

State of Utah
Administrative Rule Analysis
 Revised May 2020

NOTICE OF PROPOSED RULE

TYPE OF RULE: New ___; Amendment XXXX; Repeal ___; Repeal and Reenact ___		
Title No. - Rule No. - Section No.		
Utah Admin. Code Ref (R no.):	R156-60d	Filing No. (Office Use Only)
Changed to Admin. Code Ref. (R no.):	R	

Agency Information

1. Department:	Department of Commerce	
Agency:	Division of Occupational and Professional Licensing	
Room no.:		
Building:	Heber M. Wells Building	
Street address:	160 East 300 South	
City, state:	Salt Lake City UT 84111-2316	
Mailing address:	PO Box 146741	
City, state, zip:	Salt Lake City UT 84114-6741	
Contact person(s):		
Name:	Phone:	Email:
Jennifer Falkenrath	801-530-7632	jzaelit@utah.gov

Please address questions regarding information on this notice to the agency.

General Information

2. Rule or section catchline:	Substance Use Disorder Counselor Act Rule
3. Purpose of the new rule or reason for the change (If this is a new rule, what is the purpose of the rule? If this is an amendment, repeal, or repeal and reenact, what is the reason for the filing?):	In accordance with 2019 HB 366 and recommendations made by the licensing boards over the professions included in the Mental Health Professionals Practice Act, the Division recommends these changes to better delineate the relationship between mental health supervisors and supervisees to ensure fairness, accountability, and attaining of supervision objectives, and to streamline and update the continuing education provisions to provide consistency among all of the mental health professions. There is a sister rule filing for each profession regulated under the Mental Health Professional Licensing Act.
4. Summary of the new rule or change:	The amendment to Section R156-60d-302b updates the rule per 2019 HB 366, and establishes criteria for supervision for a substance use disorder counselor and an advanced substance use disorder counselor obtaining hours toward licensure. The supervisor and the supervisee will enter into a supervision contract prior to beginning the supervision, with a sister rule filing in R156-60 defining the contract and supervision procedures for all the mental health professions governed by the Mental Health Practice Act. The amendments to Section R156-60d-304 delete the continuing education provisions for substance use disorder counselor licensees from the Substance Use Disorder Counselor Act Rule. Its substantive provisions have been incorporated into the Mental Health Professional Practice Act Rule via a sister rule filing, to assist in streamlining and clarifying the continuing education requirements for all of the professions regulated under the Mental Health Professional Licensing Act. The amendments to Sections R156-60d-102, R156-60d-302a, R156-60d-307, and R156-60d-502 update references and make non-substantive formatting changes for clarity.

Fiscal Information

5. Aggregate anticipated cost or savings to:	
A) State budget:	None of these proposed changes are expected to impact state government revenues or expenditures because they only clarify interpretation of existing requirements and will not change existing state practices or procedures.

B) Local governments:

None of these proposed changes are expected to impact local government revenues or expenditures because they only clarify interpretation of existing requirements and will not change existing local government practices or procedures.

C) Small businesses ("small business" means a business employing 1-49 persons):

There are approximately 1,340 small businesses in Utah comprising establishments of licenses engaged in the practice of mental health therapy and/or substance use disorder counseling who may employ those engaged in the practice of substance use disorder counseling, such as private or group practices, hospitals, or medical centers (NAICS 621112, 621420, 621330, 622210, 623220, 624190, 621420, 622310). These proposed amendments may impact these small businesses. These amendments together with the sister rule filings making corresponding amendments to R156-60-102 and R156-60-302 will codify best practices for the profession by providing direction in the process of supervision that is required for new professionals who are learning proper techniques in a clinical setting. All amendments as a whole should allow for greater efficiency in supervision and allow the supervisee to obtain proper documentation of supervision hours. However, these changes are not expected to impact small business revenues or expenditures because they merely establish and clarify definitions, standards, and procedures to encompass current requirements and best practices as well as update the rule to conform to statutory changes enacted by 2019 HB 366.

D) Non-small businesses ("non-small business" means a business employing 50 or more persons):

There are approximately 72 non-small businesses in Utah comprising establishments of licenses engaged in the practice of mental health therapy and/or substance use disorder counseling who may employ those engaged in the practice of substance use disorder counseling, such as private or group practices, hospitals, or medical centers (NAICS 621112, 621420, 621330, 622210, 623220, 624190). These proposed amendments may impact these non-small businesses. These amendments together with the sister rule filings making corresponding amendments to R156-60-102 and R156-60-302 will codify best practices for the profession by providing direction in the process of supervision that is required for new professionals who are learning proper techniques in a clinical setting. All amendments as a whole should allow for greater efficiency in supervision and allow the supervisee to obtain proper documentation of supervision hours. However, these changes are not expected to impact non-small business revenues or expenditures because they merely establish and clarify definitions, standards, and procedures to encompass current requirements and best practices as well as update the rule to conform to statutory changes enacted by 2019 HB 366.

E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an **agency**):

The amendments establishing and clarifying supervision standards will impact the approximately 457 substance use disorder counselor licensees who require supervision. However, the impact is expected to be fiscally neutral because the financial arrangements for supervision for the supervisors and supervisees will not be changed by the proposed amendments. The amendments will only codify best practices for the profession by providing direction in the process of supervision that is required for new professionals who are learning proper techniques in a clinical setting, and require that the supervision is documented in a written contract to ensure the supervision is done in a manner that will fulfill the statutory requirements. The amendments are expected to simply allow for greater efficiency in supervision and allow the supervisees to more easily obtain proper documentation of supervision hours.

F) Compliance costs for affected persons:

There are not expected to be any compliance costs for any affected persons.

G) Regulatory Impact Summary Table (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)

Regulatory Impact Table			
Fiscal Cost	FY2021	FY2022	FY2023
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Cost	\$0	\$0	\$0
Fiscal Benefits			
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0

Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Benefits	\$0	\$0	\$0
Net Fiscal Benefits	\$0	\$0	\$0

H) Department head approval of regulatory impact analysis:

The head of the Department of Commerce, Chris Parker, has reviewed and approved this fiscal analysis.

6. A) Comments by the department head on the fiscal impact this rule may have on businesses:

The Division of Occupational and Professional Licensing proposes amendments to update the Substance Use Disorder Counselor Act Rule in accordance with 2019 HB 366 and recommendations made by the licensing boards over the professions included in the Mental Health Professionals Practice Act. The revisions establish criteria for supervision for a substance use disorder counselor and an advanced substance use disorder counselor obtaining hours toward licensure. There are also substantive provisions that have been incorporated into the Mental Health Professional Practice Act Rule through other rule filings connected with 2019 HB 366 to harmonize the continuing education requirements for all of the professions regulated under the Mental Health Professional Licensing Act. Amendments are also made to update references and make non-substantive formatting changes for clarity.

Small Businesses (less than 50 employees):

In Utah, there are approximately 1,340 small businesses comprised of licensees practicing mental health therapy and substance use disorder counseling, such as private or group practices, hospitals, or medical centers (NAICS 621112, 621420, 621330, 622210, 623220, 624190, 621420, 622310). These amendments together with similar rule filings connected with 2019 HB 366 will codify best practices for the profession by providing direction in the process of supervision that is required for new professionals who are learning proper techniques in a clinical setting. Thus, all amendments as a whole should allow for greater efficiency in supervision and documentation of hours. Accordingly, no fiscal impact is expected for small business over and above any fiscal impact described in the Legislative fiscal note for 2019 HB 366 as these costs are either inestimable or there is no fiscal impact.

Regulatory Impact to Non-Small Businesses (50 or more employees)

In Utah, there are approximately 72 non-small businesses comprised of establishments engaged in the practice of mental health therapy and substance use disorder counseling who may employ those engaged in the practice of substance use disorder counseling, such as private or group practices, hospitals, or medical centers (NAICS 621112, 621420, 621330, 622210, 623220, 624190). These amendments together with the other rule filings connected with 2019 HB 366 will codify best practices for the profession by providing direction in the process of supervision that is required for new professionals who are learning proper techniques in a clinical setting. These changes will allow greater efficiency in supervision. Thus, these changes are not expected to impact non-small business revenues or expenditures because they establish and clarify definitions, standards, and procedures to incorporate current requirements and update the rule to conform to statutory changes. Any fiscal impact beyond those described in the Legislative fiscal note for 2019 HB 366 are either inestimable or there is no fiscal impact.

B) Name and title of department head commenting on the fiscal impacts:

Chris Parker, Executive Director

Citation Information

7. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws. State code or constitution citations (required):

Section 58-60-501	Subsection 58-1-106(1)(a)	Subsection 58-1-202(1)(a)

Incorporations by Reference Information

(If this rule incorporates more than two items by reference, please include additional tables.)

8. A) This rule adds, updates, or removes the following title of materials incorporated by references (a copy of materials incorporated by reference must be submitted to the Office of Administrative Rules; if none, leave blank):

	First Incorporation
Official Title of Materials Incorporated (from title page)	Updates NAADAC, the Association for Addiction Professionals/NAADAC NCC AP Code of Ethics
Publisher	NAADAC: The Association for Addiction Professionals
Date Issued	October 9, 2016

Issue, or version	
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B) This rule adds, updates, or removes the following title of materials incorporated by references (a copy of materials incorporated by reference must be submitted to the Office of Administrative Rules; *if none, leave blank*):

Second Incorporation	
Official Title of Materials Incorporated (from title page)	
Publisher	
Date Issued	
Issue, or version	

Public Notice Information

9. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. The agency is required to hold a hearing if it receives requests from ten interested persons or from an association having not fewer than ten members. Additionally, the request must be received by the agency not more than 15 days after the publication of this rule in the Utah State Bulletin. See Section 63G-3-302 and Rule R15-1 for more information.)

A) Comments will be accepted until (mm/dd/yyyy): 11/02/2020

B) A public hearing (optional) will be held:

On (mm/dd/yyyy):	At (hh:mm AM/PM):	At (place):
10/05/2020	9:00 AM	Rule hearing will be held before the Division electronically only. Meeting ID meet.google.com/cwk-sgez-hny <input type="checkbox"/> Phone Numbers (US)+1 302-846-7685 PIN: 165 425 131#

10. This rule change MAY become effective on (mm/dd/yyyy): 11/09/2020

NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.

Agency Authorization Information

To the agency: Information requested on this form is required by Sections 63G-3-301, 302, 303, and 402. Incomplete forms will be returned to the agency for completion, possibly delaying publication in the *Utah State Bulletin*, and delaying the first possible effective date.

Agency head or designee, and title:	Mark S. Steinagel, Division Director	Date (mm/dd/yyyy):	09/14/2020
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R156. Commerce, Occupational and Professional Licensing.

R156-60d. Substance Use Disorder Counselor Act Rule.

R156-60d-102. Definitions.

In addition to the definitions regarding substance use disorder counseling practice in Title 58, Chapters 1 and 60, as used in Title 58, Chapters 1 and 60~~[or this rule]~~, the following rule definitions supplement the statutory definitions:

(1) "Accredited institution of higher education that meet division standards,"~~[7]~~ as used in Subsections 58-60-506(2) (a) (i) and (5) (a) (i), means an educational institution that has accreditation that is recognized by the Council for Higher Education Accreditation ~~[of the American Council on Education]~~ (CHEA).

(2) "ASAM" means the American Society of Addiction Medicine~~[Patient Placement Criteria]~~.

(3) "DSM-IV or 5" means the Diagnostic Statistical Manual of Mental Health Disorders published by the American Psychiatric Association. [

~~(4) "General supervision" means that the supervisor provides consultation with the supervisee by personal face to face contact, or direct voice contact by telephone or some other means within a reasonable time consistent with the acts and practices in which the supervisee is engaged.]~~

~~([5]4)~~ "IC&RC" means the International Certification and Reciprocity Consortium.

~~([6]5)~~ "Initial assessment" means the procedure of gathering psychosocial information, ~~[which may include]~~ including the application of the Addiction Severity Index, ~~[in order]~~ to recommend a level of treatment and to assist the mental health therapist supervisor in the information collection process, and may include a referral to an appropriate treatment program.

~~([7]6)~~ "NAADAC" means the ~~[National]~~ Association for Addiction Professionals~~[of Alcohol and Drug Abuse Counselors]~~.

~~([8]7)~~ "Prerequisite courses,"~~[7]~~ as used in Subsections 58-60-506(2) (a) (iii) and (5) (a) (iii), means courses completed before qualifying for licensure.

~~([9]8)~~ "SASSI" means Substance Abuse Subtle Screening Inventory.

~~([10]9)~~ "Screening,"~~[7]~~ as used in Subsection 58-60-502(9) (b) and (10) (b) (i), means a brief interview conducted in person or by telephone to determine if there is a potential substance abuse problem. If a potential problem is identified, the screening may include a referral for an initial assessment or a substance use disorder evaluation. The screening may also include a preliminary ASAM ~~[level]~~ Criteria recommendation in order to expedite the subsequent assessment and evaluation process. Screening instruments such as the SASSI may be included in the screening process.

~~([11]10)~~ "Substance use disorder evaluation" means the process used to interpret information gathered from an initial assessment, other instruments as needed, and a face to face interview by a licensed mental health therapist in order to determine if an individual meets the DSM-IV or 5 criteria for substance abuse or dependence and is in need of treatment. If the need for treatment is determined, the substance use disorder evaluation process includes the determination of a DSM-IV or 5 diagnosis and the determination of an individualized treatment plan.

~~([12]11)~~ "Substance use disorder education program,"~~[7]~~ as used in

Subsection 58-60-506(2) (b) and (5) (b), means college or university coursework at an accredited institution.

(~~13~~12) "Unprofessional conduct[~~r~~]", as defined in Title 58 Chapters 1 and 60, is further defined, in accordance with Subsection 58-1-203(1) (e), in Section R156-60d-502.

R156-60d-302a. Qualifications for Licensure - Education Requirements.

(1) In accordance with Subsection 58-60-506(2) (a) (iii) and (5) (a) (iii), two prerequisite courses shall be completed at an accredited institution and shall cover the following subjects:

- (a) human development across the lifespan; and
- (b) general psychology.

(2) In accordance with Subsection 58-60-506(5) (a) (ii), completion of the equivalent of an associate's degree includes not less than 90 quarter or 60 semester credit hours of course work from accredited institutions of higher education that have accreditation recognized by the Council for Higher Education Accreditation [~~of the American Council on Education~~] (CHEA).

R156-60d-302b. Qualifications for Licensure - Supervised Experience Requirements.

(1) In accordance with Subsection 58-60-506(2) (c), the 4,000 hours of supervised experience in substance use disorder treatment required to qualify an applicant for the advanced substance use disorder counselor license shall ~~be:~~

- ~~— (a) supervised experience] consist of providing substance use disorder counseling services as defined in Subsection 58-60-502(9). [~~r~~~~
- ~~— (b) supervised at a ratio of one hour of face to face direct supervision for every 40 hours of substance use disorder counseling supervision provided by a supervisor meeting qualifications established in Section 58-60-508; and~~
- ~~— (c) completed only under the direct supervision of an advanced substance use disorder counselor or mental health therapist unless otherwise approved by the Division in collaboration with the Board.]~~

(2) In accordance with Subsection 58-60-506(5) (c), the 2,000 hours of supervised experience in substance use disorder treatment required to qualify an applicant for the substance use disorder counselor license shall ~~be:~~

- ~~— (a) supervised experience] consist of providing substance use disorder counseling services as defined in Subsection 58-60-502(10). [~~r~~~~
- ~~— (b) supervised at a ratio of one hour of face to face direct supervision for every 40 hours of substance use disorder counseling supervision provided by a supervisor meeting qualifications established in Section 58-60-508; and~~
- ~~— (c) completed only when under the direct supervision of a substance use disorder counselor or mental health therapist unless otherwise approved by the Division in collaboration with the Board.]~~

(3) In accordance with Subsections 58-60-506(2) (c) (i) and 58-60-506(5) (c) (i), supervised experience shall be completed:

- (a) under direct supervision as defined in Section 58-60-502(3) and R156-60-102(4), by a supervisor who meets the requirements of Section 58-60-508 and Section R156-60-302; and

(b) in accordance with Section R156-60-302, which requires a written supervision contract and establishes certain duties and responsibilities for the supervisor and supervisee.

R156-60d-304. Continuing Education.

In accordance with Section 58-60-105, the continuing professional education requirements for a substance use disorder counselor licensed under Title 58, Chapter 60, Part 5 are established in Section R156-60-105.

~~[(1) In accordance with Section 58-60-105, there is created a continuing education requirement as a condition for renewal or reinstatement of a licensed advanced substance use disorder counselor, certified advanced substance use disorder counselor, licensed substance use disorder counselor, or a certified substance use disorder counselor issued under Title 58, Chapter 60, Part 5.~~

~~(2) Continuing education shall consist of 40 hours of education directly related to the licensee's professional practice. A licensed advanced substance use disorder counselor and licensed substance use disorder counselor shall complete the requirement during each two year license renewal cycle. A certified advanced substance use disorder counselor and a certified substance use disorder counselor shall complete the requirement during each two year period following the date of initial licensure. At least six of the 40 required hours must be in the area of professional ethics and responsibilities.~~

~~(3) The required number of hours of continuing education for a licensed advanced substance use disorder counselor or a licensed substance use disorder counselor who first becomes licensed during the two year renewal cycle shall be decreased in a pro rata amount equal to any part of that two year renewal cycle preceding the date on which that individual first became licensed.~~

~~(4) The standards for continuing education shall include:~~

~~(a) a clear statement of purpose and defined objective for the educational program directly related to the practice of a substance use disorder counselor;~~

~~(b) documented relevance to the licensee's professional practice;~~

~~(c) a competent, well-organized, and sequential presentation consistent with the stated purpose and objective of the program;~~

~~(d) preparation and presentation by individuals who are qualified by education, training, and experience; and~~

~~(e) a competent method of registration of individuals who actually completed the continuing education program and records of that registration completion available for review.~~

~~(5) Credit for continuing education shall be recognized in accordance with the following:~~

~~(a) unlimited hours shall be recognized for continuing education completed in blocks of time of not less than 50 minutes in formally established classroom courses, seminars, conferences, workshops, institutes, or in services;~~

~~(b) a maximum of ten hours per two year period may be recognized for teaching in a college or university, or teaching continuing education courses in the field of substance use disorder counseling; and~~

~~(c) a maximum of 15 hours per two year period may be recognized for distance learning, clinical readings or internet-based courses directly~~

~~related to practice as a substance use disorder counselor.~~

~~(6) A licensee shall be responsible for maintaining competent records of completed continuing education for a period of four years after close of the two year period to which the records pertain. It is the responsibility of the licensee to maintain such information with respect to continuing education to demonstrate it meets the requirements under this section.~~

~~(7) A licensee who documents he is engaged in full time activities or is subjected to circumstances which prevent that licensee from meeting the continuing education requirements established under this section may be excused from the requirement for a period of up to five years. However, it is the responsibility of the licensee to document the reasons and justify why the requirement could not be met.]~~

R156-60d-307. License Reinstatement - Requirements.

In accordance with Subsection 58-1-308(5) and subject to Section R156-1-308g, an applicant for reinstatement of a license ~~[after]~~more than two years ~~[following expiration of that license]~~after the date the license expired shall ~~[-demonstrate competency by]:~~

(1) meet~~[ing]~~ with the Board upon request for the purpose of evaluating the applicant's current ability to engage safely and competently in practice as a substance use disorder counselor and to make a determination of any additional education, experience or examination requirements ~~[which]~~that will be required before reinstatement;

(2) pass~~[ing]~~ the examination required in Section R156-60d-302c if it is determined necessary by the Board to demonstrate the applicant's ability to engage safely and competently in practice as a substance use disorder counselor; and

(3) ~~[completing]~~complete at least 40 hours of continuing education in subjects determined by the Board as necessary to ensure the applicant's ability to engage safely and competently in practice as a substance use disorder counselor.

R156-60d-502. Unprofessional Conduct.

"Unprofessional conduct" includes:

(1) ~~[violation]~~violating of any provision of the NAADAC, the Association for Addiction Professionals (October 9, 2016) NAADAC and NCC AP Code of Ethics ~~[: Teaching Tool, January 2011 edition]~~, which is hereby incorporated by reference;

(2) violating any provision applicable to a supervisor under Section 58-60-508 or Section R156-60-302; ~~[acting as a supervisor without ensuring that the supervisee holds the requisite license;~~

~~(3) exercising undue influence over the clinical judgment of a supervisor over whom the licensee has administrative control;~~

~~(4) if licensed as a licensed advanced substance use disorder counselor or a licensed substance use disorder counselor, accepting the duties as a supervisor of a certified advanced substance use disorder counselor, certified advanced substance use disorder counselor intern, certified substance use disorder counselor, or a certified substance use disorder counselor intern who has any supervisory control over the licensed advanced substance use disorder counselor or licensed substance use disorder counselor; and]~~

(3) violating any provision applicable to a supervisee under Section R156-60-302; or

(~~5~~4) directing one's mental health therapist supervisor to engage in a practice that would violate any statute, rule, or generally accepted professional or ethical standard of the supervisor's profession.

KEY: licensing, substance use disorder counselors

Date of Enactment or Last Substantive Amendment: [~~January 22, 2015~~]2020

Notice of Continuation: July 14, 2020

Authorizing, and Implemented or Interpreted Law: 58-60-501; 58-1-106(1) (a); 58-1-202(1) (a)