

1                   **SUBSTANCE ABUSE TREATMENT FACILITY PATIENT**

2                                   **BROKERING**

3   2018 GENERAL SESSION

4   STATE OF UTAH

5                           **Chief Sponsor: Eric K. Hutchings**

6                                   Senate Sponsor: \_\_\_\_\_

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8   **LONG TITLE**

9   **Committee Note:**

10           The Health Reform Task Force recommended this bill.

11   **General Description:**

12           This bill makes remuneration for the referral of an individual for substance use disorder  
13 treatment an unlawful act.

14   **Highlighted Provisions:**

15           This bill:

- 16           ▶ makes remuneration for the referral of an individual for substance use disorder  
17 treatment a third degree felony;
- 18           ▶ specifies permissible exceptions;
- 19           ▶ defines terms; and
- 20           ▶ makes technical changes.

21   **Money Appropriated in this Bill:**

22           None

23   **Other Special Clauses:**

24           None

25   **Utah Code Sections Affected:**

26   AMENDS:

27           **26-36a-103**, as last amended by Laws of Utah 2013, Chapter 32



- 28 [26-36b-103](#), as enacted by Laws of Utah 2016, Chapter 279
- 29 [62A-2-101](#), as last amended by Laws of Utah 2017, Chapters 29, 148, and 209
- 30 [62A-2-116](#), as last amended by Laws of Utah 2016, Chapter 211
- 31 [63G-2-305](#), as last amended by Laws of Utah 2017, Chapters 374, 382, and 415
- 32 [77-7a-104](#), as last amended by Laws of Utah 2017, Chapter 415

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

35 Section 1. Section [26-36a-103](#) is amended to read:

36 **[26-36a-103. Definitions.](#)**

37 As used in this chapter:

38 (1) "Accountable care organization" means a managed care organization, as defined in  
39 42 C.F.R. Sec. 438, that contracts with the department under the provisions of Section  
40 [26-18-405](#).

41 (2) "Assessment" means the Medicaid hospital provider assessment established by this  
42 chapter.

43 (3) "Discharges" means the number of total hospital discharges reported on worksheet  
44 S-3 Part I, column 15, lines 12, 14, and 14.01 of the 2552-96 Medicare Cost Report or on  
45 Worksheet S-3 Part I, column 15, lines 14, 16, and 17 of the 2552-10 Medicare Cost Report for  
46 the applicable assessment year.

47 (4) "Division" means the Division of Health Care Financing of the department.

48 (5) "Hospital":

49 (a) means a privately owned:

50 (i) general acute hospital operating in the state as defined in Section [26-21-2](#); and

51 (ii) specialty hospital operating in the state, which shall include a privately owned  
52 hospital whose inpatient admissions are predominantly:

53 (A) rehabilitation;

54 (B) psychiatric;

55 (C) chemical dependency; or

56 (D) long-term acute care services; and

57 (b) does not include:

58 (i) [~~a residential care or treatment facility~~] a human services program, as defined in

59 Section [62A-2-101](#);

60 (ii) a hospital owned by the federal government, including the Veterans Administration  
61 Hospital; or

62 (iii) a hospital that is owned by the state government, a state agency, or a political  
63 subdivision of the state, including:

64 (A) a state-owned teaching hospital; and

65 (B) the Utah State Hospital.

66 (6) "Medicare cost report" means CMS-2552-96 or CMS-2552-10, the cost report for  
67 electronic filing of hospitals.

68 (7) "State plan amendment" means a change or update to the state Medicaid plan.

69 Section 2. Section **26-36b-103** is amended to read:

70 **26-36b-103. Definitions.**

71 As used in this chapter:

72 (1) "Assessment" means the inpatient hospital assessment established by this chapter.

73 (2) "CMS" means the same as that term is defined in Section [26-18-411](#).

74 (3) "Discharges" means the number of total hospital discharges reported on:

75 (a) Worksheet S-3 Part I, column 15, lines 14, 16, and 17 of the 2552-10 Medicare cost  
76 report for the applicable assessment year; or

77 (b) a similar report adopted by the department by administrative rule, if the report  
78 under Subsection (3)(a) is no longer available.

79 (4) "Division" means the Division of Health Care Financing within the department.

80 (5) "Medicare cost report" means CMS-2552-10, the cost report for electronic filing of  
81 hospitals.

82 (6) "Non-state government hospital":

83 (a) means a hospital owned by a non-state government entity; and

84 (b) does not include:

85 (i) the Utah State Hospital; or

86 (ii) a hospital owned by the federal government, including the Veterans Administration  
87 Hospital.

88 (7) "Private hospital":

89 (a) means:

90 (i) a privately owned general acute hospital operating in the state as defined in Section  
91 26-21-2; and

92 (ii) a privately owned specialty hospital operating in the state, which shall include a  
93 privately owned hospital whose inpatient admissions are predominantly:

- 94 (A) rehabilitation;
- 95 (B) psychiatric;
- 96 (C) chemical dependency; or
- 97 (D) long-term acute care services; and

98 (b) does not include a [~~residential care or treatment facility~~] human services program,  
99 as defined in Section 62A-2-101.

100 (8) "State teaching hospital" means a state owned teaching hospital that is part of an  
101 institution of higher education.

102 Section 3. Section 62A-2-101 is amended to read:

103 **62A-2-101. Definitions.**

104 As used in this chapter:

105 (1) "Adult day care" means nonresidential care and supervision:

- 106 (a) for three or more adults for at least four but less than 24 hours a day; and
- 107 (b) that meets the needs of functionally impaired adults through a comprehensive  
108 program that provides a variety of health, social, recreational, and related support services in a  
109 protective setting.

110 (2) "Applicant" means a person who applies for an initial license or a license renewal  
111 under this chapter.

112 (3) (a) "Associated with the licensee" means that an individual is:

113 (i) affiliated with a licensee as an owner, director, member of the governing body,  
114 employee, agent, provider of care, department contractor, or volunteer; or

115 (ii) applying to become affiliated with a licensee in a capacity described in Subsection  
116 (3)(a)(i).

117 (b) "Associated with the licensee" does not include:

118 (i) service on the following bodies, unless that service includes direct access to a child  
119 or a vulnerable adult:

120 (A) a local mental health authority described in Section 17-43-301;

- 121 (B) a local substance abuse authority described in Section 17-43-201; or
- 122 (C) a board of an organization operating under a contract to provide mental health or  
123 substance abuse programs, or services for the local mental health authority or substance abuse  
124 authority; or
- 125 (ii) a guest or visitor whose access to a child or a vulnerable adult is directly supervised  
126 at all times.
- 127 (4) (a) "Boarding school" means a private school that:
- 128 (i) uses a regionally accredited education program;
- 129 (ii) provides a residence to the school's students:
- 130 (A) for the purpose of enabling the school's students to attend classes at the school; and
- 131 (B) as an ancillary service to educating the students at the school;
- 132 (iii) has the primary purpose of providing the school's students with an education, as  
133 defined in Subsection (4)(b)(i); and
- 134 (iv) (A) does not provide the treatment or services described in Subsection [(29)]  
135 (33)(a); or
- 136 (B) provides the treatment or services described in Subsection [(29)] (33)(a) on a  
137 limited basis, as described in Subsection (4)(b)(ii).
- 138 (b) (i) For purposes of Subsection (4)(a)(iii), "education" means a course of study for  
139 one or more of grades kindergarten through 12th grade.
- 140 (ii) For purposes of Subsection (4)(a)(iv)(B), a private school provides the treatment or  
141 services described in Subsection [(29)] (33)(a) on a limited basis if:
- 142 (A) the treatment or services described in Subsection [(29)] (33)(a) are provided only  
143 as an incidental service to a student; and
- 144 (B) the school does not:
- 145 (I) specifically solicit a student for the purpose of providing the treatment or services  
146 described in Subsection [(29)] (33)(a); or
- 147 (II) have a primary purpose of providing the treatment or services described in  
148 Subsection [(29)] (33)(a).
- 149 (c) "Boarding school" does not include a therapeutic school.
- 150 (5) "Child" means a person under 18 years of age.
- 151 (6) "Child placing" means receiving, accepting, or providing custody or care for any

152 child, temporarily or permanently, for the purpose of:

153 (a) finding a person to adopt the child;

154 (b) placing the child in a home for adoption; or

155 (c) foster home placement.

156 (7) "Child-placing agency" means a person that engages in child placing.

157 (8) "Client" means an individual who receives or has received services from a licensee.

158 (9) "Day treatment" means specialized treatment that is provided to:

159 (a) a client less than 24 hours a day; and

160 (b) four or more persons who:

161 (i) are unrelated to the owner or provider; and

162 (ii) have emotional, psychological, developmental, physical, or behavioral  
163 dysfunctions, impairments, or chemical dependencies.

164 (10) "Department" means the Department of Human Services.

165 (11) "Department contractor" means an individual who:

166 (a) provides services under a contract with the department; and

167 (b) due to the contract with the department, has or will likely have direct access to a  
168 child or vulnerable adult.

169 (12) "Direct access" means that an individual has, or likely will have:

170 (a) contact with or access to a child or vulnerable adult that provides the individual  
171 with an opportunity for personal communication or touch; or

172 (b) an opportunity to view medical, financial, or other confidential personal identifying  
173 information of the child, the child's parents or legal guardians, or the vulnerable adult.

174 (13) "Directly supervised" means that an individual is being supervised under the  
175 uninterrupted visual and auditory surveillance of another individual who has a current  
176 background screening approval issued by the office.

177 (14) "Director" means the director of the Office of Licensing.

178 (15) "Domestic violence" means the same as that term is defined in Section [77-36-1](#).

179 (16) "Domestic violence treatment program" means a nonresidential program designed  
180 to provide psychological treatment and educational services to perpetrators and victims of  
181 domestic violence.

182 (17) "Elder adult" means a person 65 years of age or older.

- 183 (18) "Executive director" means the executive director of the department.
- 184 (19) "Foster home" means a residence that is licensed or certified by the Office of  
185 Licensing for the full-time substitute care of a child.
- 186 (20) "Health benefit plan" means the same as that term is defined in Section  
187 31A-22-619.6.
- 188 (21) "Health care provider" means the same as that term is defined in Section  
189 78B-3-403.
- 190 (22) "Health insurer" means the same as that term is defined in Section 31A-22-615.5.
- 191 ~~[(20)]~~ (23) (a) "Human services program" means a:
- 192 (i) foster home;
- 193 (ii) therapeutic school;
- 194 (iii) youth program;
- 195 (iv) resource family home;
- 196 (v) recovery residence; or
- 197 (vi) facility or program that provides:
- 198 (A) secure treatment;
- 199 (B) inpatient treatment;
- 200 (C) residential treatment;
- 201 (D) residential support;
- 202 (E) adult day care;
- 203 (F) day treatment;
- 204 (G) outpatient treatment;
- 205 (H) domestic violence treatment;
- 206 (I) child-placing services;
- 207 (J) social detoxification; or
- 208 (K) any other human services that are required by contract with the department to be  
209 licensed with the department.
- 210 (b) "Human services program" does not include a boarding school.
- 211 ~~[(21)]~~ (24) "Indian child" means the same as that term is defined in 25 U.S.C. Sec.  
212 1903.
- 213 ~~[(22)]~~ (25) "Indian country" means the same as that term is defined in 18 U.S.C. Sec.

214 1151.

215 [~~(23)~~] (26) "Indian tribe" means the same as that term is defined in 25 U.S.C. Sec.

216 1903.

217 [~~(24)~~] (27) "Licensee" means an individual or a human services program licensed by  
218 the office.

219 [~~(25)~~] (28) "Local government" means a city, town, metro township, or county.

220 [~~(26)~~] (29) "Minor" has the same meaning as "child."

221 [~~(27)~~] (30) "Office" means the Office of Licensing within the Department of Human  
222 Services.

223 [~~(28)~~] (31) "Outpatient treatment" means individual, family, or group therapy or  
224 counseling designed to improve and enhance social or psychological functioning for those  
225 whose physical and emotional status allows them to continue functioning in their usual living  
226 environment.

227 (32) "Practice group" or "group practice" means two or more health care providers  
228 legally organized as a partnership, professional corporation, or similar association, for which:

229 (a) substantially all of the services of the health care providers who are members of the  
230 group are provided through the group and are billed in the name of the group and amounts  
231 received are treated as receipts of the group; and

232 (b) the overhead expenses of and the income from the practice are distributed in  
233 accordance with methods previously determined by members of the group.

234 [~~(29)~~] (33) (a) "Recovery residence" means a home, residence, or facility that meets at  
235 least two of the following requirements:

236 (i) provides a supervised living environment for individuals recovering from a  
237 substance [~~abuse~~] use disorder;

238 (ii) provides a living environment in which more than half of the individuals in the  
239 residence are recovering from a substance [~~abuse~~] use disorder;

240 (iii) provides or arranges for residents to receive services related to their recovery from  
241 a substance [~~abuse~~] use disorder, either on or off site;

242 (iv) is held out as a living environment in which individuals recovering from substance  
243 abuse disorders live together to encourage continued sobriety; or

244 (v) (A) receives public funding; or



245 (B) is run as a business venture, either for-profit or not-for-profit.  
246 (b) "Recovery residence" does not mean:  
247 (i) a residential treatment program;  
248 (ii) residential support; or  
249 (iii) a home, residence, or facility, in which:  
250 (A) residents, by their majority vote, establish, implement, and enforce policies  
251 governing the living environment, including the manner in which applications for residence are  
252 approved and the manner in which residents are expelled;  
253 (B) residents equitably share rent and housing-related expenses; and  
254 (C) a landlord, owner, or operator does not receive compensation, other than fair  
255 market rental income, for establishing, implementing, or enforcing policies governing the  
256 living environment.  
257 [~~(30)~~] (34) "Regular business hours" means:  
258 (a) the hours during which services of any kind are provided to a client; or  
259 (b) the hours during which a client is present at the facility of a licensee.  
260 [~~(31)~~] (35) (a) "Residential support" means arranging for or providing the necessities of  
261 life as a protective service to individuals or families who have a disability or who are  
262 experiencing a dislocation or emergency that prevents them from providing these services for  
263 themselves or their families.  
264 (b) "Residential support" includes providing a supervised living environment for  
265 persons with dysfunctions or impairments that are:  
266 (i) emotional;  
267 (ii) psychological;  
268 (iii) developmental; or  
269 (iv) behavioral.  
270 (c) Treatment is not a necessary component of residential support.  
271 (d) "Residential support" does not include:  
272 (i) a recovery residence; or  
273 (ii) residential services that are performed:  
274 (A) exclusively under contract with the Division of Services for People with  
275 Disabilities; or

276 (B) in a facility that serves fewer than four individuals.

277 ~~[(32)]~~ (36) (a) "Residential treatment" means a 24-hour group living environment for  
278 four or more individuals unrelated to the owner or provider that offers room or board and  
279 specialized treatment, behavior modification, rehabilitation, discipline, emotional growth, or  
280 habilitation services for persons with emotional, psychological, developmental, or behavioral  
281 dysfunctions, impairments, or chemical dependencies.

282 (b) "Residential treatment" does not include a:

283 (i) boarding school;

284 (ii) foster home; or

285 (iii) recovery residence.

286 ~~[(33)]~~ (37) "Residential treatment program" means a human services program that  
287 provides:

288 (a) residential treatment; or

289 (b) secure treatment.

290 ~~[(34)]~~ (38) (a) "Secure treatment" means 24-hour specialized residential treatment or  
291 care for persons whose current functioning is such that they cannot live independently or in a  
292 less restrictive environment.

293 (b) "Secure treatment" differs from residential treatment to the extent that it requires  
294 intensive supervision, locked doors, and other security measures that are imposed on residents  
295 with neither their consent nor control.

296 ~~[(35)]~~ (39) "Social detoxification" means short-term residential services for persons  
297 who are experiencing or have recently experienced drug or alcohol intoxication, that are  
298 provided outside of a health care facility licensed under Title 26, Chapter 21, Health Care  
299 Facility Licensing and Inspection Act, and that include:

300 (a) room and board for persons who are unrelated to the owner or manager of the  
301 facility;

302 (b) specialized rehabilitation to acquire sobriety; and

303 (c) aftercare services.

304 (40) "Substance abuse disorder" or "substance use disorder" mean the same as  
305 "substance use disorder" is defined in Section [62A-15-1202](#).

306 ~~[(36)]~~ (41) "Substance abuse treatment program" or "substance use disorder treatment

307 program" means a program:

308 (a) designed to provide:

309 (i) specialized drug or alcohol treatment;

310 (ii) rehabilitation; or

311 (iii) habilitation services; and

312 (b) that provides the treatment or services described in Subsection [~~(36)~~] (40)(a) to

313 persons with:

314 (i) a diagnosed substance [~~abuse~~] use disorder; or

315 (ii) chemical dependency disorder.

316 [~~(37)~~] (42) "Therapeutic school" means a residential group living facility:

317 (a) for four or more individuals that are not related to:

318 (i) the owner of the facility; or

319 (ii) the primary service provider of the facility;

320 (b) that serves students who have a history of failing to function:

321 (i) at home;

322 (ii) in a public school; or

323 (iii) in a nonresidential private school; and

324 (c) that offers:

325 (i) room and board; and

326 (ii) an academic education integrated with:

327 (A) specialized structure and supervision; or

328 (B) services or treatment related to:

329 (I) a disability;

330 (II) emotional development;

331 (III) behavioral development;

332 (IV) familial development; or

333 (V) social development.

334 [~~(38)~~] (43) "Unrelated persons" means persons other than parents, legal guardians,

335 grandparents, brothers, sisters, uncles, or aunts.

336 [~~(39)~~] (44) "Vulnerable adult" means an elder adult or an adult who has a temporary or

337 permanent mental or physical impairment that substantially affects the person's ability to:

- 338 (a) provide personal protection;
- 339 (b) provide necessities such as food, shelter, clothing, or mental or other health care;
- 340 (c) obtain services necessary for health, safety, or welfare;
- 341 (d) carry out the activities of daily living;
- 342 (e) manage the adult's own resources; or
- 343 (f) comprehend the nature and consequences of remaining in a situation of abuse,
- 344 neglect, or exploitation.

345 ~~[(40)]~~ (45) (a) "Youth program" means a nonresidential program designed to provide  
346 behavioral, substance abuse, or mental health services to minors that:

- 347 (i) serves adjudicated or nonadjudicated youth;
- 348 (ii) charges a fee for its services;
- 349 (iii) may or may not provide host homes or other arrangements for overnight  
350 accommodation of the youth;
- 351 (iv) may or may not provide all or part of its services in the outdoors;
- 352 (v) may or may not limit or censor access to parents or guardians; and
- 353 (vi) prohibits or restricts a minor's ability to leave the program at any time of the  
354 minor's own free will.

355 (b) "Youth program" does not include recreational programs such as Boy Scouts, Girl  
356 Scouts, 4-H, and other such organizations.

357 Section 4. Section **62A-2-116** is amended to read:

358 **62A-2-116. Violation -- Criminal penalties.**

359 (1) (a) A person who owns, establishes, conducts, maintains, manages, or operates a  
360 human services program in violation of this chapter is guilty of a class A misdemeanor if the  
361 violation endangers or harms the health, welfare, or safety of persons participating in that  
362 program.

363 (b) Conviction in a criminal proceeding does not preclude the office from:

- 364 (i) assessing a civil penalty or an administrative penalty;
- 365 (ii) denying, placing conditions on, suspending, or revoking a license; or
- 366 (iii) seeking injunctive or equitable relief.

367 (2) Any person that violates a provision of this chapter, lawful orders of the office, or  
368 rules adopted under this chapter may be assessed a penalty not to exceed the sum of \$10,000

369 per violation, in:

370 (a) a judicial civil proceeding; or

371 (b) an administrative action in accordance with Title 63G, Chapter 4, Administrative  
372 Procedures Act.

373 (3) Assessment of a judicial penalty or an administrative penalty does not preclude the  
374 office from:

375 (a) seeking criminal penalties;

376 (b) denying, placing conditions on, suspending, or revoking a license; or

377 (c) seeking injunctive or equitable relief.

378 (4) The office may assess the human services program the cost incurred by the office in  
379 placing a monitor.

380 (5) Notwithstanding Subsection (1)(a) and subject to Subsections (1)(b) and (2), an  
381 individual is guilty of a third degree felony and, upon conviction, shall be imprisoned for not  
382 more than five years if the individual knowingly and willfully offers, pays, promises to pay,  
383 solicits, or receives any remuneration, including any commission, bonus, kickback, bribe, or  
384 rebate, directly or indirectly, overtly or covertly, in cash or in kind, or engages in any split-fee  
385 arrangement in return for:

386 (a) referring an individual to a person for the furnishing or arranging for the furnishing  
387 of any item or service for the treatment of a substance use disorder; or

388 (b) receiving a referred individual for the furnishing or arranging for the furnishing of  
389 any item or service for the treatment of a substance use disorder.

390 (6) Subsection (5) does not prohibit:

391 (a) any discount, payment, waiver of payment, or payment practice not prohibited by  
392 42 U.S.C. Sec. 1320a-7(b) or regulations made under 42 U.S.C. Sec. 1320a-7(b);

393 (b) patient referrals within a practice group;

394 (c) payments by a health insurer who reimburses, provides, offers to provide, or  
395 administers health, mental health, or substance use disorder goods or services under a health  
396 benefit plan;

397 (d) payments to or by a health care provider, practice group, or substance use disorder  
398 treatment program that has contracted with a health insurer, a health care purchasing group, or  
399 the Medicare or Medicaid program to provide health, mental health, or substance use disorder

400 goods or services under a health benefit plan when the payments are for goods or services  
401 under the plan; or

402 (e) payments by a health care provider, practice group, or substance use disorder  
403 treatment program to a health, mental health, or substance use disorder information service that  
404 provides information upon request and without charge to consumers about providers of health  
405 care goods or services to enable consumers to select appropriate providers or facilities, if the  
406 information service:

407 (i) does not attempt through standard questions for solicitation of consumer criteria or  
408 through any other means to steer or lead a consumer to select or consider selection of a  
409 particular health care provider, practice group, or substance use disorder treatment program;

410 (ii) does not provide or represent that the information service provides diagnostic or  
411 counseling services or assessments of illness or injury and does not make any promises of cure  
412 or guarantees of treatment;

413 (iii) does not provide or arrange for transportation of a patient to or from the location  
414 of a health care provider, practice group, or substance use disorder treatment program; and

415 (iv) charges and collects fees from a health care provider, practice group, or substance  
416 use disorder treatment program participating in information services that are set in advance, are  
417 consistent with the fair market value for those information services, and are not based on the  
418 potential value of a patient or patients to a health care provider, practice group, or substance  
419 use disorder treatment program of the goods or services provided by the health care provider,  
420 practice group, or substance use disorder treatment program.

421 Section 5. Section **63G-2-305** is amended to read:

422 **63G-2-305. Protected records.**

423 The following records are protected if properly classified by a governmental entity:

424 (1) trade secrets as defined in Section [13-24-2](#) if the person submitting the trade secret  
425 has provided the governmental entity with the information specified in Section [63G-2-309](#);

426 (2) commercial information or nonindividual financial information obtained from a  
427 person if:

428 (a) disclosure of the information could reasonably be expected to result in unfair  
429 competitive injury to the person submitting the information or would impair the ability of the  
430 governmental entity to obtain necessary information in the future;

431 (b) the person submitting the information has a greater interest in prohibiting access  
432 than the public in obtaining access; and

433 (c) the person submitting the information has provided the governmental entity with  
434 the information specified in Section 63G-2-309;

435 (3) commercial or financial information acquired or prepared by a governmental entity  
436 to the extent that disclosure would lead to financial speculations in currencies, securities, or  
437 commodities that will interfere with a planned transaction by the governmental entity or cause  
438 substantial financial injury to the governmental entity or state economy;

439 (4) records, the disclosure of which could cause commercial injury to, or confer a  
440 competitive advantage upon a potential or actual competitor of, a commercial project entity as  
441 defined in Subsection 11-13-103(4);

442 (5) test questions and answers to be used in future license, certification, registration,  
443 employment, or academic examinations;

444 (6) records, the disclosure of which would impair governmental procurement  
445 proceedings or give an unfair advantage to any person proposing to enter into a contract or  
446 agreement with a governmental entity, except, subject to Subsections (1) and (2), that this  
447 Subsection (6) does not restrict the right of a person to have access to, after the contract or  
448 grant has been awarded and signed by all parties, a bid, proposal, application, or other  
449 information submitted to or by a governmental entity in response to:

450 (a) an invitation for bids;

451 (b) a request for proposals;

452 (c) a request for quotes;

453 (d) a grant; or

454 (e) other similar document;

455 (7) information submitted to or by a governmental entity in response to a request for  
456 information, except, subject to Subsections (1) and (2), that this Subsection (7) does not restrict  
457 the right of a person to have access to the information, after:

458 (a) a contract directly relating to the subject of the request for information has been  
459 awarded and signed by all parties; or

460 (b) (i) a final determination is made not to enter into a contract that relates to the  
461 subject of the request for information; and

462 (ii) at least two years have passed after the day on which the request for information is  
463 issued;

464 (8) records that would identify real property or the appraisal or estimated value of real  
465 or personal property, including intellectual property, under consideration for public acquisition  
466 before any rights to the property are acquired unless:

467 (a) public interest in obtaining access to the information is greater than or equal to the  
468 governmental entity's need to acquire the property on the best terms possible;

469 (b) the information has already been disclosed to persons not employed by or under a  
470 duty of confidentiality to the entity;

471 (c) in the case of records that would identify property, potential sellers of the described  
472 property have already learned of the governmental entity's plans to acquire the property;

473 (d) in the case of records that would identify the appraisal or estimated value of  
474 property, the potential sellers have already learned of the governmental entity's estimated value  
475 of the property; or

476 (e) the property under consideration for public acquisition is a single family residence  
477 and the governmental entity seeking to acquire the property has initiated negotiations to acquire  
478 the property as required under Section [78B-6-505](#);

479 (9) records prepared in contemplation of sale, exchange, lease, rental, or other  
480 compensated transaction of real or personal property including intellectual property, which, if  
481 disclosed prior to completion of the transaction, would reveal the appraisal or estimated value  
482 of the subject property, unless:

483 (a) the public interest in access is greater than or equal to the interests in restricting  
484 access, including the governmental entity's interest in maximizing the financial benefit of the  
485 transaction; or

486 (b) when prepared by or on behalf of a governmental entity, appraisals or estimates of  
487 the value of the subject property have already been disclosed to persons not employed by or  
488 under a duty of confidentiality to the entity;

489 (10) records created or maintained for civil, criminal, or administrative enforcement  
490 purposes or audit purposes, or for discipline, licensing, certification, or registration purposes, if  
491 release of the records:

492 (a) reasonably could be expected to interfere with investigations undertaken for



493 enforcement, discipline, licensing, certification, or registration purposes;

494 (b) reasonably could be expected to interfere with audits, disciplinary, or enforcement  
495 proceedings;

496 (c) would create a danger of depriving a person of a right to a fair trial or impartial  
497 hearing;

498 (d) reasonably could be expected to disclose the identity of a source who is not  
499 generally known outside of government and, in the case of a record compiled in the course of  
500 an investigation, disclose information furnished by a source not generally known outside of  
501 government if disclosure would compromise the source; or

502 (e) reasonably could be expected to disclose investigative or audit techniques,  
503 procedures, policies, or orders not generally known outside of government if disclosure would  
504 interfere with enforcement or audit efforts;

505 (11) records the disclosure of which would jeopardize the life or safety of an  
506 individual;

507 (12) records the disclosure of which would jeopardize the security of governmental  
508 property, governmental programs, or governmental recordkeeping systems from damage, theft,  
509 or other appropriation or use contrary to law or public policy;

510 (13) records that, if disclosed, would jeopardize the security or safety of a correctional  
511 facility, or records relating to incarceration, treatment, probation, or parole, that would interfere  
512 with the control and supervision of an offender's incarceration, treatment, probation, or parole;

513 (14) records that, if disclosed, would reveal recommendations made to the Board of  
514 Pardons and Parole by an employee of or contractor for the Department of Corrections, the  
515 Board of Pardons and Parole, or the Department of Human Services that are based on the  
516 employee's or contractor's supervision, diagnosis, or treatment of any person within the board's  
517 jurisdiction;

518 (15) records and audit workpapers that identify audit, collection, and operational  
519 procedures and methods used by the State Tax Commission, if disclosure would interfere with  
520 audits or collections;

521 (16) records of a governmental audit agency relating to an ongoing or planned audit  
522 until the final audit is released;

523 (17) records that are subject to the attorney client privilege;

524 (18) records prepared for or by an attorney, consultant, surety, indemnitor, insurer,  
525 employee, or agent of a governmental entity for, or in anticipation of, litigation or a judicial,  
526 quasi-judicial, or administrative proceeding;

527 (19) (a) (i) personal files of a state legislator, including personal correspondence to or  
528 from a member of the Legislature; and

529 (ii) notwithstanding Subsection (19)(a)(i), correspondence that gives notice of  
530 legislative action or policy may not be classified as protected under this section; and

531 (b) (i) an internal communication that is part of the deliberative process in connection  
532 with the preparation of legislation between:

533 (A) members of a legislative body;

534 (B) a member of a legislative body and a member of the legislative body's staff; or

535 (C) members of a legislative body's staff; and

536 (ii) notwithstanding Subsection (19)(b)(i), a communication that gives notice of  
537 legislative action or policy may not be classified as protected under this section;

538 (20) (a) records in the custody or control of the Office of Legislative Research and  
539 General Counsel, that, if disclosed, would reveal a particular legislator's contemplated  
540 legislation or contemplated course of action before the legislator has elected to support the  
541 legislation or course of action, or made the legislation or course of action public; and

542 (b) notwithstanding Subsection (20)(a), the form to request legislation submitted to the  
543 Office of Legislative Research and General Counsel is a public document unless a legislator  
544 asks that the records requesting the legislation be maintained as protected records until such  
545 time as the legislator elects to make the legislation or course of action public;

546 (21) research requests from legislators to the Office of Legislative Research and  
547 General Counsel or the Office of the Legislative Fiscal Analyst and research findings prepared  
548 in response to these requests;

549 (22) drafts, unless otherwise classified as public;

550 (23) records concerning a governmental entity's strategy about:

551 (a) collective bargaining; or

552 (b) imminent or pending litigation;

553 (24) records of investigations of loss occurrences and analyses of loss occurrences that  
554 may be covered by the Risk Management Fund, the Employers' Reinsurance Fund, the

555 Uninsured Employers' Fund, or similar divisions in other governmental entities;  
556 (25) records, other than personnel evaluations, that contain a personal recommendation  
557 concerning an individual if disclosure would constitute a clearly unwarranted invasion of  
558 personal privacy, or disclosure is not in the public interest;

559 (26) records that reveal the location of historic, prehistoric, paleontological, or  
560 biological resources that if known would jeopardize the security of those resources or of  
561 valuable historic, scientific, educational, or cultural information;

562 (27) records of independent state agencies if the disclosure of the records would  
563 conflict with the fiduciary obligations of the agency;

564 (28) records of an institution within the state system of higher education defined in  
565 Section 53B-1-102 regarding tenure evaluations, appointments, applications for admissions,  
566 retention decisions, and promotions, which could be properly discussed in a meeting closed in  
567 accordance with Title 52, Chapter 4, Open and Public Meetings Act, provided that records of  
568 the final decisions about tenure, appointments, retention, promotions, or those students  
569 admitted, may not be classified as protected under this section;

570 (29) records of the governor's office, including budget recommendations, legislative  
571 proposals, and policy statements, that if disclosed would reveal the governor's contemplated  
572 policies or contemplated courses of action before the governor has implemented or rejected  
573 those policies or courses of action or made them public;

574 (30) records of the Office of the Legislative Fiscal Analyst relating to budget analysis,  
575 revenue estimates, and fiscal notes of proposed legislation before issuance of the final  
576 recommendations in these areas;

577 (31) records provided by the United States or by a government entity outside the state  
578 that are given to the governmental entity with a requirement that they be managed as protected  
579 records if the providing entity certifies that the record would not be subject to public disclosure  
580 if retained by it;

581 (32) transcripts, minutes, or reports of the closed portion of a meeting of a public body  
582 except as provided in Section 52-4-206;

583 (33) records that would reveal the contents of settlement negotiations but not including  
584 final settlements or empirical data to the extent that they are not otherwise exempt from  
585 disclosure;

586 (34) memoranda prepared by staff and used in the decision-making process by an  
587 administrative law judge, a member of the Board of Pardons and Parole, or a member of any  
588 other body charged by law with performing a quasi-judicial function;

589 (35) records that would reveal negotiations regarding assistance or incentives offered  
590 by or requested from a governmental entity for the purpose of encouraging a person to expand  
591 or locate a business in Utah, but only if disclosure would result in actual economic harm to the  
592 person or place the governmental entity at a competitive disadvantage, but this section may not  
593 be used to restrict access to a record evidencing a final contract;

594 (36) materials to which access must be limited for purposes of securing or maintaining  
595 the governmental entity's proprietary protection of intellectual property rights including patents,  
596 copyrights, and trade secrets;

597 (37) the name of a donor or a prospective donor to a governmental entity, including an  
598 institution within the state system of higher education defined in Section 53B-1-102, and other  
599 information concerning the donation that could reasonably be expected to reveal the identity of  
600 the donor, provided that:

601 (a) the donor requests anonymity in writing;

602 (b) any terms, conditions, restrictions, or privileges relating to the donation may not be  
603 classified protected by the governmental entity under this Subsection (37); and

604 (c) except for an institution within the state system of higher education defined in  
605 Section 53B-1-102, the governmental unit to which the donation is made is primarily engaged  
606 in educational, charitable, or artistic endeavors, and has no regulatory or legislative authority  
607 over the donor, a member of the donor's immediate family, or any entity owned or controlled  
608 by the donor or the donor's immediate family;

609 (38) accident reports, except as provided in Sections 41-6a-404, 41-12a-202, and  
610 73-18-13;

611 (39) a notification of workers' compensation insurance coverage described in Section  
612 34A-2-205;

613 (40) (a) the following records of an institution within the state system of higher  
614 education defined in Section 53B-1-102, which have been developed, discovered, disclosed to,  
615 or received by or on behalf of faculty, staff, employees, or students of the institution:

616 (i) unpublished lecture notes;

- 617 (ii) unpublished notes, data, and information:  
618 (A) relating to research; and  
619 (B) of:  
620 (I) the institution within the state system of higher education defined in Section  
621 [53B-1-102](#); or  
622 (II) a sponsor of sponsored research;  
623 (iii) unpublished manuscripts;  
624 (iv) creative works in process;  
625 (v) scholarly correspondence; and  
626 (vi) confidential information contained in research proposals;  
627 (b) Subsection (40)(a) may not be construed to prohibit disclosure of public  
628 information required pursuant to Subsection [53B-16-302](#)(2)(a) or (b); and  
629 (c) Subsection (40)(a) may not be construed to affect the ownership of a record;  
630 (41) (a) records in the custody or control of the Office of Legislative Auditor General  
631 that would reveal the name of a particular legislator who requests a legislative audit prior to the  
632 date that audit is completed and made public; and  
633 (b) notwithstanding Subsection (41)(a), a request for a legislative audit submitted to the  
634 Office of the Legislative Auditor General is a public document unless the legislator asks that  
635 the records in the custody or control of the Office of Legislative Auditor General that would  
636 reveal the name of a particular legislator who requests a legislative audit be maintained as  
637 protected records until the audit is completed and made public;  
638 (42) records that provide detail as to the location of an explosive, including a map or  
639 other document that indicates the location of:  
640 (a) a production facility; or  
641 (b) a magazine;  
642 (43) information:  
643 (a) contained in the statewide database of the Division of Aging and Adult Services  
644 created by Section [62A-3-311.1](#); or  
645 (b) received or maintained in relation to the Identity Theft Reporting Information  
646 System (IRIS) established under Section [67-5-22](#);  
647 (44) information contained in the Management Information System and Licensing

648 Information System described in Title 62A, Chapter 4a, Child and Family Services;  
649 (45) information regarding National Guard operations or activities in support of the  
650 National Guard's federal mission;  
651 (46) records provided by any pawn or secondhand business to a law enforcement  
652 agency or to the central database in compliance with Title 13, Chapter 32a, Pawnshop and  
653 Secondhand Merchandise Transaction Information Act;  
654 (47) information regarding food security, risk, and vulnerability assessments performed  
655 by the Department of Agriculture and Food;  
656 (48) except to the extent that the record is exempt from this chapter pursuant to Section  
657 [63G-2-106](#), records related to an emergency plan or program, a copy of which is provided to or  
658 prepared or maintained by the Division of Emergency Management, and the disclosure of  
659 which would jeopardize:  
660 (a) the safety of the general public; or  
661 (b) the security of:  
662 (i) governmental property;  
663 (ii) governmental programs; or  
664 (iii) the property of a private person who provides the Division of Emergency  
665 Management information;  
666 (49) records of the Department of Agriculture and Food that provides for the  
667 identification, tracing, or control of livestock diseases, including any program established under  
668 Title 4, Chapter 24, Utah Livestock Brand and Anti-Theft Act, or Title 4, Chapter 31, Control  
669 of Animal Disease;  
670 (50) as provided in Section [26-39-501](#):  
671 (a) information or records held by the Department of Health related to a complaint  
672 regarding a child care program or residential child care which the department is unable to  
673 substantiate; and  
674 (b) information or records related to a complaint received by the Department of Health  
675 from an anonymous complainant regarding a child care program or residential child care;  
676 (51) unless otherwise classified as public under Section [63G-2-301](#) and except as  
677 provided under Section [41-1a-116](#), an individual's home address, home telephone number, or  
678 personal mobile phone number, if:

679 (a) the individual is required to provide the information in order to comply with a law,  
680 ordinance, rule, or order of a government entity; and

681 (b) the subject of the record has a reasonable expectation that this information will be  
682 kept confidential due to:

683 (i) the nature of the law, ordinance, rule, or order; and

684 (ii) the individual complying with the law, ordinance, rule, or order;

685 (52) the name, home address, work addresses, and telephone numbers of an individual  
686 that is engaged in, or that provides goods or services for, medical or scientific research that is:

687 (a) conducted within the state system of higher education, as defined in Section  
688 [53B-1-102](#); and

689 (b) conducted using animals;

690 (53) an initial proposal under Title 63N, Chapter 13, Part 2, Government Procurement  
691 Private Proposal Program, to the extent not made public by rules made under that chapter;

692 (54) in accordance with Section [78A-12-203](#), any record of the Judicial Performance  
693 Evaluation Commission concerning an individual commissioner's vote on whether or not to  
694 recommend that the voters retain a judge including information disclosed under Subsection  
695 [78A-12-203\(5\)\(e\)](#);

696 (55) information collected and a report prepared by the Judicial Performance  
697 Evaluation Commission concerning a judge, unless Section [20A-7-702](#) or Title 78A, Chapter  
698 12, Judicial Performance Evaluation Commission Act, requires disclosure of, or makes public,  
699 the information or report;

700 (56) records contained in the Management Information System created in Section  
701 [62A-4a-1003](#);

702 (57) records provided or received by the Public Lands Policy Coordinating Office in  
703 furtherance of any contract or other agreement made in accordance with Section [63J-4-603](#);

704 (58) information requested by and provided to the 911 Division under Section  
705 [63H-7a-302](#);

706 (59) in accordance with Section [73-10-33](#):

707 (a) a management plan for a water conveyance facility in the possession of the Division  
708 of Water Resources or the Board of Water Resources; or

709 (b) an outline of an emergency response plan in possession of the state or a county or

710 municipality;

711 (60) the following records in the custody or control of the Office of Inspector General  
712 of Medicaid Services, created in Section [63A-13-201](#):

713 (a) records that would disclose information relating to allegations of personal  
714 misconduct, gross mismanagement, or illegal activity of a person if the information or  
715 allegation cannot be corroborated by the Office of Inspector General of Medicaid Services  
716 through other documents or evidence, and the records relating to the allegation are not relied  
717 upon by the Office of Inspector General of Medicaid Services in preparing a final investigation  
718 report or final audit report;

719 (b) records and audit workpapers to the extent they would disclose the identity of a  
720 person who, during the course of an investigation or audit, communicated the existence of any  
721 Medicaid fraud, waste, or abuse, or a violation or suspected violation of a law, rule, or  
722 regulation adopted under the laws of this state, a political subdivision of the state, or any  
723 recognized entity of the United States, if the information was disclosed on the condition that  
724 the identity of the person be protected;

725 (c) before the time that an investigation or audit is completed and the final  
726 investigation or final audit report is released, records or drafts circulated to a person who is not  
727 an employee or head of a governmental entity for the person's response or information;

728 (d) records that would disclose an outline or part of any investigation, audit survey  
729 plan, or audit program; or

730 (e) requests for an investigation or audit, if disclosure would risk circumvention of an  
731 investigation or audit;

732 (61) records that reveal methods used by the Office of Inspector General of Medicaid  
733 Services, the fraud unit, or the Department of Health, to discover Medicaid fraud, waste, or  
734 abuse;

735 (62) information provided to the Department of Health or the Division of Occupational  
736 and Professional Licensing under Subsection [58-68-304](#)(3) or (4);

737 (63) a record described in Section [63G-12-210](#);

738 (64) captured plate data that is obtained through an automatic license plate reader  
739 system used by a governmental entity as authorized in Section [41-6a-2003](#);

740 (65) any record in the custody of the Utah Office for Victims of Crime relating to a



741 victim, including:

742 (a) a victim's application or request for benefits;

743 (b) a victim's receipt or denial of benefits; and

744 (c) any administrative notes or records made or created for the purpose of, or used to,  
745 evaluate or communicate a victim's eligibility for or denial of benefits from the Crime Victim  
746 Reparations Fund;

747 (66) an audio or video recording created by a body-worn camera, as that term is  
748 defined in Section [77-7a-103](#), that records sound or images inside a hospital or health care  
749 facility as those terms are defined in Section [78B-3-403](#), inside a clinic of a health care  
750 provider, as that term is defined in Section [78B-3-403](#), or inside a human service program as  
751 that term is defined in [~~Subsection [62A-2-101](#)(19)(a)(vi)~~] [Section 62A-2-101](#), except for  
752 recordings that:

753 (a) depict the commission of an alleged crime;

754 (b) record any encounter between a law enforcement officer and a person that results in  
755 death or bodily injury, or includes an instance when an officer fires a weapon;

756 (c) record any encounter that is the subject of a complaint or a legal proceeding against  
757 a law enforcement officer or law enforcement agency;

758 (d) contain an officer involved critical incident as defined in Subsection  
759 [76-2-408](#)(1)(d); or

760 (e) have been requested for reclassification as a public record by a subject or  
761 authorized agent of a subject featured in the recording; and

762 (67) a record pertaining to the search process for a president of an institution of higher  
763 education described in Section [53B-2-102](#), except for application materials for a publicly  
764 announced finalist.

765 Section 6. Section [77-7a-104](#) is amended to read:

766 **[77-7a-104. Activation and use of body-worn cameras.](#)**

767 (1) An officer using a body-worn camera shall verify that the equipment is properly  
768 functioning as is reasonably within the officer's ability.

769 (2) An officer shall report any malfunctioning equipment to the officer's supervisor if:

770 (a) the body-worn camera issued to the officer is not functioning properly upon initial  
771 inspection; or

772 (b) an officer determines that the officer's body-worn camera is not functioning  
773 properly at any time while the officer is on duty.

774 (3) An officer shall wear the body-worn camera so that it is clearly visible to the person  
775 being recorded.

776 (4) An officer shall activate the body-worn camera prior to any law enforcement  
777 encounter, or as soon as reasonably possible.

778 (5) An officer shall record in an uninterrupted manner until after the conclusion of a  
779 law enforcement encounter, except as an interruption of a recording is allowed under this  
780 section.

781 (6) When going on duty and off duty, an officer who is issued a body-worn camera  
782 shall record the officer's name, identification number, and the current time and date, unless the  
783 information is already available due to the functionality of the body-worn camera.

784 (7) If a body-worn camera was present during a law enforcement encounter, the officer  
785 shall document the presence of the body-worn camera in any report or other official record of a  
786 contact.

787 (8) When a body-worn camera has been activated, the officer may not deactivate the  
788 body-worn camera until the officer's direct participation in the law enforcement encounter is  
789 complete, except as provided in Subsection (9).

790 (9) An officer may deactivate a body-worn camera:

791 (a) to consult with a supervisor or another officer;

792 (b) during a significant period of inactivity; and

793 (c) during a conversation with a sensitive victim of crime, a witness of a crime, or an  
794 individual who wishes to report or discuss criminal activity if:

795 (i) the individual who is the subject of the recording requests that the officer deactivate  
796 the officer's body-worn camera; and

797 (ii) the officer believes that the value of the information outweighs the value of the  
798 potential recording and records the request by the individual to deactivate the body-worn  
799 camera.

800 (10) If an officer deactivates a body-worn camera, the officer shall document the  
801 reason for deactivating a body-worn camera in a written report.

802 (11) (a) For purposes of this Subsection (11):

- 803 (i) "Health care facility" means the same as that term is defined in Section [78B-3-403](#).
- 804 (ii) "Health care provider" means the same as that term is defined in Section
- 805 [78B-3-403](#).
- 806 (iii) "Hospital" means the same as that term is defined in Section [78B-3-403](#).
- 807 (iv) "Human service program" means the same as that term is defined in [Subsection
- 808 ~~62A-2-101(20)(a)(vi)~~] [Section 62A-2-101](#).
- 809 (b) An officer may not activate a body-worn camera in a hospital, health care facility,
- 810 human service program, or the clinic of a health care provider, except during a law
- 811 enforcement encounter, and with notice under Section [77-7a-105](#).

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**Legislative Review Note**  
**Office of Legislative Research and General Counsel**