

Representative Brad M. Daw proposes the following substitute bill:

SUBSTANCE USE AND HEALTH CARE AMENDMENTS

2020 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Brad M. Daw

Senate Sponsor: Allen M. Christensen

LONG TITLE

General Description:

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

Highlighted Provisions:

This bill:

- defines terms;
- directs the Department of Health to apply for a waiver under the state Medicaid plan to offer a program to provide Medicaid coverage to certain inmates for up to 30 days before release from a correctional facility;
- requires a county to provide matching funds to the state for Medicaid coverage ~~that~~ **and costs relating to the Medicaid coverage, ←** that is provided to certain inmates for up to 30 days before release from a correctional facility;
- creates a refundable tax credit for certain practitioners who provide substance use disorder treatment or mental health therapy in a correctional facility or the Utah State Hospital;
- creates a substance use and mental health telehealth pilot program to be conducted in one or more county jails; and



- 26 ► makes technical changes.

27 **Money Appropriated in this Bill:**

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.

(2) Before July 1, 2020, the division shall apply for a Medicaid waiver or a state plan amendment with CMS to offer a program to provide Medicaid coverage to a qualified inmate for up to 30 days immediately before the day on which the qualified inmate is released from a correctional facility.

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

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

(b) the cost of the program; and

(c) the effectiveness of the program, including:

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

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

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

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

(4) If the waiver or state plan amendment described in Subsection (2) is approved, a county that is responsible for the cost of a qualified inmate's medical care shall provide the required matching funds to the state for ~~§~~→ :

(a) any costs to enroll the qualified inmate for the Medicaid coverage described in Subsection (2); and

(b) ~~←~~§ the Medicaid coverage ~~§~~→ that is ~~←~~§ provided to the qualified inmate under Subsection (2).

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

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

(1) As used in this section:

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

~~[(a)]~~ (b) "Average of 30 hours or more per week" means that the quotient calculated

when dividing the claimant's total hours providing licensed services, in-custody mental health therapy, or in-custody substance use disorder treatment in the state during the taxable year by the number of weeks in which the claimant is licensed in the state during the taxable year is greater than or equal to 30.

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

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

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

(i) a psychiatrist~~;~~;

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

(iii) a volunteer health practitioner.

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

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

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

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

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

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

(i) is licensed as a physician under:

(A) Chapter 67, Utah Medical Practice Act;

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

(C) 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.

(j) "Secure facility" means:

(i) a county jail;

(ii) the Department of Corrections, created in Section 64-13-2;

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

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

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

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

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

(ii) a Native American Indian.

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

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

(ii) (A) licensed under Chapter 81, Retired Volunteer Health Care Practitioner Act; and

(B) previously or currently board certified in psychiatry.

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

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

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

(a) the date on which the individual obtained a license and the specialization described

in Subsection (1)~~(e)~~(h)(ii) or ~~(d)~~ (i)(ii);

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

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

(A) that the individual did not provide licensed services for the two calendar years before the date the individual initially applied for the income tax credit under this subsection; and

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

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

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

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

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

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

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

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

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

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

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

(d) a description of the type of population described in Subsection (5)(c) for which the

individual provided licensed services; and

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

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

(a) that the individual averaged 30 hours or more per week during the taxable year providing in-custody mental health therapy;

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

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

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

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

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

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

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

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

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

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

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

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

(iv) a tax credit under Subsection 59-10-1111(5) if the individual meets the

requirements of Subsection (6);

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

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

~~[(7)]~~ (9) (a) The division may issue a tax credit certificate to an individual under Subsection [59-10-1111](#)(2) for no more than 10 taxable years after the date on which the individual resumed services under Subsection (3)(b)(ii).

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

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

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

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

(1) As used in this section:

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

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

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

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

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

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

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

(a) as provided in this section; and
(b) in the amount of \$10,000.
(3) A claimant who is a psychiatrist or a psychiatric mental health nurse practitioner and who submits a tax credit certificate under Subsection 58-1-111(4) may claim a refundable tax credit:

(a) as provided in this section; and
(b) in the amount of \$10,000.
(4) A claimant who is a volunteer retired psychiatrist and who submits a tax credit certificate under Subsection 58-1-111(5) may claim a refundable tax credit:

(a) as provided in this section; and
(b) in the amount of \$10,000.
(5) A claimant who is a mental health therapist and who submits a tax credit certificate under Subsection 58-1-111(6) may claim a refundable tax credit:

(a) as provided in this section; and
(b) in the amount of \$10,000.
(6) A claimant who is a substance use disorder counselor and who submits a tax credit certificate under Subsection 58-1-111(7) may claim a refundable tax credit:

(a) as provided in this section; and
(b) in the amount of \$10,000.
[(5)] (7) A claimant may claim a tax credit under Subsections (2) through [(4)] (6) for no more than 10 taxable years for each tax credit.

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

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

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

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

(1) As used in this section:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

296 (a) be submitted jointly by:

297 (i) a rural county jail;

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

299 (iii) a provider of telehealth services;

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

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

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

(e) provide details regarding:

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

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

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

(iv) the projected costs of the proposed project;

(v) the sustainability of the proposed project; and

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

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

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

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

(f) provide other information requested by the division to ensure that the proposed project satisfies the criteria described in Subsection (5).

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

(a) the extent to which the proposed project will fulfill the purposes described in Subsection (3);

(b) the extent to which the inmate population described in Subsection (4)(b) is likely to benefit from the proposed project;

(c) the cost of the proposed project;

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

(e) the extent to which the proposed project will yield useful data to evaluate the effectiveness of the proposed project.

(6) Before June 30, 2021, the division shall report to the Law Enforcement and Criminal Justice Interim Committee regarding:

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

(b) the details and duration of each project.

(7) Before June 30, 2023, the division shall report to the Law Enforcement and Criminal Justice Interim Committee regarding:

(a) the outcomes of each project;

- (b) data gathered in relation to each project;
(c) knowledge gained relating to the provision of telehealth services in county jails;
(d) recommendations for the future use of telehealth services in county jails; and
(e) obstacles encountered in the provision of telehealth services in rural county jails.

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

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

- (1) Subsections **62A-1-120**(8)(g), (h), and (i) relating to completion of premarital counseling or education under Section **30-1-34** are repealed July 1, 2023.
- (2) Section **62A-3-209** is repealed July 1, 2023.
- (3) Section **62A-4a-202.9** is repealed December 31, 2021.
- (4) Section **62A-4a-213** is repealed July 1, 2024.
- (5) Section **62A-15-114** is repealed December 31, 2021.
- (6) Subsections **62A-15-116**(1) and (4), the language that states "In consultation with the SafeUT and School Safety Commission, established in Section **53B-17-1203**," is repealed January 1, 2023.
- (7) Section **62A-15-118** is repealed December 31, 2023.
- ~~[(7)]~~ (8) Subsections **62A-15-1100**(1) and **62A-15-1101**~~[(8)]~~(9), in relation to the Utah Substance Use and Mental Health Advisory Council, are repealed January 1, 2023.
- ~~[(8)]~~ (9) In relation to the Mental Health Crisis Line Commission, on July 1, 2023:
- (a) Subsections **62A-15-1301**(1) and **62A-15-1401**(1) are repealed;
- (b) Subsection **62A-15-1302**(1)(b), the language that states "and in consultation with the commission" is repealed;
- (c) Section **62A-15-1303**, the language that states "In consultation with the commission," is repealed; and
- (d) Subsection **62A-15-1402**(2)(a), the language that states "With recommendations from the commission," is repealed.
- Section 6. **Effective date.**
- The amendments to Sections **58-1-111** and **59-10-1111** take effect for a taxable year beginning on or after January 1, 2021.