

MENTAL HEALTH AMENDMENTS

2024 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Nelson T. Abbott

Senate Sponsor: _____

LONG TITLE**General Description:**

This bill addresses the rights and privileges of individuals under commitment to the custody or treatment services of a local mental health authority.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ amends provisions relating to the rights and privileges to which an individual is entitled when under commitment to the custody or to the treatment services of a local mental health authority; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

26B-5-301, as renumbered and amended by Laws of Utah 2023, Chapter 308

26B-5-310, as renumbered and amended by Laws of Utah 2023, Chapter 308

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



Section 1. Section **26B-5-301** is amended to read:

26B-5-301. Definitions.

As used in this part, Part 4, Commitment of Persons Under Age 18, and Part 5, Essential Treatment and Intervention:

(1) "Adult" means an individual 18 years old or older.

(2) "Approved treatment facility or program" means a mental health or substance use treatment provider that meets the goals and measurements described in Subsection **26B-5-102(2)(j)**.

(3) "Assisted outpatient treatment" means involuntary outpatient mental health treatment ordered under Section **26B-5-351**.

(4) "Attending physician" means a physician licensed to practice medicine in this state who has primary responsibility for the care and treatment of the declarant.

(5) "Attorney-in-fact" means an adult properly appointed under this part to make mental health treatment decisions for a declarant under a declaration for mental health treatment.

(6) "Commitment to the custody of a local mental health authority" means that an adult is committed to the custody of the local mental health authority that governs the mental health catchment area where the adult resides or is found.

(7) "Community mental health center" means an entity that provides treatment and services to a resident of a designated geographical area, that operates by or under contract with a local mental health authority, and that complies with state standards for community mental health centers.

(8) "Designated examiner" means:

(a) a licensed physician, preferably a psychiatrist, who is designated by the division as specially qualified by training or experience in the diagnosis of mental or related illness; or

(b) a licensed mental health professional designated by the division as specially qualified by training and who has at least five years' continual experience in the treatment of mental illness.

(9) "Designee" means a physician who has responsibility for medical functions including admission and discharge, an employee of a local mental health authority, or an employee of a person that has contracted with a local mental health authority to provide mental

health services under Section 17-43-304.

(10) "Essential treatment" and "essential treatment and intervention" mean court-ordered treatment at a local substance abuse authority or an approved treatment facility or program for the treatment of an adult's substance use disorder.

(11) "Harmful sexual conduct" means the following conduct upon an individual without the individual's consent, including the nonconsensual circumstances described in Subsections 76-5-406(2)(a) through (l):

- (a) sexual intercourse;
- (b) penetration, however slight, of the genital or anal opening of the individual;
- (c) any sexual act involving the genitals or anus of the actor or the individual and the mouth or anus of either individual, regardless of the gender of either participant; or
- (d) any sexual act causing substantial emotional injury or bodily pain.

(12) "Informed waiver" means the patient was informed of a right and, after being informed of that right and the patient's right to waive the right, expressly communicated his or her intention to waive that right.

(13) "Incapable" means that, in the opinion of the court in a guardianship proceeding under Title 75, Utah Uniform Probate Code, or in the opinion of two physicians, a person's ability to receive and evaluate information effectively or communicate decisions is impaired to such an extent that the person currently lacks the capacity to make mental health treatment decisions.

(14) "Institution" means a hospital or a health facility licensed under Section 26B-2-206.

(15) "Lay person" means an individual identified and authorized by a patient to participate in activities related to the patient's commitment, including court appearances, discharge planning, and grievances, except that a patient may revoke a lay person's authorization at any time.

~~[(15)]~~ (16) "Local substance abuse authority" means the same as that term is defined in Section 26B-5-101 and described in Section 17-43-201.

~~[(16)]~~ (17) "Mental health facility" means the Utah State Hospital or other facility that provides mental health services under contract with the division, a local mental health authority, a person that contracts with a local mental health authority, or a person that provides

acute inpatient psychiatric services to a patient.

~~[(17)]~~ (18) "Mental health officer" means an individual who is designated by a local mental health authority as qualified by training and experience in the recognition and identification of mental illness, to:

(a) apply for and provide certification for a temporary commitment; or

(b) assist in the arrangement of transportation to a designated mental health facility.

~~[(18)]~~ (19) "Mental illness" means:

(a) a psychiatric disorder that substantially impairs an individual's mental, emotional, behavioral, or related functioning; or

(b) the same as that term is defined in:

(i) the current edition of the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association; or

(ii) the current edition of the International Statistical Classification of Diseases and Related Health Problems.

~~[(19)]~~ (20) "Mental health treatment" means convulsive treatment, treatment with psychoactive medication, or admission to and retention in a facility for a period not to exceed 17 days.

~~[(20)]~~ (21) "Patient" means an individual who is:

(a) under commitment to the custody or to the treatment services of a local mental health authority; or

(b) undergoing essential treatment and intervention.

~~[(21)]~~ (22) "Physician" means an individual who is:

(a) licensed as a physician under Title 58, Chapter 67, Utah Medical Practice Act; or

(b) licensed as a physician under Title 58, Chapter 68, Utah Osteopathic Medical Practice Act.

~~[(22)]~~ (23) "Serious bodily injury" means bodily injury that involves a substantial risk of death, unconsciousness, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

~~[(23)]~~ (24) "State hospital" means the Utah State Hospital established in Section 26B-5-302.

~~[(24)]~~ (25) "Substantial danger" means that due to mental illness, an individual is at

serious risk of:

- (a) suicide;
- (b) serious bodily self-injury;
- (c) serious bodily injury because the individual is incapable of providing the basic necessities of life, including food, clothing, or shelter;
- (d) causing or attempting to cause serious bodily injury to another individual;
- (e) engaging in harmful sexual conduct; or
- (f) if not treated, suffering severe and abnormal mental, emotional, or physical distress

that:

- (i) is associated with significant impairment of judgment, reason, or behavior; and
- (ii) causes a substantial deterioration of the individual's previous ability to function independently.

~~[(25)]~~ (26) "Treatment" means psychotherapy, medication, including the administration of psychotropic medication, or other medical treatments that are generally accepted medical or psychosocial interventions for the purpose of restoring the patient to an optimal level of functioning in the least restrictive environment.

Section 2. Section **26B-5-310** is amended to read:

26B-5-310. Restrictions and limitations -- Civil rights and privileges.

(1) Subject to the general rules of the division, and except to the extent that the director or ~~his~~ the director's designee determines that it is necessary for the welfare of the patient to impose restrictions, every patient is entitled to:

(a) (i) communicate, by sealed mail or otherwise, with persons, including official agencies, inside or outside the [facility] responsible local mental health authority, local substance abuse authority, or approved treatment facility or program;

(ii) be provided with letter-writing materials, including postage; and

(iii) have staff of the responsible local mental health authority, local substance abuse authority, or approved treatment facility or program assist the patient if the patient is unable to write, prepare, or mail correspondence;

(b) have frequent and consistent opportunities to receive visitors at reasonable times that do not interfere with clinical activities; [and]

(c) speak or visit with the patient's attorney or clergy member within a reasonable

period of time;

~~[(e)]~~ (d) exercise all civil rights, including the right to dispose of property, execute instruments, make purchases, enter contractual relationships, and vote, unless the patient has been adjudicated to be incompetent and has not been restored to legal capacity[-];

(e) have access to adequate water and food, and to have the patient's nutritional needs met in a manner that is consistent with recognized dietary practices;

(f) be treated fairly, with respect and recognition of the patient's dignity and individuality;

(g) not be discriminated against on the basis of a characteristic identified in Subsection 57-21-5(1);

(h) within 72 business hours after the patient's request, see and receive the services of a patient representative, including a peer specialist, who has no direct or indirect clinical, administrative, or financial responsibility for the patient;

(i) have the patient's behavioral health orders for scope of treatment, declaration for mental health treatment, or other psychiatric advance directive reviewed and considered as the preferred treatment option for involuntary administration of medications by the responsible local mental health authority, local substance abuse authority, or approved treatment facility or program, unless by clear and convincing evidence the patient's directive does not qualify as effective participation in behavioral health decision-making;

(j) with the patient's consent, have the patient's information or records disclosed to an adult family member, the patient's lay person, or, in accordance with state and federal law, to a protection and advocacy system designated pursuant to 42 U.S.C. Sec. 10801 et seq.;

(k) (i) access to a telephone to make and receive private calls, unless determined a clinical or safety risk; and

(ii) staff assistance to be able to communicate with others, if the patient does not have a contact list;

(l) wear the patient's own clothes, keep and use the patient's own possessions, and keep and be allowed to spend a reasonable amount of the patient's own money, unless deemed a clinical or safety risk; and

(m) be told:

(i) the reason for the patient's detainment and the limitations of the patient's

183 detainment, including a description of the patient's right to refuse medication unless the patient
184 requires emergency medications; and

185 (ii) that the patient's commitment does not mean all treatment during commitment is
186 mandatory.

187 (2) (a) When any right of a patient is limited or denied, the nature, extent, and reason
188 for that limitation or denial shall be entered in the patient's treatment record.

189 (b) Information pertaining to a denial of any right of a patient shall be made available,
190 upon request, to the patient, the patient's attorney, and the patient's lay person.

191 (c) Any continuing denial or limitation of any right of a patient shall be reviewed every
192 30 days and shall also be entered in ~~[that]~~ the patient's treatment record.

193 (d) Notice of ~~[that]~~ a continuing denial of any right of a patient in excess of 30 days
194 shall be sent to the division, the ~~[appropriate]~~ responsible local mental health authority, the
195 appropriate local substance abuse authority, or an approved treatment facility or program[;
196 ~~whichever is most applicable to the patient~~].

197 ~~[(3) Notwithstanding any limitations authorized under this section on the right of~~
198 ~~communication, each patient is entitled to communicate by sealed mail with the appropriate~~
199 ~~local mental health authority, the appropriate local substance abuse authority, an approved~~
200 ~~treatment facility or program, the division, the patient's attorney, and the court, if any, that~~
201 ~~ordered the patient's commitment or essential treatment. In no case may the patient be denied a~~
202 ~~visit with the legal counsel or clergy of the patient's choice.]~~

203 ~~[(4)]~~ (3) Local mental health authorities, local substance abuse authorities, and
204 approved treatment facilities or programs shall provide reasonable means and arrangements for
205 informing involuntary patients of their right to release as provided in this chapter, and for
206 assisting them in making and presenting requests for release.

207 ~~[(5) Mental]~~ (4) Local mental health facilities, local substance abuse authorities, and
208 approved treatment facilities or programs shall post a statement, created by the division,
209 describing a patient's rights under Utah law.

210 (5) A local mental health authority, local substance abuse authority, or approved
211 treatment facility or program may not intentionally retaliate or discriminate against a detained
212 patient or employee for contacting or providing information to any official or to an employee of
213 any state protection and advocacy agency or for initiating, participating in, or testifying in a

214 grievance procedure or in an action for any remedy authorized pursuant to this section.
215 (6) Notwithstanding Section [53B-17-303](#), an individual committed under this chapter
216 has the right to determine the final disposition of that individual's body after death.
217 Section 3. **Effective date.**
218 This bill takes effect on May 1, 2024.