

UTAH STATE DEVELOPMENTAL CENTER		
EMPLOYEE CODE OF CONDUCT	DIRECTIVE 11.17.06	PAGE 1 OF 20
EFFECTIVE DATE: 01-01-99	REVISION DATE: 08-31-09	Approved By: Karen Clarke, Superintendent
REVIEWING ENTITY: Executive Staff		
AUTHORITY REFERENCE:	Utah Code Annotated: 62A-3-301 through 62A-3-312, 76-1-601, 76-5-111, CFR; 483.420(a), W127, W131, W132, (d) W149 through W157	State of Utah Department of Human Resource Management Rules: R477-10, 11, &15 DSPD 5-3,706 DHS 5-03; 2-03

I. DIRECTIVE:

- A. Utah State Developmental Center staff shall actively promote and defend individual's exercise of their human and civil rights as guaranteed by the Constitution of the State of Utah, the Constitution of the United States, and in accordance with Utah State Developmental Center Policy #30.08. Staff shall promote dignity and maintain the safety of all individuals entrusted into the care of Utah State Developmental Center.
- B. Utah State Developmental Center staff shall interact with individuals in a manner that demonstrates respect for their human dignity and individual worth. Staff shall provide education and training which facilitates individuals' integration into society as successful citizens.
- C. Willful or inadvertent mistreatment of any individual runs directly counter to the values, goals and objectives of this institution. Any acts of abuse, neglect, or exploitation of an individual are a violation of this directive, as well as violations of Utah State laws.
 1. Any Utah State Developmental Center employee or other person who abuses, neglects, or exploits an individual will be subject to administrative action and possible criminal prosecution. All allegations of abuse, neglect, or exploitation will be reported to the appropriate channels of authority within 24 hours of incident occurrence. (See Directive 11.09.)
 2. Utah law requires all suspected cases of abuse, neglect, or exploitation to be reported to Adult Protective Services (*18 and older*) and to Child Protective Services (*if under the age of 18*). In addition, suspected cases may be reported to law enforcement personnel (American Fork Police Department). (See Directive 11.09.)
 3. All other Policy Violations included in the Code of Conduct must also be reported. (See Directive 11.09.)
 4. All injuries level 2 and above (any injury that requires a nurse or doctor's service) **and** all unexplained injuries must be reported. (See Directive 11.09.)
 5. Any Utah State Developmental Center employee who has reason to believe that an individual has been subject to abuse, neglect, or exploitation must immediately notify the Department of Human Resource Department Field Office at the USDC. Notification may be done in one of two ways: 1.) Call and report on the Abuse Hotline at 763-4125, and/or 2.) Complete an Incident Tracking Form and put it into one of the Policy Violation Reporting Drop Boxes located on the Northwest side of the Human Resource Building (Heather) and by the switchboard. (See Directive 11.09.)

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6. Any employee who willfully fails to report the abuse, neglect or exploitation of any individual is guilty of a Class B misdemeanor and will be subject to criminal prosecution, as well as administrative action. Policy violation incidents will be turned into proper authorities within the first 24 hours of the time the incident occurred or was observed. (see Reportable Incidents Directive #11.09).
7. The Employee Code of Conduct is not an all-inclusive statement of State, Department, and Institution administrative policies and rules
8. Violations of this Directive may result in administrative action which may be in the form of appropriate discipline, up to and including dismissal from employment.

II. REPORTING PROTOCOL: (see **Directive** #11.09)

- A. All Policy Violations and Reportable Injury reports will be directly reported to the Human Resource Department either through the Abuse Hotline or the Incident Reporting Drop Boxes. The reporting person does not have to go through up-line supervisors to report an incident nor contact the investigating officer.
- B. Reports can be made either verbally or by using the current **Policy Violation Incident** report form.

III. PROCEDURE:

A. ABUSE OF INDIVIDUALS (Physical, Verbal, Psychological, Sexual):

1. No employee shall intentionally, knowingly, recklessly, or with criminal negligence cause physical injury to any individual. No employee, regardless of intent, should cause physical injury to any individual and/or cause or permit another person to harm an individual. No employee shall attempt to cause injury or threaten to cause injury to any individual.

In their efforts to manage individual behaviors, employees shall use only approved MANDT techniques or approved individual Behavior Support Plans. In all incidents of individual behavior management, staff will use the least intrusive action necessary to manage the behavior. In all incidents where extreme restraints are employed, staff shall thoroughly document the action on the correct Incident Tracking Form demonstrating that lesser intrusive, lesser restrictive actions were ineffective.

2. No employee shall verbally abuse an individual. Verbal abuse includes, but is not limited to; foul or abusive language, making fun of, name-calling, teasing, or yelling at the individual.
3. No employee shall psychologically/emotionally abuse an individual. Psychological/emotional abuse is creating situations, statements, or gestures designed to arouse anxiety or fear, or otherwise intimidate an individual.

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4. No employee shall sexually abuse an individual. Sexual relationships of any kind between employees and individuals are prohibited.

B. NEGLECT OF INDIVIDUALS:

1. No employee shall intentionally, knowingly, recklessly, or with criminal negligence neglect an individual. No employee regardless of intent should neglect an individual. Neglect includes, but is not limited to; neglect of assigned duties, unauthorized absence from duty, inattentiveness to duty, sleeping on the job, or any other action or condition that leads to a potentially dangerous situation or puts the individual(s) at risk. Such conditions include failure to supervise and failure to provide a safe and/or sanitary environment.

C. EXPLOITATION OF INDIVIDUALS:

1. No employee shall intentionally, knowingly, recklessly, or with criminal negligence exploit an individual. No employee, regardless of intent, should exploit an individual. Exploitation means unjust or improper use of an individual or the individual’s resources (property or money) for advantage, gratification, or profit of the perpetrator or for another party.
2. Employees shall not sell items to individuals, purchase items directly from individuals, solicit or accept gifts from individuals, guardians, or family members of the individual(s). Employees shall not accept loans of money or property from individuals. Employees shall not obtain work or services from an individual without approval from the Unit Director and provision for fair compensation to the individual. All services should go through approved programs.
3. Theft of any property belonging to individuals by any employee will be subject to administrative action and certain criminal prosecution.
4. Employees should not borrow, utilize, or consume property, personal articles, or food items that belong to an individual that resides at the Utah State Developmental Center.

D. WORKPLACE HARASSMENT:

1. Workplace harassment means discriminatory treatment based on race, religion, national origin, color, gender, age, disability, or protected activity under state and federal law. Discrimination based on Workplace harassment will not be tolerated. Violators may be subject to disciplinary action and may be referred for criminal prosecution. Discipline may include separation from employment.
2. Workplace harassment should be reported directly to the DHRM Human Resources Field Office, located on the USDC campus.
3. Workplace harassment includes the following subtypes:
 - a. Behavior or conduct in violation of R477-15-2(1) that is unwelcome, pervasive,

Comment: I'm suggesting to take out Unlawful and put in Workplace Harassment since that is how it's worded in DHRM Rule.

Comment: Again, DHRM Rule says gender instead of sex, which I think is a little more clear as sex can be confused with sexual orientation.

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- demeaning, ridiculing, derisive, or coercive, and results in a hostile, offensive, or intimidating work environment.
- b. Behavior or conduct in violation of R477-15-2(1) that results in a tangible employment action against the harassed employee.
4. The imposition of corrective action and discipline is governed by Department of Human Resource Management Rules R477-10-2- and R477-11.
 5. An employee may be subject to discipline for workplace harassment even if that harassment is not sufficiently severe to warrant a finding of unlawful harassment, or occurs outside of scheduled work time or work location provided that the harassment meets the requirements of R477-15-2(2).
 6. Individuals affected by alleged workplace harassment may, but shall not be required to, confront the accused harasser before filing a complaint.
 7. Once a complaint has been filed, the accused shall not communicate with the complainant regarding allegations of harassment.
 8. Any supervisor who has knowledge of workplace harassment behavior shall take immediate, appropriate actions and document such actions. Any supervisor who has knowledge of workplace harassment shall take immediate, appropriate action and document the action.
 9. The processing of workplace harassment complaints, the investigation thereof, and the implementation of appropriate action will be in accordance with Department of Human Resource Management Rule R477. (See Policy # 11.01.)

E. ALCOHOL AND DRUG VIOLATIONS

1. Employees are prohibited from providing alcohol, controlled substances or non-prescribed drugs to individuals. Only authorized personnel (nursing or medical staff) will give prescribed drugs to individuals.
2. Employees are prohibited from unlawfully manufacturing, dispensing, possessing, using or distributing any alcohol or controlled substance during working hours, or on state property at any time. Violations of this rule may be subject to disciplinary action in accordance with the State of Utah Human Resource Management Rules: R477-11.
3. Employees who are, or appear to be, under the influence of alcohol or controlled substances which impairs or may impair function while on duty or on state property may be subject to disciplinary action up to and including dismissal from employment as described above.

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4. Any drug violation described above which occurs during non-work hours away from state property is also prohibited if it adversely affects work performance, public safety or the credibility of this agency to be eligible to receive federal grants, or cause the public to lose confidence in the agencies ability to provide safe and appropriate services. (Federal Drug-Free Workplace Act of 1988).
5. Employee's personal medications must be secured from individual access. Employees shall not be in possession of excessive amounts of medications while on duty and/or on campus other than for daily prescribed personal needs.

F. TOBACCO

1. The Utah State Developmental Center is a campus free of tobacco use. Employees, volunteers and the public are prohibited from using any tobacco products on the Utah State Developmental Center Campus or while at work. This includes inside personal vehicles.
2. The use of any tobacco product in state-owned vehicles is prohibited.
3. Employees, volunteers and public are prohibited from providing or facilitating the purchase of tobacco products for individuals, except when approved in writing by a QMRP and the Clinical (Medical) Director for an individual.

G. CONFIDENTIALITY OF INDIVIDUAL INFORMATION (See Policy # 60.07):

1. Employees must protect the privacy of individuals by preventing the unauthorized disclosure of individual information to persons or organizations which do not have a proven "need to know". Unauthorized disclosure includes discussing individual information in conversation within hearing of an unauthorized person or providing to an unauthorized person, copies of or the opportunity to view documentation which is confidential in nature. Whether or not an act of unauthorized disclosure is intentional or unintentional is irrelevant; the result of the act has the same adverse affect on an individual's privacy.
2. When confidential information is released to authorized outside persons or agencies having a need to know, the release of information shall be only through approved channels after obtaining a written informed consent from the individual or legal guardian and a written agreement by the receiving party to maintain individual confidentiality (See Individual Rights Policy # 30.08 and HIPAA Privacy Rights of Individual Policy # 70.02).

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H. INSUBORDINATION

Employees are required to obey lawful orders/directives issued by a supervisor or manager. Employees that refuse to obey a lawful order/directive of a supervisor or manager are considered insubordinate.

Management may assign, modify, or remove any position task or responsibility in order to accomplish reorganization, improve business practices or processes, or for any other reason deemed appropriate by agency management (R 447-3-3.)

1. Employees and Managers shall handle questions regarding the legality of orders in a professional manner (R 447-3-3.).
2. It shall not be a violation of this directive to respectfully:
 - i. ask for clarification of a order/directive;
 - ii. call attention to possible conflict with laws, ordinances, administrative rules, Division or Department policy, or prior orders from another manager; or
 - iii. to recommend an alternative approach.
3. In cases of crisis or emergency, it is expected that employees carry out the lawful orders/directives of a supervisor or manager first, and after the crisis or emergency has been resolved: ask for clarification; call attention to conflict with laws, etc; and/or recommend an alternative approach.

USDC management will/shall/may discipline an employee for refusal to obey a supervisor's or manager's order, or show a lack of respect directed toward a supervisor or manager.

I. GENERAL GUIDELINES:

1. Employees may be disciplined for their conduct when such conduct adversely affects the efficiency, harmony, or good order of the Utah State Developmental Center, or when the employee's conduct could reasonably cause the public to lose confidence in the facility to provide safe and appropriate services. Employees shall be courteous and civil with the public and each other and shall not use abusive, indecent, harsh, loud, or profane language.
2. Employees are expected to apply themselves to their assigned duties and to bring to the attention of their supervisor any condition which would prevent or interfere with the accomplishment of their assigned duties.
3. Employees are expected to make prudent and frugal use of State funds, equipment, buildings, and supplies. Theft of State property, individual's property, or employee's property that occurs at work or on USDC property will be subject to administrative action and criminal prosecution.

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4. Employees shall not engage in behavior, such as the playing of pranks, or horseplay, which would endanger individuals or staff.
5. Sexual activity between employees or employees and others while on duty or on the grounds of the Developmental Center is prohibited.
6. Employees shall comply with all general Federal, State, Department, Division, and organizational administrative policies and rules.
7. Electronic Devices - Employees should only use Cell Phones/Blue Tooth/Electronic devices during lunch and breaks if they are required to provide direct care for the individuals who reside at the USDC. Some positions may require the use of cell phones. Those positions that require the use of Cell Phones/Blue Tooth/Electronic Devices should be pre-designated and approved by management and the use of the devices should be work related. Cell Phones/Blue Tooth/Electronic Devices should never be used while driving a State Vehicle.
8. REPRISALS (retaliation) are prohibited against any person who reports or opposes a practice forbidden under this directive, or who has filed a complaint, testified, assisted or participated in any lawful manner in an investigation, proceeding or hearing under this directive. The act of reprisal is subject to administrative actions and criminal prosecution.

J. ADMINISTRATION OF DIRECTIVE

1. Federal, State and Department of Human Services rules/policies regarding employee conduct will take precedence over USDC policy/directive if a contradiction should occur before new departmental rules can be incorporated into an updated edition of this directive.
2. All administrative actions or criminal proceedings will be done in accordance with appropriate Utah laws, and Administrative Rules.
3. New employees will receive this directive during their initial orientation. Each employee will sign and date the acknowledgment form (ATTACHMENT A), which will then be placed in their Personnel File.
4. In accordance with the Department of Human Services Provider Code of Conduct Ref. 05-03, and Division of Services for People with Disabilities Code of Conduct Rule 62a-5-103, all employees will review this policy annually through the Utah State Developmental Center recertification training and sign the attached form. Please return the signed sheet through the instructor or supervisor to the Department of Human Resource Management Field office located at the USDC within one week.

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GOVERNOR HUNTSMAN'S ETHICS EXECUTIVE ORDER

Governor Jon Huntsman signed an Executive order establishing an Ethics Policy for Executive Branch agencies and employees March 12, 2007.

The policy includes a prohibition against the receipt of gifts, a prohibition against nepotism in hiring and contracting and a prohibition against lobbying Executive Branch department or agency employees by former employees.

“The revolving door system whereby employees quit working with an agency one day and go to work the next day lobbying their former place of employment is counterproductive to building trust in public service,” Governor Huntsman said. “This policy establishes clear boundaries of ethical guidelines that the public expects of government employees.”

The language of the executive order is as follows”

EXECUTIVE ORDER

*Establishing an Ethics Policy for Executive Branch Agencies
and Executive Branch Employee*

WHEREAS, State employees hold themselves to high ethical standards and act with integrity in their positions of public trust:

WHEREAS, confidence in government increases when State employees make decisions based upon the best interests of the public as large, without influence by those who may seek special favors and without regard to personal gain;

WHEREAS, compliance with a strong ethics policy protects public employees from any perception of wrongdoing; and,

WHEREAS, the Utah state law governing ethical standards of public employees can and should be improved:

NOW, THEREFORE, I, JON M. Huntsman Jr., Governor of the State of Utah, by the authority vested in me by the Constitution and laws of this State do hereby order that the Executive Branch and all Executive Branch employees are subject to the following restrictions:

1. Application

- a. This order applies to all Executive Branch department or agency employees. This order may be adopted by independently elected officers and their employees. This order does not apply to any Legislative Branch employee or Judicial Branch employee.

- b. Each Executive Branch department or agency shall amend their existing policy to be consistent with the restrictions set forth below.

2. Prohibition Against the Receipt of Gifts

- a. Subject to the exceptions set forth below, an employee covered by this order is prohibited from accepting a gift or other compensation that might be intended to influence or reward the individual in the performance of official business. This prohibition shall apply notwithstanding Utah Code Ann. Section 67-16-5, which provides that gifts up to \$50 may be allowed in certain circumstances. Additionally, this order does not abrogate any restriction imposed by the Utah Procurement Code contained in Title 63, Chapter 56, Utah Code Annotated
- b. For purposes of this order, the term “gift” does not include:
 - i. campaign contributions received in accordance with Title 20A, Chapter 11, Utah Code Annotated.
 - ii. food, refreshments, or meals of limited value;
 - iii. an item given on behalf of a foreign government that becomes the property of the State;
 - iv. rewards and prizes open to the general public or all state employees;
 - v. plaques or mementos recognizing service
 - vi. trinkets or mementos of nominal value
 - vii. gifts from extended family members or personal friends;
 - viii. small efforts of common courtesy or other services of nominal monetary value;
 - ix. funeral flowers or memorials and
 - x. attendance or participation at events sponsored by another government entity.
- c. If an employee receives a gift that cannot be accepted, the employee may return the gift, pay its market value, or donate the gift to the State of Utah. If the gift is perishable or not practical to return, the gift may, with approval of the Department or Agency head, be shared with co-workers or given to charity.

3. Prohibition Against Nepotism in Hiring and Contracting

- a. An employee covered by this order may not take part in any hiring or employment decision relating to a family member. If a hiring or employment matter arises relating to a family member, then the employee must advise his or her supervisor of the relationship, and must be recused from any and all discussions or decisions relating to the matter. This prohibition shall apply notwithstanding the exceptions contained in Utah Code Ann. Section 52-3-1.
- b. An employee covered by this order may not take part in any contracting decision” (i) relating to a family member; or (ii) relating to any entity in which a family member is an officer, director or partner, or in which a family member owns or controls 10% or more of the stock of such entity. If a contracting matter arises relating to a family member, then the employee must advise his or her supervisor of the relationship, and must be recused from any and all discussions or decisions relating to the matter.

- c. For the purposes of this order the term “family member” shall mean an employee’s spouse, siblings, step-siblings, siblings-in-law-, parents, step-parents, parents-in-law, children, step-children, children-in-law, and any person living in the same household as the employee.

4. Prohibition Against Lobbying Executive Branch Department or Agency Employees

- a. An employee covered by this order may not knowingly permit a former employee, previously subject to this order during the course of his/her employment in the Executive Branch, to lobby the current employee unless a two year period has passed since the former employee’s employment was terminated.
- b. For purposes of this order, the terms “to lobby” and “lobbying” shall mean to receive compensation or other remuneration for attempting to influence executive action as defined in Utah Code Ann. Section 36-11-102(2).

5. Penalties

An employee covered by this order who violates this order is subject to appropriate discipline as provided in State of Utah Department of Human Resource Management Rules R477-11 and is determined by the Executive Branch department or agency head or the Governor’s Chief of Staff.

ATTACHMENT C

FALSE CLAIMS DETENTION AND REPORTING GUIDELINES

A. Introduction

Effective January 1, 2007, Section 6032 of The Deficit Reduction Act of 2005 requires that entities who receive or make annual payments of at least five million dollars under the Medicaid State plan, as a condition of receiving such payments, establish written policies for all employees and contractors that provide detailed information about the federal False Claims Act and other state and federal laws.

These policies must include providing information about administrative remedies for false claims and statements established under various sections of the United States Code and state laws relating to civil or criminal penalties for false claims and whistleblower or other protections available and the role of such provisions in prevention or detection of fraud, waste and abuse in federal health care programs. In addition, such entities are required to make materials available to their employees and contractors that set forth the entity's policies and procedures for detecting and preventing fraud, waste and abuse.

In that the Utah Division of Services for People with Disabilities is such an entity, and Medicaid providers may be viewed as contractors in the application of this law, DSPD is making its policies and information available to you in compliance with this regulation.

B. Utah's Procedures for Detecting Fraud, Waste and Abuse

DSPD as the recipient of Medicaid funds has numerous processes to prevent and detect fraud, waste and abuse in the Medicaid program, DSPD the Utah Department of Health, the Utah Department of Human Services, the Utah Attorney General's Office, the Utah State Auditor, the United States Department of Justice, and the Department of Health and Human Services each contributes to the oversight, detection and prevention of fraud, waste and abuse for DSPD. DSPD has dual overall purposes for prepayment education; and prevention of provider fraud waste, and abuse. Within DSPD are various auditing, tracking, referral, monitoring, education/prevention, and collection responsibilities. For details see ATTACHMENT A DSPD Contract Monitoring Plan.

C. State and Federal False Claims Act and Whistleblower Protections Overview

Federal Whistleblower Protection

The Federal False Claims Act (FCA) is an important mechanism for the Utah Attorney General (OAG) and DSPD because it permits these state agencies as well as private citizens to sue anyone who submits a false claim to obtain funds from Utah's Medicaid program for civil damages. Furthermore, the FCA amplifies Utah State law because unlike Utah, the FCA permits anyone who files a false claim to be sued for damages whereas Utah law only permits providers of health care services to be sued if they file a false claim. Other important aspects of the FCA are the incentives and protection afforded to whistleblowers under the FCA. Whistleblowers are entitled to a portion of the damages recovered in a suit to which he or she participated, and employees who come forward to report suspected fraud are protected from retaliation by their employers.

What is the FCA?

The purpose of the FCA is to recover taxpayers' money that was fraudulently paid to individuals who deceived the government. The FCA was revised in 1986 because of the increase in fraud perpetuated against the federal and state governments. These revisions helped to strengthen the joint effort needed between the federal and state governments to eliminate the fraud, waste and abuse of government funds, particularly those funds illegally earned through government contracts. These revisions also included more incentives for whistleblowers to come forward with reports of fraud. "By doing so, Congress put into play a powerful public/private partnership for uncovering fraud against the federal government and obtaining the maximum recovery for American taxpayers."

The FCA is a valuable device to the Utah Department of Health and DSPD to help maintain the integrity of Utah's Medicaid program because it specifically provides a mechanism for the government or private individuals to file a civil lawsuit against those who would otherwise be outside the reach of civil prosecution by Utah because of its limited false claims act.

Utah's false claim act applies only to providers of medical services who receive compensation from the Medicaid program. Together, with knowledge of the FCA, DSPD and private citizens can help eliminate the fraud, waste and abuse of government funds in Utah.

Federal Provisions

The FCA holds anyone who submits or causes someone else to submit a false or misleading claim for government funds liable for civil damages. 31 U.S.C. §§3729-3733.

Entities such as businesses, corporations, managed care providers, among others, can also be liable under this act for submitting false claims. A claim is simply some demand for money or property to which the government provides any portion of the money or property requested, and it is the filing of an untrue claim that brings liability upon the person who purported it to be true.

The FCA encompasses several different examples of falsifying claims including, but not limited to: falsifying medical records submitted, billing for services not rendered or goods not provided, duplicating billing to obtain double compensation, and billing, certifying, or prescribing services medically unnecessary. Additionally, no proof of specific intent to defraud the government is required to be held liable under the FCA. All that is required is that the person has actual knowledge, or has acted with deliberate ignorance or reckless disregard of the truth/falsity of his or her claim. Basically, the defense of "I didn't know it was illegal or that my timesheet was false" does not work.

-STATUTE-

(a) Liability for Certain Acts. Any person who-

- (1) knowingly presents, or causes to be presented, to an officer or employee of the United States Government or a member of the Armed Forces of the United States a *false* or fraudulent *claim* for payment or approval;**
- (2) knowingly makes, uses or causes to be made or used, a *false* record or statement to get a *false* or fraudulent *claim* paid or approved by the Government;**
- (3) conspires to defraud the Government by getting a *false* or fraudulent *claim* allowed or paid;**
- (4) has possession, custody, or control of property or money used, or to be used, by the Government and, intending to defraud the Government or willfully to conceal the property, delivers, or causes to be delivered, less property than the amount for which the person receives a certificate or receipt;**
- (5) authorized to make or deliver a document certifying receipt of property used, or to be used, by the Government and, intending to defraud the Government, makes or delivers the receipt without completely knowing that the information on the receipt is true;**
- (6) knowingly buys, or receives a pledge of an obligation or debt, public property from an officer or employee of the Government, or a member of the Armed Forces, who lawfully may not sell or pledge the property; or**
- (7) knowingly makes, uses, or causes to be made or used, a *false* record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the Government, is liable to the United States Government for a civil penalty of not less than \$5,000 and not more than \$10,000, plus 3 times the amount of damages which the Government sustains because of the *act* of that person, except that if the court finds that -**
 - (A) the person committing the violation of this subsection furnished officials of the United States responsible for investigating *false claims* violations with all information known to such person about the violation within 30 days after the date on which the defendant first obtained the information;**
 - (B) such person fully cooperated with any Government investigation of such violation, And**
 - (C) at the time such person furnished the United States with the information about the violation, no criminal prosecution, civil action, or administrative action had commenced under this title with respect to such violation, and the person did not have actual knowledge of the existence of an investigation into such violations; the court may assess not less than 2 times the amount of damages which the Government sustains because of the *act* of the person. A person violating this subsection shall also be liable to the United States Government for the costs of a civil action brought to recover any such penalty or damages.**

(b) Knowing and Knowingly Defined. - For purposes of this section, the terms “knowing” and “knowingly” mean that a person, with respect to information -

- (1) has actual knowledge of the information;**
- (2) *acts* in deliberate ignorance of the truth or falsity of the information; or**
- (3) *acts* in reckless disregard of the truth or falsity of the information, and no proof of specific intent to defraud is required.**

(c) *Claim Defined.* - For purposes of this section, “*claim*” includes any request or demand, whether under a contract or otherwise, for money or property which is made to a contractor, grantee, or other recipient if the United States Government provides any portion of the money or property which is requested or demanded, or if the Government will reimburse such contractor, grantee, or other recipient for any portion of the money or property which is requested or demanded.

(d) *Exemption from Disclosure.* - Any information furnished pursuant to subparagraphs (A) through (C) of subsection (a) shall be exempt from disclosure under section 552 of title 5.

(e) *Exclusion.* - This section does not apply to *claims*, records, or statements made under the Internal Revenue Code of 1986.

-SOURCE-

(Pub. L. 97-258, Sept. 13, 1982, 96 Stat. 978; pub. L. 99-562, Sec. 2, Oct. 27, 1986m 100 Stat. 3153; pub. L. 103-272, Sec. 4(f)(1)(O), July 5, 1994m 108 Stat. 1362.)

Utah False Claims Act

Utah law also regulates the filing of false Medicaid. The following laws regulate false Medicaid claims:

Utah Code Section 26-20-2. Definitions.

As used in this chapter:

- (1) “Benefit” means the receipt of money, goods, or any other thing of pecuniary value.
- (2) “False statement” or “false representation” means a statement or representation which is knowingly willfully made if the person making the statement or representation has knowledge of the falsity thereof.
- (3) “Knowing” and “knowingly” mean that a person is aware of the nature of his conduct and that his conduct is substantially certain to cause the intended result.
- (4) “Medical benefit” means a benefit paid or payable to a recipient or a provider under a program administered by the state under Titles V and XIX of the federal Social Security Act, Title X of the federal Public Health Services Act, the federal Child Nutrition Act of 1966 as amended by P.L. 94-105 and any programs for medical assistance of the state.
- (5) “Person” means an individual, corporation, unincorporated association, professional corporation, partnership, or other form of business association.

Utah Code Section 26-20-3. False statement or representation relating to medical benefits.

- (1) A person shall not make or cause to be made a false statement or false representation of a material fact in an application for medical benefits.
- (2) A person shall not make or cause to be made a false statement or false representation of a material fact for use in determining rights to a medical benefit.

- (3) A person, who having knowledge of the occurrence of an event affecting his initial or continued right to receive a medical benefit or the initial or continued right of any other person on whose behalf he has applied for or is receiving a medical benefit, shall not conceal or fail to disclose that event with intent to obtain a medical benefit to which the person or any other person is not entitled or in an amount greater than that to which the person or any other person is entitled.

Utah Code Section 26-20-4. Kickbacks or bribes prohibited..

A person may not solicit, offer, pay, or receive a kickback or bribe in connection with the furnishing of goods or services for which payment is or may be made in whole or in part pursuant to a medical benefit program, or pay or receive a rebate of a fee or charge for referring an individual to another person for the furnishing of goods or services.

Utah Code Section 26-20-5. False statements or false representations relating to qualification of health institution or facility prohibited --Felony.

(1) A person shall not knowingly and willfully make, or induce or seek to induce the making of a false statement or false representation of a material fact with respect to the conditions or operations of an institution or facility in order that the institution or facility may qualify, upon initial certification or upon recertification, as a hospital, skilled nursing facility, intermediate care facility, or home health agency.

(2) A person who violates this section is guilty of a second degree felony.

Utah Code Section 26-20-6. Conspiracy to defraud prohibited.

A person shall not enter into an agreement, combination, or conspiracy to defraud the state by obtaining or aiding another to obtain the payment or allowance of a false, fictitious, or fraudulent claim for a medical benefit.

Utah Code Section 26-20-7. False claims for medical benefits prohibited.

- (1) No person may make or present or cause to be made or presented to an employee or officer of the state a claim for a medical benefit, knowing the claim to be false, fictitious, or fraudulent,
- (2) In addition, no person shall knowingly:
- (a) file a claim for a medical benefit for services which were not rendered or for items or materials which were not delivered;
 - (b) file a claim for a medical benefit which misrepresents the type, quality, or quantity of items or services rendered;
 - (c) file a claim for a medical benefit representing charges at a higher rate than those charged by the provider to the general public;
 - (d) file a claim for a medical benefit for items or services which the person or the provider knew were not medically necessary in accordance with professionally recognized standards;
 - (e) file a claim for a medical benefit which has previously been paid;
 - (f) fail to credit the state for payments received from other sources;
 - (g) file a claim for a medical benefit for services also covered by one or more private sources when the person or provider knew of the private sources without disclosing those sources on the claim;
 - (h) recover or attempt to recover payment from a recipient under a medical benefit program, or the recipient's family in violation of the provider agreement;
 - (i) file a claim for a medical benefit where a provider divides an accepted multiple medical procedure into artificial components or single procedures requesting full medical benefits for performing those component procedures as if they had each been performed independently and at separate times;

- (j) falsify or alter with intent to deceive, any report or document required by state or federal law, rule, or Medicaid provider agreement;
- (k) retain any unauthorized payment as a result of acts described by this section; or
- (l) aid or abet the commission of any act prohibited by this section

Utah Code Section 26-20-8. Knowledge of past acts not necessary to establish fact that false statement or representation knowingly made.

In prosecution under this chapter, it shall not be necessary to show that the person had knowledge of similar acts having been performed in the past on the part of persons action on his behalf nor to show that the person had actual notice that the acts by the persons action on his behalf occurred to establish the fact that a false statement or representation was knowingly made.

Utah Code Section 26-20-9. Criminal penalties.

(1) The punishment for violation of any provision of this chapter, except as provided under Section 26-20-5, is determined by the cumulative value of the funds or other benefits received or claimed in the commission of all violations of a similar nature, and not by each separate violation.

(2) Punishment for violation of this chapter, except as provided, under Section 26-20-5, is as follows;

- (a) as a felony of the second degree if the cumulative value of the funds or other benefits received or claimed in violation of this chapter exceeds \$1,000;
- (b) as a felony of the third degree if the cumulative value of the funds or other benefits received or claimed in violation of this chapter exceeds \$250 but does not exceed \$1,000;
- (c) as a class A misdemeanor if the cumulative value of the funds or other benefits received or claimed in violation of this chapter exceeds \$100 but does not exceed \$250; or
- (d) as a class B misdemeanor if the cumulative value of the funds or other benefits received or claimed in violation of this chapter does not exceed \$100.

Utah Code Section 26-20-9.5. Civil penalties.

- (1) Any person who violates this chapter shall, in addition to other penalties provided by law, be subject to the following civil penalties:
 - (a) in all cases, shall be required to make full and complete restitution to the state of all medical benefits improperly obtained;
 - (b) in all cases, shall be required to pay the state its costs of enforcement of this chapter in that case, including but not limited to the cost of investigators, attorneys, and other public employees, as determined by the Bureau of Medicaid Fraud;
 - (c) may be required, in the discretion of the court, to pay to the state a civil penalty not to exceed three times the amount of value improperly claimed or received as a medical benefit; or
 - (d) may be required, in the discretion of the court, to pay to the state a civil penalty of up to \$2,000 for each claim filed or act done in violation of this chapter.
- (2) Any civil penalties assessed under Subsection (1) shall be awarded by the court as part of its judgment in both criminal and civil actions.
- (3) A criminal action need not be brought against a person in order for that person to be civilly liable under this section.

Utah Code Section 26-20-10. Revocation of license of assisted living facility - Appointment of receiver.

- (1) If the license of an assisted living facility is revoked for violation of this chapter, the county attorney may file a petition with the district court for the county in which the facility is located for the appointment of a receiver.
- (2) The district court shall issue an order to show cause why a receiver should not be appoint a returnable within five days after the filing of the petition.

- (3) If the court finds that the facts warrant the granting of the petition, the court shall appoint a receiver to take charge of the facility. The court may determine fair compensation for the receiver.
- (4) A receiver appointed pursuant to this section shall have the powers and duties prescribed by the court.

Utah Code Section 26-20-11. Presumption based on paid state warrant -- Value of medical benefits -- Repayment of benefits.

- (1) In any civil or criminal action brought under this chapter, a paid state warrant, made payable to the order of a party, creates a presumption that the party received funds from the state.
- (2) In any civil or criminal action brought under this chapter, the value of the benefits received shall be the ordinary or usual charge for similar benefits in the private sector.
- (3) In any criminal action under this chapter, the repayment of funds or other benefits obtained in violation of the provisions of this chapter does not constitute a defense to, or grounds for dismissal of that action.

Utah Code Section 26-20-12. Violation of other laws.

This chapter shall not be construed to prohibit or limit an action against a person for violation of any other law.

Utah Code Section 26-20-13. Medicaid fraud enforcement.

- (1) This chapter shall be enforced in accordance with this section.
- (2) The department shall be responsible for:
 - (a) investigating and prosecuting all civil violations of this chapter, and
 - (b) promptly referring suspected criminal violations of this chapter to the attorney general for criminal investigation and prosecution.
- (3) The attorney general shall be responsible for:
 - (a) investigating criminal violations of this chapter that are reported to the attorney general by the department or others;
 - (b) promptly referring probable civil violations of this chapter that are not related to a criminal investigation or prosecution to the department for civil investigation and prosecution; and
 - (c) prosecuting criminal violations of this chapter.
- (4) The department and the attorney general may enter into an interagency agreement regarding the investigation and prosecution of violations of this chapter in accordance with this section, the requirements of Title XIX of the federal Social Security Act, and applicable federal regulations.

Utah Criminal Code 76-8-402. Misusing public monies.

- (1) Every public officer of this state or a political subdivision, or of any county, city, town, precinct, or district of this state, and every other person charged, either by law or under contract, with the receipt, safekeeping, transfer, disbursement, or use of public monies commits an offense if the officer or other charged person:
 - (a) appropriates the money or any portion of it to his own use or benefit or to the use or benefit of another without authority of law;
 - (b) loans or transfers the money or any portion of it without authority of law;
 - (c) fails to keep the money in his possession until disbursed or paid out by authority of law;
 - (d) unlawfully deposits the money or any portion in any bank or with any other person;
 - (e) knowingly keeps any false account or makes any false entry or erasure in any account of or relating to the money;

- (f) fraudulently alters, falsifies, conceals, destroys, or obliterates any such amount;
 - (g) willfully refuses or omits to pay over, on demand, any public monies in his hands, upon the presentation of a draft, order, or warrant drawn upon such monies by competent authority;
 - (h) willfully refuses or omits to transfer the money when the transfer is required by law; or
 - (i) willfully omits or refuses to pay over, to any officer or person authorized by law to receive it, any money received by him under any duty imposed by law so to pay over the same.
- (2) A violation of Subsection (1) is a felony of the third degree, except it is a felony of the second degree if:
- (a) the value of the money exceeds \$5,000;
 - (b) the amount of the false account exceeds \$5,000;
 - (c) the amount falsely entered exceeds \$5,000;
 - (d) the amount that is the difference between the original amount and the fraudulently altered amount exceeds \$5,000.
- (3) In addition to the penalty described in Subsection (2), a public officer who violates Subsection (1) is subject to the penalties described in Section 76-8-404.

Utah Whistleblower Protections

State employees, contractors, or employees of contractors are protected when filing a report of a false claim. The employee, contractor, or employee may report violation of state or federal statutes, rules or regulations that the employee becomes aware of in the course of employment.

Utah Code 67-21-2. Definitions.

As used in this chapter.

- (1) "Adverse action" means to discharge, threaten, or otherwise discriminate against an employee in any manner that affects the employee's employment, including compensation, terms, conditions, location, rights, immunities, promotions or privileges.
- (2) "Communicate" means a verbal, written, broadcast, or other communicated report.
- (3) "Employee" means a person who performs a service for wages or other remuneration under a contract of hire, written or oral, express or implied.
- (4) (a) "Employer" means the employing state agency or political subdivision of the state.
(b) "Employer" includes an agent of an employer.
- (5) "Public body" means any of the following:
 - (a) a state officer, employee, agency, department, division, bureau, board, commission, council, authority, educational institution, or any other body in the executive branch of state government;
 - (b) an agency, board, commission, council, institution member, or employee of the legislative branch of state government;
 - (c) a county, city, town, regional governing body, council, school district, special district, or municipal corporation, board, department, commission, council, agency, or any member or employee of them;
 - (d) any other body that is created by state or local authority, or that is primarily funded by or through state or local authority, or any member or employee of that body;
 - (e) a law enforcement agency or any member or employee of a law enforcement agency; and
 - (f) the judiciary and any member or employee of the judiciary.

**Utah Code Section 67-21-3. Reporting of governmental waste or violations of law--Employer action -
-Exceptions.**

- (1) (a) An employer may not take adverse action against an employee because the employee, or a person authorized to act on behalf of the employee, communicates in good faith the existence of any waste of public funds, property, or manpower, or a violation or suspected violation of a law, rule, or regulation adopted under the law of this state, a political subdivision of this state, or any recognized entity of the United States.
(b) For purposes of Subsection (a) an employee is presumed to have communicated in good faith if he gives written notice or otherwise formally communicates the waste, violation, or reasonable suspicion to the state auditor. This presumption may be rebutted by showing that the employee knew or reasonably ought to have known that the report is malicious, false, or frivolous.
- (2) An employer may not take adverse action against an employee because an employee participates or gives information in an investigation, hearing, court proceeding, legislative or other inquiry, or other form of administrative review held by the public body.
- (3) An employer may not take adverse action against an employee because the employee has objected to or refused to carry out a directive that the employee reasonably believes violates a law of this state, a political subdivision of this state, or the United States, or a rule or regulation adopted under the authority of the laws of this state, a political subdivision of this state, or the United States.
- (4) An employer may not implement rules or policies that unreasonably restrict an employee's ability to document the existence of any waste of public funds, property, or manpower, or a violation or suspected violation of any laws, rules or regulations.

Reporting Medicaid Fraud, Waste and Abuse

Medicaid Fraud Hotline (801) 538-6155 or 1-800-662-9651

Division of Services for People with Disabilities (801) 538-4200 or FAX (801) 538-4279

Utah Attorney General (801) 538-9600

March 6, 2009

Dear staff:

In 2005, the United States Congress enacted a sweeping reform of federal Medicaid programs that was entitled the Deficit Reduction Act of 2005 (Public Law 109-171). Included in the Deficit Reduction Act (DRA) was an important provision, which expressed the intent of federal lawmakers to ensure that public funds were spent without fraud, waste or abuse. This provision provided assurances that fraud, waste and abuse would be dealt with by both the federal government as well as its State partners and is contained in the DRA. These provisions are added by the Act into the Social Security Act, which implements the Medicaid program. Because of this Congressional mandate, States bear the obligation to take affirmative steps to ensure that public funds are guarded from misuse and spent properly. The Utah State Developmental Center has always been committed to effective and responsible stewardship of public resources and continues to exercise that commitment.

To fulfill the requirements of the DRA, all USDC staff need to review the DSPD False Claim Detection and Reporting Guideline (attached to this letter) to become familiar with the terms and conditions of the Federal and State laws pertaining to fraud, waste and abuse. This Guideline provides you with the necessary information you need to comply with the requirements of the DRA. The Guideline includes the Federal False Claims Act, the Utah False Claims Act, and the Utah Whistle Blowers Act. After you have read this guideline, please print your name, sign your name, and date acknowledging you have read and understand the Guideline.

I appreciate your commitment and help to prevent fraud and to assure that funds for the individuals that reside here at the USDC are spent in a responsible manner.

Sincerely,

Karen Clarke, Superintendent, USDC

My signature below signifies that I received a copy of the DSPD False Claim Detection and Reporting Guideline, providing notice of the requirements for reporting fraud and detecting false claims as outlined in the Federal False Claims Act, the Utah False Claims Act, and the Utah Whistle Blowers Act. I have read and have understood these requirements.

Print Name:

Signature:

Date:

Attachment D

R477-14 Substance Abuse and Drug-Free Workplace

Comment: Once DHRM implements the revised rules, this should be updated.

R477-14. Substance Abuse and Drug-Free Workplace.

R477-14-1. Rules Governing a Drug-Free Workplace.

- (1) This rule implements the federal Drug-Free Workplace Act of 1988, Omnibus Transportation Employee Testing Act of 1991, 49 USC 2505; 49 USC 2701 and 49 USC 3102, and Section 67-19-36 authorizing drug and alcohol testing, in order to:
 - (a) Provide a safe and productive work environment that is free from the effect of unlawful use, distribution, dispensing, manufacture, and possession of controlled substances or alcohol use during work hours. See the Federal Controlled Substance Act, 41 USC 701.
 - (b) Identify, correct and remove the effects of drug and alcohol abuse on job performance.
 - (c) Assure the protection and safety of employees and the public.
- (2) State employees may not unlawfully manufacture, dispense, possess, distribute or use any controlled substance or alcohol during working hours, on State property, or while operating a state vehicle at any time, or other vehicle while on duty except where legally permissible.
 - (a) Employees shall follow Subsection R477-14-1(2) outside of work if any violations directly affect the eligibility of state agencies to receive federal grants or to qualify for federal contracts of \$25,000 or more.
- (3) All drug or alcohol testing shall be done in compliance with applicable federal and state regulations and policies.
- (4) All drug or alcohol testing shall be conducted by a federally certified or licensed physician or clinic, or testing service approved by DHRM.
- (5) Drug or alcohol tests with positive results or a possible false positive results shall require a confirmation test.

R477-14 Substance Abuse and Drug-Free Workplace

- (6) Employees in non safety sensitive positions are subject to one or more of the following drug or alcohol tests:
 - (a) reasonable suspicion;
 - (b) critical incident;
 - (c) post accident;
 - (d) return to duty;
 - (e) follow up.
- (7) For employees in non safety sensitive positions, the State of Utah will use the same cut off levels for positive drug tests as the federal government. This rule incorporates by reference the requirements of 49 CFR 40.40, Sections 85 to 87 (2002). Laboratory Analysis Procedures.
- (8) For employees in non safety sensitive positions, the State of Utah will use a blood alcohol concentration level of .08 as the cut off for a positive alcohol test.
- (9) Employees who hold safety sensitive positions, are final candidates for, are transferred to, or are assigned the duties of a safety sensitive position, and final applicants for safety sensitive positions are subject to one or more of the following drug or alcohol tests:
 - (a) reasonable suspicion;
 - (b) critical incident;
 - (c) post accident;
 - (d) return to duty;
 - (e) follow up;
 - (f) preemployment;
 - (g) random.
- (10) For employees in safety sensitive positions, the State of Utah will use the same cutoff levels for positive drug and alcohol tests as the federal government. This rule incorporates by reference the requirements of 49 CFR 40.40, Sections 85 to 87 (2002), Laboratory Analysis Procedures, 49 CFR 382.107 (2002), Definitions, 49

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CFR 382.201 (2002), Alcohol Concentration and 49 CFR 382.505 (200), Other Alcohol Related Conduct.

- (11) Employees in safety sensitive positions, as approved by DHRM, are subject to random drug or alcohol testing without justification of reasonable suspicion or critical incident. Except when required by federal regulation or state policy, random drug or alcohol testing of employees in safety sensitive positions shall be conducted at the discretion of the employing agency.
- (12) Employees in safety sensitive positions whose confirmation test for alcohol results are .02 or greater, when tested before, during, or immediately after performing safety sensitive functions, must be removed from performing safety sensitive duties for 8 hours, or until another test is administered and the result is less than .02.
- (13) Employees in safety sensitive positions whose confirmation test for alcohol results are .04 or greater when tested before, during or after performing safety sensitive duties, may be subject to corrective action or discipline.
- (14) Agencies with employees in positions requiring a commercial driver license shall administer testing and prohibition requirements and conduct training on these requirements as outlined in the current DHRM Drug and Alcohol Testing Manual.
- (15) Management may take disciplinary action if:
 - (a) there is a positive confirmation test for controlled substances;
 - (b) results of a confirmation test for alcohol meet or exceed the established alcohol concentration cutoff level;
 - (c) management determines an employee is unable to perform his assigned job tasks, even when the results of a confirmation test for alcohol shows less than the established alcohol concentration cutoff level.
- (16) The agency's human resource office or authorized official shall keep a separate, private record of drug or alcohol test results. The employee's official personnel file shall only contain a document making reference to the existence of the drug or alcohol test record.

R477-14 Substance Abuse and Drug-Free Workplace

R477-14-2. Management Action.

- (1) Pursuant to Rules R477-10, R477-11 and Section R477-14-2, supervisors and managers who receive notice of a workplace violation of these rules shall take immediate actions.
- (2) Management may take disciplinary action which may include dismissal.
- (3) An employee who refused to submit to drug or alcohol testing may be subject to disciplinary action which may include dismissal. See Section 67-19-33.
- (4) An employee who substitutes, adulterates, or otherwise tampers with a drug of alcohol testing sample, or attempts to do so, is subject to disciplinary action which may include dismissal.
- (5) Management may also take disciplinary action against employees who manufacture, dispense, possess, use, sell or distribute controlled substance or use alcohol, per Rule 477-11, under the following conditions:
 - (a) if the employee's action directly affects the eligibility of the agency to receive grants or contracts in excess of \$25,000.00.
 - (b) if the employee's action puts employees, clients, customers, patients, or co-workers at physical risk.
- (6) An employee who has a confirmed positive test for use of a controlled substance or alcohol in violation of these rules may be required to participate, at his expense, in a rehabilitation program, as provided for in Subsection 67-19-38.(3). If this is required, the following shall apply:
 - (a) An employee participating in a rehabilitation program shall be granted accrued leave or leave without pay for inpatient treatment.
 - (b) The employee must sign a release to allow the transmittal of verbal or written compliance reports between the state agency and the inpatient or outpatient rehabilitation program provider.
 - (c) All communication shall be classified as private in accordance with Title 63, Chapter 2.
 - (d) An employee may be required to continue participation n an outpatient rehabilitation program prescribed by a licensed practitioner on the employee's own time and expense.

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- (e) An employee, upon successful completion of a rehabilitation program shall be reinstated to work in his previously held position, or a position with a comparable or lower salary range.
- (7) An employee who fails to complete the prescribed treatment without a valid reason shall be subject to disciplinary action.
- (8) An employee who has a confirmed positive test for use of a controlled substance or alcohol is subject to follow up testing.
- (9) An employee who is convicted for a violation occurring in the workplace, under federal or state criminal statute which regulates manufacturing, distributing, dispensing, possessing, selling or using a controlled substance, shall notify the agency head of the conviction no later than five calendar days after the conviction.
 - (a) The agency head shall notify the federal grantor or agency for which a contract is being performed within ten calendar days of receiving notice from:
 - (i) the judicial system;
 - (ii) other sources;
 - (iii) an employee performing work under the grant or contract who has been convicted of a controlled substance violation in the workplace.

R477-14-3. Rule Distribution.

The Department of Human Resource Management shall distribute this rule to every state agency for communication to its employees.

R477-14-4. Policy Exceptions.

The Executive Director, DHRM, may authorize exceptions to the provisions of this rule consistent with Subsection R477-2-2(1).

Key: personnel management, drug/alcohol education, drug abuse, discipline of employees.

Date of Enactment or Last Substantive Amendment: July 1, 2006

Notice of Continuation: December 6, 2006

Authorizing, and Implemented or Interpreted Law: 67-19-6; 67-19-18; 67-19-34; 63-19-37; 67-19-38

Directive # R477-14

UTAH STATE DEVELOPMENTAL CENTER

Substance Abuse and Drug Free Workplace
Acknowledgment

My signature, below, signifies that I the employee of the Utah State Developmental Center have read and received a copy of the Utah State Developmental Center Directive # R477-14.

I acknowledge my responsibility, as an employee of the Utah State Developmental Center to conduct myself in accordance with the guidelines stated in the above mentioned policy.

Employee Name (Print)

Signature

Date