

PRESCRIBING PSYCHIATRIC DRUGS OR MEDICATION

2001 GENERAL SESSION

STATE OF UTAH

Sponsor: Matt Throckmorton

This act modifies the Human Services Code. The act amends the definition of substantiated child abuse to exclude the failure to administer prescribed medication or course of treatment if the parent or legal guardian has not been notified of the opportunity to obtain a physical examination of the minor by a health care professional. The act authorizes the Division of Child and Family Services to report an individual to the appropriate licensing authority if the division has reason to believe the individual exceeded the individual's scope of practice by recommending medication for a minor.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

62A-4a-116, as last amended by Chapters 304 and 321, Laws of Utah 2000

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

Section 1. Section **62A-4a-116** is amended to read:

62A-4a-116. Management information system – Requirements.

(1) The division shall develop and implement a management information system that meets the requirements of this section and the requirements of federal law and regulation.

(2) With regard to all child welfare cases, the management information system shall:

(a) provide each caseworker with a complete history of each child in his caseload,

including:

(i) all past action taken by the division with regard to that child and his siblings, the complete case history and all reports and information in the control or keeping of the division regarding that child and his siblings;

(ii) the number of times the child has been in foster care;

(iii) the cumulative period of time the child has been in foster care;

(iv) all reports of abuse or neglect received by the division with regard to that child's parent or parents, including documentation regarding whether each report was substantiated,

unsubstantiated, or without merit;

(v) the number of times the child's parent or parents have failed any treatment plan; and

(vi) the number of different caseworkers who have been assigned to that child in the past;

(b) contain all key elements of each family's current treatment plan, including the dates and number of times the plan has been administratively or judicially reviewed, the number of times the parent or parents have failed that treatment plan, and the exact length of time that treatment plan has been in effect;

(c) alert caseworkers regarding deadlines for completion of and compliance with treatment plans; and

(d) unless the executive director determines that there is good cause for keeping the report on the system based on standards established by rule, delete any reference to:

(i) a report that is without merit if no subsequent report involving the same alleged perpetrator has occurred within one year; or

(ii) a report that is unsubstantiated if no subsequent report involving the same alleged perpetrator has occurred within ten years.

(3) With regard to all child protective services cases, the management information system shall, in addition to the information required in Subsection (2), monitor compliance with the policy of the division, the laws of this state, and federal law and regulation.

(4) With regard to all child welfare and protective services cases, the age and date of birth of the alleged perpetrator, at the time the abuse or neglect is alleged to have occurred, shall be included in the management information system.

(5) (a) The division shall develop and maintain a part of the information management system for licensing purposes, which shall be:

(i) limited to:

(A) substantiated findings of child abuse or neglect since January 1, 1988, after notice and an opportunity to challenge has been provided under Section 62A-4a-116.5;

(B) the name of a person who was not sent a notice of agency action under Section 62A-4a-116.5 because his location was not available on the management information system or who

was sent a notice of agency action that was returned to the division as undelivered for the sole purpose of alerting the division of the need to afford the person an opportunity to challenge the finding of child abuse or neglect under Section 62A-4a-116.5 before any adverse action, beyond delaying the person's licensing application to provide an opportunity for challenge, may be taken;

(C) an adjudication of child abuse or neglect by a court of competent jurisdiction if Subsection 62A-4a-116.5(5) has been met; and

(D) any criminal conviction or guilty plea related to neglect, physical abuse, or sexual abuse of any person; and

(ii) accessible by:

(A) the Office of Licensing for licensing purposes only;

(B) the division:

(I) to screen a person at the request of the Office of the Guardian Ad Litem Director, created by Section 78-3a-912, at the time the person seeks a paid or voluntary position with the Office of the Guardian Ad Litem and each year thereafter that the person remains with the office; and

(II) to respond to a request for information from the person who is identified as a perpetrator in the report, after advising the person of the screening prohibition in Subsection (4)(d)(iii);

(C) subject to the provisions of Subsection (5)(c), the Bureau of Health Facility Licensure within the Department of Health only for the purpose of licensing a child care program or provider, or for determining whether a person associated with a covered health care facility, as defined by the Department of Health by rule, who provides direct care to a child has a substantiated finding of child abuse or neglect; and

(D) the department as provided in Subsection (6) and Section 62A-1-118.

(b) For the purpose of Subsection (5)(a), "substantiated":

(i) means a finding that there is a reasonable basis to conclude that:

(A) a person 18 years of age or older committed one or more of the following types of child abuse or neglect:

(I) physical abuse;

(II) sexual abuse;

- (III) sexual exploitation;
- (IV) abandonment;
- (V) medical neglect resulting in death, disability, or serious illness; or
- (VI) chronic or severe neglect; and
- (B) a person under the age of 18:

(I) caused serious physical injury, as defined in Subsection 76-5-109(1)(d), to another child which indicates a significant risk to other children; or

(II) engaged in sexual behavior with or upon another child which indicates a significant risk to other children; and

(ii) does not include:

(A) the use of reasonable and necessary physical restraint or force by an educator in accordance with Subsection 53A-11-802(2) or Section 76-2-401; [or]

(B) a person's conduct that:

(I) is justified under Section 76-2-401; or

(II) constituted the use of reasonable and necessary physical restraint or force in self-defense or otherwise appropriate to the circumstances to obtain possession of a weapon or other dangerous object in the possession or under the control of a child or to protect the child or another person from physical injury[-]; or

(C) (I) failure to administer prescribed or recommended medication or to follow a course of treatment prescribed or recommended by a health care provider as defined in Section 78-14-3, if the division has not provided the legal guardian or parent notice of the opportunity to obtain, at the parent's or guardian's expense, a physical examination of the minor by a health care professional licensed under Title 58, Chapter 67, Utah Medical Practice Act, Chapter 68, Utah Osteopathic Medical Practices Act, Chapter 70a, Physician Assistant Act, or licensed as an advance practice registered nurse under Chapter 31b, Nurse Practices Act, to determine if the course of treatment chosen by the legal guardian or parent is a medically acceptable alternative and is in the best interest of the minor under the circumstances;

(II) Subsection (5)(b)(ii)(C)(I) does not apply in circumstances where a delay in the

prescribed or recommended medical treatment may result in death, permanent loss of a body function, or significant physical or mental impairment of the minor; and

(III) for purposes of this Subsection (5)(b)(ii)(C), if the division has reason to believe that an individual is making medical recommendations concerning the administration of medication, and the individual is not licensed as a health care provider, as defined in Section 78-14-3, the division may report that individual to the appropriate licensing authority.

(iii) (A) For purposes of Subsection (5)(b)(i)(B), "significant risk" shall be determined in accordance with risk assessment tools and policies established by the division that focus on age, social factors, emotional factors, sexual factors, intellectual factors, family risk factors, and other related considerations.

(B) The division shall train its child protection workers to apply the risk assessment tools and policies established under Subsection (5)(b)(iii)(A).

(c) (i) The Department of Health shall:

(A) designate two persons within the Department of Health to access the licensing part of the management information system; and

(B) adopt measures to:

(I) protect the security of the licensing part of the management information system; and

(II) strictly limit access to the licensing part of the management information system to those designated under Subsection (5)(c)(i)(A).

(ii) Those designated under Subsection (5)(c)(i)(A) shall receive training from the department with respect to:

(A) accessing the licensing part of the management information system;

(B) maintaining strict security; and

(C) the criminal provisions in Section 62A-4a-412 for the improper release of information.

(iii) Those designated under Subsection (5)(c)(i)(A):

(A) are the only ones in the Department of Health with the authority to access the licensing part of the management information system; and

(B) may only access the licensing part of the management information system in accordance

with the provisions of Subsection (5)(a)(ii).

(iv) The Department of Health may obtain information in the possession of the division that relates to a substantiated finding of abuse or neglect of a person screened under this Subsection (5)(c).

(d) (i) Information in the licensing part of the management information system is confidential and may only be used or disclosed as specifically provided in this section, Section 62A-2-121, and Section 62A-4a-116.5.

(ii) No person, unless listed in Subsection (5)(a)(ii), may request another person to obtain or release a report or any other information in the possession of the division obtained as a result of the report that is available under Subsection (5)(a)(ii)(A)(III) to screen for potential perpetrators of child abuse or neglect.

(iii) A person who requests information knowing that it is a violation of Subsection (5)(d)(ii) to do so is subject to the criminal penalty in Section 62A-4a-412.

(6) All information contained in the management information system shall be available to the department upon the approval of the executive director, on a need-to-know basis.

(7) (a) The division may allow its contract providers to have limited access to the management information system. The division shall limit that access to information about persons who are currently receiving services from the specific contract provider.

(b) Each contract provider shall:

(i) take all necessary precautions to safeguard the security of the information contained in the management information system;

(ii) train its employees regarding requirements for confidentiality and the criminal penalties under Sections 62A-4a-412 and 63-2-801 for improper release of information; and

(iii) monitor its employees to ensure that they comply with the confidentiality requirements related to the management information system.

(c) The division shall take reasonable precautions to ensure that its contract providers are complying with Subsection (7)(b).

(8) The division shall take all necessary precautions, including password protection and other

appropriate technological techniques, to prevent unauthorized access to the information contained in the management information system.

(9) (a) The division shall send a certified letter to a person who submitted a report of child abuse or neglect that is put onto any part of the management information system if the division determines, at the conclusion of its investigation, that:

(i) the report is false;

(ii) it is more likely than not that the person knew that the report was false at the time the person submitted the report; and

(iii) the person's address is known or reasonably available.

(b) The letter shall inform the person of:

(i) the determination made under Subsection (9)(a);

(ii) the penalty for submitting false information under Section 76-8-506 and other applicable laws;

(iii) the obligation of the division to inform law enforcement and the alleged perpetrator:

(A) in the present instance if an immediate referral is justified by the facts; or

(B) if the person submits a subsequent false report involving the same alleged perpetrator or victim.

(c) (i) The division may inform law enforcement and the alleged perpetrator of a report for which a letter is required to be sent under Subsection (9)(a) if an immediate referral is justified by the facts.

(ii) The division shall inform law enforcement and the alleged perpetrator of a report for which a letter is required to be sent under Subsection (9)(a) if this is the second letter sent to the person involving the same alleged perpetrator or victim.

(iii) The division shall determine, in consultation with law enforcement:

(A) the information to be given to an alleged perpetrator about a false claim; and

(B) whether good cause exists, as defined by rule, for not informing an alleged perpetrator about a false claim.

(d) Nothing in this Subsection (9) may be construed as requiring the division to conduct an

investigation, beyond what is required in Subsection (9)(a), to determine whether or not a report is false.