(e) (i) For purposes of Subsection (19)(b)(vi), the sales price of tangible personal property or a product subject to taxation under this chapter is de minimis if:

(A) the seller's purchase price of the tangible personal property or product is 10% or less of the seller's total purchase price of the bundled transaction; or

(B) the seller's sales price of the tangible personal property or product is 10% or less of the seller's total sales price of the bundled transaction.

(ii) For purposes of Subsection (19)(b)(vi), a seller:

(A) shall use the seller's purchase price or the seller's sales price to determine if the purchase price or sales price of the tangible personal property or product subject to taxation under this chapter is de minimis; and

(B) may not use a combination of the seller's purchase price and the seller's sales price to determine if the purchase price or sales price of the tangible personal property or product subject to taxation under this chapter is de minimis.

(iii) For purposes of Subsection (19)(b)(vi), a seller shall use the full term of a service contract to determine if the sales price of tangible personal property or a product is de minimis.

(f) For purposes of Subsection (19)(b)(vii)(B), a seller may not use a combination of the seller's purchase price and the seller's sales price to determine if tangible personal property subject to taxation under this chapter is 50% or less of the seller's total purchase price or sales price of that retail sale.

(20) "Certified automated system" means software certified by the governing board of the agreement that:

(a) calculates the agreement sales and use tax imposed within a local taxing jurisdiction:

- (i) on a transaction; and
- (ii) in the states that are members of the agreement;

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(b) determines the amount of agreement sales and use tax to remit to a state that is a member of the agreement; and

(c) maintains a record of the transaction described in Subsection (20)(a)(i).

(21) "Certified service provider" means an agent certified:

(a) by the governing board of the agreement; and

(b) to perform a seller's sales and use tax functions for an agreement sales and use tax, as outlined in the contract between the governing board of the agreement and the certified service provider, other than the seller's obligation under Section 59-12-124 to remit a tax on the seller's own purchases.

(22) (a) Subject to Subsection (22)(b), "clothing" means all human wearing apparel suitable for general use.

(b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission shall make rules:

(i) listing the items that constitute "clothing"; and

(ii) that are consistent with the list of items that constitute "clothing" under the agreement.

(23) "Coal-to-liquid" means the process of converting coal into a liquid synthetic fuel.

(24) "Commercial use" means the use of gas, electricity, heat, coal, fuel oil, or other fuels that does not constitute industrial use under Subsection (57) or residential use under Subsection (112).

(25) (a) "Common carrier" means a person engaged in or transacting the business of transporting passengers, freight, merchandise, or other property for hire within this state.

(b) (i) "Common carrier" does not include a person that, at the time the person is traveling to or from that person's place of employment, transports a passenger to or from the passenger's place of employment.

(ii) For purposes of Subsection (25)(b)(i), in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may make rules defining what constitutes a person's place of employment.

(c) "Common carrier" does not include a person that provides transportation network services, as defined in Section 13-51-102.

(26) "Component part" includes:

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(a) poultry, dairy, and other livestock feed, and their components;
(b) baling ties and twine used in the baling of hay and straw;
(c) fuel used for providing temperature control of orchards and commercial greenhouses doing a majority of their business in wholesale sales, and for providing power for off-highway type farm machinery; and

(d) feed, seeds, and seedlings.

(27) "Computer" means an electronic device that accepts information:

(a) (i) in digital form; or

(ii) in a form similar to digital form; and

(b) manipulates that information for a result based on a sequence of instructions.

(28) "Computer software" means a set of coded instructions designed to cause:

(a) a computer to perform a task; or

(b) automatic data processing equipment to perform a task.

(29) "Computer software maintenance contract" means a contract that obligates a seller of computer software to provide a customer with:

(a) future updates or upgrades to computer software;

(b) support services with respect to computer software; or

(c) a combination of Subsections (29)(a) and (b).

(30) (a) "Conference bridging service" means an ancillary service that links two or more participants of an audio conference call or video conference call.

(b) "Conference bridging service" may include providing a telephone number as part of the ancillary service described in Subsection (30)(a).

(c) "Conference bridging service" does not include a telecommunications service used to reach the ancillary service described in Subsection (30)(a).

(31) "Construction materials" means any tangible personal property that will be converted into real property.

(32) "Delivered electronically" means delivered to a purchaser by means other than tangible storage media.

(33) (a) "Delivery charge" means a charge:

(i) by a seller of:

(A) tangible personal property;

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(B) a product transferred electronically; or

(C) a service; and

(ii) for preparation and delivery of the tangible personal property, product transferred electronically, or services described in Subsection (33)(a)(i) to a location designated by the purchaser.

(b) "Delivery charge" includes a charge for the following:

(i) transportation;

(ii) shipping;

(iii) postage;

(iv) handling;

(v) crating; or

(vi) packing.

(34) "Detailed telecommunications billing service" means an ancillary service of separately stating information pertaining to individual calls on a customer's billing statement.

(35) "Dietary supplement" means a product, other than tobacco, that:

(a) is intended to supplement the diet;

(b) contains one or more of the following dietary ingredients:

(i) a vitamin;

(ii) a mineral;

(iii) an herb or other botanical;

(iv) an amino acid;

(v) a dietary substance for use by humans to supplement the diet by increasing the total dietary intake; or

(vi) a concentrate, metabolite, constituent, extract, or combination of any ingredient described in Subsections (35)(b)(i) through (v);

(c) (i) except as provided in Subsection (35)(c)(ii), is intended for ingestion in:

(A) tablet form;

(B) capsule form;

(C) powder form;

(D) softgel form;

(E) gelcap form; or

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(F) liquid form; or

(ii) if the product is not intended for ingestion in a form described in Subsections

(35)(c)(i)(A) through (F), is not represented:

(A) as conventional food; and

(B) for use as a sole item of:

(I) a meal; or

(II) the diet; and

(d) is required to be labeled as a dietary supplement:

(i) identifiable by the "Supplemental Facts" box found on the label; and

(ii) as required by 21 C.F.R. Sec. 101.36.

(36) (a) "Digital audio work" means a work that results from the fixation of a series of musical, spoken, or other sounds.

(b) "Digital audio work" includes a ringtone.

(37) "Digital audio-visual work" means a series of related images which, when shown in succession, imparts an impression of motion, together with accompanying sounds, if any.

(38) "Digital book" means a work that is generally recognized in the ordinary and usual sense as a book.

(39) (a) "Direct mail" means printed material delivered or distributed by United States mail or other delivery service:

(i) to:

(A) a mass audience; or

(B) addressees on a mailing list provided:

(I) by a purchaser of the mailing list; or

(II) at the discretion of the purchaser of the mailing list; and

(ii) if the cost of the printed material is not billed directly to the recipients.

(b) "Direct mail" includes tangible personal property supplied directly or indirectly by a purchaser to a seller of direct mail for inclusion in a package containing the printed material.

(c) "Direct mail" does not include multiple items of printed material delivered to a single address.

(40) "Directory assistance" means an ancillary service of providing:

(a) address information; or

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(b) telephone number information.

(41) (a) "Disposable home medical equipment or supplies" means medical equipment or supplies that:

- (i) cannot withstand repeated use; and
- (ii) are purchased by, for, or on behalf of a person other than:
 - (A) a health care facility as defined in Section ~~[26-21-2]~~ 26B-2-201;
 - (B) a health care provider as defined in Section 78B-3-403;
 - (C) an office of a health care provider described in Subsection (41)(a)(ii)(B); or
 - (D) a person similar to a person described in Subsections (41)(a)(ii)(A) through (C).

(b) "Disposable home medical equipment or supplies" does not include:

- (i) a drug;
- (ii) durable medical equipment;
- (iii) a hearing aid;
- (iv) a hearing aid accessory;
- (v) mobility enhancing equipment; or
- (vi) tangible personal property used to correct impaired vision, including:
 - (A) eyeglasses; or
 - (B) contact lenses.

(c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may by rule define what constitutes medical equipment or supplies.

(42) "Drilling equipment manufacturer" means a facility:

- (a) located in the state;
- (b) with respect to which 51% or more of the manufacturing activities of the facility consist of manufacturing component parts of drilling equipment;

(c) that uses pressure of 800,000 or more pounds per square inch as part of the manufacturing process; and

(d) that uses a temperature of 2,000 or more degrees Fahrenheit as part of the manufacturing process.

(43) (a) "Drug" means a compound, substance, or preparation, or a component of a compound, substance, or preparation that is:

- (i) recognized in:

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- (A) the official United States Pharmacopoeia;
- (B) the official Homeopathic Pharmacopoeia of the United States;
- (C) the official National Formulary; or
- (D) a supplement to a publication listed in Subsections (43)(a)(i)(A) through (C);

(ii) intended for use in the:

- (A) diagnosis of disease;
- (B) cure of disease;
- (C) mitigation of disease;
- (D) treatment of disease; or
- (E) prevention of disease; or

(iii) intended to affect:

- (A) the structure of the body; or
- (B) any function of the body.

(b) "Drug" does not include:

- (i) food and food ingredients;
- (ii) a dietary supplement;
- (iii) an alcoholic beverage; or
- (iv) a prosthetic device.

(44) (a) Except as provided in Subsection (44)(c), "durable medical equipment" means equipment that:

- (i) can withstand repeated use;
- (ii) is primarily and customarily used to serve a medical purpose;
- (iii) generally is not useful to a person in the absence of illness or injury; and
- (iv) is not worn in or on the body.

(b) "Durable medical equipment" includes parts used in the repair or replacement of the equipment described in Subsection (44)(a).

(c) "Durable medical equipment" does not include mobility enhancing equipment.

(45) "Electronic" means:

- (a) relating to technology; and
- (b) having:
 - (i) electrical capabilities;

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- (ii) digital capabilities;
- (iii) magnetic capabilities;
- (iv) wireless capabilities;
- (v) optical capabilities;
- (vi) electromagnetic capabilities; or
- (vii) capabilities similar to Subsections (45)(b)(i) through (vi).

(46) "Electronic financial payment service" means an establishment:

(a) within NAICS Code 522320, Financial Transactions Processing, Reserve, and Clearinghouse Activities, of the 2012 North American Industry Classification System of the federal Executive Office of the President, Office of Management and Budget; and

(b) that performs electronic financial payment services.

(47) "Employee" means the same as that term is defined in Section 59-10-401.

(48) "Fixed guideway" means a public transit facility that uses and occupies:

(a) rail for the use of public transit; or

(b) a separate right-of-way for the use of public transit.

(49) "Fixed wing turbine powered aircraft" means an aircraft that:

(a) is powered by turbine engines;

(b) operates on jet fuel; and

(c) has wings that are permanently attached to the fuselage of the aircraft.

(50) "Fixed wireless service" means a telecommunications service that provides radio communication between fixed points.

(51) (a) "Food and food ingredients" means substances:

(i) regardless of whether the substances are in:

(A) liquid form;

(B) concentrated form;

(C) solid form;

(D) frozen form;

(E) dried form; or

(F) dehydrated form; and

(ii) that are:

(A) sold for:

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(I) ingestion by humans; or

(II) chewing by humans; and

(B) consumed for the substance's:

(I) taste; or

(II) nutritional value.

(b) "Food and food ingredients" includes an item described in Subsection (96)(b)(iii).

(c) "Food and food ingredients" does not include:

(i) an alcoholic beverage;

(ii) tobacco; or

(iii) prepared food.

(52) (a) "Fundraising sales" means sales:

(i) (A) made by a school; or

(B) made by a school student;

(ii) that are for the purpose of raising funds for the school to purchase equipment, materials, or provide transportation; and

(iii) that are part of an officially sanctioned school activity.

(b) For purposes of Subsection (52)(a)(iii), "officially sanctioned school activity" means a school activity:

(i) that is conducted in accordance with a formal policy adopted by the school or school district governing the authorization and supervision of fundraising activities;

(ii) that does not directly or indirectly compensate an individual teacher or other educational personnel by direct payment, commissions, or payment in kind; and

(iii) the net or gross revenues from which are deposited in a dedicated account controlled by the school or school district.

(53) "Geothermal energy" means energy contained in heat that continuously flows outward from the earth that is used as the sole source of energy to produce electricity.

(54) "Governing board of the agreement" means the governing board of the agreement that is:

(a) authorized to administer the agreement; and

(b) established in accordance with the agreement.

(55) (a) For purposes of Subsection 59-12-104(41), "governmental entity" means:

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(i) the executive branch of the state, including all departments, institutions, boards, divisions, bureaus, offices, commissions, and committees;

(ii) the judicial branch of the state, including the courts, the Judicial Council, the Administrative Office of the Courts, and similar administrative units in the judicial branch;

(iii) the legislative branch of the state, including the House of Representatives, the Senate, the Legislative Printing Office, the Office of Legislative Research and General Counsel, the Office of the Legislative Auditor General, and the Office of the Legislative Fiscal Analyst;

(iv) the National Guard;

(v) an independent entity as defined in Section 63E-1-102; or

(vi) a political subdivision as defined in Section 17B-1-102.

(b) "Governmental entity" does not include the state systems of public and higher education, including:

(i) a school;

(ii) the State Board of Education;

(iii) the Utah Board of Higher Education; or

(iv) an institution of higher education described in Section 53B-1-102.

(56) "Hydroelectric energy" means water used as the sole source of energy to produce electricity.

(57) "Industrial use" means the use of natural gas, electricity, heat, coal, fuel oil, or other fuels:

(a) in mining or extraction of minerals;

(b) in agricultural operations to produce an agricultural product up to the time of harvest or placing the agricultural product into a storage facility, including:

(i) commercial greenhouses;

(ii) irrigation pumps;

(iii) farm machinery;

(iv) implements of husbandry as defined in Section 41-1a-102 that are not registered under Title 41, Chapter 1a, Part 2, Registration; and

(v) other farming activities;

(c) in manufacturing tangible personal property at an establishment described in:

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(i) SIC Codes 2000 to 3999 of the 1987 Standard Industrial Classification Manual of the federal Executive Office of the President, Office of Management and Budget; or

(ii) a NAICS code within NAICS Sector 31-33, Manufacturing, of the 2017 North American Industry Classification System of the federal Executive Office of the President, Office of Management and Budget;

(d) by a scrap recycler if:

(i) from a fixed location, the scrap recycler utilizes machinery or equipment to process one or more of the following items into prepared grades of processed materials for use in new products:

(A) iron;

(B) steel;

(C) nonferrous metal;

(D) paper;

(E) glass;

(F) plastic;

(G) textile; or

(H) rubber; and

(ii) the new products under Subsection (57)(d)(i) would otherwise be made with nonrecycled materials; or

(e) in producing a form of energy or steam described in Subsection 54-2-1(3)(a) by a cogeneration facility as defined in Section 54-2-1.

(58) (a) Except as provided in Subsection (58)(b), "installation charge" means a charge for installing:

(i) tangible personal property; or

(ii) a product transferred electronically.

(b) "Installation charge" does not include a charge for:

(i) repairs or renovations of:

(A) tangible personal property; or

(B) a product transferred electronically; or

(ii) attaching tangible personal property or a product transferred electronically:

(A) to other tangible personal property; and

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(B) as part of a manufacturing or fabrication process.

(59) "Institution of higher education" means an institution of higher education listed in Section 53B-2-101.

(60) (a) "Lease" or "rental" means a transfer of possession or control of tangible personal property or a product transferred electronically for:

- (i) (A) a fixed term; or
- (B) an indeterminate term; and
- (ii) consideration.

(b) "Lease" or "rental" includes an agreement covering a motor vehicle and trailer if the amount of consideration may be increased or decreased by reference to the amount realized upon sale or disposition of the property as defined in Section 7701(h)(1), Internal Revenue Code.

(c) "Lease" or "rental" does not include:

(i) a transfer of possession or control of property under a security agreement or deferred payment plan that requires the transfer of title upon completion of the required payments;

(ii) a transfer of possession or control of property under an agreement that requires the transfer of title:

- (A) upon completion of required payments; and
- (B) if the payment of an option price does not exceed the greater of:
 - (I) \$100; or
 - (II) 1% of the total required payments; or

(iii) providing tangible personal property along with an operator for a fixed period of time or an indeterminate period of time if the operator is necessary for equipment to perform as designed.

(d) For purposes of Subsection (60)(c)(iii), an operator is necessary for equipment to perform as designed if the operator's duties exceed the:

- (i) set-up of tangible personal property;
- (ii) maintenance of tangible personal property; or
- (iii) inspection of tangible personal property.

(61) "Lesson" means a fixed period of time for the duration of which a trained

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instructor:

- (a) is present with a student in person or by video; and
- (b) actively instructs the student, including by providing observation or feedback.

(62) "Life science establishment" means an establishment in this state that is classified under the following NAICS codes of the 2007 North American Industry Classification System of the federal Executive Office of the President, Office of Management and Budget:

- (a) NAICS Code 33911, Medical Equipment and Supplies Manufacturing;
- (b) NAICS Code 334510, Electromedical and Electrotherapeutic Apparatus

Manufacturing; or

- (c) NAICS Code 334517, Irradiation Apparatus Manufacturing.

(63) "Life science research and development facility" means a facility owned, leased, or rented by a life science establishment if research and development is performed in 51% or more of the total area of the facility.

(64) "Load and leave" means delivery to a purchaser by use of a tangible storage media if the tangible storage media is not physically transferred to the purchaser.

(65) "Local taxing jurisdiction" means a:

- (a) county that is authorized to impose an agreement sales and use tax;
- (b) city that is authorized to impose an agreement sales and use tax; or
- (c) town that is authorized to impose an agreement sales and use tax.

(66) "Manufactured home" means the same as that term is defined in Section 15A-1-302.

(67) "Manufacturing facility" means:

(a) an establishment described in:

(i) SIC Codes 2000 to 3999 of the 1987 Standard Industrial Classification Manual of the federal Executive Office of the President, Office of Management and Budget; or

(ii) a NAICS code within NAICS Sector 31-33, Manufacturing, of the 2017 North American Industry Classification System of the federal Executive Office of the President, Office of Management and Budget;

(b) a scrap recycler if:

(i) from a fixed location, the scrap recycler utilizes machinery or equipment to process one or more of the following items into prepared grades of processed materials for use in new

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products:

- (A) iron;
- (B) steel;
- (C) nonferrous metal;
- (D) paper;
- (E) glass;
- (F) plastic;
- (G) textile; or
- (H) rubber; and

(ii) the new products under Subsection (67)(b)(i) would otherwise be made with nonrecycled materials; or

(c) a cogeneration facility as defined in Section 54-2-1 if the cogeneration facility is placed in service on or after May 1, 2006.

(68) (a) "Marketplace" means a physical or electronic place, platform, or forum where tangible personal property, a product transferred electronically, or a service is offered for sale.

(b) "Marketplace" includes a store, a booth, an Internet website, a catalog, or a dedicated sales software application.

(69) (a) "Marketplace facilitator" means a person, including an affiliate of the person, that enters into a contract, an agreement, or otherwise with sellers, for consideration, to facilitate the sale of a seller's product through a marketplace that the person owns, operates, or controls and that directly or indirectly:

(i) does any of the following:

(A) lists, makes available, or advertises tangible personal property, a product transferred electronically, or a service for sale by a marketplace seller on a marketplace that the person owns, operates, or controls;

(B) facilitates the sale of a marketplace seller's tangible personal property, product transferred electronically, or service by transmitting or otherwise communicating an offer or acceptance of a retail sale between the marketplace seller and a purchaser using the marketplace;

(C) owns, rents, licenses, makes available, or operates any electronic or physical infrastructure or any property, process, method, copyright, trademark, or patent that connects a

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marketplace seller to a purchaser for the purpose of making a retail sale of tangible personal property, a product transferred electronically, or a service;

(D) provides a marketplace for making, or otherwise facilitates, a retail sale of tangible personal property, a product transferred electronically, or a service, regardless of ownership or control of the tangible personal property, the product transferred electronically, or the service that is the subject of the retail sale;

(E) provides software development or research and development activities related to any activity described in this Subsection (69)(a)(i), if the software development or research and development activity is directly related to the person's marketplace;

(F) provides or offers fulfillment or storage services for a marketplace seller;

(G) sets prices for the sale of tangible personal property, a product transferred electronically, or a service by a marketplace seller;

(H) provides or offers customer service to a marketplace seller or a marketplace seller's purchaser or accepts or assists with taking orders, returns, or exchanges of tangible personal property, a product transferred electronically, or a service sold by a marketplace seller on the person's marketplace; or

(I) brands or otherwise identifies sales as those of the person; and

(ii) does any of the following:

(A) collects the sales price or purchase price of a retail sale of tangible personal property, a product transferred electronically, or a service;

(B) provides payment processing services for a retail sale of tangible personal property, a product transferred electronically, or a service;

(C) charges, collects, or otherwise receives a selling fee, listing fee, referral fee, closing fee, a fee for inserting or making available tangible personal property, a product transferred electronically, or a service on the person's marketplace, or other consideration for the facilitation of a retail sale of tangible personal property, a product transferred electronically, or a service, regardless of ownership or control of the tangible personal property, the product transferred electronically, or the service that is the subject of the retail sale;

(D) through terms and conditions, an agreement, or another arrangement with a third person, collects payment from a purchase for a retail sale of tangible personal property, a product transferred electronically, or a service and transmits that payment to the marketplace

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seller, regardless of whether the third person receives compensation or other consideration in exchange for the service; or

(E) provides a virtual currency for a purchaser to use to purchase tangible personal property, a product transferred electronically, or service offered for sale.

(b) "Marketplace facilitator" does not include:

(i) a person that only provides payment processing services; or

(ii) a person described in Subsection (69)(a) to the extent the person is facilitating a sale for a seller that is a restaurant as defined in Section 59-12-602.

(70) "Marketplace seller" means a seller that makes one or more retail sales through a marketplace that a marketplace facilitator owns, operates, or controls, regardless of whether the seller is required to be registered to collect and remit the tax under this part.

(71) "Member of the immediate family of the producer" means a person who is related to a producer described in Subsection 59-12-104(20)(a) as a:

(a) child or stepchild, regardless of whether the child or stepchild is:

(i) an adopted child or adopted stepchild; or

(ii) a foster child or foster stepchild;

(b) grandchild or stepgrandchild;

(c) grandparent or stepgrandparent;

(d) nephew or stepnephew;

(e) niece or stepniece;

(f) parent or stepparent;

(g) sibling or stepsibling;

(h) spouse;

(i) person who is the spouse of a person described in Subsections (71)(a) through (g);

or

(j) person similar to a person described in Subsections (71)(a) through (i) as determined by the commission by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(72) "Mobile home" means the same as that term is defined in Section 15A-1-302.

(73) "Mobile telecommunications service" means the same as that term is defined in the Mobile Telecommunications Sourcing Act, 4 U.S.C. Sec. 124.

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(74) (a) "Mobile wireless service" means a telecommunications service, regardless of the technology used, if:

- (i) the origination point of the conveyance, routing, or transmission is not fixed;
- (ii) the termination point of the conveyance, routing, or transmission is not fixed; or
- (iii) the origination point described in Subsection (74)(a)(i) and the termination point described in Subsection (74)(a)(ii) are not fixed.

(b) "Mobile wireless service" includes a telecommunications service that is provided by a commercial mobile radio service provider.

(c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may by rule define "commercial mobile radio service provider."

(75) (a) Except as provided in Subsection (75)(c), "mobility enhancing equipment" means equipment that is:

(i) primarily and customarily used to provide or increase the ability to move from one place to another;

(ii) appropriate for use in a:

(A) home; or

(B) motor vehicle; and

(iii) not generally used by persons with normal mobility.

(b) "Mobility enhancing equipment" includes parts used in the repair or replacement of the equipment described in Subsection (75)(a).

(c) "Mobility enhancing equipment" does not include:

(i) a motor vehicle;

(ii) equipment on a motor vehicle if that equipment is normally provided by the motor vehicle manufacturer;

(iii) durable medical equipment; or

(iv) a prosthetic device.

(76) "Model 1 seller" means a seller registered under the agreement that has selected a certified service provider as the seller's agent to perform the seller's sales and use tax functions for agreement sales and use taxes, as outlined in the contract between the governing board of the agreement and the certified service provider, other than the seller's obligation under Section 59-12-124 to remit a tax on the seller's own purchases.

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(77) "Model 2 seller" means a seller registered under the agreement that:

(a) except as provided in Subsection (77)(b), has selected a certified automated system to perform the seller's sales tax functions for agreement sales and use taxes; and

(b) retains responsibility for remitting all of the sales tax:

(i) collected by the seller; and

(ii) to the appropriate local taxing jurisdiction.

(78) (a) Subject to Subsection (78)(b), "model 3 seller" means a seller registered under the agreement that has:

(i) sales in at least five states that are members of the agreement;

(ii) total annual sales revenues of at least \$500,000,000;

(iii) a proprietary system that calculates the amount of tax:

(A) for an agreement sales and use tax; and

(B) due to each local taxing jurisdiction; and

(iv) entered into a performance agreement with the governing board of the agreement.

(b) For purposes of Subsection (78)(a), "model 3 seller" includes an affiliated group of sellers using the same proprietary system.

(79) "Model 4 seller" means a seller that is registered under the agreement and is not a model 1 seller, model 2 seller, or model 3 seller.

(80) "Modular home" means a modular unit as defined in Section 15A-1-302.

(81) "Motor vehicle" means the same as that term is defined in Section 41-1a-102.

(82) "Oil sands" means impregnated bituminous sands that:

(a) contain a heavy, thick form of petroleum that is released when heated, mixed with other hydrocarbons, or otherwise treated;

(b) yield mixtures of liquid hydrocarbon; and

(c) require further processing other than mechanical blending before becoming finished petroleum products.

(83) "Oil shale" means a group of fine black to dark brown shales containing kerogen material that yields petroleum upon heating and distillation.

(84) "Optional computer software maintenance contract" means a computer software maintenance contract that a customer is not obligated to purchase as a condition to the retail sale of computer software.

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(85) (a) "Other fuels" means products that burn independently to produce heat or energy.

(b) "Other fuels" includes oxygen when it is used in the manufacturing of tangible personal property.

(86) (a) "Paging service" means a telecommunications service that provides transmission of a coded radio signal for the purpose of activating a specific pager.

(b) For purposes of Subsection (86)(a), the transmission of a coded radio signal includes a transmission by message or sound.

(87) "Pawn transaction" means the same as that term is defined in Section 13-32a-102.

(88) "Pawnbroker" means the same as that term is defined in Section 13-32a-102.

(89) (a) "Permanently attached to real property" means that for tangible personal property attached to real property:

(i) the attachment of the tangible personal property to the real property:

(A) is essential to the use of the tangible personal property; and

(B) suggests that the tangible personal property will remain attached to the real property in the same place over the useful life of the tangible personal property; or

(ii) if the tangible personal property is detached from the real property, the detachment would:

(A) cause substantial damage to the tangible personal property; or

(B) require substantial alteration or repair of the real property to which the tangible personal property is attached.

(b) "Permanently attached to real property" includes:

(i) the attachment of an accessory to the tangible personal property if the accessory is:

(A) essential to the operation of the tangible personal property; and

(B) attached only to facilitate the operation of the tangible personal property;

(ii) a temporary detachment of tangible personal property from real property for a repair or renovation if the repair or renovation is performed where the tangible personal property and real property are located; or

(iii) property attached to oil, gas, or water pipelines, except for the property listed in Subsection (89)(c)(iii) or (iv).

(c) "Permanently attached to real property" does not include:

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(i) the attachment of portable or movable tangible personal property to real property if that portable or movable tangible personal property is attached to real property only for:

- (A) convenience;
- (B) stability; or
- (C) for an obvious temporary purpose;

(ii) the detachment of tangible personal property from real property except for the detachment described in Subsection (89)(b)(ii);

(iii) an attachment of the following tangible personal property to real property if the attachment to real property is only through a line that supplies water, electricity, gas, telecommunications, cable, or supplies a similar item as determined by the commission by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act:

- (A) a computer;
- (B) a telephone;
- (C) a television; or

(D) tangible personal property similar to Subsections (89)(c)(iii)(A) through (C) as determined by the commission by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act; or

(iv) an item listed in Subsection (130)(c).

(90) "Person" includes any individual, firm, partnership, joint venture, association, corporation, estate, trust, business trust, receiver, syndicate, this state, any county, city, municipality, district, or other local governmental entity of the state, or any group or combination acting as a unit.

(91) "Place of primary use":

(a) for telecommunications service other than mobile telecommunications service, means the street address representative of where the customer's use of the telecommunications service primarily occurs, which shall be:

- (i) the residential street address of the customer; or
- (ii) the primary business street address of the customer; or

(b) for mobile telecommunications service, means the same as that term is defined in the Mobile Telecommunications Sourcing Act, 4 U.S.C. Sec. 124.

(92) (a) "Postpaid calling service" means a telecommunications service a person

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obtains by making a payment on a call-by-call basis:

(i) through the use of a:

(A) bank card;

(B) credit card;

(C) debit card; or

(D) travel card; or

(ii) by a charge made to a telephone number that is not associated with the origination or termination of the telecommunications service.

(b) "Postpaid calling service" includes a service, except for a prepaid wireless calling service, that would be a prepaid wireless calling service if the service were exclusively a telecommunications service.

(93) "Postproduction" means an activity related to the finishing or duplication of a medium described in Subsection 59-12-104(54)(a).

(94) "Prepaid calling service" means a telecommunications service:

(a) that allows a purchaser access to telecommunications service that is exclusively telecommunications service;

(b) that:

(i) is paid for in advance; and

(ii) enables the origination of a call using an:

(A) access number; or

(B) authorization code;

(c) that is dialed:

(i) manually; or

(ii) electronically; and

(d) sold in predetermined units or dollars that decline:

(i) by a known amount; and

(ii) with use.

(95) "Prepaid wireless calling service" means a telecommunications service:

(a) that provides the right to utilize:

(i) mobile wireless service; and

(ii) other service that is not a telecommunications service, including:

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(A) the download of a product transferred electronically;

(B) a content service; or

(C) an ancillary service;

(b) that:

(i) is paid for in advance; and

(ii) enables the origination of a call using an:

(A) access number; or

(B) authorization code;

(c) that is dialed:

(i) manually; or

(ii) electronically; and

(d) sold in predetermined units or dollars that decline:

(i) by a known amount; and

(ii) with use.

(96) (a) "Prepared food" means:

(i) food:

(A) sold in a heated state; or

(B) heated by a seller;

(ii) two or more food ingredients mixed or combined by the seller for sale as a single

item; or

(iii) except as provided in Subsection (96)(c), food sold with an eating utensil provided by the seller, including a:

(A) plate;

(B) knife;

(C) fork;

(D) spoon;

(E) glass;

(F) cup;

(G) napkin; or

(H) straw.

(b) "Prepared food" does not include:

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(i) food that a seller only:

(A) cuts;

(B) repackages; or

(C) pasteurizes; ~~or~~

(ii) (A) the following:

(I) raw egg;

(II) raw fish;

(III) raw meat;

(IV) raw poultry; or

(V) a food containing an item described in Subsections (96)(b)(ii)(A)(I) through (IV);

and

(B) if the Food and Drug Administration recommends in Chapter 3, Part 401.11 of the Food and Drug Administration's Food Code that a consumer cook the items described in Subsection (96)(b)(ii)(A) to prevent food borne illness; or

(iii) the following if sold without eating utensils provided by the seller:

(A) food and food ingredients sold by a seller if the seller's proper primary classification under the 2002 North American Industry Classification System of the federal Executive Office of the President, Office of Management and Budget, is manufacturing in Sector 311, Food Manufacturing, except for Subsector 3118, Bakeries and Tortilla Manufacturing;

(B) food and food ingredients sold in an unheated state:

(I) by weight or volume; and

(II) as a single item; or

(C) a bakery item, including:

(I) a bagel;

(II) a bar;

(III) a biscuit;

(IV) bread;

(V) a bun;

(VI) a cake;

(VII) a cookie;

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- (VIII) a croissant;
- (IX) a danish;
- (X) a donut;
- (XI) a muffin;
- (XII) a pastry;
- (XIII) a pie;
- (XIV) a roll;
- (XV) a tart;
- (XVI) a torte; or
- (XVII) a tortilla.

(c) An eating utensil provided by the seller does not include the following used to transport the food:

- (i) a container; or
- (ii) packaging.

(97) "Prescription" means an order, formula, or recipe that is issued:

- (a) (i) orally;
- (ii) in writing;
- (iii) electronically; or
- (iv) by any other manner of transmission; and
- (b) by a licensed practitioner authorized by the laws of a state.

(98) (a) Except as provided in Subsection (98)(b)(ii) or (iii), "prewritten computer software" means computer software that is not designed and developed:

- (i) by the author or other creator of the computer software; and
- (ii) to the specifications of a specific purchaser.
- (b) "Prewritten computer software" includes:

(i) a prewritten upgrade to computer software if the prewritten upgrade to the computer software is not designed and developed:

- (A) by the author or other creator of the computer software; and
- (B) to the specifications of a specific purchaser;
- (ii) computer software designed and developed by the author or other creator of the

computer software to the specifications of a specific purchaser if the computer software is sold

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to a person other than the purchaser; or

(iii) except as provided in Subsection (98)(c), prewritten computer software or a prewritten portion of prewritten computer software:

(A) that is modified or enhanced to any degree; and

(B) if the modification or enhancement described in Subsection (98)(b)(iii)(A) is designed and developed to the specifications of a specific purchaser.

(c) "Prewritten computer software" does not include a modification or enhancement described in Subsection (98)(b)(iii) if the charges for the modification or enhancement are:

(i) reasonable; and

(ii) subject to Subsections 59-12-103(2)(f)(ii) and (2)(g)(i), separately stated on the invoice or other statement of price provided to the purchaser at the time of sale or later, as demonstrated by:

(A) the books and records the seller keeps at the time of the transaction in the regular course of business, including books and records the seller keeps at the time of the transaction in the regular course of business for nontax purposes;

(B) a preponderance of the facts and circumstances at the time of the transaction; and

(C) the understanding of all of the parties to the transaction.

(99) (a) "Private communications service" means a telecommunications service:

(i) that entitles a customer to exclusive or priority use of one or more communications channels between or among termination points; and

(ii) regardless of the manner in which the one or more communications channels are connected.

(b) "Private communications service" includes the following provided in connection with the use of one or more communications channels:

(i) an extension line;

(ii) a station;

(iii) switching capacity; or

(iv) another associated service that is provided in connection with the use of one or more communications channels as defined in Section 59-12-215.

(100) (a) Except as provided in Subsection (100)(b), "product transferred electronically" means a product transferred electronically that would be subject to a tax under

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this chapter if that product was transferred in a manner other than electronically.

(b) "Product transferred electronically" does not include:

- (i) an ancillary service;
- (ii) computer software; or
- (iii) a telecommunications service.

(101) (a) "Prosthetic device" means a device that is worn on or in the body to:

- (i) artificially replace a missing portion of the body;
- (ii) prevent or correct a physical deformity or physical malfunction; or
- (iii) support a weak or deformed portion of the body.

(b) "Prosthetic device" includes:

- (i) parts used in the repairs or renovation of a prosthetic device;
- (ii) replacement parts for a prosthetic device;
- (iii) a dental prosthesis; or
- (iv) a hearing aid.

(c) "Prosthetic device" does not include:

- (i) corrective eyeglasses; or
- (ii) contact lenses.

(102) (a) "Protective equipment" means an item:

- (i) for human wear; and
- (ii) that is:
 - (A) designed as protection:
 - (I) to the wearer against injury or disease; or
 - (II) against damage or injury of other persons or property; and
 - (B) not suitable for general use.

(b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission shall make rules:

- (i) listing the items that constitute "protective equipment"; and
- (ii) that are consistent with the list of items that constitute "protective equipment"

under the agreement.

(103) (a) For purposes of Subsection 59-12-104(41), "publication" means any written or printed matter, other than a photocopy:

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- (i) regardless of:
 - (A) characteristics;
 - (B) copyright;
 - (C) form;
 - (D) format;
 - (E) method of reproduction; or
 - (F) source; and
- (ii) made available in printed or electronic format.

(b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may by rule define the term "photocopy."

(104) (a) "Purchase price" and "sales price" mean the total amount of consideration:

- (i) valued in money; and
- (ii) for which tangible personal property, a product transferred electronically, or

services are:

- (A) sold;
- (B) leased; or
- (C) rented.
- (b) "Purchase price" and "sales price" include:

(i) the seller's cost of the tangible personal property, a product transferred electronically, or services sold;

(ii) expenses of the seller, including:

- (A) the cost of materials used;
- (B) a labor cost;
- (C) a service cost;
- (D) interest;
- (E) a loss;
- (F) the cost of transportation to the seller; or
- (G) a tax imposed on the seller;

(iii) a charge by the seller for any service necessary to complete the sale; or

(iv) consideration a seller receives from a person other than the purchaser if:

- (A) (I) the seller actually receives consideration from a person other than the purchaser;

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and

(II) the consideration described in Subsection (104)(b)(iv)(A)(I) is directly related to a price reduction or discount on the sale;

(B) the seller has an obligation to pass the price reduction or discount through to the purchaser;

(C) the amount of the consideration attributable to the sale is fixed and determinable by the seller at the time of the sale to the purchaser; and

(D) (I) (Aa) the purchaser presents a certificate, coupon, or other documentation to the seller to claim a price reduction or discount; and

(Bb) a person other than the seller authorizes, distributes, or grants the certificate, coupon, or other documentation with the understanding that the person other than the seller will reimburse any seller to whom the certificate, coupon, or other documentation is presented;

(II) the purchaser identifies that purchaser to the seller as a member of a group or organization allowed a price reduction or discount, except that a preferred customer card that is available to any patron of a seller does not constitute membership in a group or organization allowed a price reduction or discount; or

(III) the price reduction or discount is identified as a third party price reduction or discount on the:

(Aa) invoice the purchaser receives; or

(Bb) certificate, coupon, or other documentation the purchaser presents.

(c) "Purchase price" and "sales price" do not include:

(i) a discount:

(A) in a form including:

(I) cash;

(II) term; or

(III) coupon;

(B) that is allowed by a seller;

(C) taken by a purchaser on a sale; and

(D) that is not reimbursed by a third party; or

(ii) subject to Subsections 59-12-103(2)(f)(ii) and (2)(g)(i), the following if separately stated on an invoice, bill of sale, or similar document provided to the purchaser at the time of

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sale or later, as demonstrated by the books and records the seller keeps at the time of the transaction in the regular course of business, including books and records the seller keeps at the time of the transaction in the regular course of business for nontax purposes, by a preponderance of the facts and circumstances at the time of the transaction, and by the understanding of all of the parties to the transaction:

(A) the following from credit extended on the sale of tangible personal property or services:

- (I) a carrying charge;
- (II) a financing charge; or
- (III) an interest charge;
- (B) a delivery charge;
- (C) an installation charge;
- (D) a manufacturer rebate on a motor vehicle; or
- (E) a tax or fee legally imposed directly on the consumer.

(105) "Purchaser" means a person to whom:

- (a) a sale of tangible personal property is made;
- (b) a product is transferred electronically; or
- (c) a service is furnished.

(106) "Qualifying data center" means a data center facility that:

- (a) houses a group of networked server computers in one physical location in order to disseminate, manage, and store data and information;
- (b) is located in the state;
- (c) is a new operation constructed on or after July 1, 2016;
- (d) consists of one or more buildings that total 150,000 or more square feet;
- (e) is owned or leased by:
 - (i) the operator of the data center facility; or
 - (ii) a person under common ownership, as defined in Section 59-7-101, of the operator of the data center facility; and
- (f) is located on one or more parcels of land that are owned or leased by:
 - (i) the operator of the data center facility; or
 - (ii) a person under common ownership, as defined in Section 59-7-101, of the operator

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of the data center facility.

(107) "Regularly rented" means:

(a) rented to a guest for value three or more times during a calendar year; or

(b) advertised or held out to the public as a place that is regularly rented to guests for value.

(108) "Rental" means the same as that term is defined in Subsection (60).

(109) (a) Except as provided in Subsection (109)(b), "repairs or renovations of tangible personal property" means:

(i) a repair or renovation of tangible personal property that is not permanently attached to real property; or

(ii) attaching tangible personal property or a product transferred electronically to other tangible personal property or detaching tangible personal property or a product transferred electronically from other tangible personal property if:

(A) the other tangible personal property to which the tangible personal property or product transferred electronically is attached or from which the tangible personal property or product transferred electronically is detached is not permanently attached to real property; and

(B) the attachment of tangible personal property or a product transferred electronically to other tangible personal property or detachment of tangible personal property or a product transferred electronically from other tangible personal property is made in conjunction with a repair or replacement of tangible personal property or a product transferred electronically.

(b) "Repairs or renovations of tangible personal property" does not include:

(i) attaching prewritten computer software to other tangible personal property if the other tangible personal property to which the prewritten computer software is attached is not permanently attached to real property; or

(ii) detaching prewritten computer software from other tangible personal property if the other tangible personal property from which the prewritten computer software is detached is not permanently attached to real property.

(110) "Research and development" means the process of inquiry or experimentation aimed at the discovery of facts, devices, technologies, or applications and the process of preparing those devices, technologies, or applications for marketing.

(111) (a) "Residential telecommunications services" means a telecommunications

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service or an ancillary service that is provided to an individual for personal use:

- (i) at a residential address; or
- (ii) at an institution, including a nursing home or a school, if the telecommunications

service or ancillary service is provided to and paid for by the individual residing at the institution rather than the institution.

(b) For purposes of Subsection (111)(a)(i), a residential address includes an:

- (i) apartment; or
- (ii) other individual dwelling unit.

(112) "Residential use" means the use in or around a home, apartment building, sleeping quarters, and similar facilities or accommodations.

(113) "Retail sale" or "sale at retail" means a sale, lease, or rental for a purpose other than:

- (a) resale;
- (b) sublease; or
- (c) subrent.

(114) (a) "Retailer" means any person, unless prohibited by the Constitution of the United States or federal law, that is engaged in a regularly organized business in tangible personal property or any other taxable transaction under Subsection 59-12-103(1), and who is selling to the user or consumer and not for resale.

(b) "Retailer" includes commission merchants, auctioneers, and any person regularly engaged in the business of selling to users or consumers within the state.

(115) (a) "Sale" means any transfer of title, exchange, or barter, conditional or otherwise, in any manner, of tangible personal property or any other taxable transaction under Subsection 59-12-103(1), for consideration.

(b) "Sale" includes:

- (i) installment and credit sales;
- (ii) any closed transaction constituting a sale;
- (iii) any sale of electrical energy, gas, services, or entertainment taxable under this

chapter;

(iv) any transaction if the possession of property is transferred but the seller retains the title as security for the payment of the price; and

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(v) any transaction under which right to possession, operation, or use of any article of tangible personal property is granted under a lease or contract and the transfer of possession would be taxable if an outright sale were made.

(116) "Sale at retail" means the same as that term is defined in Subsection (113).

(117) "Sale-leaseback transaction" means a transaction by which title to tangible personal property or a product transferred electronically that is subject to a tax under this chapter is transferred:

(a) by a purchaser-lessee;

(b) to a lessor;

(c) for consideration; and

(d) if:

(i) the purchaser-lessee paid sales and use tax on the purchaser-lessee's initial purchase of the tangible personal property or product transferred electronically;

(ii) the sale of the tangible personal property or product transferred electronically to the lessor is intended as a form of financing:

(A) for the tangible personal property or product transferred electronically; and

(B) to the purchaser-lessee; and

(iii) in accordance with generally accepted accounting principles, the purchaser-lessee is required to:

(A) capitalize the tangible personal property or product transferred electronically for financial reporting purposes; and

(B) account for the lease payments as payments made under a financing arrangement.

(118) "Sales price" means the same as that term is defined in Subsection (104).

(119) (a) "Sales relating to schools" means the following sales by, amounts paid to, or amounts charged by a school:

(i) sales that are directly related to the school's educational functions or activities including:

(A) the sale of:

(I) textbooks;

(II) textbook fees;

(III) laboratory fees;

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(IV) laboratory supplies; or

(V) safety equipment;

(B) the sale of a uniform, protective equipment, or sports or recreational equipment

that:

(I) a student is specifically required to wear as a condition of participation in a school-related event or school-related activity; and

(II) is not readily adaptable to general or continued usage to the extent that it takes the place of ordinary clothing;

(C) sales of the following if the net or gross revenues generated by the sales are deposited into a school district fund or school fund dedicated to school meals:

(I) food and food ingredients; or

(II) prepared food; or

(D) transportation charges for official school activities; or

(ii) amounts paid to or amounts charged by a school for admission to a school-related event or school-related activity.

(b) "Sales relating to schools" does not include:

(i) bookstore sales of items that are not educational materials or supplies;

(ii) except as provided in Subsection (119)(a)(i)(B):

(A) clothing;

(B) clothing accessories or equipment;

(C) protective equipment; or

(D) sports or recreational equipment; or

(iii) amounts paid to or amounts charged by a school for admission to a school-related event or school-related activity if the amounts paid or charged are passed through to a person:

(A) other than a:

(I) school;

(II) nonprofit organization authorized by a school board or a governing body of a private school to organize and direct a competitive secondary school activity; or

(III) nonprofit association authorized by a school board or a governing body of a private school to organize and direct a competitive secondary school activity; and

(B) that is required to collect sales and use taxes under this chapter.

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(c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may make rules defining the term "passed through."

(120) For purposes of this section and Section 59-12-104, "school" means:

(a) an elementary school or a secondary school that:

(i) is a:

(A) public school; or

(B) private school; and

(ii) provides instruction for one or more grades kindergarten through 12; or

(b) a public school district.

(121) (a) "Seller" means a person that makes a sale, lease, or rental of:

(i) tangible personal property;

(ii) a product transferred electronically; or

(iii) a service.

(b) "Seller" includes a marketplace facilitator.

(122) (a) "Semiconductor fabricating, processing, research, or development materials" means tangible personal property or a product transferred electronically if the tangible personal property or product transferred electronically is:

(i) used primarily in the process of:

(A) (I) manufacturing a semiconductor;

(II) fabricating a semiconductor; or

(III) research or development of a:

(Aa) semiconductor; or

(Bb) semiconductor manufacturing process; or

(B) maintaining an environment suitable for a semiconductor; or

(ii) consumed primarily in the process of:

(A) (I) manufacturing a semiconductor;

(II) fabricating a semiconductor; or

(III) research or development of a:

(Aa) semiconductor; or

(Bb) semiconductor manufacturing process; or

(B) maintaining an environment suitable for a semiconductor.

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(b) "Semiconductor fabricating, processing, research, or development materials"

includes:

(i) parts used in the repairs or renovations of tangible personal property or a product transferred electronically described in Subsection (122)(a); or

(ii) a chemical, catalyst, or other material used to:

(A) produce or induce in a semiconductor a:

(I) chemical change; or

(II) physical change;

(B) remove impurities from a semiconductor; or

(C) improve the marketable condition of a semiconductor.

(123) "Senior citizen center" means a facility having the primary purpose of providing services to the aged as defined in Section ~~[62A-3-101]~~ 26B-6-101.

(124) (a) Subject to Subsections (124)(b) and (c), "short-term lodging consumable" means tangible personal property that:

(i) a business that provides accommodations and services described in Subsection 59-12-103(1)(i) purchases as part of a transaction to provide the accommodations and services to a purchaser;

(ii) is intended to be consumed by the purchaser; and

(iii) is:

(A) included in the purchase price of the accommodations and services; and

(B) not separately stated on an invoice, bill of sale, or other similar document provided to the purchaser.

(b) "Short-term lodging consumable" includes:

(i) a beverage;

(ii) a brush or comb;

(iii) a cosmetic;

(iv) a hair care product;

(v) lotion;

(vi) a magazine;

(vii) makeup;

(viii) a meal;

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(ix) mouthwash;

(x) nail polish remover;

(xi) a newspaper;

(xii) a notepad;

(xiii) a pen;

(xiv) a pencil;

(xv) a razor;

(xvi) saline solution;

(xvii) a sewing kit;

(xviii) shaving cream;

(xix) a shoe shine kit;

(xx) a shower cap;

(xxi) a snack item;

(xxii) soap;

(xxiii) toilet paper;

(xxiv) a toothbrush;

(xxv) toothpaste; or

(xxvi) an item similar to Subsections (124)(b)(i) through (xxv) as the commission may provide by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(c) "Short-term lodging consumable" does not include:

(i) tangible personal property that is cleaned or washed to allow the tangible personal property to be reused; or

(ii) a product transferred electronically.

(125) "Simplified electronic return" means the electronic return:

(a) described in Section 318(C) of the agreement; and

(b) approved by the governing board of the agreement.

(126) "Solar energy" means the sun used as the sole source of energy for producing electricity.

(127) (a) "Sports or recreational equipment" means an item:

(i) designed for human use; and

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(ii) that is:

(A) worn in conjunction with:

(I) an athletic activity; or

(II) a recreational activity; and

(B) not suitable for general use.

(b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission shall make rules:

(i) listing the items that constitute "sports or recreational equipment"; and

(ii) that are consistent with the list of items that constitute "sports or recreational equipment" under the agreement.

(128) "State" means the state of Utah, its departments, and agencies.

(129) "Storage" means any keeping or retention of tangible personal property or any other taxable transaction under Subsection 59-12-103(1), in this state for any purpose except sale in the regular course of business.

(130) (a) Except as provided in Subsection (130)(d) or (e), "tangible personal property" means personal property that:

(i) may be:

(A) seen;

(B) weighed;

(C) measured;

(D) felt; or

(E) touched; or

(ii) is in any manner perceptible to the senses.

(b) "Tangible personal property" includes:

(i) electricity;

(ii) water;

(iii) gas;

(iv) steam; or

(v) prewritten computer software, regardless of the manner in which the prewritten computer software is transferred.

(c) "Tangible personal property" includes the following regardless of whether the item

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is attached to real property:

- (i) a dishwasher;
- (ii) a dryer;
- (iii) a freezer;
- (iv) a microwave;
- (v) a refrigerator;
- (vi) a stove;
- (vii) a washer; or

(viii) an item similar to Subsections (130)(c)(i) through (vii) as determined by the commission by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(d) "Tangible personal property" does not include a product that is transferred electronically.

(e) "Tangible personal property" does not include the following if attached to real property, regardless of whether the attachment to real property is only through a line that supplies water, electricity, gas, telephone, cable, or supplies a similar item as determined by the commission by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act:

- (i) a hot water heater;
- (ii) a water filtration system; or
- (iii) a water softener system.

(131) (a) "Telecommunications enabling or facilitating equipment, machinery, or software" means an item listed in Subsection (131)(b) if that item is purchased or leased primarily to enable or facilitate one or more of the following to function:

- (i) telecommunications switching or routing equipment, machinery, or software; or
- (ii) telecommunications transmission equipment, machinery, or software.

(b) The following apply to Subsection (131)(a):

- (i) a pole;
- (ii) software;
- (iii) a supplementary power supply;
- (iv) temperature or environmental equipment or machinery;

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(v) test equipment;

(vi) a tower; or

(vii) equipment, machinery, or software that functions similarly to an item listed in Subsections (131)(b)(i) through (vi) as determined by the commission by rule made in accordance with Subsection (131)(c).

(c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may by rule define what constitutes equipment, machinery, or software that functions similarly to an item listed in Subsections (131)(b)(i) through (vi).

(132) "Telecommunications equipment, machinery, or software required for 911 service" means equipment, machinery, or software that is required to comply with 47 C.F.R. Sec. 20.18.

(133) "Telecommunications maintenance or repair equipment, machinery, or software" means equipment, machinery, or software purchased or leased primarily to maintain or repair one or more of the following, regardless of whether the equipment, machinery, or software is purchased or leased as a spare part or as an upgrade or modification to one or more of the following:

- (a) telecommunications enabling or facilitating equipment, machinery, or software;
- (b) telecommunications switching or routing equipment, machinery, or software; or
- (c) telecommunications transmission equipment, machinery, or software.

(134) (a) "Telecommunications service" means the electronic conveyance, routing, or transmission of audio, data, video, voice, or any other information or signal to a point, or among or between points.

(b) "Telecommunications service" includes:

(i) an electronic conveyance, routing, or transmission with respect to which a computer processing application is used to act:

- (A) on the code, form, or protocol of the content;
- (B) for the purpose of electronic conveyance, routing, or transmission; and
- (C) regardless of whether the service:
 - (I) is referred to as voice over Internet protocol service; or
 - (II) is classified by the Federal Communications Commission as enhanced or value

added;

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- (ii) an 800 service;
- (iii) a 900 service;
- (iv) a fixed wireless service;
- (v) a mobile wireless service;
- (vi) a postpaid calling service;
- (vii) a prepaid calling service;
- (viii) a prepaid wireless calling service; or
- (ix) a private communications service.
- (c) "Telecommunications service" does not include:
 - (i) advertising, including directory advertising;
 - (ii) an ancillary service;
 - (iii) a billing and collection service provided to a third party;
 - (iv) a data processing and information service if:
 - (A) the data processing and information service allows data to be:
 - (I) (Aa) acquired;
 - (Bb) generated;
 - (Cc) processed;
 - (Dd) retrieved; or
 - (Ee) stored; and
 - (II) delivered by an electronic transmission to a purchaser; and
 - (B) the purchaser's primary purpose for the underlying transaction is the processed data or information;
- (v) installation or maintenance of the following on a customer's premises:
 - (A) equipment; or
 - (B) wiring;
- (vi) Internet access service;
- (vii) a paging service;
- (viii) a product transferred electronically, including:
 - (A) music;
 - (B) reading material;
 - (C) a ring tone;

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- (D) software; or
 - (E) video;
 - (ix) a radio and television audio and video programming service:
 - (A) regardless of the medium; and
 - (B) including:
 - (I) furnishing conveyance, routing, or transmission of a television audio and video programming service by a programming service provider;
 - (II) cable service as defined in 47 U.S.C. Sec. 522(6); or
 - (III) audio and video programming services delivered by a commercial mobile radio service provider as defined in 47 C.F.R. Sec. 20.3;
 - (x) a value-added nonvoice data service; or
 - (xi) tangible personal property.
- (135) (a) "Telecommunications service provider" means a person that:
- (i) owns, controls, operates, or manages a telecommunications service; and
 - (ii) engages in an activity described in Subsection (135)(a)(i) for the shared use with or resale to any person of the telecommunications service.
- (b) A person described in Subsection (135)(a) is a telecommunications service provider whether or not the Public Service Commission of Utah regulates:
- (i) that person; or
 - (ii) the telecommunications service that the person owns, controls, operates, or manages.
- (136) (a) "Telecommunications switching or routing equipment, machinery, or software" means an item listed in Subsection (136)(b) if that item is purchased or leased primarily for switching or routing:
- (i) an ancillary service;
 - (ii) data communications;
 - (iii) voice communications; or
 - (iv) telecommunications service.
- (b) The following apply to Subsection (136)(a):
- (i) a bridge;
 - (ii) a computer;

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- (iii) a cross connect;
- (iv) a modem;
- (v) a multiplexer;
- (vi) plug in circuitry;
- (vii) a router;
- (viii) software;
- (ix) a switch; or

(x) equipment, machinery, or software that functions similarly to an item listed in Subsections (136)(b)(i) through (ix) as determined by the commission by rule made in accordance with Subsection (136)(c).

(c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may by rule define what constitutes equipment, machinery, or software that functions similarly to an item listed in Subsections (136)(b)(i) through (ix).

(137) (a) "Telecommunications transmission equipment, machinery, or software" means an item listed in Subsection (137)(b) if that item is purchased or leased primarily for sending, receiving, or transporting:

- (i) an ancillary service;
- (ii) data communications;
- (iii) voice communications; or
- (iv) telecommunications service.

(b) The following apply to Subsection (137)(a):

- (i) an amplifier;
- (ii) a cable;
- (iii) a closure;
- (iv) a conduit;
- (v) a controller;
- (vi) a duplexer;
- (vii) a filter;
- (viii) an input device;
- (ix) an input/output device;
- (x) an insulator;

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- (xi) microwave machinery or equipment;
- (xii) an oscillator;
- (xiii) an output device;
- (xiv) a pedestal;
- (xv) a power converter;
- (xvi) a power supply;
- (xvii) a radio channel;
- (xviii) a radio receiver;
- (xix) a radio transmitter;
- (xx) a repeater;
- (xxi) software;
- (xxii) a terminal;
- (xxiii) a timing unit;
- (xxiv) a transformer;
- (xxv) a wire; or

(xxvi) equipment, machinery, or software that functions similarly to an item listed in Subsections (137)(b)(i) through (xxv) as determined by the commission by rule made in accordance with Subsection (137)(c).

(c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may by rule define what constitutes equipment, machinery, or software that functions similarly to an item listed in Subsections (137)(b)(i) through (xxv).

(138) (a) "Textbook for a higher education course" means a textbook or other printed material that is required for a course:

- (i) offered by an institution of higher education; and
 - (ii) that the purchaser of the textbook or other printed material attends or will attend.
- (b) "Textbook for a higher education course" includes a textbook in electronic format.

(139) "Tobacco" means:

- (a) a cigarette;
- (b) a cigar;
- (c) chewing tobacco;
- (d) pipe tobacco; or

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(e) any other item that contains tobacco.

(140) "Unassisted amusement device" means an amusement device, skill device, or ride device that is started and stopped by the purchaser or renter of the right to use or operate the amusement device, skill device, or ride device.

(141) (a) "Use" means the exercise of any right or power over tangible personal property, a product transferred electronically, or a service under Subsection 59-12-103(1), incident to the ownership or the leasing of that tangible personal property, product transferred electronically, or service.

(b) "Use" does not include the sale, display, demonstration, or trial of tangible personal property, a product transferred electronically, or a service in the regular course of business and held for resale.

(142) "Value-added nonvoice data service" means a service:

(a) that otherwise meets the definition of a telecommunications service except that a computer processing application is used to act primarily for a purpose other than conveyance, routing, or transmission; and

(b) with respect to which a computer processing application is used to act on data or information:

- (i) code;
- (ii) content;
- (iii) form; or
- (iv) protocol.

(143) (a) Subject to Subsection (143)(b), "vehicle" means the following that are required to be titled, registered, or titled and registered:

- (i) an aircraft as defined in Section 72-10-102;
- (ii) a vehicle as defined in Section 41-1a-102;
- (iii) an off-highway vehicle as defined in Section 41-22-2; or
- (iv) a vessel as defined in Section 41-1a-102.

(b) For purposes of Subsection 59-12-104(33) only, "vehicle" includes:

- (i) a vehicle described in Subsection (143)(a); or
- (ii) (A) a locomotive;
- (B) a freight car;

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(C) railroad work equipment; or

(D) other railroad rolling stock.

(144) "Vehicle dealer" means a person engaged in the business of buying, selling, or exchanging a vehicle as defined in Subsection (143).

(145) (a) "Vertical service" means an ancillary service that:

(i) is offered in connection with one or more telecommunications services; and

(ii) offers an advanced calling feature that allows a customer to:

(A) identify a caller; and

(B) manage multiple calls and call connections.

(b) "Vertical service" includes an ancillary service that allows a customer to manage a conference bridging service.

(146) (a) "Voice mail service" means an ancillary service that enables a customer to receive, send, or store a recorded message.

(b) "Voice mail service" does not include a vertical service that a customer is required to have in order to utilize a voice mail service.

(147) (a) Except as provided in Subsection (147)(b), "waste energy facility" means a facility that generates electricity:

(i) using as the primary source of energy waste materials that would be placed in a landfill or refuse pit if it were not used to generate electricity, including:

(A) tires;

(B) waste coal;

(C) oil shale; or

(D) municipal solid waste; and

(ii) in amounts greater than actually required for the operation of the facility.

(b) "Waste energy facility" does not include a facility that incinerates:

(i) hospital waste as defined in 40 C.F.R. 60.51c; or

(ii) medical/infectious waste as defined in 40 C.F.R. 60.51c.

(148) "Watercraft" means a vessel as defined in Section 73-18-2.

(149) "Wind energy" means wind used as the sole source of energy to produce electricity.

(150) "ZIP Code" means a Zoning Improvement Plan Code assigned to a geographic

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location by the United States Postal Service.

Section 60. Section **59-12-103** is amended to read:

59-12-103. Sales and use tax base -- Rates -- Effective dates -- Use of sales and use tax revenues.

(1) A tax is imposed on the purchaser as provided in this part on the purchase price or sales price for amounts paid or charged for the following transactions:

(a) retail sales of tangible personal property made within the state;

(b) amounts paid for:

(i) telecommunications service, other than mobile telecommunications service, that originates and terminates within the boundaries of this state;

(ii) mobile telecommunications service that originates and terminates within the boundaries of one state only to the extent permitted by the Mobile Telecommunications Sourcing Act, 4 U.S.C. Sec. 116 et seq.; or

(iii) an ancillary service associated with a:

(A) telecommunications service described in Subsection (1)(b)(i); or

(B) mobile telecommunications service described in Subsection (1)(b)(ii);

(c) sales of the following for commercial use:

(i) gas;

(ii) electricity;

(iii) heat;

(iv) coal;

(v) fuel oil; or

(vi) other fuels;

(d) sales of the following for residential use:

(i) gas;

(ii) electricity;

(iii) heat;

(iv) coal;

(v) fuel oil; or

(vi) other fuels;

(e) sales of prepared food;

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(f) except as provided in Section 59-12-104, amounts paid or charged as admission or user fees for theaters, movies, operas, museums, planetariums, shows of any type or nature, exhibitions, concerts, carnivals, amusement parks, amusement rides, circuses, menageries, fairs, races, contests, sporting events, dances, boxing matches, wrestling matches, closed circuit television broadcasts, billiard parlors, pool parlors, bowling lanes, golf, miniature golf, golf driving ranges, batting cages, skating rinks, ski lifts, ski runs, ski trails, snowmobile trails, tennis courts, swimming pools, water slides, river runs, jeep tours, boat tours, scenic cruises, horseback rides, sports activities, or any other amusement, entertainment, recreation, exhibition, cultural, or athletic activity;

(g) amounts paid or charged for services for repairs or renovations of tangible personal property, unless Section 59-12-104 provides for an exemption from sales and use tax for:

(i) the tangible personal property; and

(ii) parts used in the repairs or renovations of the tangible personal property described in Subsection (1)(g)(i), regardless of whether:

(A) any parts are actually used in the repairs or renovations of that tangible personal property; or

(B) the particular parts used in the repairs or renovations of that tangible personal property are exempt from a tax under this chapter;

(h) except as provided in Subsection 59-12-104(7), amounts paid or charged for assisted cleaning or washing of tangible personal property;

(i) amounts paid or charged for tourist home, hotel, motel, or trailer court accommodations and services that are regularly rented for less than 30 consecutive days;

(j) amounts paid or charged for laundry or dry cleaning services;

(k) amounts paid or charged for leases or rentals of tangible personal property if within this state the tangible personal property is:

(i) stored;

(ii) used; or

(iii) otherwise consumed;

(l) amounts paid or charged for tangible personal property if within this state the tangible personal property is:

(i) stored;

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- (ii) used; or
- (iii) consumed; and
- (m) amounts paid or charged for a sale:
 - (i) (A) of a product transferred electronically; or
 - (B) of a repair or renovation of a product transferred electronically; and
 - (ii) regardless of whether the sale provides:
 - (A) a right of permanent use of the product; or
 - (B) a right to use the product that is less than a permanent use, including a right:
 - (I) for a definite or specified length of time; and
 - (II) that terminates upon the occurrence of a condition.

(2) (a) Except as provided in Subsections (2)(b) through (f), a state tax and a local tax are imposed on a transaction described in Subsection (1) equal to the sum of:

- (i) a state tax imposed on the transaction at a tax rate equal to the sum of:

- (A) 4.70% plus the rate specified in Subsection (12)(a); and

- (B) (I) the tax rate the state imposes in accordance with Part 18, Additional State Sales and Use Tax Act, if the location of the transaction as determined under Sections 59-12-211 through 59-12-215 is in a county in which the state imposes the tax under Part 18, Additional State Sales and Use Tax Act; and

- (II) the tax rate the state imposes in accordance with Part 20, Supplemental State Sales and Use Tax Act, if the location of the transaction as determined under Sections 59-12-211 through 59-12-215 is in a city, town, or the unincorporated area of a county in which the state imposes the tax under Part 20, Supplemental State Sales and Use Tax Act; and

- (ii) a local tax equal to the sum of the tax rates a county, city, or town imposes on the transaction under this chapter other than this part.

(b) Except as provided in Subsection (2)(e) or (f) and subject to Subsection (2)(k), a state tax and a local tax are imposed on a transaction described in Subsection (1)(d) equal to the sum of:

- (i) a state tax imposed on the transaction at a tax rate of 2%; and

- (ii) a local tax equal to the sum of the tax rates a county, city, or town imposes on the transaction under this chapter other than this part.

(c) Except as provided in Subsection (2)(e) or (f), a state tax and a local tax are

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imposed on amounts paid or charged for food and food ingredients equal to the sum of:

(i) a state tax imposed on the amounts paid or charged for food and food ingredients at a tax rate of 1.75%; and

(ii) a local tax equal to the sum of the tax rates a county, city, or town imposes on the amounts paid or charged for food and food ingredients under this chapter other than this part.

(d) Except as provided in Subsection (2)(e) or (f), a state tax is imposed on amounts paid or charged for fuel to a common carrier that is a railroad for use in a locomotive engine at a rate of 4.85%.

(e) (i) For a bundled transaction that is attributable to food and food ingredients and tangible personal property other than food and food ingredients, a state tax and a local tax is imposed on the entire bundled transaction equal to the sum of:

(A) a state tax imposed on the entire bundled transaction equal to the sum of:

(I) the tax rate described in Subsection (2)(a)(i)(A); and

(II) (Aa) the tax rate the state imposes in accordance with Part 18, Additional State Sales and Use Tax Act, if the location of the transaction as determined under Sections 59-12-211 through 59-12-215 is in a county in which the state imposes the tax under Part 18, Additional State Sales and Use Tax Act; and

(Bb) the tax rate the state imposes in accordance with Part 20, Supplemental State Sales and Use Tax Act, if the location of the transaction as determined under Sections 59-12-211 through 59-12-215 is in a city, town, or the unincorporated area of a county in which the state imposes the tax under Part 20, Supplemental State Sales and Use Tax Act; and

(B) a local tax imposed on the entire bundled transaction at the sum of the tax rates described in Subsection (2)(a)(ii).

(ii) If an optional computer software maintenance contract is a bundled transaction that consists of taxable and nontaxable products that are not separately itemized on an invoice or similar billing document, the purchase of the optional computer software maintenance contract is 40% taxable under this chapter and 60% nontaxable under this chapter.

(iii) Subject to Subsection (2)(e)(iv), for a bundled transaction other than a bundled transaction described in Subsection (2)(e)(i) or (ii):

(A) if the sales price of the bundled transaction is attributable to tangible personal property, a product, or a service that is subject to taxation under this chapter and tangible

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personal property, a product, or service that is not subject to taxation under this chapter, the entire bundled transaction is subject to taxation under this chapter unless:

(I) the seller is able to identify by reasonable and verifiable standards the tangible personal property, product, or service that is not subject to taxation under this chapter from the books and records the seller keeps in the seller's regular course of business; or

(II) state or federal law provides otherwise; or

(B) if the sales price of a bundled transaction is attributable to two or more items of tangible personal property, products, or services that are subject to taxation under this chapter at different rates, the entire bundled transaction is subject to taxation under this chapter at the higher tax rate unless:

(I) the seller is able to identify by reasonable and verifiable standards the tangible personal property, product, or service that is subject to taxation under this chapter at the lower tax rate from the books and records the seller keeps in the seller's regular course of business; or

(II) state or federal law provides otherwise.

(iv) For purposes of Subsection (2)(e)(iii), books and records that a seller keeps in the seller's regular course of business includes books and records the seller keeps in the regular course of business for nontax purposes.

(f) (i) Except as otherwise provided in this chapter and subject to Subsections (2)(f)(ii) and (iii), if a transaction consists of the sale, lease, or rental of tangible personal property, a product, or a service that is subject to taxation under this chapter, and the sale, lease, or rental of tangible personal property, other property, a product, or a service that is not subject to taxation under this chapter, the entire transaction is subject to taxation under this chapter unless the seller, at the time of the transaction:

(A) separately states the portion of the transaction that is not subject to taxation under this chapter on an invoice, bill of sale, or similar document provided to the purchaser; or

(B) is able to identify by reasonable and verifiable standards, from the books and records the seller keeps in the seller's regular course of business, the portion of the transaction that is not subject to taxation under this chapter.

(ii) A purchaser and a seller may correct the taxability of a transaction if:

(A) after the transaction occurs, the purchaser and the seller discover that the portion of the transaction that is not subject to taxation under this chapter was not separately stated on an

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invoice, bill of sale, or similar document provided to the purchaser because of an error or ignorance of the law; and

(B) the seller is able to identify by reasonable and verifiable standards, from the books and records the seller keeps in the seller's regular course of business, the portion of the transaction that is not subject to taxation under this chapter.

(iii) For purposes of Subsections (2)(f)(i) and (ii), books and records that a seller keeps in the seller's regular course of business includes books and records the seller keeps in the regular course of business for nontax purposes.

(g) (i) If the sales price of a transaction is attributable to two or more items of tangible personal property, products, or services that are subject to taxation under this chapter at different rates, the entire purchase is subject to taxation under this chapter at the higher tax rate unless the seller, at the time of the transaction:

(A) separately states the items subject to taxation under this chapter at each of the different rates on an invoice, bill of sale, or similar document provided to the purchaser; or

(B) is able to identify by reasonable and verifiable standards the tangible personal property, product, or service that is subject to taxation under this chapter at the lower tax rate from the books and records the seller keeps in the seller's regular course of business.

(ii) For purposes of Subsection (2)(g)(i), books and records that a seller keeps in the seller's regular course of business includes books and records the seller keeps in the regular course of business for nontax purposes.

(h) Subject to Subsections (2)(i) and (j), a tax rate repeal or tax rate change for a tax rate imposed under the following shall take effect on the first day of a calendar quarter:

(i) Subsection (2)(a)(i)(A);

(ii) Subsection (2)(b)(i);

(iii) Subsection (2)(c)(i); or

(iv) Subsection (2)(e)(i)(A)(I).

(i) (i) A tax rate increase takes effect on the first day of the first billing period that begins on or after the effective date of the tax rate increase if the billing period for the transaction begins before the effective date of a tax rate increase imposed under:

(A) Subsection (2)(a)(i)(A);

(B) Subsection (2)(b)(i);

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(C) Subsection (2)(c)(i); or

(D) Subsection (2)(e)(i)(A)(I).

(ii) The repeal of a tax or a tax rate decrease applies to a billing period if the billing statement for the billing period is rendered on or after the effective date of the repeal of the tax or the tax rate decrease imposed under:

(A) Subsection (2)(a)(i)(A);

(B) Subsection (2)(b)(i);

(C) Subsection (2)(c)(i); or

(D) Subsection (2)(e)(i)(A)(I).

(j) (i) For a tax rate described in Subsection (2)(j)(ii), if a tax due on a catalogue sale is computed on the basis of sales and use tax rates published in the catalogue, a tax rate repeal or change in a tax rate takes effect:

(A) on the first day of a calendar quarter; and

(B) beginning 60 days after the effective date of the tax rate repeal or tax rate change.

(ii) Subsection (2)(j)(i) applies to the tax rates described in the following:

(A) Subsection (2)(a)(i)(A);

(B) Subsection (2)(b)(i);

(C) Subsection (2)(c)(i); or

(D) Subsection (2)(e)(i)(A)(I).

(iii) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may by rule define the term "catalogue sale."

(k) (i) For a location described in Subsection (2)(k)(ii), the commission shall determine the taxable status of a sale of gas, electricity, heat, coal, fuel oil, or other fuel based on the predominant use of the gas, electricity, heat, coal, fuel oil, or other fuel at the location.

(ii) Subsection (2)(k)(i) applies to a location where gas, electricity, heat, coal, fuel oil, or other fuel is furnished through a single meter for two or more of the following uses:

(A) a commercial use;

(B) an industrial use; or

(C) a residential use.

(3) (a) The following state taxes shall be deposited into the General Fund:

(i) the tax imposed by Subsection (2)(a)(i)(A);

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- (ii) the tax imposed by Subsection (2)(b)(i);
- (iii) the tax imposed by Subsection (2)(c)(i); and
- (iv) the tax imposed by Subsection (2)(e)(i)(A)(I).

(b) The following local taxes shall be distributed to a county, city, or town as provided in this chapter:

- (i) the tax imposed by Subsection (2)(a)(ii);
- (ii) the tax imposed by Subsection (2)(b)(ii);
- (iii) the tax imposed by Subsection (2)(c)(ii); and
- (iv) the tax imposed by Subsection (2)(e)(i)(B).

(c) The state tax imposed by Subsection (2)(d) shall be deposited into the General Fund.

(4) (a) Notwithstanding Subsection (3)(a), for a fiscal year beginning on or after July 1, 2003, the lesser of the following amounts shall be expended as provided in Subsections (4)(b) through (g):

- (i) for taxes listed under Subsection (3)(a), the amount of tax revenue generated:
 - (A) by a 1/16% tax rate on the transactions described in Subsection (1); and
 - (B) for the fiscal year; or
- (ii) \$17,500,000.

(b) (i) For a fiscal year beginning on or after July 1, 2003, 14% of the amount described in Subsection (4)(a) shall be transferred each year as designated sales and use tax revenue to the Department of Natural Resources to:

(A) implement the measures described in Subsections 79-2-303(3)(a) through (d) to protect sensitive plant and animal species; or

(B) award grants, up to the amount authorized by the Legislature in an appropriations act, to political subdivisions of the state to implement the measures described in Subsections 79-2-303(3)(a) through (d) to protect sensitive plant and animal species.

(ii) Money transferred to the Department of Natural Resources under Subsection (4)(b)(i) may not be used to assist the United States Fish and Wildlife Service or any other person to list or attempt to have listed a species as threatened or endangered under the Endangered Species Act of 1973, 16 U.S.C. Sec. 1531 et seq.

- (iii) At the end of each fiscal year:

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(A) 50% of any unexpended designated sales and use tax revenue shall lapse to the Water Resources Conservation and Development Fund created in Section 73-10-24;

(B) 25% of any unexpended designated sales and use tax revenue shall lapse to the Utah Wastewater Loan Program Subaccount created in Section 73-10c-5; and

(C) 25% of any unexpended designated sales and use tax revenue shall lapse to the Drinking Water Loan Program Subaccount created in Section 73-10c-5.

(c) For a fiscal year beginning on or after July 1, 2003, 3% of the amount described in Subsection (4)(a) shall be deposited each year in the Agriculture Resource Development Fund created in Section 4-18-106.

(d) (i) For a fiscal year beginning on or after July 1, 2003, 1% of the amount described in Subsection (4)(a) shall be transferred each year as designated sales and use tax revenue to the Division of Water Rights to cover the costs incurred in hiring legal and technical staff for the adjudication of water rights.

(ii) At the end of each fiscal year:

(A) 50% of any unexpended designated sales and use tax revenue shall lapse to the Water Resources Conservation and Development Fund created in Section 73-10-24;

(B) 25% of any unexpended designated sales and use tax revenue shall lapse to the Utah Wastewater Loan Program Subaccount created in Section 73-10c-5; and

(C) 25% of any unexpended designated sales and use tax revenue shall lapse to the Drinking Water Loan Program Subaccount created in Section 73-10c-5.

(e) (i) For a fiscal year beginning on or after July 1, 2003, 41% of the amount described in Subsection (4)(a) shall be deposited into the Water Resources Conservation and Development Fund created in Section 73-10-24 for use by the Division of Water Resources.

(ii) In addition to the uses allowed of the Water Resources Conservation and Development Fund under Section 73-10-24, the Water Resources Conservation and Development Fund may also be used to:

(A) conduct hydrologic and geotechnical investigations by the Division of Water Resources in a cooperative effort with other state, federal, or local entities, for the purpose of quantifying surface and ground water resources and describing the hydrologic systems of an area in sufficient detail so as to enable local and state resource managers to plan for and accommodate growth in water use without jeopardizing the resource;

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(B) fund state required dam safety improvements; and

(C) protect the state's interest in interstate water compact allocations, including the hiring of technical and legal staff.

(f) For a fiscal year beginning on or after July 1, 2003, 20.5% of the amount described in Subsection (4)(a) shall be deposited into the Utah Wastewater Loan Program Subaccount created in Section 73-10c-5 for use by the Water Quality Board to fund wastewater projects.

(g) For a fiscal year beginning on or after July 1, 2003, 20.5% of the amount described in Subsection (4)(a) shall be deposited into the Drinking Water Loan Program Subaccount created in Section 73-10c-5 for use by the Division of Drinking Water to:

(i) provide for the installation and repair of collection, treatment, storage, and distribution facilities for any public water system, as defined in Section 19-4-102;

(ii) develop underground sources of water, including springs and wells; and

(iii) develop surface water sources.

(5) (a) Notwithstanding Subsection (3)(a), for a fiscal year beginning on or after July 1, 2006, the difference between the following amounts shall be expended as provided in this Subsection (5), if that difference is greater than \$1:

(i) for taxes listed under Subsection (3)(a), the amount of tax revenue generated for the fiscal year by a 1/16% tax rate on the transactions described in Subsection (1); and

(ii) \$17,500,000.

(b) (i) The first \$500,000 of the difference described in Subsection (5)(a) shall be:

(A) transferred each fiscal year to the Department of Natural Resources as designated sales and use tax revenue; and

(B) expended by the Department of Natural Resources for watershed rehabilitation or restoration.

(ii) At the end of each fiscal year, 100% of any unexpended designated sales and use tax revenue described in Subsection (5)(b)(i) shall lapse to the Water Resources Conservation and Development Fund created in Section 73-10-24.

(c) (i) After making the transfer required by Subsection (5)(b)(i), \$150,000 of the remaining difference described in Subsection (5)(a) shall be:

(A) transferred each fiscal year to the Division of Water Resources as designated sales and use tax revenue; and

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(B) expended by the Division of Water Resources for cloud-seeding projects authorized by Title 73, Chapter 15, Modification of Weather.

(ii) At the end of each fiscal year, 100% of any unexpended designated sales and use tax revenue described in Subsection (5)(c)(i) shall lapse to the Water Resources Conservation and Development Fund created in Section 73-10-24.

(d) After making the transfers required by Subsections (5)(b) and (c), 85% of the remaining difference described in Subsection (5)(a) shall be deposited into the Water Resources Conservation and Development Fund created in Section 73-10-24 for use by the Division of Water Resources for:

(i) preconstruction costs:

(A) as defined in Subsection 73-26-103(6) for projects authorized by Title 73, Chapter 26, Bear River Development Act; and

(B) as defined in Subsection 73-28-103(8) for the Lake Powell Pipeline project authorized by Title 73, Chapter 28, Lake Powell Pipeline Development Act;

(ii) the cost of employing a civil engineer to oversee any project authorized by Title 73, Chapter 26, Bear River Development Act;

(iii) the cost of employing a civil engineer to oversee the Lake Powell Pipeline project authorized by Title 73, Chapter 28, Lake Powell Pipeline Development Act; and

(iv) other uses authorized under Sections 73-10-24, 73-10-25.1, and 73-10-30, and Subsection (4)(e)(ii) after funding the uses specified in Subsections (5)(d)(i) through (iii).

(e) After making the transfers required by Subsections (5)(b) and (c), 15% of the remaining difference described in Subsection (5)(a) shall be deposited each year into the Water Rights Restricted Account created by Section 73-2-1.6.

(6) Notwithstanding Subsection (3)(a) and for taxes listed under Subsection (3)(a), the amount of revenue generated by a 1/16% tax rate on the transactions described in Subsection (1) for the fiscal year shall be deposited as follows:

(a) for fiscal year 2020-21 only:

(i) 20% of the revenue described in this Subsection (6) shall be deposited into the Transportation Investment Fund of 2005 created by Section 72-2-124; and

(ii) 80% of the revenue described in this Subsection (6) shall be deposited into the Water Infrastructure Restricted Account created by Section 73-10g-103; and

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(b) for a fiscal year beginning on or after July 1, 2021, 100% of the revenue described in this Subsection (6) shall be deposited into the Water Infrastructure Restricted Account created by Section 73-10g-103.

(7) (a) Notwithstanding Subsection (3)(a), in addition to the amounts deposited in Subsection (6), and subject to Subsection (7)(b), for a fiscal year beginning on or after July 1, 2012, the Division of Finance shall deposit into the Transportation Investment Fund of 2005 created by Section 72-2-124:

(i) a portion of the taxes listed under Subsection (3)(a) in an amount equal to 8.3% of the revenues collected from the following taxes, which represents a portion of the approximately 17% of sales and use tax revenues generated annually by the sales and use tax on vehicles and vehicle-related products:

(A) the tax imposed by Subsection (2)(a)(i)(A) at a 4.7% rate;

(B) the tax imposed by Subsection (2)(b)(i);

(C) the tax imposed by Subsection (2)(c)(i); and

(D) the tax imposed by Subsection (2)(e)(i)(A)(I); plus

(ii) an amount equal to 30% of the growth in the amount of revenues collected in the current fiscal year from the sales and use taxes described in Subsections (7)(a)(i)(A) through (D) that exceeds the amount collected from the sales and use taxes described in Subsections (7)(a)(i)(A) through (D) in the 2010-11 fiscal year.

(b) (i) Subject to Subsections (7)(b)(ii) and (iii), in any fiscal year that the portion of the sales and use taxes deposited under Subsection (7)(a) represents an amount that is a total lower percentage of the sales and use taxes described in Subsections (7)(a)(i)(A) through (D) generated in the current fiscal year than the total percentage of sales and use taxes deposited in the previous fiscal year, the Division of Finance shall deposit an amount under Subsection (7)(a) equal to the product of:

(A) the total percentage of sales and use taxes deposited under Subsection (7)(a) in the previous fiscal year; and

(B) the total sales and use tax revenue generated by the taxes described in Subsections (7)(a)(i)(A) through (D) in the current fiscal year.

(ii) In any fiscal year in which the portion of the sales and use taxes deposited under Subsection (7)(a) would exceed 17% of the revenues collected from the sales and use taxes

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described in Subsections (7)(a)(i)(A) through (D) in the current fiscal year, the Division of Finance shall deposit 17% of the revenues collected from the sales and use taxes described in Subsections (7)(a)(i)(A) through (D) for the current fiscal year under Subsection (7)(a).

(iii) Subject to Subsection (7)(b)(iv)(E), in all subsequent fiscal years after a year in which 17% of the revenues collected from the sales and use taxes described in Subsections (7)(a)(i)(A) through (D) was deposited under Subsection (7)(a), the Division of Finance shall annually deposit 17% of the revenues collected from the sales and use taxes described in Subsections (7)(a)(i)(A) through (D) in the current fiscal year under Subsection (7)(a).

(iv) (A) As used in this Subsection (7)(b)(iv), "additional growth revenue" means the amount of relevant revenue collected in the current fiscal year that exceeds by more than 3% the relevant revenue collected in the previous fiscal year.

(B) As used in this Subsection (7)(b)(iv), "combined amount" means the combined total amount of money deposited into the Cottonwood Canyons fund under Subsections (7)(b)(iv)(F) and (8)(d)(vi) in any single fiscal year.

(C) As used in this Subsection (7)(b)(iv), "Cottonwood Canyons fund" means the Cottonwood Canyons Transportation Investment Fund created in Subsection 72-2-124(10).

(D) As used in this Subsection (7)(b)(iv), "relevant revenue" means the portion of taxes listed under Subsection (3)(a) that equals 17% of the revenue collected from taxes described in Subsections (7)(a)(i)(A) through (D).

(E) For a fiscal year beginning on or after July 1, 2020, the commission shall annually reduce the deposit under Subsection (7)(b)(iii) into the Transportation Investment Fund of 2005 by an amount equal to the amount of the deposit under this Subsection (7)(b)(iv) to the Cottonwood Canyons fund in the previous fiscal year plus 25% of additional growth revenue, subject to the limit in Subsection (7)(b)(iv)(F).

(F) The commission shall annually deposit the amount described in Subsection (7)(b)(iv)(E) into the Cottonwood Canyons fund, subject to an annual maximum combined amount for any single fiscal year of \$20,000,000.

(G) If the amount of relevant revenue declines in a fiscal year compared to the previous fiscal year, the commission shall decrease the amount of the contribution to the Cottonwood Canyons fund under this Subsection (7)(b)(iv) in the same proportion as the decline in relevant revenue.

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(8) (a) Notwithstanding Subsection (3)(a), in addition to the amounts deposited under Subsections (6) and (7), and subject to Subsections (8)(b) and (d)(v), for a fiscal year beginning on or after July 1, 2018, the commission shall annually deposit into the Transportation Investment Fund of 2005 created by Section 72-2-124 a portion of the taxes listed under Subsection (3)(a) in an amount equal to 3.68% of the revenues collected from the following taxes:

- (i) the tax imposed by Subsection (2)(a)(i)(A) at a 4.7% rate;
- (ii) the tax imposed by Subsection (2)(b)(i);
- (iii) the tax imposed by Subsection (2)(c)(i); and
- (iv) the tax imposed by Subsection (2)(e)(i)(A)(I).

(b) For a fiscal year beginning on or after July 1, 2019, the commission shall annually reduce the deposit into the Transportation Investment Fund of 2005 under Subsection (8)(a) by an amount that is equal to 35% of the amount of revenue generated in the current fiscal year by the portion of the tax imposed on motor and special fuel that is sold, used, or received for sale or use in this state that exceeds 29.4 cents per gallon.

(c) The commission shall annually deposit the amount described in Subsection (8)(b) into the Transit Transportation Investment Fund created in Section 72-2-124.

(d) (i) As used in this Subsection (8)(d), "additional growth revenue" means the amount of relevant revenue collected in the current fiscal year that exceeds by more than 3% the relevant revenue collected in the previous fiscal year.

(ii) As used in this Subsection (8)(d), "combined amount" means the combined total amount of money deposited into the Cottonwood Canyons fund under Subsections (7)(b)(iv)(F) and (8)(d)(vi) in any single fiscal year.

(iii) As used in this Subsection (8)(d), "Cottonwood Canyons fund" means the Cottonwood Canyons Transportation Investment Fund created in Subsection 72-2-124(10).

(iv) As used in this Subsection (8)(d), "relevant revenue" means the portion of taxes listed under Subsection (3)(a) that equals 3.68% of the revenue collected from taxes described in Subsections (8)(a)(i) through (iv).

(v) For a fiscal year beginning on or after July 1, 2020, the commission shall annually reduce the deposit under Subsection (8)(a) into the Transportation Investment Fund of 2005 by an amount equal to the amount of the deposit under this Subsection (8)(d) to the Cottonwood

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Canyons fund in the previous fiscal year plus 25% of additional growth revenue, subject to the limit in Subsection (8)(d)(vi).

(vi) The commission shall annually deposit the amount described in Subsection (8)(d)(v) into the Cottonwood Canyons fund, subject to an annual maximum combined amount for any single fiscal year of \$20,000,000.

(vii) If the amount of relevant revenue declines in a fiscal year compared to the previous fiscal year, the commission shall decrease the amount of the contribution to the Cottonwood Canyons fund under this Subsection (8)(d) in the same proportion as the decline in relevant revenue.

(9) Notwithstanding Subsection (3)(a), for each fiscal year beginning with fiscal year 2009-10, \$533,750 shall be deposited into the Qualified Emergency Food Agencies Fund created by Section 35A-8-1009 and expended as provided in Section 35A-8-1009.

(10) (a) Notwithstanding Subsection (3)(a), except as provided in Subsection (10)(b), and in addition to any amounts deposited under Subsections (6), (7), and (8), the Division of Finance shall deposit into the Transportation Investment Fund of 2005 created by Section 72-2-124 the amount of revenue described as follows:

(i) for fiscal year 2020-21 only, 33.33% of the amount of revenue generated by a .05% tax rate on the transactions described in Subsection (1); and

(ii) for fiscal year 2021-22 only, 16.67% of the amount of revenue generated by a .05% tax rate on the transactions described in Subsection (1).

(b) For purposes of Subsection (10)(a), the Division of Finance may not deposit into the Transportation Investment Fund of 2005 any tax revenue generated by amounts paid or charged for food and food ingredients, except for tax revenue generated by a bundled transaction attributable to food and food ingredients and tangible personal property other than food and food ingredients described in Subsection (2)(e).

(11) Notwithstanding Subsection (3)(a), beginning the second fiscal year after the fiscal year during which the Division of Finance receives notice under Section 63N-2-510 that construction on a qualified hotel, as defined in Section 63N-2-502, has begun, the Division of Finance shall, for two consecutive fiscal years, annually deposit \$1,900,000 of the revenue generated by the taxes listed under Subsection (3)(a) into the Hotel Impact Mitigation Fund, created in Section 63N-2-512.

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(12) (a) The rate specified in this subsection is 0.15%.

(b) Notwithstanding Subsection (3)(a), the Division of Finance shall, for a fiscal year beginning on or after July 1, 2019, annually transfer the amount of revenue collected from the rate described in Subsection (12)(a) on the transactions that are subject to the sales and use tax under Subsection (2)(a)(i)(A) into the Medicaid Expansion Fund created in Section ~~[26-36b-208]~~ 26B-1-315.

(13) Notwithstanding Subsection (3)(a), for each fiscal year beginning with fiscal year 2020-21, the Division of Finance shall deposit \$200,000 into the General Fund as a dedicated credit solely for use of the Search and Rescue Financial Assistance Program created in, and expended in accordance with, Title 53, Chapter 2a, Part 11, Search and Rescue Act.

(14) (a) For each fiscal year beginning with fiscal year 2020-21, the Division of Finance shall annually transfer \$1,813,400 of the revenue deposited into the Transportation Investment Fund of 2005 under Subsections (6) through (8) to the General Fund.

(b) If the total revenue deposited into the Transportation Investment Fund of 2005 under Subsections (6) through (8) is less than \$1,813,400 for a fiscal year, the Division of Finance shall transfer the total revenue deposited into the Transportation Investment Fund of 2005 under Subsections (6) through (8) during the fiscal year to the General Fund.

(15) Notwithstanding Subsection (3)(a), and as described in Section 63N-3-610, beginning the first day of the calendar quarter one year after the sales and use tax boundary for a housing and transit reinvestment zone is established, the commission, at least annually, shall transfer an amount equal to 15% of the sales and use tax increment within an established sales and use tax boundary, as defined in Section 63N-3-602, into the Transit Transportation Investment Fund created in Section 72-2-124.

(16) Notwithstanding Subsection (3)(a), the Division of Finance shall, for a fiscal year beginning on or after July 1, 2022, transfer into the Outdoor Adventure Infrastructure Restricted Account, created in Section 51-9-902, a portion of the taxes listed under Subsection (3)(a) equal to 1% of the revenues collected from the following sales and use taxes:

- (a) the tax imposed by Subsection (2)(a)(i)(A) at a 4.7% rate;
- (b) the tax imposed by Subsection (2)(b)(i);
- (c) the tax imposed by Subsection (2)(c)(i); and
- (d) the tax imposed by Subsection (2)(e)(i)(A)(I).

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Section 61. Section **59-12-104.10** is amended to read:

59-12-104.10. Exemption from sales tax for cannabis.

(1) As used in this section:

(a) "Cannabis" means the same as that term is defined in Section ~~[26-61a-102]~~

26B-4-201.

(b) "Cannabis product" means the same as that term is defined in Section ~~[26-61a-102]~~

26B-4-201.

(c) "Medical cannabis device" means the same as that term is defined in Section ~~[26-61a-102]~~ 26B-4-201.

(d) "Medical cannabis pharmacy" means the same as that term is defined in Section ~~[26-61a-102]~~ 26B-4-201.

(e) "Medicinal dosage form" means the same as that term is defined in Section ~~[26-61a-102]~~ 26B-4-201.

(2) In addition to the exemptions described in Section 59-12-104, the sale by a licensed medical cannabis pharmacy of the following is not subject to the taxes this chapter imposes:

(a) cannabis in a medicinal dosage form; or

(b) a cannabis product in a medicinal dosage form.

(3) The sale of a medical cannabis device by a medical cannabis pharmacy is subject to the taxes this chapter imposes.

Section 62. Section **59-12-801** is amended to read:

59-12-801. Definitions.

As used in this part:

(1) "Emergency medical services" is as defined in Section ~~[26-8a-102]~~ 26B-4-101.

(2) "Federally qualified health center" is as defined in 42 U.S.C. Sec. 1395x.

(3) "Freestanding urgent care center" means a facility that provides outpatient health care service:

(a) on an as-needed basis, without an appointment;

(b) to the public;

(c) for the diagnosis and treatment of a medical condition if that medical condition does not require hospitalization or emergency intervention for a life threatening or potentially permanently disabling condition; and

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(d) including one or more of the following services:

(i) a medical history physical examination;

(ii) an assessment of health status; or

(iii) treatment:

(A) for a variety of medical conditions; and

(B) that is commonly offered in a physician's office.

(4) "Nursing care facility" is as defined in Section ~~[26-21-2]~~ 26B-2-201.

(5) "Rural city hospital" means a hospital owned by a city that is located within a third, fourth, fifth, or sixth class county.

(6) "Rural county health care facility" means a:

(a) rural county hospital; or

(b) rural county nursing care facility.

(7) "Rural county hospital" means a hospital owned by a county that is:

(a) a third, fourth, fifth, or sixth class county, as defined in Section 17-50-501; and

(b) located outside of a standard metropolitan statistical area, as designated by the United States Bureau of the Census.

(8) "Rural county nursing care facility" means a nursing care facility owned by:

(a) a county that is:

(i) a third, fourth, fifth, or sixth class county, as defined in Section 17-50-501; and

(ii) located outside of a standard metropolitan statistical area, as designated by the United States Census Bureau; or

(b) a special service district if the special service district is:

(i) created for the purpose of operating the nursing care facility; and

(ii) within a county that is:

(A) a third, fourth, fifth, or sixth class county, as defined in Section 17-50-501; and

(B) located outside of a standard metropolitan statistical area, as designated by the United States Census Bureau.

(9) "Rural emergency medical services" means emergency medical services that are provided by a county that is:

(a) a fifth or sixth class county, as defined in Section 17-50-501; and

(b) located outside of a standard metropolitan statistical area, as designated by the

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United States Census Bureau.

(10) "Rural health clinic" is as defined in 42 U.S.C. Sec. 1395x.

Section 63. Section **59-14-807** is amended to read:

59-14-807. Electronic Cigarette Substance and Nicotine Product Tax Restricted Account.

(1) There is created within the General Fund a restricted account known as the "Electronic Cigarette Substance and Nicotine Product Tax Restricted Account."

(2) The Electronic Cigarette Substance and Nicotine Product Tax Restricted Account consists of:

(a) revenues collected from the tax imposed by Section 59-14-804; and

(b) amounts appropriated by the Legislature.

(3) For each fiscal year, beginning with fiscal year 2021, and subject to appropriation by the Legislature, the Division of Finance shall distribute from the Electronic Cigarette Substance and Nicotine Product Tax Restricted Account:

(a) \$2,000,000 which shall be allocated to the local health departments by the Department of [~~Health~~] Health and Human Services using the formula created in accordance with Section 26A-1-116;

(b) \$2,000,000 to the Department of [~~Health~~] Health and Human Services for statewide cessation programs and prevention education;

(c) \$1,180,000 to the Department of Public Safety for law enforcement officers aimed at disrupting organizations and networks that provide tobacco products, electronic cigarette products, nicotine products, and other illegal controlled substances to minors;

(d) \$3,000,000 which shall be allocated to the local health departments by the Department of [~~Health~~] Health and Human Services using the formula created in accordance with Section 26A-1-116;

(e) \$5,084,200 to the State Board of Education for school-based prevention programs; and

(f) \$2,000,000 to the Department of Health and Human Services for alcohol, tobacco, and other drug prevention, reduction, cessation, and control programs that promote unified messages and make use of media outlets, including radio, newspaper, billboards, and television.

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(4) (a) The local health departments shall use the money received in accordance with Subsection (3)(a) for enforcing:

- (i) the regulation provisions described in Section ~~[26-57-103]~~ 26B-7-505;
- (ii) the labeling requirement described in Section ~~[26-57-104]~~ 26B-7-505; and
- (iii) the penalty provisions described in Section ~~[26-62-305]~~ 26B-7-518.

(b) The Department of ~~[Health]~~ Health and Human Services shall use the money received in accordance with Subsection (3)(b) for the Youth Electronic Cigarette, Marijuana, and Other Drug Prevention Program created in Section ~~[26-7-10]~~ 26B-1-428.

(c) The local health departments shall use the money received in accordance with Subsection (3)(d) to issue grants under the Electronic Cigarette, Marijuana, and Other Drug Prevention Grant Program created in Section 26A-1-129.

(d) The State Board of Education shall use the money received in accordance with Subsection (3)(e) to distribute to local education agencies to pay for:

- (i) stipends for positive behaviors specialists as described in Subsection 53G-10-407(4)(a)(i);
- (ii) the cost of administering the positive behaviors plan as described in Subsection 53G-10-407(4)(a)(ii); and
- (iii) the cost of implementing an Underage Drinking and Substance Abuse Prevention Program in grade 4 or 5, as described in Subsection 53G-10-406(3)(b).

(5) (a) The fund shall earn interest.

(b) All interest earned on fund money shall be deposited into the fund.

(6) Subject to legislative appropriations, funds remaining in the Electronic Cigarette Substance and Nicotine Product Tax Restricted Account after the distribution described in Subsection (3) may only be used for programs and activities related to the prevention and cessation of electronic cigarette, nicotine products, marijuana, and other drug use.

Section 64. Section **61-1-13** is amended to read:

61-1-13. Definitions.

(1) As used in this chapter:

(a) "Affiliate" means a person that, directly or indirectly, through one or more intermediaries, controls or is controlled by, or is under common control with a person specified.

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(b) (i) "Agent" means an individual other than a broker-dealer who represents a broker-dealer or issuer in effecting or attempting to effect purchases or sales of securities.

(ii) "Agent" does not include an individual who represents:

(A) an issuer, who receives no commission or other remuneration, directly or indirectly, for effecting or attempting to effect purchases or sales of securities in this state, and who effects transactions:

(I) in securities exempted by Subsection 61-1-14(1)(a), (b), (c), or (g);

(II) exempted by Subsection 61-1-14(2);

(III) in a covered security as described in Sections 18(b)(3) and 18(b)(4)(F) of the Securities Act of 1933; or

(IV) with existing employees, partners, officers, or directors of the issuer; or

(B) a broker-dealer in effecting transactions in this state limited to those transactions described in Section 15(h)(2) of the Securities Exchange Act of 1934.

(iii) A partner, officer, or director of a broker-dealer or issuer, or a person occupying a similar status or performing similar functions, is an agent only if the partner, officer, director, or person otherwise comes within the definition of "agent."

(iv) "Agent" does not include a person described in Subsection (3).

(c) (i) "Broker-dealer" means a person engaged in the business of effecting transactions in securities for the account of others or for the person's own account.

(ii) "Broker-dealer" does not include:

(A) an agent;

(B) an issuer;

(C) a depository institution or trust company;

(D) a person who has no place of business in this state if:

(I) the person effects transactions in this state exclusively with or through:

(Aa) the issuers of the securities involved in the transactions;

(Bb) other broker-dealers;

(Cc) a depository institution, whether acting for itself or as a trustee;

(Dd) a trust company, whether acting for itself or as a trustee;

(Ee) an insurance company, whether acting for itself or as a trustee;

(Ff) an investment company, as defined in the Investment Company Act of 1940,

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whether acting for itself or as a trustee;

(Gg) a pension or profit-sharing trust, whether acting for itself or as a trustee; or

(Hh) another financial institution or institutional buyer, whether acting for itself or as a trustee; or

(II) during any period of 12 consecutive months the person does not direct more than 15 offers to sell or buy into this state in any manner to persons other than those specified in Subsection (1)(c)(ii)(D)(I), whether or not the offeror or an offeree is then present in this state;

(E) a general partner who organizes and effects transactions in securities of three or fewer limited partnerships, of which the person is the general partner, in any period of 12 consecutive months;

(F) a person whose participation in transactions in securities is confined to those transactions made by or through a broker-dealer licensed in this state;

(G) a person who is a principal broker or associate broker licensed in this state and who effects transactions in a bond or other evidence of indebtedness secured by a real or chattel mortgage or deed of trust, or by an agreement for the sale of real estate or chattels, if the entire mortgage, deed of trust, or agreement, together with all the bonds or other evidences of indebtedness secured thereby, is offered and sold as a unit;

(H) a person effecting transactions in commodity contracts or commodity options;

(I) a person described in Subsection (3); or

(J) other persons as the division, by rule or order, may designate, consistent with the public interest and protection of investors, as not within the intent of this Subsection (1)(c).

(d) "Buy" or "purchase" means a contract for purchase of, contract to buy, or acquisition of a security or interest in a security for value.

(e) "Commission" means the Securities Commission created in Section 61-1-18.5.

(f) "Commodity" means, except as otherwise specified by the division by rule:

(i) an agricultural, grain, or livestock product or byproduct, except real property or a timber, agricultural, or livestock product grown or raised on real property and offered or sold by the owner or lessee of the real property;

(ii) a metal or mineral, including a precious metal, except a numismatic coin whose fair market value is at least 15% greater than the value of the metal it contains;

(iii) a gem or gemstone, whether characterized as precious, semi-precious, or

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otherwise;

(iv) a fuel, whether liquid, gaseous, or otherwise;

(v) a foreign currency; and

(vi) all other goods, articles, products, or items of any kind, except a work of art offered or sold by art dealers, at public auction or offered or sold through a private sale by the owner of the work.

(g) (i) "Commodity contract" means an account, agreement, or contract for the purchase or sale, primarily for speculation or investment purposes and not for use or consumption by the offeree or purchaser, of one or more commodities, whether for immediate or subsequent delivery or whether delivery is intended by the parties, and whether characterized as a cash contract, deferred shipment or deferred delivery contract, forward contract, futures contract, installment or margin contract, leverage contract, or otherwise.

(ii) A commodity contract offered or sold shall, in the absence of evidence to the contrary, be presumed to be offered or sold for speculation or investment purposes.

(iii) (A) A commodity contract may not include a contract or agreement that requires, and under which the purchaser receives, within 28 calendar days from the payment in good funds any portion of the purchase price, physical delivery of the total amount of each commodity to be purchased under the contract or agreement.

(B) A purchaser is not considered to have received physical delivery of the total amount of each commodity to be purchased under the contract or agreement when the commodity or commodities are held as collateral for a loan or are subject to a lien of any person when the loan or lien arises in connection with the purchase of each commodity or commodities.

(h) (i) "Commodity option" means an account, agreement, or contract giving a party to the option the right but not the obligation to purchase or sell one or more commodities or one or more commodity contracts, or both whether characterized as an option, privilege, indemnity, bid, offer, put, call, advance guaranty, decline guaranty, or otherwise.

(ii) "Commodity option" does not include an option traded on a national securities exchange registered:

(A) with the Securities and Exchange Commission; or

(B) on a board of trade designated as a contract market by the Commodity Futures

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Trading Commission.

(i) "Depository institution" means the same as that term is defined in Section 7-1-103.

(j) "Director" means the director of the division appointed in accordance with Section 61-1-18.

(k) "Division" means the Division of Securities established by Section 61-1-18.

(l) "Executive director" means the executive director of the Department of Commerce.

(m) "Federal covered adviser" means a person who:

(i) is registered under Section 203 of the Investment Advisers Act of 1940; or

(ii) is excluded from the definition of "investment adviser" under Section 202(a)(11) of the Investment Advisers Act of 1940.

(n) "Federal covered security" means a security that is a covered security under Section 18(b) of the Securities Act of 1933 or rules or regulations promulgated under Section 18(b) of the Securities Act of 1933.

(o) "Fraud," "deceit," and "defraud" are not limited to their common-law meanings.

(p) "Guaranteed" means guaranteed as to payment of principal or interest as to debt securities, or dividends as to equity securities.

(q) (i) "Investment adviser" means a person who:

(A) for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities; or

(B) for compensation and as a part of a regular business, issues or promulgates analyses or reports concerning securities.

(ii) "Investment adviser" includes a financial planner or other person who:

(A) as an integral component of other financially related services, provides the investment advisory services described in Subsection (1)(q)(i) to others as part of a business;

(B) holds the person out as providing the investment advisory services described in Subsection (1)(q)(i) to others; or

(C) holds the person out as a financial adviser, financial consultant, or any other similar title as the division may specify in rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, in any way as to imply that the person is generally engaged in an investment advisory business, including a person who does not hold a securities license and

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uses a title described in this Subsection (1)(q)(ii)(C) in any advertising or marketing material.

(iii) "Investment adviser" does not include:

(A) an investment adviser representative;

(B) a depository institution or trust company;

(C) a lawyer, accountant, engineer, or teacher whose performance of these services is solely incidental to the practice of the profession;

(D) a broker-dealer or its agent whose performance of these services is solely incidental to the conduct of its business as a broker-dealer and who receives no special compensation for the services;

(E) a publisher of a bona fide newspaper, news column, news letter, news magazine, or business or financial publication or service, of general, regular, and paid circulation, whether communicated in hard copy form, or by electronic means, or otherwise, that does not consist of the rendering of advice on the basis of the specific investment situation of each client;

(F) a person who is a federal covered adviser;

(G) a person described in Subsection (3); or

(H) such other persons not within the intent of this Subsection (1)(q) as the division may by rule or order designate.

(r) (i) "Investment adviser representative" means a partner, officer, director of, or a person occupying a similar status or performing similar functions, or other individual, except clerical or ministerial personnel, who:

(A) (I) is employed by or associated with an investment adviser who is licensed or required to be licensed under this chapter; or

(II) has a place of business located in this state and is employed by or associated with a federal covered adviser; and

(B) does any of the following:

(I) makes a recommendation or otherwise renders advice regarding securities;

(II) manages accounts or portfolios of clients;

(III) determines which recommendation or advice regarding securities should be given;

(IV) solicits, offers, or negotiates for the sale of or sells investment advisory services;

or

(V) supervises employees who perform any of the acts described in this Subsection

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(1)(r)(i)(B).

(ii) "Investment adviser representative" does not include a person described in Subsection (3).

(s) "Investment contract" includes:

(i) an investment in a common enterprise with the expectation of profit to be derived through the essential managerial efforts of someone other than the investor; or

(ii) an investment by which:

(A) an offeree furnishes initial value to an offerer;

(B) a portion of the initial value is subjected to the risks of the enterprise;

(C) the furnishing of the initial value is induced by the offerer's promises or representations that give rise to a reasonable understanding that a valuable benefit of some kind over and above the initial value will accrue to the offeree as a result of the operation of the enterprise; and

(D) the offeree does not receive the right to exercise practical and actual control over the managerial decisions of the enterprise.

(t) "Isolated transaction" means not more than a total of two transactions that occur anywhere during six consecutive months.

(u) (i) "Issuer" means a person who issues or proposes to issue a security or has outstanding a security that it has issued.

(ii) With respect to a preorganization certificate or subscription, "issuer" means the one or more promoters of the person to be organized.

(iii) "Issuer" means the one or more persons performing the acts and assuming duties of a depositor or manager under the provisions of the trust or other agreement or instrument under which the security is issued with respect to:

(A) interests in trusts, including collateral trust certificates, voting trust certificates, and certificates of deposit for securities; or

(B) shares in an investment company without a board of directors.

(iv) With respect to an equipment trust certificate, a conditional sales contract, or similar securities serving the same purpose, "issuer" means the person by whom the equipment or property is to be used.

(v) With respect to interests in partnerships, general or limited, "issuer" means the

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partnership itself and not the general partner or partners.

(vi) With respect to certificates of interest or participation in oil, gas, or mining titles or leases or in payment out of production under the titles or leases, "issuer" means the owner of the title or lease or right of production, whether whole or fractional, who creates fractional interests therein for the purpose of sale.

(v) (i) "Life settlement interest" means the entire interest or a fractional interest in any of the following that is the subject of a life settlement:

(A) a policy; or

(B) the death benefit under a policy.

(ii) "Life settlement interest" does not include the initial purchase from the owner by a life settlement provider.

(w) "Nonissuer" means not directly or indirectly for the benefit of the issuer.

(x) "Person" means:

(i) an individual;

(ii) a corporation;

(iii) a partnership;

(iv) a limited liability company;

(v) an association;

(vi) a joint-stock company;

(vii) a joint venture;

(viii) a trust where the interests of the beneficiaries are evidenced by a security;

(ix) an unincorporated organization;

(x) a government; or

(xi) a political subdivision of a government.

(y) "Precious metal" means the following, whether in coin, bullion, or other form:

(i) silver;

(ii) gold;

(iii) platinum;

(iv) palladium;

(v) copper; and

(vi) such other substances as the division may specify by rule.

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(z) "Promoter" means a person who, acting alone or in concert with one or more persons, takes initiative in founding or organizing the business or enterprise of a person.

(aa) (i) Except as provided in Subsection (1)(aa)(ii), "record" means information that is:

- (A) inscribed in a tangible medium; or
- (B) (I) stored in an electronic or other medium; and
- (II) retrievable in perceivable form.

(ii) This Subsection (1)(aa) does not apply when the context requires otherwise, including when "record" is used in the following phrases:

- (A) "of record";
- (B) "official record"; or
- (C) "public record."

(bb) (i) "Sale" or "sell" includes a contract for sale of, contract to sell, or disposition of, a security or interest in a security for value.

(ii) "Offer" or "offer to sell" includes an attempt or offer to dispose of, or solicitation of an offer to buy, a security or interest in a security for value.

(iii) The following are examples of the definitions in Subsection (1)(bb)(i) or (ii):

(A) a security given or delivered with or as a bonus on account of a purchase of a security or any other thing, is part of the subject of the purchase, and is offered and sold for value;

(B) a purported gift of assessable stock is an offer or sale as is each assessment levied on the stock;

(C) an offer or sale of a security that is convertible into, or entitles its holder to acquire or subscribe to another security of the same or another issuer is an offer or sale of that security, and also an offer of the other security, whether the right to convert or acquire is exercisable immediately or in the future;

(D) a conversion or exchange of one security for another constitutes an offer or sale of the security received in a conversion or exchange, and the offer to buy or the purchase of the security converted or exchanged;

(E) securities distributed as a dividend wherein the person receiving the dividend surrenders the right, or the alternative right, to receive a cash or property dividend is an offer or

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sale;

(F) a dividend of a security of another issuer is an offer or sale; or

(G) the issuance of a security under a merger, consolidation, reorganization, recapitalization, reclassification, or acquisition of assets constitutes the offer or sale of the security issued as well as the offer to buy or the purchase of a security surrendered in connection therewith, unless the sole purpose of the transaction is to change the issuer's domicile.

(iv) The terms defined in Subsections (1)(bb)(i) and (ii) do not include:

(A) a good faith gift;

(B) a transfer by death;

(C) a transfer by termination of a trust or of a beneficial interest in a trust;

(D) a security dividend not within Subsection (1)(bb)(iii)(E) or (F); or

(E) a securities split or reverse split.

(cc) "Securities Act of 1933," "Securities Exchange Act of 1934," and "Investment Company Act of 1940" mean the federal statutes of those names as amended before or after the effective date of this chapter.

(dd) "Securities Exchange Commission" means the United States Securities Exchange Commission created by the Securities Exchange Act of 1934.

(ee) (i) "Security" means a:

(A) note;

(B) stock;

(C) treasury stock;

(D) bond;

(E) debenture;

(F) evidence of indebtedness;

(G) certificate of interest or participation in a profit-sharing agreement;

(H) collateral-trust certificate;

(I) preorganization certificate or subscription;

(J) transferable share;

(K) investment contract;

(L) burial certificate or burial contract;

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(M) voting-trust certificate;

(N) certificate of deposit for a security;

(O) certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production under such a title or lease;

(P) commodity contract or commodity option;

(Q) interest in a limited liability company;

(R) life settlement interest; or

(S) in general, an interest or instrument commonly known as a "security," or a certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase an item listed in Subsections (1)(ee)(i)(A) through (R).

(ii) "Security" does not include:

(A) an insurance or endowment policy or annuity contract under which an insurance company promises to pay money in a lump sum or periodically for life or some other specified period;

(B) an interest in a limited liability company in which the limited liability company is formed as part of an estate plan where all of the members are related by blood or marriage, or the person claiming this exception can prove that all of the members are actively engaged in the management of the limited liability company; or

(C) (I) a whole long-term estate in real property;

(II) an undivided fractionalized long-term estate in real property that consists of 10 or fewer owners; or

(III) an undivided fractionalized long-term estate in real property that consists of more than 10 owners if, when the real property estate is subject to a management agreement:

(Aa) the management agreement permits a simple majority of owners of the real property estate to not renew or to terminate the management agreement at the earlier of the end of the management agreement's current term, or 180 days after the day on which the owners give notice of termination to the manager; and

(Bb) the management agreement prohibits, directly or indirectly, the lending of the proceeds earned from the real property estate or the use or pledge of its assets to a person or entity affiliated with or under common control of the manager.

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(iii) For purposes of Subsection (1)(ee)(ii)(B), evidence that members vote or have the right to vote, or the right to information concerning the business and affairs of the limited liability company, or the right to participate in management, may not establish, without more, that all members are actively engaged in the management of the limited liability company.

(ff) "State" means a state, territory, or possession of the United States, the District of Columbia, and Puerto Rico.

(gg) (i) "Undivided fractionalized long-term estate" means the same as that term is defined in Section 57-29-102.

(ii) "Undivided fractionalized long-term estate" does not include a joint tenancy.

(hh) "Undue influence" means that a person uses a relationship or position of authority, trust, or confidence:

(i) that is unrelated to a relationship created:

(A) in the ordinary course of making investments regulated under this chapter; or

(B) by a licensee providing services under this chapter;

(ii) that results in:

(A) an investor perceiving the person as having heightened credibility, personal trustworthiness, or dependability; or

(B) the person having special access to or control of an investor's financial resources, information, or circumstances; and

(iii) to:

(A) exploit the trust, dependence, or fear of the investor;

(B) knowingly assist or cause another to exploit the trust, dependence, or fear of the investor; or

(C) gain control deceptively over the decision making of the investor.

(ii) "Vulnerable adult" means the same as that term is defined in Section ~~[62A-3-301]~~ 26B-6-201.

(jj) "Whole long-term estate" means a person owns or persons through joint tenancy own real property through a fee estate.

(kk) "Working days" means 8 a.m. to 5 p.m., Monday through Friday, exclusive of legal holidays listed in Section 63G-1-301.

(2) A term not defined in this section shall have the meaning as established by division

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rule. The meaning of a term neither defined in this section nor by rule of the division shall be the meaning commonly accepted in the business community.

(3) (a) This Subsection (3) applies to the offer or sale of a real property estate exempted from the definition of security under Subsection (1)(ee)(ii)(C).

(b) A person who, directly or indirectly receives compensation in connection with the offer or sale as provided in this Subsection (3) of a real property estate is not an agent, broker-dealer, investment adviser, or investment adviser representative under this chapter if that person is licensed under Chapter 2f, Real Estate Licensing and Practices Act, as:

- (i) a principal broker;
- (ii) an associate broker; or
- (iii) a sales agent.

Section 65. Section **61-1-201** is amended to read:

61-1-201. Definitions.

As used in this part:

(1) "Adult Protective Services" means the same as that term is defined in Section ~~[62A-3-301]~~ 26B-6-201.

(2) "Eligible adult" means:

- (a) an individual who is 65 years ~~[of age]~~ old or older; or
- (b) a vulnerable adult as defined in Section ~~[62A-3-301]~~ 26B-6-201.

(3) "Financial exploitation of an eligible adult" means:

(a) the wrongful or unauthorized taking, withholding, appropriation, or use of money, assets, or other property of an eligible adult; or

(b) an act or omission, including through a power of attorney, guardianship, or conservatorship of an eligible adult, to:

(i) obtain control, through deception, intimidation, or undue influence, over an eligible adult's money, assets, or other property to deprive the eligible adult of the ownership, use, benefit, or possession of the eligible adult's money, assets, or other property; or

(ii) convert an eligible adult's money, assets, or other property to deprive the eligible adult of the ownership, use, benefit, or possession of the eligible adult's money, assets, or other property.

(4) "Law enforcement agency" means the same as that term is defined in Section

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53-1-102.

(5) "Qualified individual" means:

- (a) an agent;
- (b) an investment adviser representative; or
- (c) an individual who serves in a supervisory, compliance, or legal capacity for a broker-dealer or an investment adviser.

Section 66. Section ~~{62A-2-101}~~ 63A-5b-303 is amended to read:

~~{~~ ~~**62A-2-101. Definitions.**~~

~~As used in this chapter:~~

~~(1) "Adoption services" means the same as that term is defined in Section 80-2-801.~~

~~(2) "Adult day care" means nonresidential care and supervision:~~

~~(a) for three or more adults for at least four but less than 24 hours a day; and~~

~~(b) that meets the needs of functionally impaired adults through a comprehensive program that provides a variety of health, social, recreational, and related support services in a protective setting.~~

~~(3) "Applicant" means a person that applies for an initial license or a license renewal under this chapter.~~

~~(4) (a) "Associated with the licensee" means that an individual is:~~

~~(i) affiliated with a licensee as an owner, director, member of the governing body, employee, agent, provider of care, department contractor, or volunteer; or~~

~~(ii) applying to become affiliated with a licensee in a capacity described in Subsection (4)(a)(i).~~

~~(b) "Associated with the licensee" does not include:~~

~~(i) service on the following bodies, unless that service includes direct access to a child or a vulnerable adult:~~

~~(A) a local mental health authority described in Section 17-43-301;~~

~~(B) a local substance abuse authority described in Section 17-43-201; or~~

~~(C) a board of an organization operating under a contract to provide mental health or substance abuse programs, or services for the local mental health authority or substance abuse authority; or~~

~~(ii) a guest or visitor whose access to a child or a vulnerable adult is directly supervised~~

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at all times:

- ~~—— (5) (a) "Boarding school" means a private school that:~~
- ~~—— (i) uses a regionally accredited education program;~~
- ~~—— (ii) provides a residence to the school's students:~~
- ~~—— (A) for the purpose of enabling the school's students to attend classes at the school; and~~
- ~~—— (B) as an ancillary service to educating the students at the school;~~
- ~~—— (iii) has the primary purpose of providing the school's students with an education, as defined in Subsection (5)(b)(i); and~~
- ~~—— (iv) (A) does not provide the treatment or services described in Subsection (38)(a); or~~
- ~~—— (B) provides the treatment or services described in Subsection (38)(a) on a limited basis, as described in Subsection (5)(b)(ii):~~
- ~~—— (b) (i) For purposes of Subsection (5)(a)(iii), "education" means a course of study for one or more of grades kindergarten through 12th grade.~~
- ~~—— (ii) For purposes of Subsection (5)(a)(iv)(B), a private school provides the treatment or services described in Subsection (38)(a) on a limited basis if:~~
- ~~—— (A) the treatment or services described in Subsection (38)(a) are provided only as an incidental service to a student; and~~
- ~~—— (B) the school does not:~~
- ~~—— (I) specifically solicit a student for the purpose of providing the treatment or services described in Subsection (38)(a); or~~
- ~~—— (H) have a primary purpose of providing the treatment or services described in Subsection (38)(a):~~
- ~~—— (c) "Boarding school" does not include a therapeutic school.~~
- ~~—— (6) "Child" means an individual under 18 years old.~~
- ~~—— (7) "Child placing" means receiving, accepting, or providing custody or care for any child, temporarily or permanently, for the purpose of:~~
- ~~—— (a) finding a person to adopt the child;~~
- ~~—— (b) placing the child in a home for adoption; or~~
- ~~—— (c) foster home placement.~~
- ~~—— (8) "Child-placing agency" means a person that engages in child placing.~~
- ~~—— (9) "Client" means an individual who receives or has received services from a licensee.~~

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~~———— (10) (a) "Congregate care program" means any of the following that provide services to a child:~~

~~———— (i) an outdoor youth program;~~

~~———— (ii) a residential support program;~~

~~———— (iii) a residential treatment program; or~~

~~———— (iv) a therapeutic school.~~

~~———— (b) "Congregate care program" does not include a human services program that:~~

~~———— (i) is licensed to serve adults; and~~

~~———— (ii) is approved by the office to service a child for a limited time.~~

~~———— (11) "Day treatment" means specialized treatment that is provided to:~~

~~———— (a) a client less than 24 hours a day; and~~

~~———— (b) four or more persons who:~~

~~———— (i) are unrelated to the owner or provider; and~~

~~———— (ii) have emotional, psychological, developmental, physical, or behavioral dysfunctions, impairments, or chemical dependencies.~~

~~———— (12) "Department" means the Department of [Human Services] Health and Human Services.~~

~~———— (13) "Department contractor" means an individual who:~~

~~———— (a) provides services under a contract with the department; and~~

~~———— (b) due to the contract with the department, has or will likely have direct access to a child or vulnerable adult.~~

~~———— (14) "Direct access" means that an individual has, or likely will have:~~

~~———— (a) contact with or access to a child or vulnerable adult that provides the individual with an opportunity for personal communication or touch; or~~

~~———— (b) an opportunity to view medical, financial, or other confidential personal identifying information of the child, the child's parents or legal guardians, or the vulnerable adult.~~

~~———— (15) "Directly supervised" means that an individual is being supervised under the uninterrupted visual and auditory surveillance of another individual who has a current background screening approval issued by the office.~~

~~———— (16) "Director" means the director of the office.~~

~~———— (17) "Domestic violence" means the same as that term is defined in Section 77-36-1.~~

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~~—— (18) "Domestic violence treatment program" means a nonresidential program designed to provide psychological treatment and educational services to perpetrators and victims of domestic violence.~~

~~—— (19) "Elder adult" means a person 65 years old or older.~~

~~—— (20) "Executive director" means the executive director of the department.~~

~~—— (21) "Foster home" means a residence that is licensed or certified by the office for the full-time substitute care of a child.~~

~~—— (22) "Health benefit plan" means the same as that term is defined in Section 31A-1-301.~~

~~—— (23) "Health care provider" means the same as that term is defined in Section 78B-3-403.~~

~~—— (24) "Health insurer" means the same as that term is defined in Section 31A-22-615.5.~~

~~—— (25) (a) "Human services program" means:~~

~~—— (i) a foster home;~~

~~—— (ii) a therapeutic school;~~

~~—— (iii) a youth program;~~

~~—— (iv) an outdoor youth program;~~

~~—— (v) a residential treatment program;~~

~~—— (vi) a residential support program;~~

~~—— (vii) a resource family home;~~

~~—— (viii) a recovery residence; or~~

~~—— (ix) a facility or program that provides:~~

~~—— (A) adult day care;~~

~~—— (B) day treatment;~~

~~—— (C) outpatient treatment;~~

~~—— (D) domestic violence treatment;~~

~~—— (E) child-placing services;~~

~~—— (F) social detoxification; or~~

~~—— (G) any other human services that are required by contract with the department to be licensed with the department.~~

~~—— (b) "Human services program" does not include:~~

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- ~~—— (i) a boarding school; or~~
- ~~—— (ii) a residential, vocational and life skills program, as defined in Section 13-53-102.~~
- ~~—— (26) "Indian child" means the same as that term is defined in 25 U.S.C. Sec. 1903.~~
- ~~—— (27) "Indian country" means the same as that term is defined in 18 U.S.C. Sec. 1151.~~
- ~~—— (28) "Indian tribe" means the same as that term is defined in 25 U.S.C. Sec. 1903.~~
- ~~—— (29) "Intermediate secure treatment" means 24-hour specialized residential treatment or care for an individual who:~~
 - ~~—— (a) cannot live independently or in a less restrictive environment; and~~
 - ~~—— (b) requires, without the individual's consent or control, the use of locked doors to care for the individual.~~
- ~~—— (30) "Licensee" means an individual or a human services program licensed by the office.~~
- ~~—— (31) "Local government" means a city, town, metro township, or county.~~
- ~~—— (32) "Minor" means child.~~
- ~~—— (33) "Office" means the Office of Licensing within the Department of [Human Services] Health and Human Services.~~
- ~~—— (34) "Outdoor youth program" means a program that provides:~~
 - ~~—— (a) services to a child that has:~~
 - ~~—— (i) a chemical dependency; or~~
 - ~~—— (ii) a dysfunction or impairment that is emotional, psychological, developmental, physical, or behavioral;~~
 - ~~—— (b) a 24-hour outdoor group living environment; and~~
 - ~~—— (c) (i) regular therapy, including group, individual, or supportive family therapy; or~~
 - ~~—— (ii) informal therapy or similar services, including wilderness therapy, adventure therapy, or outdoor behavioral healthcare.~~
- ~~—— (35) "Outpatient treatment" means individual, family, or group therapy or counseling designed to improve and enhance social or psychological functioning for those whose physical and emotional status allows them to continue functioning in their usual living environment.~~
- ~~—— (36) "Practice group" or "group practice" means two or more health care providers legally organized as a partnership, professional corporation, or similar association, for which:~~
 - ~~—— (a) substantially all of the services of the health care providers who are members of the~~

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~~group are provided through the group and are billed in the name of the group and amounts received are treated as receipts of the group; and~~

~~—— (b) the overhead expenses of and the income from the practice are distributed in accordance with methods previously determined by members of the group.~~

~~—— (37) "Private-placement child" means a child whose parent or guardian enters into a contract with a congregate care program for the child to receive services.~~

~~—— (38) (a) "Recovery residence" means a home, residence, or facility that meets at least two of the following requirements:~~

~~—— (i) provides a supervised living environment for individuals recovering from a substance use disorder;~~

~~—— (ii) provides a living environment in which more than half of the individuals in the residence are recovering from a substance use disorder;~~

~~—— (iii) provides or arranges for residents to receive services related to their recovery from a substance use disorder, either on or off site;~~

~~—— (iv) is held out as a living environment in which individuals recovering from substance abuse disorders live together to encourage continued sobriety; or~~

~~—— (v) (A) receives public funding; or~~

~~—— (B) is run as a business venture, either for-profit or not-for-profit.~~

~~—— (b) "Recovery residence" does not mean:~~

~~—— (i) a residential treatment program;~~

~~—— (ii) residential support program; or~~

~~—— (iii) a home, residence, or facility, in which:~~

~~—— (A) residents, by their majority vote, establish, implement, and enforce policies governing the living environment, including the manner in which applications for residence are approved and the manner in which residents are expelled;~~

~~—— (B) residents equitably share rent and housing-related expenses; and~~

~~—— (C) a landlord, owner, or operator does not receive compensation, other than fair market rental income, for establishing, implementing, or enforcing policies governing the living environment.~~

~~—— (39) "Regular business hours" means:~~

~~—— (a) the hours during which services of any kind are provided to a client; or~~

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- ~~—— (b) the hours during which a client is present at the facility of a licensee.~~
- ~~—— (40) (a) "Residential support program" means a program that arranges for or provides the necessities of life as a protective service to individuals or families who have a disability or who are experiencing a dislocation or emergency that prevents them from providing these services for themselves or their families.~~
- ~~—— (b) "Residential support program" includes a program that provides a supervised living environment for individuals with dysfunctions or impairments that are:~~
 - ~~—— (i) emotional;~~
 - ~~—— (ii) psychological;~~
 - ~~—— (iii) developmental; or~~
 - ~~—— (iv) behavioral.~~
- ~~—— (c) Treatment is not a necessary component of a residential support program.~~
- ~~—— (d) "Residential support program" does not include:~~
 - ~~—— (i) a recovery residence; or~~
 - ~~—— (ii) a program that provides residential services that are performed:~~
 - ~~—— (A) exclusively under contract with the department and provided to individuals through the Division of Services for People with Disabilities; or~~
 - ~~—— (B) in a facility that serves fewer than four individuals.~~
- ~~—— (41) (a) "Residential treatment" means a 24-hour group living environment for four or more individuals unrelated to the owner or provider that offers room or board and specialized treatment, behavior modification, rehabilitation, discipline, emotional growth, or habilitation services for persons with emotional, psychological, developmental, or behavioral dysfunctions, impairments, or chemical dependencies.~~
- ~~—— (b) "Residential treatment" does not include a:~~
 - ~~—— (i) boarding school;~~
 - ~~—— (ii) foster home; or~~
 - ~~—— (iii) recovery residence.~~
- ~~—— (42) "Residential treatment program" means a program or facility that provides:~~
 - ~~—— (a) residential treatment; or~~
 - ~~—— (b) intermediate secure treatment.~~
- ~~—— (43) "Seclusion" means the involuntary confinement of an individual in a room or an~~

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area:

- ~~—— (a) away from the individual's peers; and~~
- ~~—— (b) in a manner that physically prevents the individual from leaving the room or area.~~
- ~~—— (44) "Social detoxification" means short-term residential services for persons who are experiencing or have recently experienced drug or alcohol intoxication, that are provided outside of a health care facility licensed under [Title 26, Chapter 21, Health Care Facility Licensing and Inspection Act] Title 26B, Chapter 2, Part 2, Health Care Facility Licensing and Inspection, and that include:~~
 - ~~—— (a) room and board for persons who are unrelated to the owner or manager of the facility;~~
 - ~~—— (b) specialized rehabilitation to acquire sobriety; and~~
 - ~~—— (c) aftercare services.~~
- ~~—— (45) "Substance abuse disorder" or "substance use disorder" mean the same as "substance use disorder" is defined in Section [62A-15-1202] 26B-5-501.~~
- ~~—— (46) "Substance abuse treatment program" or "substance use disorder treatment program" means a program:~~
 - ~~—— (a) designed to provide:~~
 - ~~—— (i) specialized drug or alcohol treatment;~~
 - ~~—— (ii) rehabilitation; or~~
 - ~~—— (iii) habilitation services; and~~
 - ~~—— (b) that provides the treatment or services described in Subsection (46)(a) to persons with:~~
 - ~~—— (i) a diagnosed substance use disorder; or~~
 - ~~—— (ii) chemical dependency disorder.~~
- ~~—— (47) "Therapeutic school" means a residential group living facility:~~
 - ~~—— (a) for four or more individuals that are not related to:~~
 - ~~—— (i) the owner of the facility; or~~
 - ~~—— (ii) the primary service provider of the facility;~~
 - ~~—— (b) that serves students who have a history of failing to function:~~
 - ~~—— (i) at home;~~
 - ~~—— (ii) in a public school; or~~

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- ~~—— (iii) in a nonresidential private school; and~~
- ~~—— (c) that offers:~~
 - ~~—— (i) room and board; and~~
 - ~~—— (ii) an academic education integrated with:~~
 - ~~—— (A) specialized structure and supervision; or~~
 - ~~—— (B) services or treatment related to:~~
 - ~~—— (I) a disability;~~
 - ~~—— (II) emotional development;~~
 - ~~—— (III) behavioral development;~~
 - ~~—— (IV) familial development; or~~
 - ~~—— (V) social development.~~
- ~~—— (48) "Unrelated persons" means persons other than parents, legal guardians, grandparents, brothers, sisters, uncles, or aunts.~~
- ~~—— (49) "Vulnerable adult" means an elder adult or an adult who has a temporary or permanent mental or physical impairment that substantially affects the person's ability to:~~
 - ~~—— (a) provide personal protection;~~
 - ~~—— (b) provide necessities such as food, shelter, clothing, or mental or other health care;~~
 - ~~—— (c) obtain services necessary for health, safety, or welfare;~~
 - ~~—— (d) carry out the activities of daily living;~~
 - ~~—— (e) manage the adult's own resources; or~~
 - ~~—— (f) comprehend the nature and consequences of remaining in a situation of abuse, neglect, or exploitation.~~
- ~~—— (50) (a) "Youth program" means a program designed to provide behavioral, substance abuse, or mental health services to minors that:~~
 - ~~—— (i) serves adjudicated or nonadjudicated youth;~~
 - ~~—— (ii) charges a fee for its services;~~
 - ~~—— (iii) may provide host homes or other arrangements for overnight accommodation of the youth;~~
 - ~~—— (iv) may provide all or part of its services in the outdoors;~~
 - ~~—— (v) may limit or censor access to parents or guardians; and~~
 - ~~—— (vi) prohibits or restricts a minor's ability to leave the program at any time of the~~

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~~minor's own free will.~~

~~—— (b) "Youth program" does not include recreational programs such as Boy Scouts, Girl Scouts, 4-H, and other such organizations.~~

~~—— (51) (a) "Youth transportation company" means any person that transports a child for payment to or from a congregate care program in Utah.~~

~~—— (b) "Youth transportation company" does not include:~~

~~—— (i) a relative of the child;~~

~~—— (ii) a state agency; or~~

~~—— (iii) a congregate care program's employee who transports the child from the congregate care program that employs the employee and returns the child to the same congregate care program.~~

~~—— Section 67. Section **62A-2-106** is amended to read:~~

~~—— **62A-2-106. Office responsibilities.**~~

~~—— (1) Subject to the requirements of federal and state law, the office shall:~~

~~—— (a) make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to establish:~~

~~—— (i) except as provided in Subsection (1)(a)(ii), basic health and safety standards for licensees, that shall be limited to:~~

~~—— (A) fire safety;~~

~~—— (B) food safety;~~

~~—— (C) sanitation;~~

~~—— (D) infectious disease control;~~

~~—— (E) safety of the:~~

~~—— (F) physical facility and grounds; and~~

~~—— (H) area and community surrounding the physical facility;~~

~~—— (F) transportation safety;~~

~~—— (G) emergency preparedness and response;~~

~~—— (H) the administration of medical standards and procedures, consistent with the related provisions of this title;~~

~~—— (I) staff and client safety and protection;~~

~~—— (J) the administration and maintenance of client and service records;~~

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- ~~—— (K) staff qualifications and training, including standards for permitting experience to be substituted for education, unless prohibited by law;~~
- ~~—— (L) staff to client ratios;~~
- ~~—— (M) access to firearms; and~~
- ~~—— (N) the prevention of abuse, neglect, exploitation, harm, mistreatment, or fraud;~~
- ~~—— (ii) basic health and safety standards for therapeutic schools, that shall be limited to:~~
- ~~—— (A) fire safety, except that the standards are limited to those required by law or rule under Title 53, Chapter 7, Part 2, Fire Prevention and Fireworks Act;~~
- ~~—— (B) food safety;~~
- ~~—— (C) sanitation;~~
- ~~—— (D) infectious disease control, except that the standards are limited to:~~
- ~~—— (I) those required by law or rule under [Title 26, Utah Health Code, or] Title 26A, Local Health Authorities, or Title 26B, Utah Health and Human Services Code; and~~
- ~~—— (H) requiring a separate room for clients who are sick;~~
- ~~—— (E) safety of the physical facility and grounds, except that the standards are limited to those required by law or rule under Title 53, Chapter 7, Part 2, Fire Prevention and Fireworks Act;~~
- ~~—— (F) transportation safety;~~
- ~~—— (G) emergency preparedness and response;~~
- ~~—— (H) access to appropriate medical care, including:~~
- ~~—— (I) subject to the requirements of law, designation of a person who is authorized to dispense medication; and~~
- ~~—— (H) storing, tracking, and securing medication;~~
- ~~—— (I) staff and client safety and protection that permits the school to provide for the direct supervision of clients at all times;~~
- ~~—— (J) the administration and maintenance of client and service records;~~
- ~~—— (K) staff qualifications and training, including standards for permitting experience to be substituted for education, unless prohibited by law;~~
- ~~—— (L) staff to client ratios;~~
- ~~—— (M) access to firearms; and~~
- ~~—— (N) the prevention of abuse, neglect, exploitation, harm, mistreatment, or fraud;~~

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- ~~—— (iii) procedures and standards for permitting a licensee to:~~
- ~~—— (A) provide in the same facility and under the same conditions as children, residential treatment services to a person 18 years old or older who:~~
- ~~—— (I) begins to reside at the licensee's residential treatment facility before the person's 18th birthday;~~
- ~~—— (II) has resided at the licensee's residential treatment facility continuously since the time described in Subsection (1)(a)(iii)(A)(I);~~
- ~~—— (III) has not completed the course of treatment for which the person began residing at the licensee's residential treatment facility; and~~
- ~~—— (IV) voluntarily consents to complete the course of treatment described in Subsection (1)(a)(iii)(A)(III); or~~
- ~~—— (B) (I) provide residential treatment services to a child who is:~~
- ~~—— (Aa) at least 12 years old or, as approved by the office, younger than 12 years old; and~~
- ~~—— (Bb) under the custody of the Department of [Human Services] Health and Human Services, or one of its divisions; and~~
- ~~—— (II) provide, in the same facility as a child described in Subsection (1)(a)(iii)(B)(I), residential treatment services to a person who is:~~
- ~~—— (Aa) at least 18 years old, but younger than 21 years old; and~~
- ~~—— (Bb) under the custody of the Department of [Human Services] Health and Human Services, or one of its divisions;~~
- ~~—— (iv) minimum administration and financial requirements for licensees;~~
- ~~—— (v) guidelines for variances from rules established under this Subsection (1);~~
- ~~—— (vi) ethical standards, as described in Subsection 78B-6-106(3), and minimum responsibilities of a child-placing agency that provides adoption services and that is licensed under this chapter;~~
- ~~—— (vii) what constitutes an "outpatient treatment program" for purposes of this chapter;~~
- ~~—— (viii) a procedure requiring a licensee to provide an insurer the licensee's records related to any services or supplies billed to the insurer, and a procedure allowing the licensee and the insurer to contact the Insurance Department to resolve any disputes;~~
- ~~—— (ix) a protocol for the office to investigate and process complaints about licensees;~~
- ~~—— (x) a procedure for a licensee to:~~

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- ~~—— (A) report the use of a restraint or seclusion within one business day after the day on which the use of the restraint or seclusion occurs; and~~
- ~~—— (B) report a critical incident within one business day after the day on which the incident occurs;~~
- ~~—— (xi) guidelines for the policies and procedures described in Sections [62A-2-123 and 62A-2-124] 26B-2-123 and 26B-2-109;~~
- ~~—— (xii) a procedure for the office to review and approve the policies and procedures described in Sections [62A-2-123 and 62A-2-124] 26B-2-123 and 26B-2-109; and~~
- ~~—— (xiii) a requirement that each human services program publicly post information that informs an individual how to submit a complaint about a human services program to the office;~~
- ~~—— (b) enforce rules relating to the office;~~
- ~~—— (c) issue licenses in accordance with this chapter;~~
- ~~—— (d) if the United States Department of State executes an agreement with the office that designates the office to act as an accrediting entity in accordance with the Intercountry Adoption Act of 2000, Pub. L. No. 106-279, accredit one or more agencies and persons to provide intercountry adoption services pursuant to:~~
 - ~~—— (i) the Intercountry Adoption Act of 2000, Pub. L. No. 106-279; and~~
 - ~~—— (ii) the implementing regulations for the Intercountry Adoption Act of 2000, Pub. L. No. 106-279;~~
- ~~—— (e) make rules to implement the provisions of Subsection (1)(d);~~
- ~~—— (f) conduct surveys and inspections of licensees and facilities in accordance with Section [62A-2-118] 26B-2-107;~~
- ~~—— (g) collect licensure fees;~~
- ~~—— (h) notify licensees of the name of a person within the department to contact when filing a complaint;~~
- ~~—— (i) investigate complaints regarding any licensee or human services program;~~
- ~~—— (j) have access to all records, correspondence, and financial data required to be maintained by a licensee;~~
- ~~—— (k) have authority to interview any client, family member of a client, employee, or officer of a licensee;~~
- ~~—— (l) have authority to deny, condition, revoke, suspend, or extend any license issued by~~

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~~the department under this chapter by following the procedures and requirements of Title 63G, Chapter 4, Administrative Procedures Act;~~

~~—— (m) electronically post notices of agency action issued to a human services program, with the exception of a foster home, on the office's website, in accordance with Title 63G, Chapter 2, Government Records Access and Management Act; and~~

~~—— (n) upon receiving a local government's request under Section [62A-2-108.4] 26B-2-118, notify the local government of new human services program license applications, except for foster homes, for human services programs located within the local government's jurisdiction;~~

~~—— (2) In establishing rules under Subsection (1)(a)(ii)(G), the office shall require a licensee to establish and comply with an emergency response plan that requires clients and staff to:~~

~~—— (a) immediately report to law enforcement any significant criminal activity, as defined by rule, committed:~~

~~—— (i) on the premises where the licensee operates its human services program;~~

~~—— (ii) by or against its clients; or~~

~~—— (iii) by or against a staff member while the staff member is on duty;~~

~~—— (b) immediately report to emergency medical services any medical emergency, as defined by rule:~~

~~—— (i) on the premises where the licensee operates its human services program;~~

~~—— (ii) involving its clients; or~~

~~—— (iii) involving a staff member while the staff member is on duty; and~~

~~—— (c) immediately report other emergencies that occur on the premises where the licensee operates its human services program to the appropriate emergency services agency;~~

~~—— Section 68. Section 62A-2-110 is amended to read:~~

~~—— **62A-2-110. Exclusions from chapter.**~~

~~—— The provisions of this chapter do not apply to:~~

~~—— (1) a facility or program owned or operated by an agency of the United States government;~~

~~—— (2) a facility or program operated by or under an exclusive contract with the Department of Corrections;~~

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~~—— (3) unless required otherwise by a contract with the department, individual or group counseling by a mental health professional licensed under Title 58, Chapter 60, Mental Health Professional Practice Act;~~

~~—— (4) a general acute hospital, small health care facility, specialty hospital, nursing care facility, or other health care facility licensed by the [Department of Health under Title 26, Chapter 21, Health Care Facility Licensing and Inspection Act] Department of Health and Human Services under Title 26B, Chapter 2, Part 2, Health Care Facility Licensing and Inspection; or~~

~~—— (5) a boarding school.~~

~~—— Section 69. Section **62A-3-322** is amended to read:~~

~~—— **62A-3-322. Medical cannabis use by a vulnerable adult or guardian.**~~

~~—— A peace officer or an employee or agent of the division may not solicit or provide, and a court may not order, emergency services for a vulnerable adult based solely on:~~

~~—— (1) the vulnerable adult's possession or use of cannabis in accordance with [Title 26, Chapter 61a, Utah Medical Cannabis Act] Title 26B, Chapter 4, Part 2, Cannabinoid Research and Medical Cannabis; or~~

~~—— (2) the guardian of the vulnerable adult assisting with the use of or possessing cannabis in accordance with [Title 26, Chapter 61a, Utah Medical Cannabis Act] Title 26B, Chapter 4, Part 2, Cannabinoid Research and Medical Cannabis.~~

~~—— Section 70. Section **62A-5a-102** is amended to read:~~

~~—— **62A-5a-102. Definitions.**~~

~~—— As used in this chapter:~~

~~—— (1) "Council" means the Coordinating Council for Persons with Disabilities.~~

~~—— (2) "State agencies" means:~~

~~—— (a) the Division of Services for People with Disabilities and the Division of Substance Abuse and Mental Health, within the Department of [Human Services] Health and Human Services;~~

~~—— (b) the Division of Health Care Financing within the Department of [Health] Health and Human Services;~~

~~—— (c) family health services programs established under Title 26, Chapter 10, Family Health Services, operated by the Department of [Health] Health and Human Services;~~

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~~—— (d) the Utah State Office of Rehabilitation created in Section 35A-1-202; and~~

~~—— (e) special education programs operated by the State Board of Education or an LEA under Title 53E, Chapter 7, Part 2, Special Education Program.~~

~~—— Section 71. Section 62A-11-103 is amended to read:~~

~~—— 62A-11-103. Definitions:~~

~~—— As used in this part:~~

~~—— (1) "Account" means a demand deposit account, checking or negotiable withdrawal order account, savings account, time deposit account, or money-market mutual fund account.~~

~~—— (2) "Cash medical support" means an obligation to equally share all reasonable and necessary medical and dental expenses of children.~~

~~—— (3) "Child support services" or "IV-D child support services" means services provided pursuant to Part D of Title IV of the Social Security Act, 42 U.S.C. Sec. 651, et seq.~~

~~—— (4) "Director" means the director of the Office of Recovery Services.~~

~~—— (5) "Disposable earnings" means that part of the earnings of an individual remaining after the deduction of all amounts required by law to be withheld.~~

~~—— (6) "Financial institution" means:~~

~~—— (a) a depository institution as defined in Section 7-1-103 or the Federal Deposit Insurance Act, 12 U.S.C. Sec. 1813(c);~~

~~—— (b) an institution-affiliated party as defined in the Federal Deposit Insurance Act, 12 U.S.C. Sec. 1813(u);~~

~~—— (c) any federal credit union or state credit union as defined in the Federal Credit Union Act, 12 U.S.C. Sec. 1752, including an institution-affiliated party of such a credit union as defined in 12 U.S.C. Sec. 1786(r);~~

~~—— (d) a broker-dealer as defined in Section 61-1-13; or~~

~~—— (e) any benefit association, insurance company, safe deposit company, money-market mutual fund, or similar entity authorized to do business in the state.~~

~~—— (7) "Financial record" is defined in the Right to Financial Privacy Act of 1978, 12 U.S.C. Sec. 3401.~~

~~—— (8) "Income" means earnings, compensation, or other payment due to an individual, regardless of source, whether denominated as wages, salary, commission, bonus, pay, or contract payment, or denominated as advances on future wages, salary, commission, bonus,~~

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~~pay, allowances, contract payment, or otherwise, including severance pay, sick pay, and incentive pay. "Income" includes:~~

~~—— (a) all gain derived from capital assets, labor, or both, including profit gained through sale or conversion of capital assets;~~

~~—— (b) interest and dividends;~~

~~—— (c) periodic payments made under pension or retirement programs or insurance policies of any type;~~

~~—— (d) unemployment compensation benefits;~~

~~—— (e) workers' compensation benefits; and~~

~~—— (f) disability benefits.~~

~~—— (9) "IV-D" means Part D of Title IV of the Social Security Act, 42 U.S.C. Sec. 651 et seq.~~

~~—— (10) "New hire registry" means the centralized new hire registry created in Section 35A-7-103.~~

~~—— (11) "Obligee" means an individual, this state, another state, or other comparable jurisdiction to whom a debt is owed or who is entitled to reimbursement of child support or public assistance.~~

~~—— (12) "Obligor" means a person, firm, corporation, or the estate of a decedent owing money to this state, to an individual, to another state, or other comparable jurisdiction in whose behalf this state is acting.~~

~~—— (13) "Office" means the Office of Recovery Services.~~

~~—— (14) "Provider" means a person or entity that receives compensation from any public assistance program for goods or services provided to a public assistance recipient.~~

~~—— (15) "Public assistance" or "assistance" means:~~

~~—— (a) services or benefits provided under Title 35A, Chapter 3, Employment Support Act;~~

~~—— (b) medical assistance provided under [Title 26, Chapter 18, Medical Assistance Act] Title 26B, Chapter 3, Health Care - Delivery and Assistance;~~

~~—— (c) foster care maintenance payments under Part E of Title IV of the Social Security Act, 42 U.S.C. Sec. 670, et seq.;~~

~~—— (d) SNAP benefits as defined in Section 35A-1-102; or~~

~~—— (e) any other public funds expended for the benefit of a person in need of financial;~~

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~~medical, food, housing, or related assistance.~~

~~—— (16) "State case registry" means the central, automated record system maintained by the office and the central, automated district court record system maintained by the Administrative Office of the Courts, that contains records which use standardized data elements, such as names, Social Security numbers and other uniform identification numbers, dates of birth, and case identification numbers, with respect to:~~

~~—— (a) each case in which services are being provided by the office under the state IV-D child support services plan; and~~

~~—— (b) each support order established or modified in the state on or after October 1, 1998.~~

~~—— Section 72. Section **63A-5b-303** is amended to read:~~

~~‡~~ **63A-5b-303. Duties and authority of division.**

(1) (a) The division shall:

(i) subject to Subsection (1)(b), supervise and control the allocation of space, in accordance with legislative directive through annual appropriations acts, other legislation, or statute, to agencies in all buildings or space owned, leased, or rented by or to the state, except as provided in Subsection (3) or as otherwise provided by statute;

(ii) assure the efficient use of all building space under the division's supervision and control;

(iii) acquire title to all real property, buildings, fixtures, and appurtenances for use by the state or an agency, as authorized by the Legislature through an appropriation act, other legislation, or statute, subject to Subsection (1)(c);

(iv) except as otherwise provided by statute, hold title to all real property, buildings, fixtures, and appurtenances owned by the state or an agency;

(v) collect and maintain all deeds, abstracts of title, and all other documents evidencing title to or an interest in property belonging to the state or to the state's departments, except institutions of higher education and the trust lands administration;

(vi) (A) periodically conduct a market analysis of proposed rates and fees; and

(B) include in a market analysis a comparison of the division's rates and fees with the rates and fees of other public or private sector providers of comparable services, if rates and fees for comparable services are reasonably available;

(vii) fulfill the division's responsibilities under Part 10, Energy Conservation and

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Efficiency, including responsibilities:

(A) to implement the state building energy efficiency program under Section 63A-5b-1002; and

(B) related to the approval of loans from the State Facility Energy Efficiency Fund under Section 63A-5b-1003;

(viii) convey, lease, or dispose of the real property, water rights, or water shares associated with the Utah State Developmental Center if directed to do so by the Utah State Developmental Center board, as provided in Subsection [~~62A-5-206.6(2)~~] 26B-6-507(2); and

(ix) take all other action that the division is required to do under this chapter or other applicable statute.

(b) In making an allocation of space under Subsection (1)(a)(i), the division shall conduct one or more studies to determine the actual needs of each agency.

(c) The division may, without legislative approval, acquire title to real property for use by the state or an agency if the acquisition cost does not exceed \$500,000.

(2) The division may:

(a) sue and be sued;

(b) as authorized by the Legislature, buy, lease, or otherwise acquire, by exchange or otherwise, and hold real or personal property necessary for the discharge of the division's duties; and

(c) take all other action necessary for carrying out the purposes of this chapter.

(3) (a) The division may not supervise or control the allocation of space for an entity in the public education system.

(b) The supervision and control of the legislative area is reserved to the Legislature.

(c) The supervision and control of capitol hill facilities and capitol hill grounds is reserved to the State Capitol Preservation Board.

(d) (i) Subject to Subsection (3)(d)(ii), the supervision and control of the allocation of space for an institution of higher education is reserved to the Utah Board of Higher Education.

(ii) The Utah Board of Higher Education shall consult and cooperate with the division in the establishment and enforcement of standards for the supervision and control of the allocation of space for an institution of higher education.

(e) (i) Subject to Subsection (3)(e)(ii), the supervision and control of the allocation of

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space for the courts of record listed in Subsection 78A-1-101(1) is reserved to the Administrative Office of the Courts referred to in Subsection 78A-2-108(3).

(ii) The Administrative Office of the Courts shall consult and cooperate with the division in the establishment and enforcement of standards for the supervision and control of the allocation of space for the courts of record listed in Subsection 78A-1-101(1).

(4) Before the division charges a rate, fee, or other amount for a service provided by the division's internal service fund to an executive branch agency, or to a service subscriber other than an executive branch agency, the division shall:

(a) submit an analysis of the proposed rate, fee, or other amount to the rate committee created in Section 63A-1-114; and

(b) obtain the approval of the Legislature as required by Section 63J-1-410 or 63J-1-504.

Section ~~73~~67. Section **63A-5b-607** is amended to read:

63A-5b-607. Health insurance requirements -- Penalties.

(1) As used in this section:

(a) "Aggregate amount" means the dollar sum of all contracts, change orders, and modifications for a single project.

(b) "Change order" means the same as that term is defined in Section 63G-6a-103.

(c) "Eligible employee" means an employee, as defined in Section 34A-2-104, who:

(i) works at least 30 hours per calendar week; and

(ii) meets the employer eligibility waiting period for qualified health insurance coverage provided by the employer.

(d) "Health benefit plan" means:

(i) the same as that term is defined in Section 31A-1-301; or

(ii) an employee welfare benefit plan:

(A) established under the Employee Retirement Income Security Act of 1974, 29 U.S.C. Sec. 1001 et seq.;

(B) for an employer with 100 or more employees; and

(C) in which the employer establishes a self-funded or partially self-funded group health plan to provide medical care for the employer's employees and dependents of the employees.

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(e) "Qualified health insurance coverage" means the same as that term is defined in Section ~~[26-40-115]~~ 26B-3-909.

(f) "Subcontractor" means the same as that term is defined in Section 63A-5b-605.

(g) "Third party administrator" or "administrator" means the same as that term is defined in Section 31A-1-301.

(2) Except as provided in Subsection (3), the requirements of this section apply to:

(a) a contractor of a design or construction contract with the division if the prime contract is in an aggregate amount of \$2,000,000 or more; and

(b) a subcontractor of a contractor of a design or construction contract with the division if the subcontract is in an aggregate amount of \$1,000,000 or more.

(3) The requirements of this section do not apply to a contractor or subcontractor if:

(a) the application of this section jeopardizes the division's receipt of federal funds;

(b) the contract is a sole source contract, as defined in Section 63G-6a-103; or

(c) the contract is the result of an emergency procurement.

(4) A person who intentionally uses a change order, contract modification, or multiple contracts to circumvent the requirements of this section is guilty of an infraction.

(5) (a) A contractor that is subject to the requirements of this section shall:

(i) make and maintain an offer of qualified health coverage for the contractor's eligible employees and the eligible employees' dependents; and

(ii) submit to the director a written statement demonstrating that the contractor is in compliance with Subsection (5)(a)(i).

(b) A statement under Subsection (5)(a)(ii):

(i) shall be from:

(A) an actuary selected by the contractor or the contractor's insurer;

(B) an underwriter who is responsible for developing the employer group's premium rates; or

(C) if the contractor provides a health benefit plan described in Subsection (1)(d)(ii), an actuary or underwriter selected by a third party administrator; and

(ii) may not be created more than one year before the day on which the contractor submits the statement to the director.

(c) (i) A contractor that provides a health benefit plan described in Subsection (1)(d)(ii)

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shall provide the actuary or underwriter selected by an administrator, as described in Subsection (5)(b)(i)(C), sufficient information to determine whether the contractor's contribution to the health benefit plan and the actuarial value of the health benefit plan meet the requirements of qualified health coverage.

(ii) A contractor may not make a change to the contractor's contribution to the health benefit plan, unless the contractor provides notice to:

(A) the actuary or underwriter selected by an administrator, as described in Subsection (5)(b)(i)(C), for the actuary or underwriter to update the written statement described in Subsection (5)(a) in compliance with this section; and

(B) the division.

(6) (a) A contractor that is subject to the requirements of this section shall:

(i) ensure that each contract the contractor enters with a subcontractor that is subject to the requirements of this section requires the subcontractor to obtain and maintain an offer of qualified health coverage for the subcontractor's eligible employees and the eligible employees' dependents during the duration of the subcontract; and

(ii) obtain from a subcontractor referred to in Subsection (6)(a)(i) a written statement demonstrating that the subcontractor offers qualified health coverage to eligible employees and eligible employees' dependents.

(b) A statement under Subsection (6)(a)(ii):

(i) shall be from:

(A) an actuary selected by the subcontractor or the subcontractor's insurer;

(B) an underwriter who is responsible for developing the employer group's premium rates; or

(C) if the subcontractor provides a health benefit plan described in Subsection (1)(d)(ii), an actuary or underwriter selected by an administrator; and

(ii) may not be created more than one year before the day on which the contractor obtains the statement from the subcontractor.

(7) (a) (i) A contractor that fails to maintain an offer of qualified health coverage during the duration of the contract as required in this section is subject to penalties in accordance with administrative rules made by the division under this section, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

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(ii) A contractor is not subject to penalties for the failure of a subcontractor to obtain and maintain an offer of qualified health coverage as required in this section.

(b) (i) A subcontractor that fails to obtain and maintain an offer of qualified health coverage during the duration of the subcontract as required in this section is subject to penalties in accordance with administrative rules made by the division under this section, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(ii) A subcontractor is not subject to penalties for the failure of a contractor to maintain an offer of qualified health coverage as required in this section.

(8) The division shall make rules:

(a) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;

(b) in coordination with:

(i) the Department of Environmental Quality in accordance with Section 19-1-206;

(ii) the Department of Natural Resources in accordance with Section 79-2-404;

(iii) a public transit district in accordance with Section 17B-2a-818.5;

(iv) the State Capitol Preservation Board in accordance with Section 63C-9-403;

(v) the Department of Transportation in accordance with Section 72-6-107.5; and

(vi) the Legislature's Administrative Rules Review and General Oversight Committee;

and

(c) that establish:

(i) the requirements and procedures for a contractor and a subcontractor to demonstrate compliance with this section, including:

(A) a provision that a contractor or subcontractor's compliance with this section is subject to an audit by the division or the Office of the Legislative Auditor General;

(B) a provision that a contractor that is subject to the requirements of this section obtain a written statement as provided in Subsection (5); and

(C) a provision that a subcontractor that is subject to the requirements of this section obtain a written statement as provided in Subsection (6);

(ii) the penalties that may be imposed if a contractor or subcontractor intentionally violates the provisions of this section, which may include:

(A) a three-month suspension of the contractor or subcontractor from entering into a future contract with the state upon the first violation;

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(B) a six-month suspension of the contractor or subcontractor from entering into a future contract with the state upon the second violation;

(C) an action for debarment of the contractor or subcontractor in accordance with Section 63G-6a-904 upon the third or subsequent violation; and

(D) monetary penalties which may not exceed 50% of the amount necessary to purchase qualified health coverage for eligible employees and dependents of eligible employees of the contractor or subcontractor who were not offered qualified health coverage during the duration of the contract; and

(iii) a website for the department to post the commercially equivalent benchmark for the qualified health coverage that is provided by the Department of [~~Health~~] Health and Human Services in accordance with Subsection [~~26-40-115(2)~~] 26B-3-909(2).

(9) During the duration of a contract, the division may perform an audit to verify a contractor or subcontractor's compliance with this section.

(10) (a) Upon the division's request, a contractor or subcontractor shall provide the division:

(i) a signed actuarial certification that the coverage the contractor or subcontractor offers is qualified health coverage; or

(ii) all relevant documents and information necessary for the division to determine compliance with this section.

(b) If a contractor or subcontractor provides the documents and information described in Subsection (10)(a)(i), the Insurance Department shall assist the division in determining if the coverage the contractor or subcontractor offers is qualified health coverage.

(11) (a) (i) In addition to the penalties imposed under Subsection (7), a contractor or subcontractor that intentionally violates the provisions of this section is liable to an eligible employee for health care costs that would have been covered by qualified health coverage.

(ii) An employer has an affirmative defense to a cause of action under Subsection (11)(a)(i) if:

(A) the employer relied in good faith on a written statement described in Subsection (5) or (6); or

(B) the department determines that compliance with this section is not required under the provisions of Subsection (3).

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(b) An eligible employee has a private right of action against the employee's employer only as provided in this Subsection (11).

(12) The director shall cause money collected from the imposition and collection of a penalty under this section to be deposited into the Medicaid Restricted Account created by Section ~~[26-18-402]~~ 26B-1-309.

(13) The failure of a contractor or subcontractor to provide qualified health coverage as required by this section:

(a) may not be the basis for a protest or other action from a prospective bidder, offeror, or contractor under:

(i) Section 63G-6a-1602; or

(ii) any other provision in Title 63G, Chapter 6a, Utah Procurement Code; and

(b) may not be used by the procurement entity or a prospective bidder, offeror, or contractor as a basis for any action or suit that would suspend, disrupt, or terminate the design or construction.

(14) An employer's waiting period for an employee to become eligible for qualified health coverage may not extend beyond the first day of the calendar month following 60 days after the day on which the employee is hired.

(15) An administrator, including an administrator's actuary or underwriter, who provides a written statement under Subsection (5)(a) or (c) regarding the qualified health coverage of a contractor or subcontractor who provides a health benefit plan described in Subsection (1)(d)(ii):

(a) subject to Subsection (11)(b), is not liable for an error in the written statement, unless the administrator commits gross negligence in preparing the written statement;

(b) is not liable for any error in the written statement if the administrator relied in good faith on information from the contractor or subcontractor; and

(c) may require as a condition of providing the written statement that a contractor or subcontractor hold the administrator harmless for an action arising under this section.

Section ~~{74}~~68. Section **63A-5b-910** is amended to read:

63A-5b-910. Disposition of proceeds received by division from sale of vacant division-owned property.

(1) (a) Except as provided in Section ~~[62A-5-206.7]~~ 26B-1-331, the division shall pay

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into the state treasury the money received from the transfer of ownership or lease of vacant division-owned property.

(b) Money paid into the state treasury under Subsection (1)(a):

(i) becomes a part of the funds provided by law for carrying out the building program of the state; and

(ii) is appropriated for the purpose described in Subsection (1)(b)(i).

(2) The proceeds from the transfer of ownership or lease of vacant division-owned property belonging to or used by a particular state agency shall, to the extent practicable, be expended for the construction of buildings or in the performance of other work for the benefit of that state agency.

~~{ 26-29-1. Buildings }~~ Section 69. Section 63A-5b-1109, which is renumbered from Section 26-29-1 is renumbered and amended to read:

~~[26-29-1].~~ **63A-5b-1109. Buildings** and facilities to which chapter applies --
Standards available to interested parties -- Division of Facilities Construction and Management staff to advise, review, and approve plans when possible.

(1) (a) The standards in this [chapter] section apply to all buildings and facilities used by the public that are constructed or remodeled in whole or in part by the use of state funds, or the funds of any political subdivision of the state.

(b) All of those buildings and facilities constructed in Utah after May 12, 1981, shall conform to the standard prescribed in this [chapter] section except buildings, facilities, or portions of them, not intended for public use, including:

- (i) caretaker dwellings;
- (ii) service buildings; and
- (iii) heating plants.

(2) This [chapter] section applies to temporary or emergency construction as well as permanent buildings.

(3) (a) The standards established in this [chapter] section apply to the remodeling or alteration of any existing building or facility within the jurisdictions set forth in this [chapter] section where the remodeling or alteration will affect an area of the building or facility in which there are architectural barriers for persons with a physical disability.

(b) If the remodeling involves less than 50% of the space of the building or facility,

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only the areas being remodeled need comply with the standards.

(c) If remodeling involves 50% or more of the space of the building or facility, the entire building or facility shall be brought into compliance with the standards.

(4) (a) All individuals and organizations are encouraged to apply the standards prescribed in this ~~[chapter]~~ section to all buildings used by the public, but that are financed from other than public funds.

(b) The Division of Facilities Construction and Management shall:

(i) make the standards established by this ~~[chapter]~~ section available to interested individuals and organizations; and

(ii) upon request and to the extent possible, make available the services of the Division of Facilities Construction and Management staff to advise, review, and approve plans and specifications in order to comply with the standards of this ~~chapter~~.

~~Section 75~~ [chapter] section.

(5) (a) This section is concerned with nonambulatory disabilities, semiambulatory disabilities, sight disabilities, hearing disabilities, disabilities of incoordination, and aging.

(b) This section is intended to make all buildings and facilities covered by this section accessible to, and functional for, persons with a physical disability.

(6) The standards of this section are the current edition of planning and design criteria to prevent architectural barriers for the aged and persons with a physical disability, as promulgated by the Division of Facilities Construction and Management.

(7) The responsibility for adoption of the planning and design criteria referred to in this section, and enforcement of this section shall be as follows:

(a) where state school funds are utilized, the State Board of Education;

(b) where state funds are utilized, the Division of Facilities Construction and Management; and

(c) where funds of political subdivisions are utilized, the governing board of the county or municipality in which the building or facility is located.

Section 70. Section **63A-9-701** is amended to read:

63A-9-701. Subscription to motor pool by certain local government entities.

(1) The following local government entities may subscribe to the central motor pool service provided by the division subject to the conditions established in Subsection (2):

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(a) local health departments as defined in Title 26A, Chapter 1, Part 1, Local Health Department Act;

(b) local substance abuse authorities as defined in Section 17-43-201;

(c) local area agencies, as authorized by Section ~~[62A-3-104]~~ 26B-6-104, or their subcontractors who are local governmental or public entities; and

(d) local mental health authorities as defined in Section 17-43-301.

(2) The local government entities outlined in Subsection (1) may subscribe to the central motor pool service provided by the division only if:

(a) the director of the local government entity determines it will result in substantial cost savings or increased efficiency to the local government entity; and

(b) the central motor pool has sufficient vehicles available.

Section ~~{76}~~ 71. Section **63A-13-102** is amended to read:

63A-13-102. Definitions.

As used in this chapter:

(1) "Abuse" means:

(a) an action or practice that:

(i) is inconsistent with sound fiscal, business, or medical practices; and

(ii) results, or may result, in unnecessary Medicaid related costs; or

(b) reckless or negligent upcoding.

(2) "Claimant" means a person that:

(a) provides a service; and

(b) submits a claim for Medicaid reimbursement for the service.

(3) "Department" means the Department of Health and Human Services created in Section 26B-1-201.

(4) "Division" means the Division of ~~[Medicaid and Health Financing]~~ Integrated Healthcare, created in Section ~~[26-18-2.1]~~ 26B-3-102.

(5) "Extrapolation" means a method of using a mathematical formula that takes the audit results from a small sample of Medicaid claims and projects those results over a much larger group of Medicaid claims.

(6) "Fraud" means intentional or knowing:

(a) deception, misrepresentation, or upcoding in relation to Medicaid funds, costs, a

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claim, reimbursement, or services; or

(b) a violation of a provision of Sections ~~[26-20-3]~~ 26B-3-1102 through ~~[26-20-7]~~ 26B-3-1106.

(7) "Fraud unit" means the Medicaid Fraud Control Unit of the attorney general's office.

(8) "Health care professional" means a person licensed under:

- (a) Title 58, Chapter 5a, Podiatric Physician Licensing Act;
- (b) Title 58, Chapter 16a, Utah Optometry Practice Act;
- (c) Title 58, Chapter 17b, Pharmacy Practice Act;
- (d) Title 58, Chapter 24b, Physical Therapy Practice Act;
- (e) Title 58, Chapter 31b, Nurse Practice Act;
- (f) Title 58, Chapter 40, Recreational Therapy Practice Act;
- (g) Title 58, Chapter 41, Speech-Language Pathology and Audiology Licensing Act;
- (h) Title 58, Chapter 42a, Occupational Therapy Practice Act;
- (i) Title 58, Chapter 44a, Nurse Midwife Practice Act;
- (j) Title 58, Chapter 49, Dietitian Certification Act;
- (k) Title 58, Chapter 60, Mental Health Professional Practice Act;
- (l) Title 58, Chapter 67, Utah Medical Practice Act;
- (m) Title 58, Chapter 68, Utah Osteopathic Medical Practice Act;
- (n) Title 58, Chapter 69, Dentist and Dental Hygienist Practice Act;
- (o) Title 58, Chapter 70a, Utah Physician Assistant Act; and
- (p) Title 58, Chapter 73, Chiropractic Physician Practice Act.

(9) "Inspector general" means the inspector general of the office, appointed under Section 63A-13-201.

(10) "Office" means the Office of Inspector General of Medicaid Services, created in Section 63A-13-201.

(11) "Provider" means a person that provides:

(a) medical assistance, including supplies or services, in exchange, directly or indirectly, for Medicaid funds; or

(b) billing or recordkeeping services relating to Medicaid funds.

(12) "Upcoding" means assigning an inaccurate billing code for a service that is

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payable or reimbursable by Medicaid funds, if the correct billing code for the service, taking into account reasonable opinions derived from official published coding definitions, would result in a lower Medicaid payment or reimbursement.

(13) (a) "Waste" means the act of using or expending a resource carelessly, extravagantly, or to no purpose.

(b) "Waste" includes an activity that:

(i) does not constitute abuse or necessarily involve a violation of law; and

(ii) relates primarily to mismanagement, an inappropriate action, or inadequate oversight.

Section ~~{77}~~72. Section **63A-13-204** is amended to read:

63A-13-204. Selection and review of claims.

(1) (a) The office shall periodically select and review a representative sample of claims submitted for reimbursement under the state Medicaid program to determine whether fraud, waste, or abuse occurred.

(b) The office shall limit its review for waste and abuse under Subsection (1)(a) to 36 months prior to the date of the inception of the investigation or 72 months if there is a credible allegation of fraud. In the event the office or the fraud unit determines that there is fraud as defined in Section 63A-13-102, then the statute of limitations defined in ~~[Subsection {26-20-15(1)}]~~ Section 26B-3-1115 shall apply.

(2) The office may directly contact the recipient of record for a Medicaid reimbursed service to determine whether the service for which reimbursement was claimed was actually provided to the recipient of record.

(3) The office shall:

(a) generate statistics from the sample described in Subsection (1) to determine the type of fraud, waste, or abuse that is most advantageous to focus on in future audits or investigations;

(b) ensure that the office, or any entity that contracts with the office to conduct audits:

(i) has on staff or contracts with a medical or dental professional who is experienced in the treatment, billing, and coding procedures used by the type of provider being audited; and

(ii) uses the services of the appropriate professional described in Subsection (3)(b)(i) if the provider that is the subject of the audit disputes the findings of the audit;

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(c) ensure that a finding of overpayment or underpayment to a provider is not based on extrapolation, unless:

(i) there is a determination that the level of payment error involving the provider exceeds a 10% error rate:

(A) for a sample of claims for a particular service code; and

(B) over a three year period of time;

(ii) documented education intervention has failed to correct the level of payment error; and

(iii) the value of the claims for the provider, in aggregate, exceeds \$200,000 in reimbursement for a particular service code on an annual basis; and

(d) require that any entity with which the office contracts, for the purpose of conducting an audit of a service provider, shall be paid on a flat fee basis for identifying both overpayments and underpayments.

(4) (a) If the office, or a contractor on behalf of the department:

(i) intends to implement the use of extrapolation as a method of auditing claims, the department shall, prior to adopting the extrapolation method of auditing, report its intent to use extrapolation:

(A) to the Social Services Appropriations Subcommittee; and

(B) as required under Section 63A-13-502; and

(ii) determines Subsections (3)(c)(i) through (iii) are applicable to a provider, the office or the contractor may use extrapolation only for the service code associated with the findings under Subsections (3)(c)(i) through (iii).

(b) (i) If extrapolation is used under this section, a provider may, at the provider's option, appeal the results of the audit based on:

(A) each individual claim; or

(B) the extrapolation sample.

(ii) Nothing in this section limits a provider's right to appeal the audit under Title 63G, Chapter 4, Administrative Procedures Act, the Medicaid program and its manual or rules, or other laws or rules that may provide remedies to providers.

Section ~~78~~73. Section **63A-13-301** is amended to read:

63A-13-301. Access to records -- Retention of designation under Government

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Records Access and Management Act.

(1) In order to fulfill the duties described in Section 63A-13-202, and in the manner provided in Subsection (4), the office shall have unrestricted access to all records of state executive branch entities, all local government entities, and all providers relating, directly or indirectly, to:

- (a) the state Medicaid program;
- (b) state or federal Medicaid funds;
- (c) the provision of Medicaid related services;
- (d) the regulation or management of any aspect of the state Medicaid program;
- (e) the use or expenditure of state or federal Medicaid funds;
- (f) suspected or proven fraud, waste, or abuse of state or federal Medicaid funds;
- (g) Medicaid program policies, practices, and procedures;
- (h) monitoring of Medicaid services or funds; or
- (i) a fatality review of a person who received Medicaid funded services.

(2) The office shall have access to information in any database maintained by the state or a local government to verify identity, income, employment status, or other factors that affect eligibility for Medicaid services.

(3) The records described in Subsections (1) and (2) include records held or maintained by the department, the division, the Department of [~~Human Services~~] Health and Human Services, the Department of Workforce Services, a local health department, a local mental health authority, or a school district. The records described in Subsection (1) include records held or maintained by a provider. When conducting an audit of a provider, the office shall, to the extent possible, limit the records accessed to the scope of the audit.

(4) A record, described in Subsection (1) or (2), that is accessed or copied by the office:

(a) may be reviewed or copied by the office during normal business hours, unless otherwise requested by the provider or health care professional under Subsection (4)(b);

(b) unless there is a credible allegation of fraud, shall be accessed, reviewed, and copied in a manner, on a day, and at a time that is minimally disruptive to the health care professional's or provider's care of patients, as requested by the health care professional or provider;

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- (c) may be submitted electronically;
- (d) may be submitted together with other records for multiple claims; and
- (e) if it is a government record, shall retain the classification made by the entity responsible for the record, under Title 63G, Chapter 2, Government Records Access and Management Act.

(5) Except as provided in Subsection (7), notwithstanding any provision of state law to the contrary, the office shall have the same access to all records, information, and databases to which the department or the division has access.

(6) The office shall comply with the requirements of federal law, including the Health Insurance Portability and Accountability Act of 1996 and 42 C.F.R., Part 2, relating to the office's:

- (a) access, review, retention, and use of records; and
- (b) use of information included in, or derived from, records.

(7) The office's access to data held by the Health Data Committee:

- (a) is not subject to this section; and
- (b) is subject to [~~Title 26, Chapter 33a, Utah Health Data Authority Act~~] Title 26B,

Chapter 8, Part 5, Utah Health Data Authority.

Section ~~{79}~~74. Section **63A-16-803** is amended to read:

63A-16-803. Single sign-on citizen portal -- Creation.

(1) The division shall, in consultation with the entities described in Subsection (4), design and create a single sign-on citizen portal that is:

- (a) a web portal through which an individual may access information and services described in Subsection (2), as agreed upon by the entities described in Subsection (4); and
- (b) secure, centralized, and interconnected.

(2) The division shall ensure that the single sign-on citizen portal allows an individual, at a single point of entry, to:

- (a) access and submit an application for:
 - (i) medical and support programs including:

(A) a medical assistance program administered under [~~Title 26, Chapter 18, Medical Assistance Act~~] Title 26B, Chapter 3, Health Care - ~~{Delivery}~~Administration and Assistance, including Medicaid;

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(B) the Children's Health Insurance Program under [~~Title 26, Chapter 40, Utah Children's Health Insurance Act~~] Title 26B, Chapter 3, Part 9, Utah Children's Health Insurance Program;

(C) the Primary Care Network as defined in Section [~~26-18-416~~] 26B-3-211; and

(D) the Women, Infants, and Children program administered under 42 U.S.C. Sec. 1786;

(ii) unemployment insurance under Title 35A, Chapter 4, Employment Security Act;

(iii) workers' compensation under Title 34A, Chapter 2, Workers' Compensation Act;

(iv) employment with a state agency;

(v) a driver license or state identification card renewal under Title 53, Chapter 3, Uniform Driver License Act;

(vi) a birth or death certificate under [~~Title 26, Chapter 2, Utah Vital Statistics Act~~] Title 26B, Chapter 8, Part 1, Vital Statistics; and

(vii) a hunting or fishing license under Title 23, Chapter 19, Licenses, Permits, and Tags;

(b) access the individual's:

(i) transcripts from an institution of higher education described in Section 53B-2-101;

and

(ii) immunization records maintained by the [~~Utah~~] Department of [~~Health~~] Health and Human Services;

(c) register the individual's vehicle under Title 41, Chapter 1a, Part 2, Registration, with the Motor Vehicle Division of the State Tax Commission;

(d) file the individual's state income taxes under Title 59, Chapter 10, Individual Income Tax Act, beginning December 1, 2020;

(e) access information about positions available for employment with the state; and

(f) access any other service or information the department determines is appropriate in consultation with the entities described in Subsection (4).

(3) The division shall develop the single sign-on citizen portal using an open platform that:

(a) facilitates participation in the portal by a state entity;

(b) allows for optional participation in the portal by a political subdivision of the state;

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and

(c) contains a link to the State Tax Commission website.

(4) In developing the single sign-on citizen portal, the department shall consult with:

(a) each state executive branch agency that administers a program, provides a service, or manages applicable information described in Subsection (2);

(b) the Utah League of Cities and Towns;

(c) the Utah Association of Counties; and

(d) other appropriate state executive branch agencies.

(5) The division shall ensure that the single sign-on citizen portal is fully operational no later than January 1, 2025.

Section ~~80~~⁷⁵. Section **63A-17-806** is amended to read:

63A-17-806. Definitions -- Infant at Work Pilot Program -- Administration --

Report.

(1) As used in this section:

(a) "Eligible employee" means an employee who has been employed by the Department of ~~[Health]~~ Health and Human Services for a minimum of:

(i) 12 consecutive months; and

(ii) 1,250 hours, excluding paid time off during the 12-month period immediately preceding the day on which the employee applies for participation in the program.

(b) "Infant" means a baby that is at least six weeks of age and no more than six months of age.

(c) "Parent" means:

(i) a biological or adoptive parent of an infant; or

(ii) an individual who has an infant placed in the individual's foster care by the Division of Child and Family Services.

(d) "Program" means the Infant at Work Pilot Program established in this section.

(2) There is created the Infant at Work Pilot Program for eligible employees.

(3) The program shall:

(a) allow an eligible employee to bring the eligible employee's infant to work subject to the provisions of this section;

(b) be administered by the division; and

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(c) be implemented for a minimum of one year.

(4) The division shall establish an application process for eligible employees of the Department of ~~[Health]~~ Health and Human Services to apply to the program that includes:

(a) a process for evaluating whether an eligible employee's work environment is appropriate for an infant;

(b) guidelines for infant health and safety; and

(c) guidelines regarding an eligible employee's initial and ongoing participation in the program.

(5) If the division approves the eligible employee for participation in the program, the eligible employee shall have the sole responsibility for the care and safety of the infant at the workplace.

(6) The division may not require the Department of ~~[Health]~~ Health and Human Services to designate or set aside space for an eligible employee's infant other than the eligible employee's existing work space.

(7) The division, in consultation with the Department of ~~[Health]~~ Health and Human Services, shall make rules that the department determines necessary to establish the program in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(8) On or before June 30, 2022, the division, in consultation with the Department of ~~[Health]~~ Health and Human Services, shall submit a written report to the Business and Labor Interim Committee that describes the efficacy of the program, including any recommendations for additional legislative action.

Section ~~81~~76. Section **63A-17-1001** is amended to read:

63A-17-1001. Controlled substances and alcohol use prohibited.

Except as provided in ~~[Title 26, Chapter 61a, Utah Medical Cannabis Act]~~ Title 26B, Chapter 4, Part 2, Cannabinoid Research and Medical Cannabis, an employee may not:

(1) manufacture, dispense, possess, use, distribute, or be under the influence of a controlled substance or alcohol during work hours or on state property except where legally permissible;

(2) manufacture, dispense, possess, use, or distribute a controlled substance or alcohol if the activity prevents:

(a) state agencies from receiving federal grants or performing under federal contracts of

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\$25,000 or more; or

(b) the employee to perform his services or work for state government effectively as regulated by the rules of the executive director in accordance with Section 63A-17-1002; or

(3) refuse to submit to a drug or alcohol test under Section 63A-17-1004.

Section ~~82~~77. Section **63B-16-401** is amended to read:

63B-16-401. Authorizations to acquire, sell, lease, or exchange property.

(1) It is the intent of the Legislature that:

(a) the Southeast Applied Technology Campus of the Utah College of Applied Technology and Utah State University Eastern may cooperatively enter into negotiations with a nonstate entity and complete a real property exchange to acquire an applied technology facility in Price;

(b) no state funds be used for any portion of this project; and

(c) the college may request state funds for operations and maintenance costs and capital improvements to the extent that the college is able to demonstrate to the Board of Regents that the facility meets approved academic and training purposes under Board of Regents policy R710.

(2) It is the intent of the Legislature that:

(a) the Mountainland Applied Technology Campus of the Utah College of Applied Technology may exercise its option to purchase additional property in northern Utah County adjacent to property purchased with the appropriation in Chapter 367, Item 41, Laws of Utah 2006;

(b) the purchase be financed through donations, institutional funds, a land exchange involving Lehi City and the Utah Transit Authority, or some combination of donations, institutional funds, and a land exchange involving Lehi City and the Utah Transit Authority for future development of a commuter rail station;

(c) the purchase be conducted under the direction of the director of the Division of Facilities Construction and Management; and

(d) no state funds be used for any portion of this purchase.

(3) It is the intent of the Legislature that:

(a) the Department of Human Services Complex located at 120 North 200 West, Salt Lake City, Utah be sold for \$11,000,000;

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(b) that the proceeds from the sale be used to:

(i) payoff the outstanding bond on the Human Services Complex;

(ii) purchase the Brigham Young University Salt Lake Center located at 3760 South Highland Drive, Salt Lake City, Utah for up to \$6,000,000 for occupancy by the Utah State Board of Education Schools for the Deaf and Blind; and

(iii) the remaining funds be used to remodel the Salt Lake Center; and

(c) the Division of Facilities, Construction and Management enter into a lease with the buyer of the Human Services Complex for and on behalf of the Department of Health and Human Services that allows the Department of Health and Human Services to continue to occupy the complex for the period of time needed for the state to purchase, construct, or lease a replacement facility for the Department of Health and Human Services.

Section ~~78~~78. Section **63C-9-403** is amended to read:

63C-9-403. Contracting power of executive director -- Health insurance coverage.

(1) As used in this section:

(a) "Aggregate" means the sum of all contracts, change orders, and modifications related to a single project.

(b) "Change order" means the same as that term is defined in Section 63G-6a-103.

(c) "Employee" means, as defined in Section 34A-2-104, an "employee," "worker," or "operative" who:

(i) works at least 30 hours per calendar week; and

(ii) meets employer eligibility waiting requirements for health care insurance, which may not exceed the first of the calendar month following 60 days after the day on which the individual is hired.

(d) "Health benefit plan" means:

(i) the same as that term is defined in Section 31A-1-301; or

(ii) an employee welfare benefit plan:

(A) established under the Employee Retirement Income Security Act of 1974, 29 U.S.C. Sec. 1001 et seq.;

(B) for an employer with 100 or more employees; and

(C) in which the employer establishes a self-funded or partially self-funded group health plan to provide medical care for the employer's employees and dependents of the

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employees.

(e) "Qualified health coverage" means the same as that term is defined in Section ~~[26-40-115]~~ 26B-3-909.

(f) "Subcontractor" means the same as that term is defined in Section 63A-5b-605.

(g) "Third party administrator" or "administrator" means the same as that term is defined in Section 31A-1-301.

(2) Except as provided in Subsection (3), the requirements of this section apply to:

(a) a contractor of a design or construction contract entered into by the board, or on behalf of the board, on or after July 1, 2009, if the prime contract is in an aggregate amount equal to or greater than \$2,000,000; and

(b) a subcontractor of a contractor of a design or construction contract entered into by the board, or on behalf of the board, on or after July 1, 2009, if the subcontract is in an aggregate amount equal to or greater than \$1,000,000.

(3) The requirements of this section do not apply to a contractor or subcontractor described in Subsection (2) if:

(a) the application of this section jeopardizes the receipt of federal funds;

(b) the contract is a sole source contract; or

(c) the contract is an emergency procurement.

(4) A person that intentionally uses change orders, contract modifications, or multiple contracts to circumvent the requirements of this section is guilty of an infraction.

(5) (a) A contractor subject to the requirements of this section shall demonstrate to the executive director that the contractor has and will maintain an offer of qualified health coverage for the contractor's employees and the employees' dependents during the duration of the contract by submitting to the executive director a written statement that:

(i) the contractor offers qualified health coverage that complies with Section ~~[26-40-115]~~ 26B-3-909;

(ii) is from:

(A) an actuary selected by the contractor or the contractor's insurer;

(B) an underwriter who is responsible for developing the employer group's premium rates; or

(C) if the contractor provides a health benefit plan described in Subsection (1)(d)(ii),

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an actuary or underwriter selected by a third party administrator; and

(iii) was created within one year before the day on which the statement is submitted.

(b) (i) A contractor that provides a health benefit plan described in Subsection (1)(d)(ii) shall provide the actuary or underwriter selected by the administrator, as described in Subsection (5)(a)(ii)(C), sufficient information to determine whether the contractor's contribution to the health benefit plan and the health benefit plan's actuarial value meets the requirements of qualified health coverage.

(ii) A contractor may not make a change to the contractor's contribution to the health benefit plan, unless the contractor provides notice to:

(A) the actuary or underwriter selected by the administrator, as described in Subsection (5)(a)(ii)(C), for the actuary or underwriter to update the written statement described in Subsection (5)(a) in compliance with this section; and

(B) the executive director.

(c) A contractor that is subject to the requirements of this section shall:

(i) place a requirement in each of the contractor's subcontracts that a subcontractor that is subject to the requirements of this section shall obtain and maintain an offer of qualified health coverage for the subcontractor's employees and the employees' dependents during the duration of the subcontract; and

(ii) obtain from a subcontractor that is subject to the requirements of this section a written statement that:

(A) the subcontractor offers qualified health coverage that complies with Section ~~[26-40-115]~~ 26B-3-909;

(B) is from an actuary selected by the subcontractor or the subcontractor's insurer, an underwriter who is responsible for developing the employer group's premium rates, or if the subcontractor provides a health benefit plan described in Subsection (1)(d)(ii), an actuary or underwriter selected by an administrator; and

(C) was created within one year before the day on which the contractor obtains the statement.

(d) (i) (A) A contractor that fails to maintain an offer of qualified health coverage as described in Subsection (5)(a) during the duration of the contract is subject to penalties in accordance with administrative rules adopted by the division under Subsection (6).

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(B) A contractor is not subject to penalties for the failure of a subcontractor to obtain and maintain an offer of qualified health coverage described in Subsection (5)(c)(i).

(ii) (A) A subcontractor that fails to obtain and maintain an offer of qualified health coverage described in Subsection (5)(c)(i) during the duration of the subcontract is subject to penalties in accordance with administrative rules adopted by the department under Subsection (6).

(B) A subcontractor is not subject to penalties for the failure of a contractor to maintain an offer of qualified health coverage described in Subsection (5)(a).

(6) The department shall adopt administrative rules:

(a) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;

(b) in coordination with:

(i) the Department of Environmental Quality in accordance with Section 19-1-206;

(ii) the Department of Natural Resources in accordance with Section 79-2-404;

(iii) the Division of Facilities Construction and Management in accordance with Section 63A-5b-607;

(iv) a public transit district in accordance with Section 17B-2a-818.5;

(v) the Department of Transportation in accordance with Section 72-6-107.5; and

(vi) the Legislature's Administrative Rules Review and General Oversight Committee;

and

(c) that establish:

(i) the requirements and procedures a contractor and a subcontractor shall follow to demonstrate compliance with this section, including:

(A) that a contractor or subcontractor's compliance with this section is subject to an audit by the department or the Office of the Legislative Auditor General;

(B) that a contractor that is subject to the requirements of this section shall obtain a written statement described in Subsection (5)(a); and

(C) that a subcontractor that is subject to the requirements of this section shall obtain a written statement described in Subsection (5)(c)(ii);

(ii) the penalties that may be imposed if a contractor or subcontractor intentionally violates the provisions of this section, which may include:

(A) a three-month suspension of the contractor or subcontractor from entering into

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future contracts with the state upon the first violation;

(B) a six-month suspension of the contractor or subcontractor from entering into future contracts with the state upon the second violation;

(C) an action for debarment of the contractor or subcontractor in accordance with Section 63G-6a-904 upon the third or subsequent violation; and

(D) monetary penalties which may not exceed 50% of the amount necessary to purchase qualified health coverage for employees and dependents of employees of the contractor or subcontractor who were not offered qualified health coverage during the duration of the contract; and

(iii) a website on which the department shall post the commercially equivalent benchmark, for the qualified health coverage identified in Subsection (1)(e), that is provided by the Department of ~~[Health]~~ Health and Human Services, in accordance with Subsection ~~[26-40-115(2)]~~ 26B-3-909(2).

(7) (a) (i) In addition to the penalties imposed under Subsection (6)(c)(ii), a contractor or subcontractor who intentionally violates the provisions of this section is liable to the employee for health care costs that would have been covered by qualified health coverage.

(ii) An employer has an affirmative defense to a cause of action under Subsection (7)(a)(i) if:

(A) the employer relied in good faith on a written statement described in Subsection (5)(a) or (5)(c)(ii); or

(B) the department determines that compliance with this section is not required under the provisions of Subsection (3).

(b) An employee has a private right of action only against the employee's employer to enforce the provisions of this Subsection (7).

(8) Any penalties imposed and collected under this section shall be deposited into the Medicaid Restricted Account created in Section ~~[26-18-402]~~ 26B-1-309.

(9) The failure of a contractor or subcontractor to provide qualified health coverage as required by this section:

(a) may not be the basis for a protest or other action from a prospective bidder, offeror, or contractor under:

(i) Section 63G-6a-1602; or

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(ii) any other provision in Title 63G, Chapter 6a, Utah Procurement Code; and

(b) may not be used by the procurement entity or a prospective bidder, offeror, or contractor as a basis for any action or suit that would suspend, disrupt, or terminate the design or construction.

(10) An administrator, including the administrator's actuary or underwriter, who provides a written statement under Subsection (5)(a) or (c) regarding the qualified health coverage of a contractor or subcontractor who provides a health benefit plan described in Subsection (1)(d)(ii):

(a) subject to Subsection (10)(b), is not liable for an error in the written statement, unless the administrator commits gross negligence in preparing the written statement;

(b) is not liable for any error in the written statement if the administrator relied in good faith on information from the contractor or subcontractor; and

(c) may require as a condition of providing the written statement that a contractor or subcontractor hold the administrator harmless for an action arising under this section.

Section ~~{84}~~79. Section **63C-18-102** is amended to read:

63C-18-102. Definitions.

As used in this chapter:

(1) "Commission" means the Behavioral Health Crisis Response Commission created in Section 63C-18-202.

(2) "Local mental health crisis line" means the same as that term is defined in Section ~~[62A-15-1301]~~ 26B-5-610.

(3) "Statewide mental health crisis line" means the same as that term is defined in Section ~~[62A-15-1301]~~ 26B-5-610.

(4) "Statewide warm line" means the same as that term is defined in Section ~~[62A-15-1301]~~ 26B-5-610.

Section ~~{85}~~80. Section **63C-18-202** is amended to read:

63C-18-202. Commission established -- Members.

(1) There is created the Behavioral Health Crisis Response Commission, composed of the following members:

(a) the executive director of the University Neuropsychiatric Institute;

(b) the governor or the governor's designee;

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(c) the director of the ~~Division of Substance Abuse~~ Office of Substance Use and Mental Health;

(d) one representative of the Office of the Attorney General, appointed by the attorney general;

(e) one member of the public, appointed by the chair of the commission and approved by the commission;

(f) two individuals who are mental or behavioral health clinicians licensed to practice in the state, appointed by the chair of the commission and approved by the commission, at least one of whom is an individual who:

(i) is licensed as a physician under:

(A) Title 58, Chapter 67, Utah Medical Practice Act;

(B) Title 58, Chapter 67b, Interstate Medical Licensure Compact; or

(C) Title 58, Chapter 68, Utah Osteopathic Medical Practice Act; and

(ii) is board eligible for a psychiatry specialization recognized by the American Board of Medical Specialists or the American Osteopathic Association's Bureau of Osteopathic Specialists;

(g) one individual who represents a county of the first or second class, appointed by the Utah Association of Counties;

(h) one individual who represents a county of the third, fourth, or fifth class, appointed by the Utah Association of Counties;

(i) one individual who represents the Utah Hospital Association, appointed by the chair of the commission;

(j) one individual who represents law enforcement, appointed by the chair of the commission;

(k) one individual who has lived with a mental health disorder, appointed by the chair of the commission;

(l) one individual who represents an integrated health care system that:

(i) is not affiliated with the chair of the commission; and

(ii) provides inpatient behavioral health services and emergency room services to individuals in the state;

(m) one individual who represents an accountable care organization, as defined in

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Section ~~[26-18-423]~~ 26B-3-219, with a statewide membership base;

(n) three members of the House of Representatives, appointed by the speaker of the House of Representatives, no more than two of whom may be from the same political party;

(o) three members of the Senate, appointed by the president of the Senate, no more than two of whom may be from the same political party;

(p) one individual who represents 911 call centers and public safety answering points, appointed by the chair of the commission;

(q) one individual who represents Emergency Medical Services, appointed by the chair of the commission;

(r) one individual who represents the mobile wireless service provider industry, appointed by the chair of the commission;

(s) one individual who represents rural telecommunications providers, appointed by the chair of the commission;

(t) one individual who represents voice over internet protocol and land line providers, appointed by the chair of the commission; and

(u) one individual who represents the Utah League of Cities and Towns, appointed by the chair of the commission.

(2) On December 31, 2022:

(a) the number of members described in Subsection (1)(n) and the number of members described in Subsection (1)(o) is reduced to one, with no restriction relating to party membership; and

(b) the members described in Subsections (1)(p) through (u) are removed from the commission.

(3) (a) The executive director of the University Neuropsychiatric Institute is the chair of the commission.

(b) The chair of the commission shall appoint a member of the commission to serve as the vice chair of the commission, with the approval of the commission.

(c) The chair of the commission shall set the agenda for each commission meeting.

(4) (a) A majority of the members of the commission constitutes a quorum.

(b) The action of a majority of a quorum constitutes the action of the commission.

(5) (a) Except as provided in Subsection (5)(b), a member may not receive

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compensation, benefits, per diem, or travel expenses for the member's service on the commission.

(b) Compensation and expenses of a member who is a legislator are governed by Section 36-2-2 and Legislative Joint Rules, Title 5, Legislative Compensation and Expenses.

(6) The Office of the Attorney General shall provide staff support to the commission.

Section ~~86~~81. Section **63C-18-203** is amended to read:

63C-18-203. Commission duties -- Reporting requirements.

(1) The commission shall:

(a) identify a method to integrate existing local mental health crisis lines to ensure each individual who accesses a local mental health crisis line is connected to a qualified mental or behavioral health professional, regardless of the time, date, or number of individuals trying to simultaneously access the local mental health crisis line;

(b) study how to establish and implement a statewide mental health crisis line and a statewide warm line, including identifying:

(i) a statewide phone number or other means for an individual to easily access the statewide mental health crisis line, including a short code for text messaging and a three-digit number for calls;

(ii) a statewide phone number or other means for an individual to easily access the statewide warm line, including a short code for text messaging and a three-digit number for calls;

(iii) a supply of:

(A) qualified mental or behavioral health professionals to staff the statewide mental health crisis line; and

(B) qualified mental or behavioral health professionals or certified peer support specialists to staff the statewide warm line; and

(iv) a funding mechanism to operate and maintain the statewide mental health crisis line and the statewide warm line;

(c) coordinate with local mental health authorities in fulfilling the commission's duties described in Subsections (1)(a) and (b); and

(d) recommend standards for the certifications described in Section [~~62A-15-1302~~]
26B-5-610.

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(2) In preparation for the implementation of the statewide 988 hotline, the commission shall study and make recommendations regarding:

(a) crisis line practices and needs, including:

(i) quality and timeliness of service;

(ii) service volume projections;

(iii) a statewide assessment of crisis line staffing needs, including required certifications; and

(iv) a statewide assessment of technology needs;

(b) primary duties performed by crisis line workers;

(c) coordination or redistribution of secondary duties performed by crisis line workers, including responding to non-emergency calls;

(d) establishing a statewide 988 hotline:

(i) in accordance with federal law;

(ii) that ensures the efficient and effective routing of calls to an appropriate crisis center; and

(iii) that includes directly responding to calls with trained personnel and the provision of acute mental health, crisis outreach, and stabilization services;

(e) opportunities to increase operational and technological efficiencies and effectiveness between 988 and 911, utilizing current technology;

(f) needs for interoperability partnerships and policies related to 911 call transfers and public safety responses;

(g) standards for statewide mobile crisis outreach teams, including:

(i) current models and projected needs;

(ii) quality and timeliness of service;

(iii) hospital and jail diversions; and

(iv) staffing and certification;

(h) resource centers, including:

(i) current models and projected needs; and

(ii) quality and timeliness of service;

(i) policy considerations related to whether the state should:

(i) manage, operate, and pay for a complete behavioral health system; or

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- (ii) create partnerships with private industry; and
- (j) sustainable funding source alternatives, including:
 - (i) charging a 988 fee, including a recommendation on the fee amount;
 - (ii) General Fund appropriations;
 - (iii) other government funding options;
 - (iv) private funding sources;
 - (v) grants;
 - (vi) insurance partnerships, including coverage for support and treatment after initial call and triage; and
 - (vii) other funding resources.

(3) The commission shall:

(a) before December 31, 2021, present an initial report on the matters described in Subsection (2), including any proposed legislation, to the Executive Appropriations Committee; and

(b) before December 31, 2022, present a final report on the items described in Subsection (2), including any proposed legislation, to the Executive Appropriations Committee.

(4) The duties described in Subsection (2) are removed on December 31, 2022.

(5) The commission may conduct other business related to the commission's duties described in this section.

(6) The commission shall consult with the ~~[Division of Substance Abuse]~~ Office of Substance Use and Mental Health regarding the standards and operation of the statewide mental health crisis line and the statewide warm line, in accordance with ~~[Title 62A, Chapter 15, Part 13, Statewide Mental Health Crisis Line and Statewide Warm Line]~~ Section 26B-5-610.

Section ~~{87}~~ 82. Section **63G-2-202** is amended to read:

63G-2-202. Access to private, controlled, and protected documents.

(1) Except as provided in Subsection (11)(a), a governmental entity:

(a) shall, upon request, disclose a private record to:

- (i) the subject of the record;
- (ii) the parent or legal guardian of an unemancipated minor who is the subject of the

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record;

(iii) the legal guardian of a legally incapacitated individual who is the subject of the record;

(iv) any other individual who:

(A) has a power of attorney from the subject of the record;

(B) submits a notarized release from the subject of the record or the individual's legal representative dated no more than 90 days before the date the request is made; or

(C) if the record is a medical record described in Subsection 63G-2-302(1)(b), is a health care provider, as defined in Section ~~[26-33a-102]~~ 26B-8-501, if releasing the record or information in the record is consistent with normal professional practice and medical ethics; or

(v) any person to whom the record must be provided pursuant to:

(A) court order as provided in Subsection (7); or

(B) a legislative subpoena as provided in Title 36, Chapter 14, Legislative Subpoena Powers; and

(b) may disclose a private record described in Subsections 63G-2-302(1)(j) through (m), without complying with Section 63G-2-206, to another governmental entity for a purpose related to:

(i) voter registration; or

(ii) the administration of an election.

(2) (a) Upon request, a governmental entity shall disclose a controlled record to:

(i) a physician, physician assistant, psychologist, certified social worker, insurance provider or producer, or a government public health agency upon submission of:

(A) a release from the subject of the record that is dated no more than 90 days prior to the date the request is made; and

(B) a signed acknowledgment of the terms of disclosure of controlled information as provided by Subsection (2)(b); and

(ii) any person to whom the record must be disclosed pursuant to:

(A) a court order as provided in Subsection (7); or

(B) a legislative subpoena as provided in Title 36, Chapter 14, Legislative Subpoena Powers.

(b) A person who receives a record from a governmental entity in accordance with

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Subsection (2)(a)(i) may not disclose controlled information from that record to any person, including the subject of the record.

(3) If there is more than one subject of a private or controlled record, the portion of the record that pertains to another subject shall be segregated from the portion that the requester is entitled to inspect.

(4) Upon request, and except as provided in Subsection (11)(b), a governmental entity shall disclose a protected record to:

- (a) the person that submitted the record;
- (b) any other individual who:
 - (i) has a power of attorney from all persons, governmental entities, or political subdivisions whose interests were sought to be protected by the protected classification; or
 - (ii) submits a notarized release from all persons, governmental entities, or political subdivisions whose interests were sought to be protected by the protected classification or from their legal representatives dated no more than 90 days prior to the date the request is made;
- (c) any person to whom the record must be provided pursuant to:
 - (i) a court order as provided in Subsection (7); or
 - (ii) a legislative subpoena as provided in Title 36, Chapter 14, Legislative Subpoena Powers; or
- (d) the owner of a mobile home park, subject to the conditions of Subsection 41-1a-116(5).

(5) Except as provided in Subsection (1)(b), a governmental entity may disclose a private, controlled, or protected record to another governmental entity, political subdivision, state, the United States, or a foreign government only as provided by Section 63G-2-206.

(6) Before releasing a private, controlled, or protected record, the governmental entity shall obtain evidence of the requester's identity.

(7) A governmental entity shall disclose a record pursuant to the terms of a court order signed by a judge from a court of competent jurisdiction, provided that:

- (a) the record deals with a matter in controversy over which the court has jurisdiction;
- (b) the court has considered the merits of the request for access to the record;
- (c) the court has considered and, where appropriate, limited the requester's use and further disclosure of the record in order to protect:

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- (i) privacy interests in the case of private or controlled records;
- (ii) business confidentiality interests in the case of records protected under Subsection 63G-2-305(1), (2), (40)(a)(ii), or (40)(a)(vi); and

- (iii) privacy interests or the public interest in the case of other protected records;
- (d) to the extent the record is properly classified private, controlled, or protected, the interests favoring access, considering limitations thereon, are greater than or equal to the interests favoring restriction of access; and

- (e) where access is restricted by a rule, statute, or regulation referred to in Subsection 63G-2-201(3)(b), the court has authority independent of this chapter to order disclosure.

(8) (a) Except as provided in Subsection (8)(d), a governmental entity may disclose or authorize disclosure of private or controlled records for research purposes if the governmental entity:

- (i) determines that the research purpose cannot reasonably be accomplished without use or disclosure of the information to the researcher in individually identifiable form;

- (ii) determines that:

- (A) the proposed research is bona fide; and

- (B) the value of the research is greater than or equal to the infringement upon personal privacy;

- (iii) (A) requires the researcher to assure the integrity, confidentiality, and security of the records; and

- (B) requires the removal or destruction of the individual identifiers associated with the records as soon as the purpose of the research project has been accomplished;

- (iv) prohibits the researcher from:

- (A) disclosing the record in individually identifiable form, except as provided in Subsection (8)(b); or

- (B) using the record for purposes other than the research approved by the governmental entity; and

- (v) secures from the researcher a written statement of the researcher's understanding of and agreement to the conditions of this Subsection (8) and the researcher's understanding that violation of the terms of this Subsection (8) may subject the researcher to criminal prosecution under Section 63G-2-801.

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(b) A researcher may disclose a record in individually identifiable form if the record is disclosed for the purpose of auditing or evaluating the research program and no subsequent use or disclosure of the record in individually identifiable form will be made by the auditor or evaluator except as provided by this section.

(c) A governmental entity may require indemnification as a condition of permitting research under this Subsection (8).

(d) A governmental entity may not disclose or authorize disclosure of a private record for research purposes as described in this Subsection (8) if the private record is a record described in Subsection 63G-2-302(1)(w).

(9) (a) Under Subsections 63G-2-201(5)(b) and 63G-2-401(6), a governmental entity may disclose to persons other than those specified in this section records that are:

- (i) private under Section 63G-2-302; or
- (ii) protected under Section 63G-2-305, subject to Section 63G-2-309 if a claim for business confidentiality has been made under Section 63G-2-309.

(b) Under Subsection 63G-2-403(11)(b), the State Records Committee may require the disclosure to persons other than those specified in this section of records that are:

- (i) private under Section 63G-2-302;
- (ii) controlled under Section 63G-2-304; or
- (iii) protected under Section 63G-2-305, subject to Section 63G-2-309 if a claim for business confidentiality has been made under Section 63G-2-309.

(c) Under Subsection 63G-2-404(7), the court may require the disclosure of records that are private under Section 63G-2-302, controlled under Section 63G-2-304, or protected under Section 63G-2-305 to persons other than those specified in this section.

(10) (a) A private record described in Subsection 63G-2-302(2)(f) may only be disclosed as provided in Subsection (1)(a)(v).

(b) A protected record described in Subsection 63G-2-305(43) may only be disclosed as provided in Subsection (4)(c) or Section ~~[62A-3-312]~~ 26B-6-212.

(11) (a) A private, protected, or controlled record described in Section ~~[62A-16-301]~~ 26B-1-506 shall be disclosed as required under:

- (i) Subsections ~~[62A-16-301(1)(b), (2), and (4)(c)]~~ 26B-1-506(1)(b), (2), and (4)(c); and

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(ii) Subsections [~~62A-16-302(1) and (6)~~] 26B-1-507(1) and (6).

(b) A record disclosed under Subsection (11)(a) shall retain its character as private, protected, or controlled.

Section ~~{88}~~83. Section **63G-2-302** is amended to read:

63G-2-302. Private records.

(1) The following records are private:

(a) records concerning an individual's eligibility for unemployment insurance benefits, social services, welfare benefits, or the determination of benefit levels;

(b) records containing data on individuals describing medical history, diagnosis, condition, treatment, evaluation, or similar medical data;

(c) records of publicly funded libraries that when examined alone or with other records identify a patron;

(d) records received by or generated by or for:

(i) the Independent Legislative Ethics Commission, except for:

(A) the commission's summary data report that is required under legislative rule; and

(B) any other document that is classified as public under legislative rule; or

(ii) a Senate or House Ethics Committee in relation to the review of ethics complaints, unless the record is classified as public under legislative rule;

(e) records received by, or generated by or for, the Independent Executive Branch Ethics Commission, except as otherwise expressly provided in Title 63A, Chapter 14, Review of Executive Branch Ethics Complaints;

(f) records received or generated for a Senate confirmation committee concerning character, professional competence, or physical or mental health of an individual:

(i) if, prior to the meeting, the chair of the committee determines release of the records:

(A) reasonably could be expected to interfere with the investigation undertaken by the committee; or

(B) would create a danger of depriving a person of a right to a fair proceeding or impartial hearing; and

(ii) after the meeting, if the meeting was closed to the public;

(g) employment records concerning a current or former employee of, or applicant for employment with, a governmental entity that would disclose that individual's home address,

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home telephone number, social security number, insurance coverage, marital status, or payroll deductions;

(h) records or parts of records under Section 63G-2-303 that a current or former employee identifies as private according to the requirements of that section;

(i) that part of a record indicating a person's social security number or federal employer identification number if provided under Section 31A-23a-104, 31A-25-202, 31A-26-202, 58-1-301, 58-55-302, 61-1-4, or 61-2f-203;

(j) that part of a voter registration record identifying a voter's:

(i) driver license or identification card number;

(ii) social security number, or last four digits of the social security number;

(iii) email address;

(iv) date of birth; or

(v) phone number;

(k) a voter registration record that is classified as a private record by the lieutenant governor or a county clerk under Subsection 20A-2-101.1(5)(a), 20A-2-104(4)(h), or 20A-2-204(4)(b);

(l) a voter registration record that is withheld under Subsection 20A-2-104(7);

(m) a withholding request form described in Subsections 20A-2-104(7) and (8) and any verification submitted in support of the form;

(n) a record that:

(i) contains information about an individual;

(ii) is voluntarily provided by the individual; and

(iii) goes into an electronic database that:

(A) is designated by and administered under the authority of the Chief Information Officer; and

(B) acts as a repository of information about the individual that can be electronically retrieved and used to facilitate the individual's online interaction with a state agency;

(o) information provided to the Commissioner of Insurance under:

(i) Subsection 31A-23a-115(3)(a);

(ii) Subsection 31A-23a-302(4); or

(iii) Subsection 31A-26-210(4);

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(p) information obtained through a criminal background check under Title 11, Chapter 40, Criminal Background Checks by Political Subdivisions Operating Water Systems;

(q) information provided by an offender that is:

(i) required by the registration requirements of Title 77, Chapter 41, Sex and Kidnap Offender Registry or Title 77, Chapter 43, Child Abuse Offender Registry; and

(ii) not required to be made available to the public under Subsection 77-41-110(4) or 77-43-108(4);

(r) a statement and any supporting documentation filed with the attorney general in accordance with Section 34-45-107, if the federal law or action supporting the filing involves homeland security;

(s) electronic toll collection customer account information received or collected under Section 72-6-118 and customer information described in Section 17B-2a-815 received or collected by a public transit district, including contact and payment information and customer travel data;

(t) an email address provided by a military or overseas voter under Section 20A-16-501;

(u) a completed military-overseas ballot that is electronically transmitted under Title 20A, Chapter 16, Uniform Military and Overseas Voters Act;

(v) records received by or generated by or for the Political Subdivisions Ethics Review Commission established in Section 63A-15-201, except for:

(i) the commission's summary data report that is required in Section 63A-15-202; and

(ii) any other document that is classified as public in accordance with Title 63A, Chapter 15, Political Subdivisions Ethics Review Commission;

(w) a record described in Section 53G-9-604 that verifies that a parent was notified of an incident or threat;

(x) a criminal background check or credit history report conducted in accordance with Section 63A-3-201;

(y) a record described in Subsection 53-5a-104(7);

(z) on a record maintained by a county for the purpose of administering property taxes, an individual's:

(i) email address;

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- (ii) phone number; or
 - (iii) personal financial information related to a person's payment method;
 - (aa) a record submitted by a taxpayer to establish the taxpayer's eligibility for an exemption, deferral, abatement, or relief under:
 - (i) Title 59, Chapter 2, Part 11, Exemptions, Deferrals, and Abatements;
 - (ii) Title 59, Chapter 2, Part 12, Property Tax Relief;
 - (iii) Title 59, Chapter 2, Part 18, Tax Deferral and Tax Abatement; or
 - (iv) Title 59, Chapter 2, Part 19, Armed Forces Exemptions;
 - (bb) a record provided by the State Tax Commission in response to a request under Subsection 59-1-403(4)(y)(iii);
 - (cc) a record of the Child Welfare Legislative Oversight Panel regarding an individual child welfare case, as described in Subsection 36-33-103(3); and
 - (dd) a record relating to drug or alcohol testing of a state employee under Section 63A-17-1004.
- (2) The following records are private if properly classified by a governmental entity:
- (a) records concerning a current or former employee of, or applicant for employment with a governmental entity, including performance evaluations and personal status information such as race, religion, or disabilities, but not including records that are public under Subsection 63G-2-301(2)(b) or 63G-2-301(3)(o) or private under Subsection (1)(b);
 - (b) records describing an individual's finances, except that the following are public:
 - (i) records described in Subsection 63G-2-301(2);
 - (ii) information provided to the governmental entity for the purpose of complying with a financial assurance requirement; or
 - (iii) records that must be disclosed in accordance with another statute;
 - (c) records of independent state agencies if the disclosure of those records would conflict with the fiduciary obligations of the agency;
 - (d) other records containing data on individuals the disclosure of which constitutes a clearly unwarranted invasion of personal privacy;
 - (e) records provided by the United States or by a government entity outside the state that are given with the requirement that the records be managed as private records, if the providing entity states in writing that the record would not be subject to public disclosure if

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retained by it;

(f) any portion of a record in the custody of the Division of Aging and Adult Services, created in Section ~~[62A-3-102]~~ 26B-6-102, that may disclose, or lead to the discovery of, the identity of a person who made a report of alleged abuse, neglect, or exploitation of a vulnerable adult; and

(g) audio and video recordings created by a body-worn camera, as defined in Section 77-7a-103, that record sound or images inside a home or residence except for recordings that:

(i) depict the commission of an alleged crime;

(ii) record any encounter between a law enforcement officer and a person that results in death or bodily injury, or includes an instance when an officer fires a weapon;

(iii) record any encounter that is the subject of a complaint or a legal proceeding against a law enforcement officer or law enforcement agency;

(iv) contain an officer involved critical incident as defined in Subsection 76-2-408(1)(f); or

(v) have been requested for reclassification as a public record by a subject or authorized agent of a subject featured in the recording.

(3) (a) As used in this Subsection (3), "medical records" means medical reports, records, statements, history, diagnosis, condition, treatment, and evaluation.

(b) Medical records in the possession of the University of Utah Hospital, its clinics, doctors, or affiliated entities are not private records or controlled records under Section 63G-2-304 when the records are sought:

(i) in connection with any legal or administrative proceeding in which the patient's physical, mental, or emotional condition is an element of any claim or defense; or

(ii) after a patient's death, in any legal or administrative proceeding in which any party relies upon the condition as an element of the claim or defense.

(c) Medical records are subject to production in a legal or administrative proceeding according to state or federal statutes or rules of procedure and evidence as if the medical records were in the possession of a nongovernmental medical care provider.

Section ~~{89}~~ 84. Section **63G-2-305** is amended to read:

63G-2-305. Protected records.

The following records are protected if properly classified by a governmental entity:

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(1) trade secrets as defined in Section 13-24-2 if the person submitting the trade secret has provided the governmental entity with the information specified in Section 63G-2-309;

(2) commercial information or nonindividual financial information obtained from a person if:

(a) disclosure of the information could reasonably be expected to result in unfair competitive injury to the person submitting the information or would impair the ability of the governmental entity to obtain necessary information in the future;

(b) the person submitting the information has a greater interest in prohibiting access than the public in obtaining access; and

(c) the person submitting the information has provided the governmental entity with the information specified in Section 63G-2-309;

(3) commercial or financial information acquired or prepared by a governmental entity to the extent that disclosure would lead to financial speculations in currencies, securities, or commodities that will interfere with a planned transaction by the governmental entity or cause substantial financial injury to the governmental entity or state economy;

(4) records, the disclosure of which could cause commercial injury to, or confer a competitive advantage upon a potential or actual competitor of, a commercial project entity as defined in Subsection 11-13-103(4);

(5) test questions and answers to be used in future license, certification, registration, employment, or academic examinations;

(6) records, the disclosure of which would impair governmental procurement proceedings or give an unfair advantage to any person proposing to enter into a contract or agreement with a governmental entity, except, subject to Subsections (1) and (2), that this Subsection (6) does not restrict the right of a person to have access to, after the contract or grant has been awarded and signed by all parties:

(a) a bid, proposal, application, or other information submitted to or by a governmental entity in response to:

(i) an invitation for bids;

(ii) a request for proposals;

(iii) a request for quotes;

(iv) a grant; or

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(v) other similar document; or

(b) an unsolicited proposal, as defined in Section 63G-6a-712;

(7) information submitted to or by a governmental entity in response to a request for information, except, subject to Subsections (1) and (2), that this Subsection (7) does not restrict the right of a person to have access to the information, after:

(a) a contract directly relating to the subject of the request for information has been awarded and signed by all parties; or

(b) (i) a final determination is made not to enter into a contract that relates to the subject of the request for information; and

(ii) at least two years have passed after the day on which the request for information is issued;

(8) records that would identify real property or the appraisal or estimated value of real or personal property, including intellectual property, under consideration for public acquisition before any rights to the property are acquired unless:

(a) public interest in obtaining access to the information is greater than or equal to the governmental entity's need to acquire the property on the best terms possible;

(b) the information has already been disclosed to persons not employed by or under a duty of confidentiality to the entity;

(c) in the case of records that would identify property, potential sellers of the described property have already learned of the governmental entity's plans to acquire the property;

(d) in the case of records that would identify the appraisal or estimated value of property, the potential sellers have already learned of the governmental entity's estimated value of the property; or

(e) the property under consideration for public acquisition is a single family residence and the governmental entity seeking to acquire the property has initiated negotiations to acquire the property as required under Section 78B-6-505;

(9) records prepared in contemplation of sale, exchange, lease, rental, or other compensated transaction of real or personal property including intellectual property, which, if disclosed prior to completion of the transaction, would reveal the appraisal or estimated value of the subject property, unless:

(a) the public interest in access is greater than or equal to the interests in restricting

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access, including the governmental entity's interest in maximizing the financial benefit of the transaction; or

(b) when prepared by or on behalf of a governmental entity, appraisals or estimates of the value of the subject property have already been disclosed to persons not employed by or under a duty of confidentiality to the entity;

(10) records created or maintained for civil, criminal, or administrative enforcement purposes or audit purposes, or for discipline, licensing, certification, or registration purposes, if release of the records:

(a) reasonably could be expected to interfere with investigations undertaken for enforcement, discipline, licensing, certification, or registration purposes;

(b) reasonably could be expected to interfere with audits, disciplinary, or enforcement proceedings;

(c) would create a danger of depriving a person of a right to a fair trial or impartial hearing;

(d) reasonably could be expected to disclose the identity of a source who is not generally known outside of government and, in the case of a record compiled in the course of an investigation, disclose information furnished by a source not generally known outside of government if disclosure would compromise the source; or

(e) reasonably could be expected to disclose investigative or audit techniques, procedures, policies, or orders not generally known outside of government if disclosure would interfere with enforcement or audit efforts;

(11) records the disclosure of which would jeopardize the life or safety of an individual;

(12) records the disclosure of which would jeopardize the security of governmental property, governmental programs, or governmental recordkeeping systems from damage, theft, or other appropriation or use contrary to law or public policy;

(13) records that, if disclosed, would jeopardize the security or safety of a correctional facility, or records relating to incarceration, treatment, probation, or parole, that would interfere with the control and supervision of an offender's incarceration, treatment, probation, or parole;

(14) records that, if disclosed, would reveal recommendations made to the Board of Pardons and Parole by an employee of or contractor for the Department of Corrections, the

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Board of Pardons and Parole, or the Department of [~~Human Services~~] Health and Human Services that are based on the employee's or contractor's supervision, diagnosis, or treatment of any person within the board's jurisdiction;

(15) records and audit workpapers that identify audit, collection, and operational procedures and methods used by the State Tax Commission, if disclosure would interfere with audits or collections;

(16) records of a governmental audit agency relating to an ongoing or planned audit until the final audit is released;

(17) records that are subject to the attorney client privilege;

(18) records prepared for or by an attorney, consultant, surety, indemnitor, insurer, employee, or agent of a governmental entity for, or in anticipation of, litigation or a judicial, quasi-judicial, or administrative proceeding;

(19) (a) (i) personal files of a state legislator, including personal correspondence to or from a member of the Legislature; and

(ii) notwithstanding Subsection (19)(a)(i), correspondence that gives notice of legislative action or policy may not be classified as protected under this section; and

(b) (i) an internal communication that is part of the deliberative process in connection with the preparation of legislation between:

(A) members of a legislative body;

(B) a member of a legislative body and a member of the legislative body's staff; or

(C) members of a legislative body's staff; and

(ii) notwithstanding Subsection (19)(b)(i), a communication that gives notice of legislative action or policy may not be classified as protected under this section;

(20) (a) records in the custody or control of the Office of Legislative Research and General Counsel, that, if disclosed, would reveal a particular legislator's contemplated legislation or contemplated course of action before the legislator has elected to support the legislation or course of action, or made the legislation or course of action public; and

(b) notwithstanding Subsection (20)(a), the form to request legislation submitted to the Office of Legislative Research and General Counsel is a public document unless a legislator asks that the records requesting the legislation be maintained as protected records until such time as the legislator elects to make the legislation or course of action public;

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(21) research requests from legislators to the Office of Legislative Research and General Counsel or the Office of the Legislative Fiscal Analyst and research findings prepared in response to these requests;

(22) drafts, unless otherwise classified as public;

(23) records concerning a governmental entity's strategy about:

(a) collective bargaining; or

(b) imminent or pending litigation;

(24) records of investigations of loss occurrences and analyses of loss occurrences that may be covered by the Risk Management Fund, the Employers' Reinsurance Fund, the Uninsured Employers' Fund, or similar divisions in other governmental entities;

(25) records, other than personnel evaluations, that contain a personal recommendation concerning an individual if disclosure would constitute a clearly unwarranted invasion of personal privacy, or disclosure is not in the public interest;

(26) records that reveal the location of historic, prehistoric, paleontological, or biological resources that if known would jeopardize the security of those resources or of valuable historic, scientific, educational, or cultural information;

(27) records of independent state agencies if the disclosure of the records would conflict with the fiduciary obligations of the agency;

(28) records of an institution within the state system of higher education defined in Section 53B-1-102 regarding tenure evaluations, appointments, applications for admissions, retention decisions, and promotions, which could be properly discussed in a meeting closed in accordance with Title 52, Chapter 4, Open and Public Meetings Act, provided that records of the final decisions about tenure, appointments, retention, promotions, or those students admitted, may not be classified as protected under this section;

(29) records of the governor's office, including budget recommendations, legislative proposals, and policy statements, that if disclosed would reveal the governor's contemplated policies or contemplated courses of action before the governor has implemented or rejected those policies or courses of action or made them public;

(30) records of the Office of the Legislative Fiscal Analyst relating to budget analysis, revenue estimates, and fiscal notes of proposed legislation before issuance of the final recommendations in these areas;

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(31) records provided by the United States or by a government entity outside the state that are given to the governmental entity with a requirement that they be managed as protected records if the providing entity certifies that the record would not be subject to public disclosure if retained by it;

(32) transcripts, minutes, recordings, or reports of the closed portion of a meeting of a public body except as provided in Section 52-4-206;

(33) records that would reveal the contents of settlement negotiations but not including final settlements or empirical data to the extent that they are not otherwise exempt from disclosure;

(34) memoranda prepared by staff and used in the decision-making process by an administrative law judge, a member of the Board of Pardons and Parole, or a member of any other body charged by law with performing a quasi-judicial function;

(35) records that would reveal negotiations regarding assistance or incentives offered by or requested from a governmental entity for the purpose of encouraging a person to expand or locate a business in Utah, but only if disclosure would result in actual economic harm to the person or place the governmental entity at a competitive disadvantage, but this section may not be used to restrict access to a record evidencing a final contract;

(36) materials to which access must be limited for purposes of securing or maintaining the governmental entity's proprietary protection of intellectual property rights including patents, copyrights, and trade secrets;

(37) the name of a donor or a prospective donor to a governmental entity, including an institution within the state system of higher education defined in Section 53B-1-102, and other information concerning the donation that could reasonably be expected to reveal the identity of the donor, provided that:

(a) the donor requests anonymity in writing;

(b) any terms, conditions, restrictions, or privileges relating to the donation may not be classified protected by the governmental entity under this Subsection (37); and

(c) except for an institution within the state system of higher education defined in Section 53B-1-102, the governmental unit to which the donation is made is primarily engaged in educational, charitable, or artistic endeavors, and has no regulatory or legislative authority over the donor, a member of the donor's immediate family, or any entity owned or controlled

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by the donor or the donor's immediate family;

(38) accident reports, except as provided in Sections 41-6a-404, 41-12a-202, and 73-18-13;

(39) a notification of workers' compensation insurance coverage described in Section 34A-2-205;

(40) (a) the following records of an institution within the state system of higher education defined in Section 53B-1-102, which have been developed, discovered, disclosed to, or received by or on behalf of faculty, staff, employees, or students of the institution:

(i) unpublished lecture notes;

(ii) unpublished notes, data, and information:

(A) relating to research; and

(B) of:

(I) the institution within the state system of higher education defined in Section 53B-1-102; or

(II) a sponsor of sponsored research;

(iii) unpublished manuscripts;

(iv) creative works in process;

(v) scholarly correspondence; and

(vi) confidential information contained in research proposals;

(b) Subsection (40)(a) may not be construed to prohibit disclosure of public information required pursuant to Subsection 53B-16-302(2)(a) or (b); and

(c) Subsection (40)(a) may not be construed to affect the ownership of a record;

(41) (a) records in the custody or control of the Office of the Legislative Auditor General that would reveal the name of a particular legislator who requests a legislative audit prior to the date that audit is completed and made public; and

(b) notwithstanding Subsection (41)(a), a request for a legislative audit submitted to the Office of the Legislative Auditor General is a public document unless the legislator asks that the records in the custody or control of the Office of the Legislative Auditor General that would reveal the name of a particular legislator who requests a legislative audit be maintained as protected records until the audit is completed and made public;

(42) records that provide detail as to the location of an explosive, including a map or

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other document that indicates the location of:

- (a) a production facility; or
- (b) a magazine;
- (43) information contained in the statewide database of the Division of Aging and Adult Services created by Section ~~[62A-3-311.1]~~ 26B-6-210;
- (44) information contained in the Licensing Information System described in Title 80, Chapter 2, Child Welfare Services;
- (45) information regarding National Guard operations or activities in support of the National Guard's federal mission;
- (46) records provided by any pawn or secondhand business to a law enforcement agency or to the central database in compliance with Title 13, Chapter 32a, Pawnshop, Secondhand Merchandise, and Catalytic Converter Transaction Information Act;
- (47) information regarding food security, risk, and vulnerability assessments performed by the Department of Agriculture and Food;
- (48) except to the extent that the record is exempt from this chapter pursuant to Section 63G-2-106, records related to an emergency plan or program, a copy of which is provided to or prepared or maintained by the Division of Emergency Management, and the disclosure of which would jeopardize:
 - (a) the safety of the general public; or
 - (b) the security of:
 - (i) governmental property;
 - (ii) governmental programs; or
 - (iii) the property of a private person who provides the Division of Emergency Management information;
- (49) records of the Department of Agriculture and Food that provides for the identification, tracing, or control of livestock diseases, including any program established under Title 4, Chapter 24, Utah Livestock Brand and Anti-Theft Act, or Title 4, Chapter 31, Control of Animal Disease;
- (50) as provided in Section ~~[26-39-501]~~ 26B-2-408:
 - (a) information or records held by the Department of ~~[Health]~~ Health and Human Services related to a complaint regarding a child care program or residential child care which

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the department is unable to substantiate; and

(b) information or records related to a complaint received by the Department of ~~[Health]~~ Health and Human Services from an anonymous complainant regarding a child care program or residential child care;

(51) unless otherwise classified as public under Section 63G-2-301 and except as provided under Section 41-1a-116, an individual's home address, home telephone number, or personal mobile phone number, if:

(a) the individual is required to provide the information in order to comply with a law, ordinance, rule, or order of a government entity; and

(b) the subject of the record has a reasonable expectation that this information will be kept confidential due to:

(i) the nature of the law, ordinance, rule, or order; and

(ii) the individual complying with the law, ordinance, rule, or order;

(52) the portion of the following documents that contains a candidate's residential or mailing address, if the candidate provides to the filing officer another address or phone number where the candidate may be contacted:

(a) a declaration of candidacy, a nomination petition, or a certificate of nomination, described in Section 20A-9-201, 20A-9-202, 20A-9-203, 20A-9-404, 20A-9-405, 20A-9-408, 20A-9-408.5, 20A-9-502, or 20A-9-601;

(b) an affidavit of impecuniosity, described in Section 20A-9-201; or

(c) a notice of intent to gather signatures for candidacy, described in Section 20A-9-408;

(53) the name, home address, work addresses, and telephone numbers of an individual that is engaged in, or that provides goods or services for, medical or scientific research that is:

(a) conducted within the state system of higher education, as defined in Section 53B-1-102; and

(b) conducted using animals;

(54) in accordance with Section 78A-12-203, any record of the Judicial Performance Evaluation Commission concerning an individual commissioner's vote, in relation to whether a judge meets or exceeds minimum performance standards under Subsection 78A-12-203(4), and information disclosed under Subsection 78A-12-203(5)(e);

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(55) information collected and a report prepared by the Judicial Performance Evaluation Commission concerning a judge, unless Section 20A-7-702 or Title 78A, Chapter 12, Judicial Performance Evaluation Commission Act, requires disclosure of, or makes public, the information or report;

(56) records provided or received by the Public Lands Policy Coordinating Office in furtherance of any contract or other agreement made in accordance with Section 63L-11-202;

(57) information requested by and provided to the 911 Division under Section 63H-7a-302;

(58) in accordance with Section 73-10-33:

(a) a management plan for a water conveyance facility in the possession of the Division of Water Resources or the Board of Water Resources; or

(b) an outline of an emergency response plan in possession of the state or a county or municipality;

(59) the following records in the custody or control of the Office of Inspector General of Medicaid Services, created in Section 63A-13-201:

(a) records that would disclose information relating to allegations of personal misconduct, gross mismanagement, or illegal activity of a person if the information or allegation cannot be corroborated by the Office of Inspector General of Medicaid Services through other documents or evidence, and the records relating to the allegation are not relied upon by the Office of Inspector General of Medicaid Services in preparing a final investigation report or final audit report;

(b) records and audit workpapers to the extent they would disclose the identity of a person who, during the course of an investigation or audit, communicated the existence of any Medicaid fraud, waste, or abuse, or a violation or suspected violation of a law, rule, or regulation adopted under the laws of this state, a political subdivision of the state, or any recognized entity of the United States, if the information was disclosed on the condition that the identity of the person be protected;

(c) before the time that an investigation or audit is completed and the final investigation or final audit report is released, records or drafts circulated to a person who is not an employee or head of a governmental entity for the person's response or information;

(d) records that would disclose an outline or part of any investigation, audit survey

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plan, or audit program; or

(e) requests for an investigation or audit, if disclosure would risk circumvention of an investigation or audit;

(60) records that reveal methods used by the Office of Inspector General of Medicaid Services, the fraud unit, or the Department of [~~Health~~] Health and Human Services, to discover Medicaid fraud, waste, or abuse;

(61) information provided to the Department of [~~Health~~] Health and Human Services or the Division of Professional Licensing under Subsections 58-67-304(3) and (4) and Subsections 58-68-304(3) and (4);

(62) a record described in Section 63G-12-210;

(63) captured plate data that is obtained through an automatic license plate reader system used by a governmental entity as authorized in Section 41-6a-2003;

(64) any record in the custody of the Utah Office for Victims of Crime relating to a victim, including:

(a) a victim's application or request for benefits;

(b) a victim's receipt or denial of benefits; and

(c) any administrative notes or records made or created for the purpose of, or used to, evaluate or communicate a victim's eligibility for or denial of benefits from the Crime Victim Reparations Fund;

(65) an audio or video recording created by a body-worn camera, as that term is defined in Section 77-7a-103, that records sound or images inside a hospital or health care facility as those terms are defined in Section 78B-3-403, inside a clinic of a health care provider, as that term is defined in Section 78B-3-403, or inside a human service program as that term is defined in Section ~~[62A-2-101]~~ 26B-2-101, except for recordings that:

(a) depict the commission of an alleged crime;

(b) record any encounter between a law enforcement officer and a person that results in death or bodily injury, or includes an instance when an officer fires a weapon;

(c) record any encounter that is the subject of a complaint or a legal proceeding against a law enforcement officer or law enforcement agency;

(d) contain an officer involved critical incident as defined in Subsection 76-2-408(1)(f); or

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(e) have been requested for reclassification as a public record by a subject or authorized agent of a subject featured in the recording;

(66) a record pertaining to the search process for a president of an institution of higher education described in Section 53B-2-102, except for application materials for a publicly announced finalist;

(67) an audio recording that is:

(a) produced by an audio recording device that is used in conjunction with a device or piece of equipment designed or intended for resuscitating an individual or for treating an individual with a life-threatening condition;

(b) produced during an emergency event when an individual employed to provide law enforcement, fire protection, paramedic, emergency medical, or other first responder service:

(i) is responding to an individual needing resuscitation or with a life-threatening condition; and

(ii) uses a device or piece of equipment designed or intended for resuscitating an individual or for treating an individual with a life-threatening condition; and

(c) intended and used for purposes of training emergency responders how to improve their response to an emergency situation;

(68) records submitted by or prepared in relation to an applicant seeking a recommendation by the Research and General Counsel Subcommittee, the Budget Subcommittee, or the Audit Subcommittee, established under Section 36-12-8, for an employment position with the Legislature;

(69) work papers as defined in Section 31A-2-204;

(70) a record made available to Adult Protective Services or a law enforcement agency under Section 61-1-206;

(71) a record submitted to the Insurance Department in accordance with Section 31A-37-201;

(72) a record described in Section 31A-37-503;

(73) any record created by the Division of Professional Licensing as a result of Subsection 58-37f-304(5) or 58-37f-702(2)(a)(ii);

(74) a record described in Section 72-16-306 that relates to the reporting of an injury involving an amusement ride;

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(75) except as provided in Subsection 63G-2-305.5(1), the signature of an individual on a political petition, or on a request to withdraw a signature from a political petition, including a petition or request described in the following titles:

- (a) Title 10, Utah Municipal Code;
- (b) Title 17, Counties;
- (c) Title 17B, Limited Purpose Local Government Entities - Local Districts;
- (d) Title 17D, Limited Purpose Local Government Entities - Other Entities; and
- (e) Title 20A, Election Code;

(76) except as provided in Subsection 63G-2-305.5(2), the signature of an individual in a voter registration record;

(77) except as provided in Subsection 63G-2-305.5(3), any signature, other than a signature described in Subsection (75) or (76), in the custody of the lieutenant governor or a local political subdivision collected or held under, or in relation to, Title 20A, Election Code;

(78) a Form I-918 Supplement B certification as described in Title 77, Chapter 38, Part 5, Victims Guidelines for Prosecutors Act;

(79) a record submitted to the Insurance Department under Section 31A-48-103;

(80) personal information, as defined in Section 63G-26-102, to the extent disclosure is prohibited under Section 63G-26-103;

(81) an image taken of an individual during the process of booking the individual into jail, unless:

(a) the individual is convicted of a criminal offense based upon the conduct for which the individual was incarcerated at the time the image was taken;

(b) a law enforcement agency releases or disseminates the image:

(i) after determining that the individual is a fugitive or an imminent threat to an individual or to public safety and releasing or disseminating the image will assist in apprehending the individual or reducing or eliminating the threat; or

(ii) to a potential witness or other individual with direct knowledge of events relevant to a criminal investigation or criminal proceeding for the purpose of identifying or locating an individual in connection with the criminal investigation or criminal proceeding; or

(c) a judge orders the release or dissemination of the image based on a finding that the release or dissemination is in furtherance of a legitimate law enforcement interest;

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(82) a record:

(a) concerning an interstate claim to the use of waters in the Colorado River system;

(b) relating to a judicial proceeding, administrative proceeding, or negotiation with a representative from another state or the federal government as provided in Section 63M-14-205; and

(c) the disclosure of which would:

(i) reveal a legal strategy relating to the state's claim to the use of the water in the Colorado River system;

(ii) harm the ability of the Colorado River Authority of Utah or river commissioner to negotiate the best terms and conditions regarding the use of water in the Colorado River system; or

(iii) give an advantage to another state or to the federal government in negotiations regarding the use of water in the Colorado River system;

(83) any part of an application described in Section 63N-16-201 that the Governor's Office of Economic Opportunity determines is nonpublic, confidential information that if disclosed would result in actual economic harm to the applicant, but this Subsection (83) may not be used to restrict access to a record evidencing a final contract or approval decision;

(84) the following records of a drinking water or wastewater facility:

(a) an engineering or architectural drawing of the drinking water or wastewater facility; and

(b) except as provided in Section 63G-2-106, a record detailing tools or processes the drinking water or wastewater facility uses to secure, or prohibit access to, the records described in Subsection (84)(a); and

(85) a statement that an employee of a governmental entity provides to the governmental entity as part of the governmental entity's personnel or administrative investigation into potential misconduct involving the employee if the governmental entity:

(a) requires the statement under threat of employment disciplinary action, including possible termination of employment, for the employee's refusal to provide the statement; and

(b) provides the employee assurance that the statement cannot be used against the employee in any criminal proceeding.

Section ~~490~~85. Section **63G-3-501** is amended to read:

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63G-3-501. Administrative Rules Review and General Oversight Committee.

(1) (a) There is created an Administrative Rules Review and General Oversight Committee of the following 10 permanent members:

(i) five members of the Senate appointed by the president of the Senate, no more than three of whom may be from the same political party; and

(ii) five members of the House of Representatives appointed by the speaker of the House of Representatives, no more than three of whom may be from the same political party.

(b) Each permanent member shall serve:

(i) for a two-year term; or

(ii) until the permanent member's successor is appointed.

(c) (i) A vacancy exists when a permanent member ceases to be a member of the Legislature, or when a permanent member resigns from the committee.

(ii) When a vacancy exists:

(A) if the departing member is a member of the Senate, the president of the Senate shall appoint a member of the Senate to fill the vacancy; or

(B) if the departing member is a member of the House of Representatives, the speaker of the House of Representatives shall appoint a member of the House of Representatives to fill the vacancy.

(iii) The newly appointed member shall serve the remainder of the departing member's unexpired term.

(d) (i) The president of the Senate shall designate a member of the Senate appointed under Subsection (1)(a)(i) as a cochair of the committee.

(ii) The speaker of the House of Representatives shall designate a member of the House of Representatives appointed under Subsection (1)(a)(ii) as a cochair of the committee.

(e) Three representatives and three senators from the permanent members are a quorum for the transaction of business at any meeting.

(f) (i) Subject to Subsection (1)(f)(ii), the committee shall meet at least once each month to review new agency rules, amendments to existing agency rules, and repeals of existing agency rules.

(ii) The committee chairs may suspend the meeting requirement described in Subsection (1)(f)(i) at the committee chairs' discretion.

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(2) The office shall submit a copy of each issue of the bulletin to the committee.

(3) (a) The committee shall exercise continuous oversight of the rulemaking process.

(b) The committee shall examine each rule, including any rule made according to the emergency rulemaking procedure described in Section 63G-3-304, submitted by an agency to determine:

(i) whether the rule is authorized by statute;

(ii) whether the rule complies with legislative intent;

(iii) the rule's impact on the economy and the government operations of the state and local political subdivisions;

(iv) the rule's impact on affected persons;

(v) the rule's total cost to entities regulated by the state;

(vi) the rule's benefit to the citizens of the state; and

(vii) whether adoption of the rule requires legislative review or approval.

(c) The committee may examine and review:

(i) any executive order issued pursuant to Title 53, Chapter 2a, Part 2, Disaster Response and Recovery Act;

(ii) any public health order issued during a public health emergency declared in accordance with [~~Title 26, Utah Health Code, or~~] Title 26A, Local Health Authorities~~++~~, or Title 26B, Utah Health and Human Services Code; or

(iii) an agency's policies that:

(A) affect a class of persons other than the agency; or

(B) are contrary to legislative intent.

(d) (i) To carry out these duties, the committee may examine any other issues that the committee considers necessary.

(ii) Notwithstanding anything to the contrary in this section, the committee may not examine an agency's internal policies, procedures, or practices.

(iii) The committee may also notify and refer rules to the chairs of the interim committee that has jurisdiction over a particular agency when the committee determines that an issue involved in an agency's rules may be more appropriately addressed by that committee.

(e) An agency shall respond to a request from the committee for:

(i) an agency's policy described in Subsection (3)(c)(iii); or

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(ii) information related to an agency's policy described in Subsection (3)(c)(iii).

(f) In reviewing a rule, the committee shall follow generally accepted principles of statutory construction.

(4) When the committee reviews an existing rule, the committee chairs shall invite the Senate and House chairs of the standing committee and of the appropriation subcommittee that have jurisdiction over the agency whose existing rule is being reviewed to participate as nonvoting, ex officio members with the committee.

(5) The committee may request that the Office of the Legislative Fiscal Analyst prepare a fiscal note on any rule.

(6) In order to accomplish the committee's functions described in this chapter, the committee has all the powers granted to legislative interim committees under Section 36-12-11.

(7) (a) The committee may prepare written findings of the committee's review of a rule, policy, practice, or procedure and may include any recommendation, including:

(i) legislative action; or

(ii) action by a standing committee or interim committee.

(b) When the committee reviews a rule, the committee shall provide to the agency that enacted the rule:

(i) the committee's findings, if any; and

(ii) a request that the agency notify the committee of any changes the agency makes to the rule.

(c) The committee shall provide a copy of the committee's findings described in Subsection (7)(a), if any, to:

(i) any member of the Legislature, upon request;

(ii) any person affected by the rule, upon request;

(iii) the president of the Senate;

(iv) the speaker of the House of Representatives;

(v) the Senate and House chairs of the standing committee that has jurisdiction over the agency whose rule, policy, practice, or procedure is the subject of the finding; and

(vi) the Senate and House chairs of the appropriation subcommittee that has jurisdiction over the agency that made the rule.

(8) (a) (i) The committee may submit a report on the committee's review under this

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section to each member of the Legislature at each regular session.

(ii) The report shall include:

- (A) any finding or recommendation the committee made under Subsection (7);
- (B) any action an agency took in response to a committee recommendation; and
- (C) any recommendation by the committee for legislation.

(b) If the committee receives a recommendation not to reauthorize a rule, as described in Subsection 63G-3-301(13)(b), and the committee recommends to the Legislature reauthorization of the rule, the committee shall submit a report to each member of the Legislature detailing the committee's decision.

(c) If the committee recommends legislation, the committee may prepare legislation for consideration by the Legislature at the next general session.

Section ~~91~~86. Section **63G-4-102** is amended to read:

63G-4-102. Scope and applicability of chapter.

(1) Except as set forth in Subsection (2), and except as otherwise provided by a statute superseding provisions of this chapter by explicit reference to this chapter, the provisions of this chapter apply to every agency of the state and govern:

(a) state agency action that determines the legal rights, duties, privileges, immunities, or other legal interests of an identifiable person, including agency action to grant, deny, revoke, suspend, modify, annul, withdraw, or amend an authority, right, or license; and

(b) judicial review of the action.

(2) This chapter does not govern:

(a) the procedure for making agency rules, or judicial review of the procedure or rules;

(b) the issuance of a notice of a deficiency in the payment of a tax, the decision to waive a penalty or interest on taxes, the imposition of and penalty or interest on taxes, or the issuance of a tax assessment, except that this chapter governs an agency action commenced by a taxpayer or by another person authorized by law to contest the validity or correctness of the action;

(c) state agency action relating to extradition, to the granting of a pardon or parole, a commutation or termination of a sentence, or to the rescission, termination, or revocation of parole or probation, to the discipline of, resolution of a grievance of, supervision of, confinement of, or the treatment of an inmate or resident of a correctional facility, the Utah

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State Hospital, the Utah State Developmental Center, or a person in the custody or jurisdiction of the ~~[Division of Substance Abuse]~~ Office of Substance Use and Mental Health, or a person on probation or parole, or judicial review of the action;

(d) state agency action to evaluate, discipline, employ, transfer, reassign, or promote a student or teacher in a school or educational institution, or judicial review of the action;

(e) an application for employment and internal personnel action within an agency concerning its own employees, or judicial review of the action;

(f) the issuance of a citation or assessment under Title 34A, Chapter 6, Utah Occupational Safety and Health Act, and Title 58, Occupations and Professions, except that this chapter governs an agency action commenced by the employer, licensee, or other person authorized by law to contest the validity or correctness of the citation or assessment;

(g) state agency action relating to management of state funds, the management and disposal of school and institutional trust land assets, and contracts for the purchase or sale of products, real property, supplies, goods, or services by or for the state, or by or for an agency of the state, except as provided in those contracts, or judicial review of the action;

(h) state agency action under Title 7, Chapter 1, Part 3, Powers and Duties of Commissioner of Financial Institutions, Title 7, Chapter 2, Possession of Depository Institution by Commissioner, Title 7, Chapter 19, Acquisition of Failing Depository Institutions or Holding Companies, and Chapter 7, Governmental Immunity Act of Utah, or judicial review of the action;

(i) the initial determination of a person's eligibility for unemployment benefits, the initial determination of a person's eligibility for benefits under Title 34A, Chapter 2, Workers' Compensation Act, and Title 34A, Chapter 3, Utah Occupational Disease Act, or the initial determination of a person's unemployment tax liability;

(j) state agency action relating to the distribution or award of a monetary grant to or between governmental units, or for research, development, or the arts, or judicial review of the action;

(k) the issuance of a notice of violation or order under ~~[Title 26, Chapter 8a, Utah Emergency Medical Services System Act]~~ Title 26B, Chapter 4, Part 1, Utah Emergency Medical Services System, Title 19, Chapter 2, Air Conservation Act, Title 19, Chapter 3, Radiation Control Act, Title 19, Chapter 4, Safe Drinking Water Act, Title 19, Chapter 5,

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Water Quality Act, Title 19, Chapter 6, Part 1, Solid and Hazardous Waste Act, Title 19, Chapter 6, Part 4, Underground Storage Tank Act, or Title 19, Chapter 6, Part 7, Used Oil Management Act, or Title 19, Chapter 6, Part 10, Mercury Switch Removal Act, except that this chapter governs an agency action commenced by a person authorized by law to contest the validity or correctness of the notice or order;

(l) state agency action, to the extent required by federal statute or regulation, to be conducted according to federal procedures;

(m) the initial determination of a person's eligibility for government or public assistance benefits;

(n) state agency action relating to wildlife licenses, permits, tags, and certificates of registration;

(o) a license for use of state recreational facilities;

(p) state agency action under Chapter 2, Government Records Access and Management Act, except as provided in Section 63G-2-603;

(q) state agency action relating to the collection of water commissioner fees and delinquency penalties, or judicial review of the action;

(r) state agency action relating to the installation, maintenance, and repair of headgates, caps, valves, or other water controlling works and weirs, flumes, meters, or other water measuring devices, or judicial review of the action;

(s) the issuance and enforcement of an initial order under Section 73-2-25;

(t) (i) a hearing conducted by the Division of Securities under Section 61-1-11.1; and

(ii) an action taken by the Division of Securities under a hearing conducted under Section 61-1-11.1, including a determination regarding the fairness of an issuance or exchange of securities described in Subsection 61-1-11.1(1);

(u) state agency action relating to water well driller licenses, water well drilling permits, water well driller registration, or water well drilling construction standards, or judicial review of the action;

(v) the issuance of a determination and order under Title 34A, Chapter 5, Utah Antidiscrimination Act;

(w) state environmental studies and related decisions by the Department of Transportation approving state or locally funded projects, or judicial review of the action;

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(x) the suspension of operations under Subsection 32B-1-304(3); or
(y) the issuance of a determination of violation by the Governor's Office of Economic Opportunity under Section 11-41-104.

(3) This chapter does not affect a legal remedy otherwise available to:

- (a) compel an agency to take action; or
- (b) challenge an agency's rule.

(4) This chapter does not preclude an agency, prior to the beginning of an adjudicative proceeding, or the presiding officer during an adjudicative proceeding from:

(a) requesting or ordering a conference with parties and interested persons to:

- (i) encourage settlement;
- (ii) clarify the issues;
- (iii) simplify the evidence;
- (iv) facilitate discovery; or
- (v) expedite the proceeding; or

(b) granting a timely motion to dismiss or for summary judgment if the requirements of Rule 12(b) or Rule 56 of the Utah Rules of Civil Procedure are met by the moving party, except to the extent that the requirements of those rules are modified by this chapter.

(5) (a) A declaratory proceeding authorized by Section 63G-4-503 is not governed by this chapter, except as explicitly provided in that section.

(b) Judicial review of a declaratory proceeding authorized by Section 63G-4-503 is governed by this chapter.

(6) This chapter does not preclude an agency from enacting a rule affecting or governing an adjudicative proceeding or from following the rule, if the rule is enacted according to the procedures outlined in Chapter 3, Utah Administrative Rulemaking Act, and if the rule conforms to the requirements of this chapter.

(7) (a) If the attorney general issues a written determination that a provision of this chapter would result in the denial of funds or services to an agency of the state from the federal government, the applicability of the provision to that agency shall be suspended to the extent necessary to prevent the denial.

(b) The attorney general shall report the suspension to the Legislature at its next session.

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(8) Nothing in this chapter may be interpreted to provide an independent basis for jurisdiction to review final agency action.

(9) Nothing in this chapter may be interpreted to restrict a presiding officer, for good cause shown, from lengthening or shortening a time period prescribed in this chapter, except the time period established for judicial review.

(10) Notwithstanding any other provision of this section, this chapter does not apply to a special adjudicative proceeding, as defined in Section 19-1-301.5, except to the extent expressly provided in Section 19-1-301.5.

(11) Subsection (2)(w), regarding action taken based on state environmental studies and policies of the Department of Transportation, applies to any claim for which a court of competent jurisdiction has not issued a final unappealable judgment or order before May 14, 2019.

Section ~~{92}~~87. Section **63G-7-201** is amended to read:

63G-7-201. Immunity of governmental entities and employees from suit.

(1) Except as otherwise provided in this chapter, each governmental entity and each employee of a governmental entity are immune from suit for any injury that results from the exercise of a governmental function.

(2) Notwithstanding the waiver of immunity provisions of Section 63G-7-301, a governmental entity, its officers, and its employees are immune from suit:

(a) as provided in Section 78B-4-517; and

(b) for any injury or damage resulting from the implementation of or the failure to implement measures to:

(i) control the causes of epidemic and communicable diseases and other conditions significantly affecting the public health or necessary to protect the public health as set out in Title 26A, Chapter 1, Local Health Departments;

(ii) investigate and control suspected bioterrorism and disease as set out in [~~Title 26, Chapter 23b, Detection of Public Health Emergencies Act~~] ~~{Title 26B, Chapter 7, Part 3, Treatment, Isolation, and Quarantine Procedures for Communicable Diseases}~~Sections 26B-7-316 through 26B-7-324;

(iii) respond to a national, state, or local emergency, a public health emergency as defined in Section [~~26-23b-102~~] 26B-7-301, or a declaration by the President of the United

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States or other federal official requesting public health related activities, including the use, provision, operation, and management of:

- (A) an emergency shelter;
- (B) housing;
- (C) a staging place; or
- (D) a medical facility; and

(iv) adopt methods or measures, in accordance with Section ~~[26-1-30]~~ 26B-1-202, for health care providers, public health entities, and health care insurers to coordinate among themselves to verify the identity of the individuals they serve.

(3) A governmental entity, its officers, and its employees are immune from suit, and immunity is not waived, for any injury if the injury arises out of or in connection with, or results from:

(a) a latent dangerous or latent defective condition of:

(i) any highway, road, street, alley, crosswalk, sidewalk, culvert, tunnel, bridge, or viaduct; or

(ii) another structure located on any of the items listed in Subsection (3)(a)(i); or

(b) a latent dangerous or latent defective condition of any public building, structure, dam, reservoir, or other public improvement.

(4) A governmental entity, its officers, and its employees are immune from suit, and immunity is not waived, for any injury proximately caused by a negligent act or omission of an employee committed within the scope of employment, if the injury arises out of or in connection with, or results from:

(a) the exercise or performance, or the failure to exercise or perform, a discretionary function, whether or not the discretion is abused;

(b) except as provided in Subsections 63G-7-301(2)(j), (3), and (4), assault, battery, false imprisonment, false arrest, malicious prosecution, intentional trespass, abuse of process, libel, slander, deceit, interference with contract rights, infliction of mental anguish, or violation of civil rights;

(c) the issuance, denial, suspension, or revocation of, or the failure or refusal to issue, deny, suspend, or revoke, any permit, license, certificate, approval, order, or similar authorization;

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- (d) a failure to make an inspection or making an inadequate or negligent inspection;
- (e) the institution or prosecution of any judicial or administrative proceeding, even if malicious or without probable cause;
- (f) a misrepresentation by an employee whether or not the misrepresentation is negligent or intentional;
- (g) a riot, unlawful assembly, public demonstration, mob violence, or civil disturbance;
- (h) the collection or assessment of taxes;
- (i) an activity of the Utah National Guard;
- (j) the incarceration of a person in a state prison, county or city jail, or other place of legal confinement;
- (k) a natural condition on publicly owned or controlled land;
- (l) a condition existing in connection with an abandoned mine or mining operation;
- (m) an activity authorized by the School and Institutional Trust Lands Administration or the Division of Forestry, Fire, and State Lands;
- (n) the operation or existence of a pedestrian or equestrian trail that is along a ditch, canal, stream, or river, regardless of ownership or operation of the ditch, canal, stream, or river, if:
 - (i) the trail is designated under a general plan adopted by a municipality under Section 10-9a-401 or by a county under Section 17-27a-401;
 - (ii) the trail right-of-way or the right-of-way where the trail is located is open to public use as evidenced by a written agreement between:
 - (A) the owner or operator of the trail right-of-way or of the right-of-way where the trail is located; and
 - (B) the municipality or county where the trail is located; and
 - (iii) the written agreement:
 - (A) contains a plan for operation and maintenance of the trail; and
 - (B) provides that an owner or operator of the trail right-of-way or of the right-of-way where the trail is located has, at a minimum, the same level of immunity from suit as the governmental entity in connection with or resulting from the use of the trail;
- (o) research or implementation of cloud management or seeding for the clearing of fog;
- (p) the management of flood waters, earthquakes, or natural disasters;

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- (q) the construction, repair, or operation of flood or storm systems;
- (r) the operation of an emergency vehicle, while being driven in accordance with the requirements of Section 41-6a-212;
- (s) the activity of:
 - (i) providing emergency medical assistance;
 - (ii) fighting fire;
 - (iii) regulating, mitigating, or handling hazardous materials or hazardous wastes;
 - (iv) an emergency evacuation;
 - (v) transporting or removing an injured person to a place where emergency medical assistance can be rendered or where the person can be transported by a licensed ambulance service; or
 - (vi) intervening during a dam emergency;
- (t) the exercise or performance, or the failure to exercise or perform, any function pursuant to Title 73, Chapter 10, Board of Water Resources - Division of Water Resources;
- (u) an unauthorized access to government records, data, or electronic information systems by any person or entity;
- (v) an activity of wildlife, as defined in Section 23-13-2, that arises during the use of a public or private road; or
- (w) a communication between employees of one or more law enforcement agencies related to the employment, disciplinary history, character, professional competence, or physical or mental health of a peace officer, or a former, current, or prospective employee of a law enforcement agency, including any communication made in accordance with Section 53-14-101.

Section ~~{93}~~88. Section **63I-1-226** is repealed and reenacted to read:

63I-1-226. Repeal dates: ~~{Title}~~Titles 26A through 26B.

- (1) Subsection 26B-1-204(2)(i), related to the Residential Child Care Licensing Advisory Committee, is repealed July 1, 2024.
- (2) Subsection 26B-1-204(2)(k), related to the Primary Care Grant Committee, is repealed July 1, 2025.
- (3) Section 26B-1-230, related to governmental entities requiring COVID-19 vaccines, is repealed July 1, 2024.

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(4) Section 26B-1-315, which creates the Medicaid Expansion Fund, is repealed July 1, 2024.

(5) Section 26B-1-319, which creates the Spinal Cord and Brain Injury Rehabilitation Fund, is repealed January 1, 2025.

(6) Section 26B-1-320, which creates the Pediatric Neuro-Rehabilitation Fund, is repealed January 1, 2025.

(7) Subsection 26B-1-329(6), related to the Behavioral Health Crisis Response Commission, is repealed July 1, 2023.

(8) Section 26B-1-402, related to the Rare Disease Advisory Council Grant Program, is repealed July 1, 2026.

(9) Section 26B-1-409, which creates the Utah Digital Health Service Commission, is repealed July 1, 2025.

(10) Section 26B-1-410, which creates the Primary Care Grant Committee, is repealed July 1, 2025.

(11) Section 26B-1-415, which creates the Residential Child Care Licensing Advisory Committee, is repealed July 1, 2024.

(12) Section 26B-1-416, which creates the Utah Children's Health Insurance Program Advisory Council, is repealed July 1, 2025.

(13) Section 26B-1-417, which creates the Traumatic Brain Injury Advisory Committee, is repealed July 1, 2025.

(14) Section 26B-1-418, which creates the Spinal Cord and Brain Injury Rehabilitation Fund and Pediatric Neuro-Rehabilitation Fund Advisory Committee, is repealed January 1, 2025.

(15) Section 26B-1-422, which creates the Early Childhood Utah Advisory Council, is repealed July 1, 2026.

(16) Section 26B-1-428, which creates the Youth Electronic Cigarette, Marijuana, and Other Drug Prevention Program, is repealed July 1, 2025.

(17) Section 26B-1-430, which creates the Coordinating Council for Persons with Disabilities, is repealed July 1, 2027.

(18) Section 26B-1-431, which creates the Forensic Mental Health Coordinating Council, is repealed July 1, 2023.

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~~{ (19) Section 26B-2-309, related to assisted living facility transfers, is repealed July 1, 2023.~~

~~— (20) Section 26B-2-407, related to drinking water quality in child care centers, is repealed July 1, 2027.~~

~~— (21) Subsection 26B-3-107(9), which addresses reimbursement for dental hygienists, is repealed July 1, 2028.~~

~~— (22) Section 26B-3-136, which creates the Children's Health Care Coverage Program, is repealed July 1, 2025.~~

~~— (23) Section 26B-3-137, related to reimbursement for the National Diabetes Prevention Program, is repealed June 30, 2027.~~

~~— (24) Subsection 26B-3-213(2), the language that states "and the Behavioral Health Crisis Response Commission created in Section 63C-18-202" is repealed July 1, 2023.~~

~~— (25) Title 26B, Chapter 3, Part 5, Inpatient Hospital Assessment, is repealed July 1, 2024.~~

~~— (26) Title 26B, Chapter 3, Part 6, Medicaid Expansion Hospital Assessment, is repealed July 1, 2024.~~

~~— (27) Title 26B, Chapter 3, Part 7, Hospital Provider Assessment, is repealed July 1, 2024.~~

~~— (28) Section 26B-4-136, related to the Volunteer Emergency Medical Service Personnel Health Insurance Program, is repealed July 1, 2027.~~

~~† (29) {19} {Subsection 26B-4-319(5)} Section 26B-1-432, which creates the Newborn Hearing Screening Committee, is repealed July 1, 2026.~~

~~(30) {20} Section {26B-4-710} 26B-2-309, related to {rural residency training programs} assisted living facility transfers, is repealed July 1, {2025}.~~

~~— (31) Subsections 26B-5-112(1) and (5) 2023.~~

(21) Section 26B-2-407, related to drinking water quality in child care centers, is repealed July 1, 2027.

(22) Subsection 26B-3-107(9), which addresses reimbursement for dental hygienists, is repealed July 1, 2028.

(23) Section 26B-3-136, which creates the Children's Health Care Coverage Program, is repealed July 1, 2025.

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(24) Section 26B-3-137, related to reimbursement for the National Diabetes Prevention Program, is repealed June 30, 2027.

(25) Subsection 26B-3-213(2), the language that states "~~{In consultation with}~~ and the Behavioral Health Crisis Response Commission~~{, established}~~ created in Section 63C-18-202~~{,}~~" is repealed July 1, 2023.

(26) Sections 26B-3-302 through 26B-3-309, regarding the Drug Utilization Review Board, are repealed July 1, 2027.

(27) Title 26B, Chapter 3, Part 5, Inpatient Hospital Assessment, is repealed July 1, 2024.

(28) Title 26B, Chapter 3, Part 6, Medicaid Expansion Hospital Assessment, is repealed July 1, 2024.

(29) Title 26B, Chapter 3, Part 7, Hospital Provider Assessment, is repealed July 1, 2024.

(30) Section 26B-4-136, related to the Volunteer Emergency Medical Service Personnel Health Insurance Program, is repealed July 1, 2027.

(31) Section 26B-4-710, related to rural residency training programs, is repealed July 1, 2025.

(32) Subsections 26B-5-112(1) and (5), the language that states "In consultation with the Behavioral Health Crisis Response Commission, established in Section 63C-18-202," is repealed January 1, 2023.

(~~{32}~~{33}) Section 26B-5-114, related to the Behavioral Health Receiving Center Grant Program, is repealed December 31, 2023.

(~~{33}~~{34}) Section 26B-5-118, related to collaborative care grant programs, is repealed December 31, 2024.

(~~{34}~~{35}) In relation to the Behavioral Health Crisis Response Commission, on July 1, 2023:

(a) Subsection 26B-5-609(1)(a) is repealed;

(b) Subsection 26B-5-609(3)(a), the language that states "With recommendations from the commission," is repealed;

(c) Subsection 26B-5-610(1)(b) is repealed;~~{ and }~~

(d) Subsection 26B-5-610(2)(b), the language that states "and in consultation with the

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commission," is repealed~~(1); and~~

(e) Subsection 26B-5-610(4) is repealed.

(~~35~~36) Subsections 26B-5-611(1)(a) and (10), in relation to the Utah Substance Use and Mental Health Advisory Council, are repealed January 1, 2033.

(~~36~~37) Section 26B-5-612, related to integrated behavioral health care grant programs, is repealed December 31, 2025.

(~~37~~38) Subsection 26B-7-119(5), related to reports to the Legislature on the outcomes of the Hepatitis C Outreach Pilot Program, is repealed July 1, 2028.

(~~38~~39) Section 26B-7-224, related to reports to the Legislature on violent incidents and fatalities involving substance abuse, is repealed December 31, 2027.

(~~39~~40) Title 26B, Chapter 8, Part 5, Utah Health Data Authority, is repealed July 1, 2024.

(~~40~~41) Section 26B-8-513, related to identifying overuse of non-evidence-based health care, is repealed December 31, 2023.

Section ~~(94)~~89. Section **63I-1-262** is amended to read:

63I-1-262. Repeal dates: Title 62.

[~~(1) Section 62A-3-209 is repealed July 1, 2023.~~]

[~~(2) Sections 62A-5a-101, 62A-5a-102, 62A-5a-103, and 62A-5a-104, which create the Coordinating Council for Persons with Disabilities, are repealed July 1, 2027.~~]

[~~(3) Subsections 62A-15-116(1) and (5), the language that states "In consultation with the Behavioral Health Crisis Response Commission, established in Section 63C-18-202," is repealed January 1, 2023.~~]

[~~(4) Section 62A-15-118 is repealed December 31, 2023.~~]

[~~(5) Section 62A-15-124 is repealed December 31, 2024.~~]

[~~(6) Section 62A-15-605, which creates the Forensic Mental Health Coordinating Council, is repealed July 1, 2023.~~]

[~~(7) Subsections 62A-15-1100(1) and 62A-15-1101(9), in relation to the Utah Substance Use and Mental Health Advisory Council, are repealed January 1, 2033.~~]

[~~(8) In relation to the Behavioral Health Crisis Response Commission, on July 1, 2023.~~]

[~~(a) Subsections 62A-15-1301(2) and 62A-15-1401(1) are repealed;~~]

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~~[(b) Subsection 62A-15-1302(1)(b), the language that states "and in consultation with the commission" is repealed;]~~

~~[(c) Subsection 62A-15-1303(1), the language that states "In consultation with the commission," is repealed;]~~

~~[(d) Subsection 62A-15-1402(2)(a), the language that states "With recommendations from the commission," is repealed; and]~~

~~[(e) Subsection 62A-15-1702(6) is repealed.]~~

Section ~~{95}~~90. Section **63I-2-226** is repealed and reenacted to read:

63I-2-226. Repeal dates: ~~{Title}~~Titles 26A through 26B.

(1) Subsection 26B-1-204(2)(f), related to the Air Ambulance Committee, is repealed July 1, 2024.

(2) Section 26B-1-405, related to the Air Ambulance Committee, is repealed on July 1, 2024.

(3) Section 26B-1-419, which creates the Utah Health Care Workforce Financial Assistance Program Advisory Committee, is repealed July 1, 2027.

(4) In relation to the Air Ambulance Committee, on July 1, 2024, Subsection 26B-2-231(1)(a) is amended to read:

"(a) provide the patient or the patient's representative with the following information before contacting an air medical transport provider:

(i) which health insurers in the state the air medical transport provider contracts with;

(ii) if sufficient data is available, the average charge for air medical transport services for a patient who is uninsured or out of network; and

(iii) whether the air medical transport provider balance bills a patient for any charge not paid by the patient's health insurer; and"

(5) Subsection 26B-3-215(5), related to reporting on coverage for in vitro fertilization and genetic testing, is repealed July 1, 2030.

(6) In relation to the Air Ambulance Committee, on July 1, 2024, Subsection 26B-4-135(1)(a) is amended to read:

"(a) provide the patient or the patient's representative with the following information before contacting an air medical transport provider:

(i) which health insurers in the state the air medical transport provider contracts with;

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(ii) if sufficient data is available, the average charge for air medical transport services for a patient who is uninsured or out of network; and

(iii) whether the air medical transport provider balance bills a patient for any charge not paid by the patient's health insurer; and".

(7) Section 26B-4-702, related to the Utah Health Care Workforce Financial Assistance Program, is repealed July 1, 2027.

(8) Section 26B-5-117, related to early childhood mental health support grant programs, is repealed January 2, 2025.

(9) Subsection 26B-7-117(3), related to reports to the Legislature on syringe exchange and education, is repealed January 1, 2027.

Section ~~96~~91. Section **63I-2-262** is amended to read:

63I-2-262. Repeal dates: Title 62.

~~[(1) Section 62A-4a-1003.5, relating to the Management Information System, is repealed September 1, 2022.]~~

~~[(2) Subsection 62A-5-103.1(6) is repealed January 1, 2023.]~~

~~[(3) Section 62A-15-122 is repealed January 2, 2025]~~

~~[(4) Title 62A, Chapter 15, Part 19, Mental Health Crisis Intervention Council, is repealed January 1, 2023.]~~

Section ~~97~~92. Section **63J-1-315** is amended to read:

63J-1-315. Medicaid Growth Reduction and Budget Stabilization Account -- Transfers of Medicaid growth savings -- Base budget adjustments.

(1) As used in this section:

(a) "Department" means the Department of Health and Human Services created in Section 26B-1-201.

(b) "Division" means the Division of ~~[Medicaid and Health Financing]~~ Integrated Healthcare created in Section ~~[26-18-2.1]~~ 26B-3-102.

(c) "General Fund revenue surplus" means a situation where actual General Fund revenues collected in a completed fiscal year exceed the estimated revenues for the General Fund for that fiscal year that were adopted by the Executive Appropriations Committee of the Legislature.

(d) "Medicaid growth savings" means the Medicaid growth target minus Medicaid

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program expenditures, if Medicaid program expenditures are less than the Medicaid growth target.

(e) "Medicaid growth target" means Medicaid program expenditures for the previous year multiplied by 1.08.

(f) "Medicaid program" is as defined in Section [26-18-2] ~~[26B-3-103](#)~~ [26B-3-101](#).

(g) "Medicaid program expenditures" means total state revenue expended for the Medicaid program from the General Fund, including restricted accounts within the General Fund, during a fiscal year.

(h) "Medicaid program expenditures for the previous year" means total state revenue expended for the Medicaid program from the General Fund, including restricted accounts within the General Fund, during the fiscal year immediately preceding a fiscal year for which Medicaid program expenditures are calculated.

(i) "Operating deficit" means that, at the end of the fiscal year, the unassigned fund balance in the General Fund is less than zero.

(j) "State revenue" means revenue other than federal revenue.

(k) "State revenue expended for the Medicaid program" includes money transferred or appropriated to the Medicaid Growth Reduction and Budget Stabilization Account only to the extent the money is appropriated for the Medicaid program by the Legislature.

(2) There is created within the General Fund a restricted account to be known as the Medicaid Growth Reduction and Budget Stabilization Account.

(3) (a) (i) Except as provided in Subsection (6), if, at the end of a fiscal year, there is a General Fund revenue surplus, the Division of Finance shall transfer an amount equal to Medicaid growth savings from the General Fund to the Medicaid Growth Reduction and Budget Stabilization Account.

(ii) If the amount transferred is reduced to prevent an operating deficit, as provided in Subsection (6), the Legislature shall include, to the extent revenue is available, an amount equal to the reduction as an appropriation from the General Fund to the account in the base budget for the second fiscal year following the fiscal year for which the reduction was made.

(b) If, at the end of a fiscal year, there is not a General Fund revenue surplus, the Legislature shall include, to the extent revenue is available, an amount equal to Medicaid growth savings as an appropriation from the General Fund to the account in the base budget for

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the second fiscal year following the fiscal year for which the reduction was made.

(c) Subsections (3)(a) and (3)(b) apply only to the fiscal year in which the department implements the proposal developed under Section ~~[26-18-405]~~ 26B-3-202 to reduce the long-term growth in state expenditures for the Medicaid program, and to each fiscal year after that year.

(4) The Division of Finance shall calculate the amount to be transferred under Subsection (3):

(a) before transferring revenue from the General Fund revenue surplus to:

(i) the General Fund Budget Reserve Account under Section 63J-1-312;

(ii) the Wildland Fire Suppression Fund created in Section 65A-8-204, as described in Section 63J-1-314; and

(iii) the State Disaster Recovery Restricted Account under Section 63J-1-314;

(b) before earmarking revenue from the General Fund revenue surplus to the Industrial Assistance Account under Section 63N-3-106; and

(c) before making any other year-end contingency appropriations, year-end set-asides, or other year-end transfers required by law.

(5) (a) If, at the close of any fiscal year, there appears to be insufficient money to pay additional debt service for any bonded debt authorized by the Legislature, the Division of Finance may hold back from any General Fund revenue surplus money sufficient to pay the additional debt service requirements resulting from issuance of bonded debt that was authorized by the Legislature.

(b) The Division of Finance may not spend the hold back amount for debt service under Subsection (5)(a) unless and until it is appropriated by the Legislature.

(c) If, after calculating the amount for transfer under Subsection (3), the remaining General Fund revenue surplus is insufficient to cover the hold back for debt service required by Subsection (5)(a), the Division of Finance shall reduce the transfer to the Medicaid Growth Reduction and Budget Stabilization Account by the amount necessary to cover the debt service hold back.

(d) Notwithstanding Subsections (3) and (4), the Division of Finance shall hold back the General Fund balance for debt service authorized by this Subsection (5) before making any transfers to the Medicaid Growth Reduction and Budget Stabilization Account or any other

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designation or allocation of General Fund revenue surplus.

(6) Notwithstanding Subsections (3) and (4), if, at the end of a fiscal year, the Division of Finance determines that an operating deficit exists and that holding back earmarks to the Industrial Assistance Account under Section 63N-3-106, transfers to the Wildland Fire Suppression Fund and State Disaster Recovery Restricted Account under Section 63J-1-314, transfers to the General Fund Budget Reserve Account under Section 63J-1-312, or earmarks and transfers to more than one of those accounts, in that order, does not eliminate the operating deficit, the Division of Finance may reduce the transfer to the Medicaid Growth Reduction and Budget Stabilization Account by the amount necessary to eliminate the operating deficit.

(7) The Legislature may appropriate money from the Medicaid Growth Reduction and Budget Stabilization Account only:

(a) if Medicaid program expenditures for the fiscal year for which the appropriation is made are estimated to be 108% or more of Medicaid program expenditures for the previous year; and

(b) for the Medicaid program.

(8) The Division of Finance shall deposit interest or other earnings derived from investment of Medicaid Growth Reduction and Budget Stabilization Account money into the General Fund.

Section ~~98~~93. **Coordinating S.B. 208 with H.B. 26 -- Substantive and technical amendment.**

If this S.B. 208 and H.B. 26, License Plate Amendments, both pass and become law, the Legislature intends that the Office of Legislative Research and General Counsel prepare the Utah Code database for publication on January 1, 2024, as follows:

(1) the amendments to Section 63I-2-226 in this bill supersede the amendments to Section 63I-2-226 in H.B. 26;

(2) add the language "Section 26B-1-302 is repealed on July 1, 2024." as a subsection to Section 63I-2-226 in this bill, numerically according to title placement;

(3) add the language "Section 26B-1-313 is repealed on July 1, 2024." as a subsection to Section 63I-2-226 in this bill, numerically according to title placement;

(4) add the language "Section 26B-1-314 is repealed on July 1, 2024." as a subsection to Section 63I-2-226 in this bill, numerically according to title placement; and

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(5) add the language "Section 26B-1-321 is repealed on July 1, 2024." as a subsection to Section 63I-2-226 in this bill, numerically according to title placement.

Section 94. Coordinating S.B. 208 with H.B. 36 -- Substantive and technical amendment.

If this S.B. 208 and H.B. 36, Long Term Care Ombudsman Amendments, both pass and become law, the Legislature intends that the Office of Legislative Research and General Counsel, in preparing the Utah Code database for publication, omit Subsection 63I-1-226(20), relating to assisted living facility transfers, from this bill.

Section 95. Coordinating S.B. 208 with H.B. 48 -- Substantive and technical amendment.

If this S.B. 208 and H.B. 48, Early Childhood Amendments, both pass and become law, the Legislature intends that the Office of Legislative Research and General Counsel prepare the Utah Code database for publication as follows:

(1) the amendments to Section 63I-1-226 in this bill supersede the amendments to Section 63I-1-226 in H.B. 48; and

(2) Subsection 63I-1-226(15) in this S.B. 208 is amended to read:

"(15) Section 26B-1-422, which creates the Early Childhood Utah Advisory Council, is repealed July 1, 2029."

Section 96. Coordinating S.B. 208 with H.B. 66 -- Substantive and technical amendment.

If this S.B. 208 and H.B. 66, Behavioral Health Crisis Response Commission Amendments, both pass and become law, the Legislature intends that the Office of Legislative Research and General Counsel prepare the Utah Code database for publication as follows:

(1) the amendments to Section 63I-1-226 in this bill supersede the amendments to Section 63I-1-226 in H.B. 66;

(2) the amendments to Section 63I-1-262 in this bill supersede the amendments to Section 63I-1-262 in H.B. 66;

(3) Subsection 63I-1-226(7) in this S.B. 208 is amended to read:

"(7) Subsection 26B-1-329(6), related to the Behavioral Health Crisis Response Commission, is repealed December 31, 2026.";

(4) Subsection 63I-1-226(25) in this S.B. 208 is amended to read:

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"(25) Subsection 26B-3-213(2), the language that states "and the Behavioral Health Crisis Response Commission created in Section 63C-18-202" is repealed December 31, 2026.";

(5) Subsection 63I-1-226(32) in this S.B. 208 is amended to read:

"(32) Subsections 26B-5-112(1) and (5), the language that states "In consultation with the Behavioral Health Crisis Response Commission, established in Section 63C-18-202," is repealed December 31, 2026.";

(6) Subsection 63I-1-226(33) in this S.B. 208 is amended to read:

"(33) Section 26B-5-114, related to the Behavioral Health Receiving Center Grant Program, is repealed December 31, 2026.";

(7) Subsection 63I-1-226(35) in this S.B. 208 is amended to read:

"(35) In relation to the Behavioral Health Crisis Response Commission, on December 31, 2026:

(a) Subsection 26B-5-609(1)(a) is repealed;

(b) Subsection 26B-5-609(3)(a), the language that states "With recommendations from the commission," is repealed;

(c) Subsection 26B-5-610(1)(b) is repealed;

(d) Subsection 26B-5-610(2)(b), the language that states "and in consultation with the commission," is repealed; and

(e) Subsection 26B-5-610(4), the language that states "In consultation with the commission," is repealed.";

(8) add the language "Subsection 26B-1-324(4), the language that states "the Behavioral Health Crisis Response Commission, as defined in Section 63C-18-202," is repealed December 31, 2026." as a subsection to Section 63I-1-226 in this bill, numerically according to title placement;

(9) add the language "Section 62A-15-116.5 is repealed December 31, 2026." as a subsection to Section 63I-1-226 in this bill, numerically according to title placement after Section 62A-15-116.5 has been technically renumbered to Title 26B, in accordance with the Revisor Instructions in this bill; and

(10) add the language "Section 62A-15-125 is repealed December 31, 2026." as a subsection to Section 63I-1-226 in this bill, numerically according to title placement after Section 62A-15-125 has been technically renumbered to Title 26B, in accordance with the

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Revisor Instructions in this bill.

Section 97. Coordinating S.B. 208 with H.B. 131 -- Substantive and technical amendment.

If this S.B. 208 and H.B. 131, Vaccine Passport Prohibition, both pass and become law, the Legislature intends that the Office of Legislative Research and General Counsel, in preparing the Utah Code database for publication, omit Subsection 63I-1-226(3), related to governmental entities requiring COVID-19 vaccines, from this bill.

Section 98. Coordinating S.B. 208 with H.B. 248 -- Substantive and technical amendment.

If this S.B. 208 and H.B. 248, Mental Health Services for Adults, both pass and become law, the Legislature intends that the Office of Legislative Research and General Counsel prepare the Utah Code database for publication as follows:

(1) the amendments to Section 63I-1-262 in this bill supersede the amendments to Section 63I-1-262 in H.B. 248; and

(2) add the following language as a subsection to Section 63I-1-226 in this bill, numerically according to title placement:

"In relation to the Utah Assertive Community Treatment Act, on July 1, 2024:

(a) Subsection 26B-5-606(2)(a)(i), the language that states "and" is repealed; and

(b) Subsections 26B-5-606(2)(a)(ii), 26B-5-606(2)(b), and 26B-5-606(2)(c) are repealed."

Section 99. Coordinating S.B. 208 with H.B. 429 -- Substantive and technical amendment.

If this S.B. 208 and H.B. 429, Pregnant and Postpartum Inmate Amendments, both pass and become law, the Legislature intends that the Office of Legislative Research and General Counsel prepare the Utah Code database for publication as follows:

(1) the amendments to Section 63I-1-226 in this bill supersede the amendments to Section 63I-1-226 in H.B. 429; and

(2) add the language "Subsection 26B-1-401, regarding the Correctional Postnatal and Early Childhood Advisory Board, is repealed on July 1, 2026." as a subsection to Section 63I-1-226 in this bill, numerically according to title placement.

Section 100. Coordinating S.B. 208 with H.B. 437 -- Substantive and technical

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amendment.

If this S.B. 208 and H.B. 437, Health Services Amendments, both pass and become law, the Legislature intends that the Office of Legislative Research and General Counsel prepare the Utah Code database for publication as follows:

(1) the amendments to Section 63I-2-226 in this bill supersede the amendments to Section 63I-2-226 in H.B. 437;

(2) add the language "Section 26-10-16 is repealed July 1, 2024." as a subsection to Section 63I-2-226 in this bill, numerically according to title placement after Section 26-10-16 has been technically renumbered to Title 26B, in accordance with the Revisor Instructions in this bill; and

(3) add the language "Section 26-18-29 is repealed July 1, 2024." as a subsection to Section 63I-2-226 in this bill, numerically according to title placement after Section 26-18-29 has been technically renumbered to Title 26B, in accordance with the Revisor Instructions in this bill.

Section 101. Coordinating S.B. 208 with H.B. 487 -- Substantive and technical amendment.

If this S.B. 208 and H.B. 487, Sickle Cell Disease, both pass and become law, the Legislature intends that the Office of Legislative Research and General Counsel prepare the Utah Code database for publication as follows:

(1) the amendments to Section 63I-2-226 in this bill supersede the amendments to Section 63I-2-226 in H.B. 487; and

(2) add the language "Section 26B-7-120, relating to sickle cell disease, is repealed on July 1, 2025." as a subsection to Section 63I-2-226 in this bill, numerically according to title placement.

Section 102. Coordinating S.B. 208 with S.B. 64 -- Substantive and technical amendment.

If this S.B. 208 and S.B. 64, Bureau of Emergency Medical Services Amendments, both pass and become law, the Legislature intends that the Office of Legislative Research and General Counsel prepare the Utah Code database for publication on July 1, 2023, as follows:

(1) the amendments to Section 63I-1-226 in this bill supersede the amendments to Section 63I-1-226 in S.B. 64;

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(2) Subsection 63I-1-226(2) in this S.B. 208 is amended to read:

"(2) Subsection 26B-1-204(2)(i), related to the Primary Care Grant Committee, is repealed July 1, 2025.";

(3) Subsection 63I-1-226(30) in this bill, relating to the Volunteer Emergency Medical Service Personnel Health Insurance Program, be omitted;

(4) Subsection 63I-2-226(1) in this bill, relating to the Air Ambulance Committee, be omitted;

(5) Subsection 63I-2-226(2) in this bill, relating to the Air Ambulance Committee, be omitted; and

(6) Subsection 63I-2-226(6) in this bill, relating to the Air Ambulance Committee, be omitted.

Section 103. Coordinating S.B. 208 with S.B. 123 -- Substantive and technical amendment.

If this S.B. 208 and S.B. 123, Boards and Commissions Modifications, both pass and become law, the Legislature intends that the Office of Legislative Research and General Counsel prepare the Utah Code database for publication as follows:

(1) the amendments to Section 63I-1-226 in this bill supersede the amendments to Section 63I-1-226 in S.B. 123;

(2) Subsection 63I-1-226(2) in this S.B. 208 is amended to read:

"(2) Subsection 26B-1-204(2)(i), related to the Primary Care Grant Committee, is repealed July 1, 2025.";

(3) Subsection 63I-1-226(1) in this bill, relating to the Residential Child Care Licensing Advisory Committee, be omitted; and

(4) Subsection 63I-1-226(11) in this bill, relating to the Residential Child Care Licensing Advisory Committee, be omitted.

Section 104. Coordinating S.B. 208 with S.B. 126 -- Substantive and technical amendment.

If this S.B. 208 and S.B. 126, Hospital Assessment Amendments, both pass and become law, the Legislature intends that the Office of Legislative Research and General Counsel prepare the Utah Code database for publication as follows:

(1) the amendments to Section 63I-1-226 in this bill supersede the amendments to

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Section 63I-1-226 in S.B. 126; and

(2) Subsection 63I-1-226(29) in this S.B. 208 is amended to read:

"(29) Title 26B, Chapter 3, Part 7, Hospital Provider Assessment, is repealed July 1, 2028."

Section 105. Revisor instructions.

The Legislature intends that the Office of Legislative Research and General Counsel, in preparing the Utah Code database for publication~~{t}~~:

(1) not enroll this bill if any of the following bills do not pass:

(a) S.B. 38, Health and Human Services Recodification - Administration, Licensing, and Recovery Services;

(b) S.B. 39, Health and Human Services Recodification - ~~{Prevention, Supports, Substance Use}~~ Health Care Assistance and ~~{Mental Health}~~ Data;

(c) S.B. 40, Health and Human Services Recodification - Health Care ~~{Assistance}~~ Delivery and ~~{Data}~~ Repeals; or

(d) S.B. 41, Health and Human Services Recodification - ~~{Health Care Delivery and Repeals}~~

~~{Prevention, Supports, Substance Use and Mental Health}~~; and

(2) in any new language added to the Utah Code by legislation passed during the 2023 General Session, replace any references to Titles 26 or 62A with the renumbered reference as it is renumbered in this bill.