

1 **SUBSTANCE USE AND HEALTH CARE AMENDMENTS**

2 2020 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Brad M. Daw**

5 Senate Sponsor: Allen M. Christensen

6

7 **LONG TITLE**

8 **Committee Note:**

9 The Health and Human Services Interim Committee recommended this bill.

10 Legislative Vote: 10 voting for 0 voting against 7 absent

11 **General Description:**

12 This bill modifies and enacts provisions relating to substance use treatment, mental
13 health treatment, and health care provided in a correctional facility and the Utah State
14 Hospital.

15 **Highlighted Provisions:**

16 This bill:

- 17 ▶ defines terms;
- 18 ▶ directs the Department of Health to apply for a waiver under the state Medicaid plan

19 to offer a program to provide Medicaid coverage to certain inmates ~~for up to~~ **for up to**

19a 30
20 days before release from a correctional facility;

- 21 ▶ creates a refundable tax credit for certain practitioners who provide substance use
- 22 disorder treatment or mental health therapy in a correctional facility or the Utah

23 State Hospital;

- 24 ▶ creates a substance use and mental health telehealth pilot program to be conducted
- 25 in one or more county jails; and

- 26 ▶ makes technical changes.

27 **Money Appropriated in this Bill:**



H.B. 38

28 None

29 **Other Special Clauses:**

30 This bill provides a special effective date.

31 **Utah Code Sections Affected:**

32 AMENDS:

33 **58-1-111**, as enacted by Laws of Utah 2016, Chapter 407

34 **59-10-1111**, as enacted by Laws of Utah 2016, Chapter 407

35 **63I-1-262**, as last amended by Laws of Utah 2019, Chapters 246, 257, 440 and last
36 amended by Coordination Clause, Laws of Utah 2019, Chapter 246

37 ENACTS:

38 **26-18-420**, Utah Code Annotated 1953

39 **62A-15-118**, Utah Code Annotated 1953



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

42 Section 1. Section **26-18-420** is enacted to read:

43 **26-18-420. Medicaid waiver for coverage of qualified inmates leaving prison or**
44 **jail.**

45 (1) As used in this section:

46 (a) "Correctional facility" means:

47 (i) a county jail;

48 (ii) the Department of Corrections, created in Section [64-13-2](#); or

49 (iii) a prison, penitentiary, or other institution operated by or under contract with the
50 Department of Corrections for the confinement of an offender, as defined in Section [64-13-1](#).

51 (b) "Qualified inmate" means an individual who:

52 (i) is incarcerated in a correctional facility; and

53 (ii) has:

54 (A) a chronic physical or behavioral health condition;

55 (B) a mental illness, as defined in Section [62A-15-602](#); or

56 (C) an opioid use disorder.

57 (2) Before July 1, 2020, the division shall apply for a Medicaid waiver or a state plan

58 amendment with CMS to offer a program to provide Medicaid coverage ~~to~~ **to** a qualified
58a inmate

59 ~~H~~→ [during the] for up to ←~~H~~ 30 days immediately before the day on which the qualified inmate is
 59a released from a
 60 correctional facility.

61 (3) If the waiver or state plan amendment described in Subsection (2) is approved, the
 62 department shall report to the Health and Human Services Interim Committee each year before
 63 November 30 while the waiver or state plan amendment is in effect regarding:

64 (a) the number of qualified inmates served under the program;

65 (b) the cost of the program; and

66 (c) the effectiveness of the program, including:

67 (i) any reduction in the number of emergency room visits or hospitalizations by
 68 inmates after release from a correctional facility;

69 (ii) any reduction in the number of inmates undergoing inpatient treatment after release
 70 from a correctional facility;

71 (iii) any reduction in overdose rates and deaths of inmates after release from a
 72 correctional facility; and

73 (iv) any other costs or benefits as a result of the program.

74 Section 2. Section **58-1-111** is amended to read:

75 **58-1-111. Tax credit certificate --Mental health practitioners and substance use**
 76 **therapists -- Underserved populations.**

77 (1) As used in this section:

78 (a) "Average of 20 hours or more per week" means that the quotient calculated when
 79 dividing the claimant's total hours providing licensed services, in-custody mental health
 80 therapy, or in-custody substance use disorder treatment in the state during the taxable year by
 81 the number of weeks in which the claimant is licensed in the state during the taxable year is
 82 greater than or equal to 20.

83 ~~[(a)]~~ (b) "Average of 30 hours or more per week" means that the quotient calculated
 84 when dividing the claimant's total hours providing licensed services, in-custody mental health
 85 therapy, or in-custody substance use disorder treatment in the state during the taxable year by
 86 the number of weeks in which the claimant is licensed in the state during the taxable year is
 87 greater than or equal to 30.

88 (c) "In-custody mental health therapy" means the provision of behavioral health
 89 treatment within the scope of practice of a mental health therapist in a secure facility in the

90 state.

91 (d) "In-custody substance use disorder treatment" means the provision of behavioral
92 health treatment within the scope of practice of a substance use disorder counselor in a secure
93 facility in the state.

94 ~~(b)~~ (e) "Licensed services" means the provision of behavioral health treatment in the
95 state ~~and~~ within the scope of practice of:

96 (i) a psychiatrist~~;~~;

97 (ii) a psychiatric mental health nurse practitioner~~;~~; or

98 (iii) a volunteer health practitioner.

99 (f) "Medication-assisted treatment" means treatment of a substance use disorder that
100 includes the use of a drug that is approved by the federal Food and Drug Administration for the
101 treatment of a substance use disorder in conjunction with behavioral health therapy.

102 (g) "Mental health therapist" means an individual who is licensed under Chapter 60,
103 Mental Health Professional Practice Act, for the practice of mental health therapy, as defined in
104 Section [58-60-102](#).

105 ~~(e)~~ (h) "Psychiatric mental health nurse practitioner" means an individual who:

106 (i) is licensed under Chapter 31b, Nurse Practice Act, for the practice of advanced
107 practice registered nursing, as ~~that term is~~ defined in Section [58-31b-102](#); and

108 (ii) holds a certification recognized by the American Nurses Credentialing Center of
109 the American Association of Colleges of Nursing as a psychiatric mental health nurse
110 practitioner.

111 ~~(d)~~ (i) "Psychiatrist" means an individual who:

112 (i) is licensed as a physician under:

113 (A) Chapter 67, Utah Medical Practice Act;

114 (B) Chapter 67b, Interstate Medical Licensure Compact; or

115 (C) Chapter 68, Utah Osteopathic Medical Practice Act; and

116 (ii) is board eligible for a psychiatry specialization recognized by the American Board
117 of Medical Specialists or the American Osteopathic Association's Bureau of Osteopathic
118 Specialists.

119 (j) "Secure facility" means:

120 (i) a county jail;

121 (ii) the Department of Corrections, created in Section 64-13-2;
 122 (iii) a prison, penitentiary, or other institution operated by or under contract with the
 123 Department of Corrections for the confinement of an offender, as defined in Section 64-13-1;

124 or

125 (iv) the Utah State Hospital, created in Section 62A-15-601.

126 (k) "Substance use disorder counselor" means an individual who is licensed under
 127 Chapter 60, Mental Health Professional Practice Act, to practice as a licensed advanced
 128 substance use disorder counselor, as defined in Section 58-60-502.

129 ~~(e)~~ (l) "Underserved population" means:

130 (i) an individual located in a county of the third, fourth, fifth, or sixth class, as
 131 ~~designated~~ classified in Section 17-50-501; or

132 (ii) a Native American Indian.

133 ~~(f)~~ (m) "Volunteer retired psychiatrist" means an individual:

134 (i) described in Subsection (1)~~(d)~~(i) who, during the calendar year, did not receive
 135 payment for providing licensed services; or

136 (ii) (A) licensed under Chapter 81, Retired Volunteer Health Care Practitioner Act; and
 137 (B) previously or currently board certified in psychiatry.

138 (2) (a) An individual who seeks to obtain a state income tax credit under Subsections
 139 59-10-1111(2) through ~~(4)~~ (6) shall file an application with the division with respect to each
 140 taxable year in which the individual seeks a state income tax credit.

141 (b) An individual may qualify for a tax credit certificate under this section for no more
 142 than 10 taxable years for each tax credit.

143 (3) The application for a tax credit certificate under Subsection 59-10-1111(2) shall
 144 require the individual to provide the following to the division:

145 (a) the date on which the individual obtained a license and the specialization described
 146 in Subsection (1)~~(e)~~(h)(ii) or ~~(d)~~ (i)(ii);

147 (b) (i) an attestation that the individual was licensed on or after January 1, 2017, to
 148 provide licensed services; or

149 (ii) if the individual was licensed to provide licensed services prior to January 1, 2017,
 150 an attestation:

151 (A) that the individual did not provide licensed services for the two calendar years

152 before the date the individual initially applied for the income tax credit under this subsection;
153 and

154 (B) the date on which the individual resumed providing licensed services in the state;
155 and

156 (c) other information as required by the division by administrative rule adopted in
157 accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

158 (4) An application for a tax credit certificate under Subsection 59-10-1111(3) shall
159 require the individual to attest to the division:

160 (a) that the individual averaged 30 or more hours per week during the taxable year
161 providing licensed services;

162 (b) that the individual devoted 25% or more of the individual's total hours of licensed
163 services in the taxable year to an underserved population;

164 (c) the type of underserved population for which the individual provided services
165 during the taxable year; and

166 (d) other information as required by the division by administrative rule adopted in
167 accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

168 (5) An application for a tax credit certificate under Subsection 59-10-1111(4) shall
169 require the individual to attest to the division:

170 (a) whether the individual is licensed under Subsection (1)~~(f)~~(m)(i) or (ii);

171 (b) that the individual did not receive payment during the calendar year for providing
172 licensed services;

173 (c) that during the calendar year, the individual provided at least 300 hours of licensed
174 services to an underserved population, the homeless population, or veterans without receiving
175 payment for providing the licensed services;

176 (d) a description of the type of population described in Subsection (5)(c) for which the
177 individual provided licensed services; and

178 (e) other information as required by the division by administrative rule adopted in
179 accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

180 (6) An application for a tax credit certificate under Subsection 59-10-1111(5) shall
181 require the individual to attest to the division:

182 (a) that the individual averaged 30 hours or more per week during the taxable year

183 providing in-custody mental health therapy;

184 (b) a list of each secure facility in which the individual provided in-custody mental
185 health therapy during the taxable year; and

186 (c) other information as required by the division by administrative rule adopted in
187 accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

188 (7) An application for a tax credit certificate under Subsection 59-10-1111(6) shall
189 require the individual to attest to the division:

190 (a) that the individual averaged 20 hours or more per week during the taxable year
191 providing in-custody substance use disorder treatment;

192 (b) if used, a description of the type of medication-assisted treatment used by the
193 individual in providing the in-custody substance use disorder treatment;

194 (c) a list of each secure facility in which the individual provided the substance use
195 disorder treatment during the taxable year; and

196 (d) other information as required by the division by administrative rule adopted in
197 accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

198 ~~[(6)]~~ (8) (a) The division shall issue a tax credit certificate in accordance with this
199 subsection.

200 (b) The tax credit certificate may state that an individual is entitled to:

201 (i) a tax credit under Subsection 59-10-1111(2) if the individual meets the
202 requirements of Subsection (3);

203 (ii) a tax credit under Subsection 59-10-1111(3) if the individual meets the
204 requirements of Subsection (4);

205 (iii) a tax credit under Subsection 59-10-1111(4) if the individual meets the
206 requirements of Subsection (5); ~~[or]~~

207 (iv) a tax credit under Subsection 59-10-1111(5) if the individual meets the
208 requirements of Subsection (6);

209 (v) a tax credit under Subsection 59-10-1111(6) if the individual meets the
210 requirements of Subsection (7); or

211 ~~[(iv)]~~ (vi) a tax credit under Subsections 59-10-1111(2) and (3) if the individual meets
212 the requirements of Subsections (3) and (4).

213 ~~[(7)]~~ (9) (a) The division may issue a tax credit certificate to an individual under

214 Subsection 59-10-1111(2) for no more than 10 taxable years after the date on which the
215 individual resumed services under Subsection (3)(b)(ii).

216 (b) The division may issue a tax credit certificate to an individual under Subsections
217 59-10-1111(3) [~~and (4)~~] through (6) for no more than 10 taxable years.

218 [~~(8)~~] (10) The division shall provide a copy of a tax credit certificate issued under this
219 section to the individual and the State Tax Commission.

220 Section 3. Section 59-10-1111 is amended to read:

221 **59-10-1111. Refundable tax credit for mental health practitioners and substance**
222 **use therapists.**

223 (1) As used in this section:

224 (a) "Mental health therapist" means the same as that term is defined in Section
225 58-1-111.

226 [~~(a)~~] (b) "Psychiatric mental health nurse practitioner" means the same as that term is
227 defined in Section 58-1-111.

228 [~~(b)~~] (c) "Psychiatrist" means the same as that term is defined in Section 58-1-111.

229 (d) "Substance use disorder counselor" means the same as that term is defined in
230 Section 58-1-111.

231 [~~(c)~~] (e) "Tax credit certificate" means a certificate issued by the Division of
232 Occupational and Professional Licensing under Section 58-1-111 certifying that the claimant is
233 entitled to a tax credit under this section.

234 [~~(d)~~] (f) "Volunteer retired psychiatrist" means the same as that term is defined in
235 Section 58-1-111.

236 (2) A claimant who is a psychiatrist or a psychiatric mental health nurse practitioner
237 and who submits a tax credit certificate issued by the Division of Occupational and
238 Professional Licensing under Subsection 58-1-111(3), may claim a refundable tax credit:

239 (a) as provided in this section; and

240 (b) in the amount of \$10,000.

241 (3) A claimant who is a psychiatrist or a psychiatric mental health nurse practitioner
242 and who submits a tax credit certificate under Subsection 58-1-111(4) may claim a refundable
243 tax credit:

244 (a) as provided in this section; and

245 (b) in the amount of \$10,000.

246 (4) A claimant who is a volunteer retired psychiatrist and who submits a tax credit
247 certificate under Subsection [58-1-111\(5\)](#) may claim a refundable tax credit:

248 (a) as provided in this section; and

249 (b) in the amount of \$10,000.

250 (5) A claimant who is a mental health therapist and who submits a tax credit certificate
251 under Subsection [58-1-111\(6\)](#) may claim a refundable tax credit:

252 (a) as provided in this section; and

253 (b) in the amount of \$10,000.

254 (6) A claimant who is a substance use disorder counselor and who submits a tax credit
255 certificate under Subsection [58-1-111\(7\)](#) may claim a refundable tax credit:

256 (a) as provided in this section; and

257 (b) in the amount of \$10,000.

258 ~~[(5)]~~ (7) A claimant may claim a tax credit under Subsections (2) through ~~[(4)]~~ (6) for
259 no more than 10 taxable years for each tax credit.

260 ~~[(6)]~~ (8) (a) In accordance with any rules prescribed by the commission under
261 Subsection ~~[(6)]~~ (8)(b), the commission shall make a refund to a claimant who claims a tax
262 credit under this section if the amount of the tax credit exceeds the claimant's tax liability for
263 the taxable year.

264 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
265 commission may make rules providing procedures for making a refund to a claimant as
266 required by Subsection ~~[(6)]~~ (8)(a).

267 Section 4. Section **62A-15-118** is enacted to read:

268 **62A-15-118. Substance Use and Mental Health Telehealth Pilot Program.**

269 (1) As used in this section:

270 (a) "Inmate" means an individual incarcerated in a rural county jail.

271 (b) "Project" means a pilot project that provides telehealth services to inmates.

272 (c) "Rural county" means a county of the second, third, fourth, fifth, or sixth class, as
273 classified in Section [17-50-501](#).

274 (d) "Telehealth services" means mental health or substance use disorder treatment
275 provided remotely through the use of telecommunications technology.

276 (2) (a) On or before July 1, 2020, the division shall issue a request for proposals in
277 accordance with this section to award a grant to one or more county jails to develop and
278 implement a project.

279 (b) The division shall award all grants under this section before December 31, 2020.

280 (c) A project shall run for two years.

281 (3) The purpose of a project is to:

282 (a) determine how telehealth services can be used in the state to:

283 (i) increase access to mental health and substance use disorder treatment to inmates;

284 (ii) reduce the number of deaths in rural county jails due to suicide or withdrawal
285 symptoms;

286 (iii) reduce the number of overdose deaths of inmates with a substance use disorder
287 after release from a rural county jail; and

288 (iv) reduce the costs associated with providing mental health and substance use
289 disorder treatment to inmates; and

290 (b) identify methods of using telehealth services for inmates.

291 (4) An application for a grant under this section shall:

292 (a) be submitted jointly by:

293 (i) a rural county jail;

294 (ii) a local substance abuse and mental health authority; and

295 (iii) a provider of telehealth services;

296 (b) identify the inmate population to which the rural county jail will provide telehealth
297 services;

298 (c) identify the type of telehealth services that the rural county jail will provide;

299 (d) explain how the inmate population described in Subsection (4)(b) will benefit from
300 the provision of telehealth services;

301 (e) provide details regarding:

302 (i) how the rural county jail plans to provide telehealth services;

303 (ii) how the proposed project will ensure that consideration is given to the capacity and
304 availability of the rural county jail and community health care resources;

305 (iii) how the rural county jail, telehealth service provider, and local mental health and
306 substance abuse authority will coordinate to ensure timely and effective provision of telehealth

307 services;

308 (iv) the projected costs of the proposed project;

309 (v) the sustainability of the proposed project; and

310 (vi) the methods the proposed project will use to:

311 (A) protect the privacy of each inmate who participates in the proposed project;

312 (B) collect nonidentifying data relating to the proposed project; and

313 (C) provide transparency on the costs and operation of the proposed project; and

314 (f) provide other information requested by the division to ensure that the proposed

315 project satisfies the criteria described in Subsection (5).

316 (5) In evaluating an application for the grant, the division shall consider:

317 (a) the extent to which the proposed project will fulfill the purposes described in

318 Subsection (3);

319 (b) the extent to which the inmate population described in Subsection (4)(b) is likely to

320 benefit from the proposed project;

321 (c) the cost of the proposed project;

322 (d) the viability and innovation of the proposed project; and

323 (e) the extent to which the proposed project will yield useful data to evaluate the

324 effectiveness of the proposed project.

325 (6) Before June 30, 2021, the division shall report to the Law Enforcement and

326 Criminal Justice Interim Committee regarding:

327 (a) each county jail that is part of a project; and

328 (b) the details and duration of each project.

329 (7) Before June 30, 2023, the division shall report to the Law Enforcement and

330 Criminal Justice Interim Committee regarding:

331 (a) the outcomes of each project;

332 (b) data gathered in relation to each project;

333 (c) knowledge gained relating to the provision of telehealth services in county jails;

334 (d) recommendations for the future use of telehealth services in county jails; and

335 (e) obstacles encountered in the provision of telehealth services in rural county jails.

336 Section 5. Section **63I-1-262** is amended to read:

337 **63I-1-262. Repeal dates, Title 62A.**

338 (1) Subsections [62A-1-120\(8\)\(g\)](#), (h), and (i) relating to completion of premarital
339 counseling or education under Section [30-1-34](#) are repealed July 1, 2023.

340 (2) Section [62A-3-209](#) is repealed July 1, 2023.

341 (3) Section [62A-4a-202.9](#) is repealed December 31, 2021.

342 (4) Section [62A-4a-213](#) is repealed July 1, 2024.

343 (5) Section [62A-15-114](#) is repealed December 31, 2021.

344 (6) Subsections [62A-15-116\(1\)](#) and (4), the language that states "In consultation with
345 the SafeUT and School Safety Commission, established in Section [53B-17-1203](#)," is repealed
346 January 1, 2023.

347 (7) Section [62A-15-118](#) is repealed December 31, 2023.

348 [~~7~~] (8) Subsections [62A-15-1100\(1\)](#) and [62A-15-1101](#)[~~(8)~~](9), in relation to the Utah
349 Substance Use and Mental Health Advisory Council, are repealed January 1, 2023.

350 [~~8~~] (9) In relation to the Mental Health Crisis Line Commission, on July 1, 2023:

351 (a) Subsections [62A-15-1301\(1\)](#) and [62A-15-1401\(1\)](#) are repealed;

352 (b) Subsection [62A-15-1302\(1\)\(b\)](#), the language that states "and in consultation with
353 the commission" is repealed;

354 (c) Section [62A-15-1303](#), the language that states "In consultation with the
355 commission," is repealed; and

356 (d) Subsection [62A-15-1402\(2\)\(a\)](#), the language that states "With recommendations
357 from the commission," is repealed.

358 Section 6. **Effective date.**

359 The amendments to Sections [58-1-111](#) and [59-10-1111](#) take effect for a taxable year
360 beginning on or after January 1, 2021.