

1 **LICENSURE AND REGULATION OF**
2 **PROGRAMS AND FACILITIES**

3 2005 GENERAL SESSION

4 STATE OF UTAH

5
6 **LONG TITLE**

7 **General Description:**

8 This bill amends the licensing provisions of Title 62A, Chapter 2, Licensure of Programs and
9 Facilities.

10 **Highlighted Provisions:**

11 This bill:

- 12 ▶ modifies and enacts defined terms;
- 13 ▶ amends the responsibilities and rulemaking duties of the Office of Licensing;
- 14 ▶ lists grounds for refusing to renew a license;
- 15 ▶ requires that residential treatment programs obtain a separate license for each location
16 where the residential treatment program is operated;
- 17 ▶ provides requirements for a human services program to obtain approval of educational
18 service and funding plans;
- 19 ▶ imposes requirements for licensing, and for making rules regarding the licensing, of
20 residential treatment programs;
- 21 ▶ requires applicants for a license to operate a residential treatment program to provide a
22 description of the program, and notice of intent to operate a residential treatment
23 program, to the governing body of the city or county where the program intends to
24 operate;
- 25 ▶ provides that records received by the Office of Licensing through reports and inspections
26 shall be classified in accordance with the Government Records and Access Management
27 Act;
- 28 ▶ provides that Title 62A, Chapter 2, Licensure of Programs and Facilities, does not apply
29 to licensed mental health professionals, unless otherwise required by a contract with the
30 Department of Human Services;

- 31 ▶ provides that the Office of Licensing may place conditions on licenses;
- 32 ▶ lists standards for determining whether to reissue a revoked license;
- 33 ▶ provides that a revoked license may not be reissued until at least one year after final
- 34 notice of the revocation is served;
- 35 ▶ provides that a license may be suspended for up to one year;
- 36 ▶ provides that full faith and credit be extended to an Indian tribe's licensure of tribal foster
- 37 homes;
- 38 ▶ permits records to be copied during administrative inspections;
- 39 ▶ provides standards for:
 - 40 • conducting and reviewing background checks; and
 - 41 • granting persons direct access to children and vulnerable adults;
- 42 ▶ provides that substance abuse treatment programs that provide services to adults only are
- 43 not required to submit identifying information to the Office of Licensing for criminal
- 44 background checks; and
- 45 ▶ makes technical changes.

46 **Monies Appropriated in this Bill:**

47 None

48 **Other Special Clauses:**

49 None

50 **Utah Code Sections Affected:**

51 AMENDS:

- 52 **62A-2-101**, as last amended by Chapter 22, Laws of Utah 2003
- 53 **62A-2-105**, as last amended by Chapter 119, Laws of Utah 2003
- 54 **62A-2-106**, as last amended by Chapter 119, Laws of Utah 2003
- 55 **62A-2-108**, as last amended by Chapter 358, Laws of Utah 1998
- 56 **62A-2-108.1**, as last amended by Chapter 42, Laws of Utah 1997
- 57 **62A-2-109**, as last amended by Chapter 358, Laws of Utah 1998
- 58 **62A-2-110**, as last amended by Chapter 358, Laws of Utah 1998
- 59 **62A-2-111**, as last amended by Chapter 358, Laws of Utah 1998

- 60 **62A-2-112**, as last amended by Chapter 358, Laws of Utah 1998
 61 **62A-2-113**, as last amended by Chapter 358, Laws of Utah 1998
 62 **62A-2-116**, as last amended by Chapter 358, Laws of Utah 1998
 63 **62A-2-117**, as enacted by Chapter 358, Laws of Utah 1998
 64 **62A-2-118**, as enacted by Chapter 358, Laws of Utah 1998
 65 **62A-2-120**, as last amended by Chapter 300, Laws of Utah 2002
 66 **62A-2-121**, as last amended by Chapter 86, Laws of Utah 2004
 67 **62A-2-122**, as enacted by Chapter 300, Laws of Utah 2002

68 ENACTS:

69 **62A-2-108.2**, Utah Code Annotated 1953

70

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

72 Section 1. Section **62A-2-101** is amended to read:

73 **62A-2-101. Definitions.**

74 As used in this chapter:

- 75 (1) "Adult day care" means [~~continuous~~] nonresidential care and supervision;
 76 (a) for three or more adults for at least four but less than 24 hours a day[;]; and
 77 (b) that meets the needs of functionally impaired adults through a comprehensive program
 78 that provides a variety of health, social, recreational, and related support services in a protective
 79 setting.
 80 (2) "Child" means a person under 18 years of age.
 81 (3) "Child placing" means receiving, accepting, or providing custody or care for any child
 82 [~~under 18 years of age~~], temporarily or permanently, for the purpose of:
 83 (a) finding a person to adopt the child;
 84 (b) placing the child [~~temporarily or permanently~~] in a home for adoption; or
 85 (c) foster home placement.
 86 (4) "Client" means an individual who receives or has received services from a [~~human~~
 87 ~~services~~] licensee [~~under this chapter~~].
 88 (5) "Day treatment" means specialized treatment [~~for~~] that is provided to:

- 89 (a) a client less than 24 hours a day ~~[for]~~;
- 90 (b) four or more persons who:
- 91 (i) are unrelated to the owner or provider; and ~~[who]~~
- 92 (ii) have emotional, psychological, developmental, physical, or behavioral dysfunctions,
- 93 impairments, or chemical dependencies~~[- Day treatment is provided in lieu of, or in coordination with,~~
- 94 ~~a more restrictive residential or inpatient environment or service.];~~ and
- 95 (c) a client who does not reside at a location owned or operated by the treatment provider.
- 96 (6) "Department" means the Department of Human Services.
- 97 (7) "Direct access" means that an individual has, or likely will have, contact with or access to
- 98 a child or vulnerable adult that provides the individual with an opportunity for personal communication
- 99 or touch.
- 100 (8) "Director" means the director of the Office of Licensing.
- 101 (9) "Domestic violence" is as defined in Section 77-36-1.
- 102 ~~[(9)]~~ (10) "Domestic violence treatment program" means a nonresidential program designed
- 103 to provide psychological treatment and educational services to perpetrators and victims of domestic
- 104 violence.
- 105 ~~[(10)]~~ (11) "Elder adult" means a person 65 years of age or older.
- 106 ~~[(11)]~~ (12) "Executive director" means the executive director of the department.
- 107 (13) "Foster home" means a temporary residential living environment for the care of fewer
- 108 than four foster children in the home of a licensed or certified foster parent.
- 109 ~~[(12)]~~ (14) "Human services ~~[licensee" or "licensee"]~~ program" means a:
- 110 (a) foster home;
- 111 (b) youth program[;];
- 112 (c) resource family home[;]; or [a]
- 113 (d) facility or program[~~-, licensed by the department,~~] that provides [care,];
- 114 (i) secure treatment[;];
- 115 (ii) inpatient treatment[;];
- 116 (iii) residential treatment[;];
- 117 (iv) residential support[;];

- 118 (v) adult day care~~[-];~~
- 119 (vi) day treatment~~[-];~~
- 120 (vii) outpatient treatment~~[-];~~
- 121 (viii) domestic violence treatment~~[-];~~
- 122 (ix) child placing services~~[-or];~~
- 123 (x) social detoxification~~[-]; or~~
- 124 (xi) any other human services that are required by contract to be licensed with the
- 125 department.
- 126 (15) "Licensee" means a person or human services program licensed by the office.
- 127 ~~(13)~~ (16) "Licensing board" means the Human Services Licensing Board.
- 128 ~~(14)~~ (17) "Minor" has the same meaning as "child."
- 129 ~~(15)~~ (18) "Office" means the Office of Licensing within the Department of Human Services.
- 130 ~~(16)~~ (19) "Outpatient treatment" means individual, family, or group therapy or counseling
- 131 designed to improve and enhance social or psychological functioning for those whose physical and
- 132 emotional status allows them to continue functioning in their usual living environment.
- 133 ~~(17)~~ (20) (a) "Person associated with the licensee" means a person:
- 134 (i) affiliated with a licensee as an owner, director, member of the governing body, employee,
- 135 agent, provider of care, or volunteer ~~[of a human services licensee]; or [of an applicant]~~
- 136 (ii) applying to become affiliated with a licensee in any capacity listed under Subsection
- 137 (20)(a)(i).
- 138 (b) Notwithstanding Subsection ~~(17)~~ (20)(a), "person associated with the licensee" does
- 139 not include an individual serving on ~~either of~~ the following bodies unless that individual has direct
- 140 access to children or vulnerable adults:
- 141 (i) a local mental health authority under Section 17-43-301 ~~[or];~~
- 142 (ii) a local substance abuse authority under Section 17-43-201; or
- 143 ~~(ii)~~ (iii) a board of an organization operating under a contract to provide ~~[comprehensive];~~
- 144 (A) mental health or substance abuse programs; or
- 145 (B) services for the local mental health authority or substance abuse authority.
- 146 (c) "Person associated with the licensee" does not include a guest or visitor whose access to

147 children or vulnerable adults is directly supervised by the licensee at all times.

148 ~~[(18)]~~ (21) (a) "Residential support" means arranging for or providing the necessities of life
149 as a protective service to individuals or families who are disabled or who are experiencing a
150 dislocation or emergency ~~[which]~~ that prevents them from providing these services for themselves or
151 their families. ~~[Treatment is not a necessary component of residential support.]~~

152 (b) "Residential support" includes providing a supervised living environment for persons with:

153 (i) dysfunctions or impairments that are:

154 (A) emotional;

155 (B) psychological;

156 (C) developmental; or

157 (D) behavioral; or

158 (ii) chemical dependencies.

159 (c) Treatment is not a necessary component of residential support.

160 ~~[(19)]~~ (22) "Residential treatment" means a 24-hour group living environment for four or
161 more individuals unrelated to the owner or provider that offers room or board and specialized
162 treatment, behavior modification, rehabilitation, discipline, emotional growth, or habilitation services
163 for persons with emotional, psychological, developmental, or behavioral dysfunctions, impairments, or
164 chemical dependencies. ~~[In residential treatment, individuals are assisted in acquiring the social and
165 behavioral skills necessary for living independently in the community.]~~

166 (23) "Residential treatment program" means a human services program that provides:

167 (a) residential treatment; or

168 (b) secure treatment.

169 ~~[(20)]~~ (24) "Resource family home" means a home licensed to provide services to a child in
170 the custody of the state ~~[and includes a foster care home and a legal risk home].~~

171 ~~[(21)]~~ (25) "Secure treatment" means 24-hour specialized residential treatment or care for
172 persons whose current functioning is such that they cannot live independently or in a less restrictive
173 environment. Secure treatment differs from residential treatment to the extent that it requires intensive
174 supervision, locked doors, and other security measures ~~[which]~~ that are imposed on residents with
175 neither their consent nor control.

176 ~~(22)~~ (26) "Social detoxification" means short-term residential services for persons who are
177 ~~[intoxicated]~~ experiencing or have recently experienced drug or alcohol intoxication, that are
178 provided outside of a health care facility licensed under Title 26, Chapter 21, Health Care Facility
179 ~~[Licensure]~~ Licensing and Inspection Act, and that include:

- 180 (a) room and board for persons who are unrelated to the owner or manager of the facility;
- 181 (b) specialized rehabilitation to acquire sobriety; and
- 182 (c) aftercare services.

183 (27) "Substance abuse treatment program" means a program:

184 (a) designed to provide:

- 185 (i) specialized drug or alcohol treatment;
- 186 (ii) rehabilitation; or
- 187 (iii) habilitation services; and

188 (b) that provides the treatment or services described in Subsection (27)(a) to persons with:

- 189 (i) a diagnosed substance abuse; or
- 190 (ii) chemical dependency disorder.

191 ~~(23)~~ (28) "Unrelated persons" means persons other than parents, legal guardians,
192 grandparents, brothers, sisters, uncles, or aunts.

193 ~~(24)~~ (29) "Vulnerable adult" means an elder adult or an adult who has a temporary or
194 permanent mental or physical impairment that substantially affects the person's ability to:

- 195 (a) provide personal protection;
- 196 (b) provide necessities such as food, shelter, clothing, or mental or other health care;
- 197 (c) obtain services necessary for health, safety, or welfare;
- 198 (d) carry out the activities of daily living;
- 199 (e) manage the adult's own resources; or
- 200 (f) comprehend the nature and consequences of remaining in a situation of abuse, neglect, or
201 exploitation.

202 ~~(25)~~ (30) (a) "Youth program" means a ~~[nonresidential]~~ program[-] designed to provide
203 behavioral, substance abuse or mental health services to minors that:

- 204 (i) serves ~~[either]~~ adjudicated or nonadjudicated youth;

- 205 (ii) charges a fee for its services;
- 206 (iii) may or may not provide host homes or other arrangements for overnight accommodation
207 of the youth;
- 208 (iv) may or may not provide all or part of its services in the outdoors;
- 209 (v) may or may not limit or censor access to parents or guardians; and
- 210 (vi) prohibits or restricts a minor's ability to leave the program at any time of ~~his~~ the minor's
211 own free will.

212 (b) "Youth program" does not include recreational programs such as Boy Scouts, Girl
213 Scouts, 4-H, and other such organizations.

214 Section 2. Section **62A-2-105** is amended to read:

215 **62A-2-105. Licensing board responsibilities.**

216 (1) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
217 licensing board shall review and approve rules regarding:

218 (a) approving, denying, suspending, and revoking licenses ~~[for human services licensees and~~
219 facilities];

220 (b) conditional licenses, variances from department rule, and exclusions;

221 (c) the protection of the basic health and safety of clients;

222 (d) licensing of all persons and human services ~~[licensees]~~ programs that are required to be
223 licensed under this chapter; and

224 (e) notification to providers and subproviders of rights and responsibilities including who to
225 contact within the department when filing a complaint against a licensee or ~~[facility]~~ human services
226 program, and the responsibility of the department to follow up once contacted.

227 (2) The licensing board shall:

228 (a) define information that shall be submitted to the department with an application for a
229 license;

230 (b) review and approve fees, in accordance with Section 63-38-3.2, for licenses issued
231 under this chapter;

232 (c) represent the community and ~~[the human services]~~ licensees; and

233 (d) advise the department as requested, concerning enforcement of rules established under

234 this chapter.

235 Section 3. Section **62A-2-106** is amended to read:

236 **62A-2-106. Office responsibilities.**

237 [~~The office shall:~~]

238 (1) Subject to the requirements of federal and state law, the office shall:

239 (a) make rules in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking
240 Act, to establish:

241 [~~(i)~~] (i) basic health and safety standards for licensees, which [~~shall be limited to~~] may
242 include the following:

243 [~~(i)~~] (A) fire safety;

244 [~~(ii)~~] (B) food safety;

245 [~~(iii)~~] (C) sanitation;

246 [~~(iv)~~] (D) infectious disease control;

247 [~~(v)~~] (E) safety of the physical [~~plant~~] facility;

248 [~~(vi)~~] (F) transportation safety;

249 [~~(vii)~~] (G) emergency preparedness and response;

250 [~~(viii)~~] (H) the administration of medical standards and procedures, consistent with the
251 related provisions of this title; [~~and~~]

252 [~~(ix)~~] (I) [~~consumer~~] staff and client safety and protection;

253 (J) the administration and maintenance of client and service records;

254 (K) staff qualifications and training;

255 (L) staff to client ratios; and

256 (M) access to firearms;

257 (ii) procedures and standards for permitting licensees that provide residential treatment
258 services to children to provide, in the same facility as children, residential treatment services to a
259 person 18 years old or older who:

260 (A) begins to reside at the licensee's residential treatment facility before the person's
261 eighteenth birthday;

262 (B) has resided at the licensee's residential treatment facility continuously since the time

263 described in Subsection (1)(a)(ii)(A); and

264 (C) has not completed the course of treatment for which the person began residing at the

265 licensee's residential treatment facility;

266 ~~[(b)]~~ (iii) minimum administration and financial requirements for licensees; and

267 ~~[(c)]~~ (iv) guidelines for variances from rules established under this Subsection (1);

268 ~~[(2)]~~ (b) enforce rules~~[(a)]~~ approved by the licensing board;

269 ~~[(b) in effect on January 1, 1998, that apply to a service or program for which a licensee is~~

270 ~~not under contract with a division listed in Section 62A-1-105 to provide until rules are established~~

271 ~~pursuant to Subsection (2)(c); and]~~

272 ~~[(c) established after July 1, 1999, by a policymaking board created by Section 62A-1-105~~

273 ~~which:]~~

274 ~~[(i) shall be limited to:]~~

275 ~~[(A) the administration and maintenance of client and service records;]~~

276 ~~[(B) staff qualifications; and]~~

277 ~~[(C) staff to client ratios; and]~~

278 ~~[(ii) may only apply to a service or program for which a licensee is not under contract with a~~

279 ~~division listed in Section 62A-1-105 to provide;]~~

280 ~~[(3)]~~ (c) issue licenses in accordance with this chapter;

281 ~~[(4)]~~ (d) conduct surveys and inspections of licensees, human services program, and facilities

282 in accordance with Section 62A-2-118;

283 ~~[(5)]~~ (e) collect licensure fees;

284 ~~[(6)]~~ (f) provide necessary administrative support to the licensing board;

285 ~~[(7) provide notification to licensee or facility, including providers and subproviders, of]~~

286 (g) notify licensees of the name of a person within the department to contact when filing a

287 complaint;

288 ~~[(8)]~~ (h) investigate complaints regarding any licensee or ~~[facility]~~ human services program;

289 ~~[(9)]~~ (i) have access to all records, correspondence, and financial data required to be

290 maintained by a licensee or ~~[facility]~~ human services program;

291 ~~[(10)]~~ (j) have authority to interview any client, family member of a client, employee, or

292 officer of a [~~human services~~] licensee or [~~facility~~] human services program; and
 293 ~~[(+)]~~ (k) have authority to deny, condition, revoke, suspend, or extend any license issued
 294 by the department under this chapter by following the procedures and requirements of Title 63,
 295 Chapter 46b, Administrative Procedures Act.

296 (2) In establishing rules under Subsection (1)(a)(i)(G), the office shall require a licensee to
 297 establish and comply with an emergency response plan that requires clients and staff to:

298 (a) immediately report to law enforcement any criminal activity committed:

299 (i) on the premises where the licensee operates its human services program;

300 (ii) by or against its clients; or

301 (iii) by or against a staff member while the staff member is on duty;

302 (b) immediately report to emergency medical services any medical emergency:

303 (i) on the premises where the licensee operates its human services program;

304 (ii) involving its clients; or

305 (iii) involving a staff member while the staff member is on duty; and

306 (c) immediately report other emergencies that occur on the premises where the licensee
 307 operates its human services program to the appropriate emergency services agency.

308 Section 4. Section **62A-2-108** is amended to read:

309 **62A-2-108. Licensure requirements -- Expiration -- Renewal.**

310 (1) Except as provided in Section 62A-2-110, [~~no~~] a person, agency, firm, corporation,
 311 association, or governmental unit, acting severally or jointly with any other person, agency, firm,
 312 corporation, association, or governmental unit, may not establish, conduct, or maintain a human
 313 services program [~~or facility~~] in this state without a valid and current license issued by and under the
 314 authority of the [~~department~~] office as provided by this chapter and the rules of the licensing board.

315 (2) [~~No~~] A license issued under this chapter [~~is assignable or transferable~~] may not be
 316 assigned or transferred.

317 (3) A current license shall at all times be posted in the facility where each human services
 318 program [~~or facility~~] is operated, in a place that is visible and readily accessible to the public.

319 (4) (a) Each license issued under this chapter expires at midnight 12 months from the date of
 320 issuance unless it has been:

- 321 (i) previously revoked by the office; or
- 322 (ii) voluntarily returned to the office by the ~~[human services]~~ licensee.
- 323 (b) A license shall be renewed upon application and payment of the applicable fee, unless the
- 324 office finds that the licensee or ~~[facility has]~~ human services program:
- 325 (i) is not ~~[complied]~~ in compliance with the:
- 326 (A) provisions of this chapter; or
- 327 (B) rules made ~~[under]~~ pursuant to this chapter[-];
- 328 (ii) has engaged in a pattern of noncompliance with the:
- 329 (A) provisions of this chapter; or
- 330 (B) rules made pursuant to this chapter;
- 331 (iii) has engaged in conduct that is grounds for denying a license under Section 62A-2-112;
- 332 or
- 333 (iv) has engaged in conduct that poses a substantial risk of harm to any person.
- 334 (5) Any licensee or ~~[facility which]~~ human services program that is in operation at the time
- 335 rules are made in accordance with this chapter shall be given a reasonable time for compliance as
- 336 determined by the rule.
- 337 (6) (a) A license for a residential treatment program issued pursuant to this section shall
- 338 apply to a specific residential treatment program facility.
- 339 (b) A residential treatment program shall obtain a separate license for each facility where the
- 340 residential treatment program is operated.
- 341 Section 5. Section **62A-2-108.1** is amended to read:
- 342 **62A-2-108.1. Coordination of human services and educational services -- Licensing**
- 343 **of programs -- Procedures.**
- 344 (1) For purposes of this section, "education entitled child" means a child:
- 345 (a) subject to compulsory education under Section 53A-11-101; or
- 346 (b) entitled to educational services under Section 53A-15-301.
- 347 ~~[(+)]~~ (2) A human services program may not be licensed to serve ~~[children subject to~~
- 348 compulsory education under Section 53A-11-101 or entitled to educational services under Section
- 349 53A-15-301] an education entitled child unless the human services program presents an educational

350 service plan that includes evidence;

351 (a) satisfactory to:

352 (i) the ~~[licensing authority]~~ office; and ~~[to]~~

353 (ii) (A) the local school board in which the human services program will be operated; or

354 (B) the school district superintendent of the school district in which the human services

355 program will be operated; and

356 (b) that children served by the human services program shall receive appropriate educational

357 services satisfying the requirements of applicable law.

358 ~~[(2)]~~ (3) If the human services program ~~[is to be permitted to serve any children]~~ serves an

359 education entitled child whose custodial parents or legal guardians reside outside the state, then the

360 program shall also provide an educational funding plan that includes evidence:

361 (a) satisfactory ~~[evidence]~~ to:

362 (i) the ~~[licensing authority]~~ office; and ~~[to]~~

363 (ii) (A) the local school board in which the human services program will be operated; or

364 (B) the school district superintendent of the school district in which the human services

365 program will be operated; and

366 (b) that all costs for educational services to be provided to ~~[those students]~~ the educational

367 entitled child, including tuition and school fees approved by the local school board, shall be borne by

368 the human services program.

369 ~~[(3) If the local school board finds the educational service plan and the educational funding~~

370 ~~plan to be adequate, then the board shall provide the licensing authority with a letter of approval.]~~

371 ~~[(4) If the local school board finds the educational service plan and the educational funding~~

372 ~~plan to be inadequate, then the board shall provide the licensing authority with a letter of disapproval,~~

373 ~~together with the specific requirements the human services program must meet before licensure is~~

374 ~~granted.]~~

375 (4) In accordance with Subsection (2), the human services program shall obtain and provide

376 the office with a letter:

377 (a) from the entity referred to in Subsection (2)(a):

378 (i) approving the educational service plan referred to in Subsection (2); or

379 (ii) (A) disapproving the educational service plan referred to in Subsection (2); and
380 (B) listing the specific requirements the human services program must meet before approval
381 is granted; and

382 (b) from the entity referred to in Subsection (3)(a):

383 (i) approving the educational funding plan, referred to in Subsection (3); or

384 (ii) (A) disapproving the educational funding plan, referred to in Subsection (3); and

385 (B) listing the specific requirements the human services program must meet before approval
386 is granted.

387 (5) Failure of a local school board or school district superintendent to respond to a
388 proposed plan within 45 days of receipt of the plan is equivalent to approval of the plan by the local
389 school board or school district superintendent.

390 (6) If a ~~[human services program]~~ licensee that is licensed to serve an educational entitled
391 child fails to comply with its approved educational service plan or educational funding plan, then:

392 (a) the [licensing authority] office shall give the [program] licensee notice of intent to revoke
393 the [licensure] licensee's license; and[;]

394 (b) if the [program] licensee continues its noncompliance for more than 30 days after receipt
395 of the notice[;] described in Subsection (6)(a), the office shall revoke the [program's] licensee's
396 license.

397 (7) If ~~[a]~~ an education entitled child whose custodial parent or legal guardian resides within
398 the state is provided with educational services by a school district other than the school district in
399 which the custodial parent or legal guardian resides, then the funding provisions of Section
400 53A-2-210 apply.

401 Section 6. Section **62A-2-108.2** is enacted to read:

402 **62A-2-108.2. Licensing residential treatment programs -- Notification of local**
403 **government.**

404 (1) (a) In accordance with Title 63, Chapter 46, Utah Administrative Rulemaking Act, the
405 office shall make rules that establish categories of residential treatment licenses based on differences
406 in the types of residential treatment programs.

407 (b) The categories referred to in Subsection (1)(a) may be based on differences in:

- 408 (i) services offered;
409 (ii) types of clients served;
410 (iii) risks posed to the community; or
411 (iv) other factors that make regulatory differences advisable.
- 412 (2) Subject to the requirements of federal and state law, and pursuant to the authority
413 granted by Section 62A-2-106, the office shall establish and enforce rules that:
- 414 (a) relate generally to all categories of residential treatment program licenses; and
415 (b) relate to specific categories of residential treatment program licenses on the basis of the
416 regulatory needs, as determined by the office, of residential treatment programs within those specific
417 categories.
- 418 (3) Before submitting an application for a license to operate a residential treatment program,
419 the applicant shall serve notice of its intent to operate a residential treatment program on the
420 governing body of:
- 421 (a) the city in which the residential treatment program will be located; or
422 (b) if the residential treatment program will be located in the unincorporated area of a county,
423 the county in which the residential treatment program will be located.
- 424 (4) The notice described in Subsection (3) shall include the following information relating to
425 the residential treatment program:
- 426 (a) an accurate description of the residential treatment program;
427 (b) the location where the residential treatment program will be operated;
428 (c) the services that will be provided by the residential treatment program;
429 (d) the type of clients that the residential treatment program will serve;
430 (e) the category of license for which the residential treatment program is applying to the
431 office;
- 432 (f) the name, telephone number, and address of a person that may be contacted to make
433 inquiries about the residential treatment program; and
- 434 (g) any other information that the office may require by rule.
- 435 (5) When submitting an application for a license to operate a residential treatment program,
436 the applicant shall include with the application:

- 437 (a) a copy of the notice described in Subsection (3); and
438 (b) proof that the applicant served the notice described in Subsection (3) on the governing
439 body described in Subsection (3).

440 Section 7. Section **62A-2-109** is amended to read:

441 **62A-2-109. License application -- Classification of information.**

442 (1) An application for a license under this chapter shall be made to the office and shall
443 contain information that the board determines is necessary in accordance with ~~[established]~~ approved
444 rules.

445 (2) Information received by the office through reports and inspections shall be classified ~~[as~~
446 ~~public]~~ in accordance with Title 63, Chapter 2, Government Records Access and Management Act.

447 Section 8. Section **62A-2-110** is amended to read:

448 **62A-2-110. Exclusions from chapter.**

449 The provisions of this chapter do not apply to:

450 (1) a facility or program owned or operated by an agency of the United States government;

451 (2) a facility or program operated by or under an exclusive contract with the Department of
452 Corrections;

453 (3) ~~[private]~~ unless required otherwise by a contract with the department, individual or group
454 counseling by a mental health professional licensed ~~[practitioner]~~ under Title 58, Chapter 60, Mental
455 Health Professional Practice Act; or

456 (4) a general acute hospital, small health care facility, specialty hospital, nursing care facility,
457 or other health care facility licensed by the Department of Health under ~~[Section 26-21-2]~~ Title 26,
458 Chapter 21, Health Care Facility Licensing and Inspection Act.

459 Section 9. Section **62A-2-111** is amended to read:

460 **62A-2-111. Adjudicative proceedings.**

461 (1) Whenever the office has reason to believe that a ~~[human services]~~ licensee or ~~[facility]~~
462 human services program is in violation of this chapter or rules made under this chapter, the office may
463 commence adjudicative proceedings to determine the legal rights of the ~~[human services]~~ licensee or
464 ~~[facility]~~ human services program by serving notice of agency action in accordance with Title 63,
465 Chapter 46b, Administrative Procedures Act.

466 (2) A [~~human services~~] licensee, human services program, or individual may commence
467 adjudicative proceedings, in accordance with Title 63, Chapter 46b, Administrative Procedures Act,
468 regarding all office actions that determine the legal rights, duties, privileges, immunities, or other legal
469 interests of the [~~human services~~] licensee, human services program, or persons associated with the
470 licensee, including all office actions to grant, deny, place conditions on, revoke, suspend, withdraw,
471 or amend an authority, right, or license under this chapter.

472 Section 10. Section **62A-2-112** is amended to read:

473 **62A-2-112. Violations -- Penalties.**

474 If the office finds that a violation has occurred under Section 62A-2-111, it may:

475 (1) deny, place conditions on, suspend, or revoke a license, if it finds:

476 (a) that there has been a failure to comply with the rules approved by the board[;]; or [~~if it~~
477 ~~finds~~]

478 (b) evidence of aiding, abetting, or permitting the commission of any illegal act; or

479 (2) restrict or prohibit new admissions to a human services program or facility, if it finds:

480 (a) that there has been a failure to comply with rules approved by the board[;]; or [~~if it finds~~]

481 (b) evidence of aiding, abetting, or permitting the commission of any illegal act in the human
482 services program or facility.

483 Section 11. Section **62A-2-113** is amended to read:

484 **62A-2-113. License revocation -- Suspension.**

485 (1) If a license is revoked, the office may not grant a new license [~~after~~] unless:

486 (a) the human services program provides satisfactory evidence [~~is submitted~~] to the office[;
487 ~~evidencing~~] that the conditions upon which revocation was based have been corrected; [~~and~~]

488 (b) [~~inspection and~~] the human services program is inspected by the office and found to be in
489 compliance with all provisions of this chapter and applicable rules[;];

490 (c) at least one year has passed since the day on which the licensee is served with final notice
491 that the license is revoked; and

492 (d) the office determines that the interests of the public will not be jeopardized by granting
493 the license.

494 (2) The office may [~~only~~] suspend a license for [~~a period of time which does not exceed the~~

495 ~~current expiration date of that license]~~ no longer than one year.

496 (3) When a license has been suspended, the office may [~~completely or partially~~] restore, or
497 restore subject to conditions, the suspended license upon a determination that the:

498 (a) conditions upon which the suspension was based have been completely or partially
499 corrected; and

500 (b) interests of the public will not be jeopardized by restoration of the license.

501 Section 12. Section **62A-2-116** is amended to read:

502 **62A-2-116. Violation -- Criminal penalties.**

503 A person who owns, establishes, conducts, maintains, manages, or operates a human
504 services [~~facility~~] program in violation of this chapter is guilty of a class A misdemeanor if the violation
505 endangers or harms the health, welfare, or safety of persons participating in that program.

506 Section 13. Section **62A-2-117** is amended to read:

507 **62A-2-117. Licensure of tribal foster homes.**

508 (1) The Indian Child Welfare Act, 25 U.S.C. Secs. 1901-1963, provides that Indian tribes
509 may develop and implement tribal foster home standards.

510 (2) The office shall [~~license~~] give full faith and credit to an Indian tribe's certification or
511 licensure of tribal foster homes according to standards developed and approved by the Indian tribe,
512 pursuant to the Indian Child Welfare Act, 25 U.S.C. Secs. 1901-1963.

513 (3) If the Indian tribe has not developed standards, the office shall license tribal foster homes
514 pursuant to this chapter.

515 Section 14. Section **62A-2-118** is amended to read:

516 **62A-2-118. Administrative inspections.**

517 (1) The office may, for the purpose of ascertaining compliance with [~~the provisions of~~] this
518 chapter, enter and inspect on a routine basis the facility of a licensee.

519 (2) Before conducting an inspection under Subsection (1), the office shall, after identifying
520 the person in charge:

521 (a) give proper identification;

522 (b) request to see the applicable license;

523 (c) describe the nature and purpose of the inspection; and

524 (d) if necessary, explain the authority of the office to conduct the inspection and the penalty
525 for refusing to permit the inspection as provided in Section 62A-2-116.

526 (3) In conducting an inspection under Subsection (1), the office may, after meeting the
527 requirements of Subsection (2):

528 (a) inspect the physical facilities;

529 (b) inspect and copy records and documents;

530 (c) interview officers, employees, clients, family members of clients, and others; and

531 (d) observe the licensee in operation.

532 (4) An inspection conducted under Subsection (1) shall be during regular business hours and
533 may be announced or unannounced.

534 (5) The ~~[human services]~~ licensee shall make copies of inspection reports available to the
535 public upon request.

536 (6) The provisions of this section apply to on-site inspections and do not restrict the office
537 from contacting family members, neighbors, or other individuals, or from seeking information from
538 other sources to determine compliance with ~~[the provisions of]~~ this chapter.

539 Section 15. Section **62A-2-120** is amended to read:

540 **62A-2-120. Criminal background checks.**

541 (1) (a) ~~[An]~~ Except as provided in Subsection (7), an applicant for an initial license or a
542 license renewal under this chapter shall submit to the department the names and other identifying
543 information, which may include fingerprints, of all persons associated with the licensee, as defined in
544 Section 62A-2-101, with direct access to children or vulnerable adults. ~~[This information for a given~~
545 ~~person associated with the licensee shall be submitted before that person is permitted to have direct~~
546 ~~access to children or vulnerable adults.]~~

547 (b) The Criminal Investigations and Technical Services Division of the Department of Public
548 Safety shall process that information to determine whether the individual has been convicted of any
549 crime.

550 (c) If an individual has not continuously lived in Utah for the five years immediately preceding
551 the day on which the information referred to in Subsection (1)(a) is submitted to the department, the
552 individual shall submit fingerprints for a FBI national criminal history record check. The fingerprints

553 shall be submitted to the FBI through the Criminal Investigations and Technical Services Division.

554 (2) The department shall approve a person for whom identifying information is submitted
555 under Subsection (1) to have direct access to children or adults in the licensee program [~~servicing~~
556 ~~children or vulnerable adults~~] if:

557 (a) (i) the person is found to have no criminal history record; or

558 [~~(b)(i)~~] (ii)(A) the only convictions in the person's criminal history record are[~~:(A)~~]
559 misdemeanors or infractions not involving any of the offenses described in Subsection (3)[~~:(B)~~
560 ~~infractions not involving any of the offenses described in Subsection (3)~~]; and

561 [(ii)] (B) the date of the last conviction under Subsection (2)[~~(b)(i)~~](a)(ii)(A) is more than five
562 years before the date of the search[~~:(B)~~];

563 (b) the person is not listed in the statewide database of the Division of Aging and Adult
564 Services created by Section 62A-3-311.1;

565 (c) juvenile court records do not show that a court made a substantiated finding, under
566 Subsection 78-3a-320, that the person committed a severe type of child abuse or neglect;

567 (d) the person is not listed in the Licensing Information System of the Division of Child and
568 Family Services created by Section 62A-4a-116.2; and

569 (e) the person has not pled guilty or no contest to a pending charge for any:

570 (i) felony;

571 (ii) misdemeanor listed in Subsection (3); or

572 (iii) infraction listed in Subsection (3).

573 (3) [~~The~~] Unless at least ten years have passed since the date of conviction, the department
574 may not approve a person to have direct access to children or vulnerable adults in the [licensee
575 program serving children or vulnerable adults if the person has at any time] licensee's human services
576 program if that person has been convicted of an offense, whether a felony, misdemeanor, or
577 infraction, that [was] is:

578 (a) identified as a sexual offense, domestic violence, lewdness, assault, or battery;

579 (b) a violation of any pornography law, including sexual exploitation of a minor;

580 (c) prostitution;

581 (d) [~~identified~~] included in Title 76, [~~Utah Criminal Code~~, as an offense against the family or

582 ~~an offense against the person; or~~ Chapter 5, Offenses Against the Person; or
583 (e) ~~[identified]~~ included in Title 76, ~~[Utah Criminal Code, as a sexual offense.]~~ Chapter 5a,
584 Sexual Exploitation of Children; or
585 (f) included in Title 76, Chapter 7, Offenses Against the Family.
586 (4) (a) If a person for whom identifying information is submitted under Subsection (1) is not
587 approved by the department under Subsection (2) or (3) to have direct access to children or
588 vulnerable adults in the licensee program ~~[serving children or vulnerable adults]~~, the department shall
589 conduct a comprehensive review of criminal and court records and related circumstances if ~~[a person~~
590 ~~for whom identifying information is submitted under Subsection (1)]~~ the reason the approval is not
591 granted is due solely to one or more of the following:
592 (i) ~~[has been convicted at any time of]~~ a conviction for:
593 (A) any felony not listed in Subsection (3);
594 ~~[(ii) has been convicted within five years of the date of the search of:]~~
595 ~~[(A)]~~ (B) any misdemeanor or infraction, not listed in Subsection (3)~~[:]~~, within five years of
596 the date of the search; or
597 ~~[(B) any infraction not listed in Subsection (3); or]~~
598 ~~[(iii) has been convicted at any time of]~~
599 (C) a protective order or ex parte protective order violation under Section ~~[76-5-18]~~
600 76-5-108 or a similar statute in another state~~[:]~~; or
601 (D) any felony, misdemeanor, or infraction listed in Subsection (3) if at least ten years have
602 passed since the date of conviction;
603 (ii) a plea of guilty or no contest to a pending:
604 (A) felony;
605 (B) misdemeanor not listed in Subsection (3); or
606 (C) infraction not listed in Subsection (3);
607 (iii) the person is listed in the statewide database of the Division of Aging and Adult Services
608 created by Section 62A-3-311.1;
609 (iv) juvenile court records show that a court made a substantiated finding, under Subsection
610 78-3a-320, that the person committed a severe type of child abuse or neglect; or

611 (v) the person is not listed in the Licensing Information System of the Division of Child and
612 Family Services created by Section 62A-4a-116.2.

613 (b) The comprehensive review under Subsection (4)(a) shall include an examination of:

614 (i) the date of the offense or incident;

615 (ii) the nature and seriousness of the offense or incident;

616 (iii) the circumstances under which the offense or incident occurred;

617 (iv) the age of the [~~offender~~] perpetrator when the offense [~~was committed~~] or incident
618 occurred;

619 (v) whether the offense or incident was an isolated or repeated incident;

620 (vi) whether the offense or incident directly relates to abuse of a child or vulnerable adult,
621 including:

622 (A) actual or threatened, nonaccidental physical or mental harm;

623 (B) sexual abuse;

624 (C) sexual exploitation; and

625 (D) negligent treatment;

626 (vii) any evidence provided by the person of rehabilitation, counseling, or psychiatric
627 treatment received, or additional academic or vocational schooling completed, by the person; and

628 (viii) any other pertinent information.

629 (c) At the conclusion of the comprehensive review under [~~this~~] Subsection (4)(a), the
630 department shall [~~either~~] approve [~~or not approve~~] the person who is the subject of the review to
631 have direct access to children or vulnerable adults, [~~based upon the determination of the department~~
632 ~~and the Human Services Licensing Board of whether or not granting approval would~~] unless it finds
633 that approval will likely create a risk of harm to a child or vulnerable adult.

634 (d) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
635 department may make rules, consistent with this chapter, defining procedures for the comprehensive
636 review described in this Subsection (4).

637 (5) A licensee may not permit any person to have direct access to a child or a vulnerable
638 adult unless that person is:

639 (a) associated with the licensee and:

640 (i) approved by the department to have direct access to children or vulnerable adults
641 pursuant to this section; or

642 (ii) (A) the department has not determined whether to approve that person to have direct
643 access to children or vulnerable adults;

644 (B) the information described in Subsection (1)(a), relating to that person, is submitted to the
645 department; and

646 (C) that person is directly supervised by a person associated with the licensee who is
647 approved by the department to have direct access to children or vulnerable adults pursuant to this
648 section; or

649 (b) (i) not associated with the licensee; and

650 (ii) directly supervised by a person associated with the licensee who is approved by the
651 department to have direct access to children or vulnerable adults pursuant to this section.

652 ~~(5)~~ (6) (a) Within 30 days after receiving the identifying information for a person under
653 Subsection (1), the department shall give written notice to the person and to the [~~human services~~]
654 licensee or applicant with whom the person is associated of:

655 (i) the department's decision regarding its background screening clearance and findings; and

656 (ii) a [~~listing~~] list of any convictions found in the search.

657 (b) With the notice described in Subsection [~~(5)~~] (6)(a), the department shall also give to the
658 person the details of any comprehensive review conducted under Subsection (4).

659 (c) If the notice under Subsection [~~(5)~~] (6)(a) states that the person is not approved to have
660 direct access to children or vulnerable adults, the notice shall further advise the persons to whom the
661 notice is given that either the person or the [~~human services~~] licensee or applicant with whom the
662 person is associated, or both, may, pursuant to Subsection 62A-2-111(2), request a hearing in the
663 department's Office of Administrative Hearings, to challenge the department's decision.

664 (d) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
665 department shall make rules, consistent with this chapter:

666 (i) defining procedures for the challenge of its background screening decision described in
667 this Subsection [~~(5)~~] (6); and

668 (ii) expediting the process for renewal of a license pursuant to the requirements of this section

669 and other applicable sections.

670 (7) Notwithstanding Subsection (1)(a), this section does not apply to an applicant for an
671 initial license, or license renewal, to operate a substance abuse treatment program that provides
672 services to adults.

673 Section 16. Section **62A-2-121** is amended to read:

674 **62A-2-121. Access to abuse and neglect information for licensing purposes.**

675 (1) With respect to [~~human services~~] licensees, the department may access only the
676 Licensing Information System of the Division of Child and Family Services created by Section
677 62A-4a-116.2 and juvenile court records under Subsection 78-3a-320[~~(4)~~](6), for the purpose of:

678 (a) determining whether a person associated with [a] the licensee, with direct access to
679 children, is listed in the Licensing Information System or has a substantiated finding by a juvenile court
680 of a severe type of child abuse or neglect under Subsections 78-3a-320(1) and (2); and

681 (b) informing a licensee that a person associated with the licensee is listed in the Licensing
682 Information System or has a substantiated finding by a juvenile court of a severe type of child abuse
683 or neglect under Subsections 78-3a-320(1) and (2).

684 (2) Notwithstanding Subsection (1), the department may access the Division of Child and
685 Family Service's Management Information System under Section 62A-4a-116 for the purpose of
686 licensing and monitoring foster parents.

687 (3) After receiving identifying information for a person under Subsection 62A-2-120(1), the
688 department shall process the information for the purposes described in Subsection (1).

689 (4) The department shall adopt rules under Title 63, Chapter 46a, Utah Administrative
690 Rulemaking Act, consistent with this chapter, defining the circumstances under which a person [~~who~~
691 ~~has~~] may have direct access to children [~~and who~~] when:

692 (a) the person is listed in the Licensing Information System [~~or has~~] of the Division of Child
693 and Family Services created by Section 62A-4a-116.2; or

694 (b) juvenile court records show that a court made a substantiated finding [~~by a court of~~],
695 under Subsection 78-3a-320, that the person committed a severe type of child abuse or neglect
696 [~~under Subsections 78-3a-320(1) and (2) may provide services to children~~].

697 Section 17. Section **62A-2-122** is amended to read:

698 **62A-2-122. Access to vulnerable adult abuse and neglect information for licensing**
699 **purposes.**

700 (1) With respect to [~~human services~~] licensees, the department may access the data base
701 created by Section 62A-3-311.1 for the purpose of:

702 (a) determining whether a person associated with [a] the licensee, with direct access to
703 vulnerable adults, has a substantiated finding of abuse, neglect, or exploitation; and

704 (b) informing a licensee that a person associated with the licensee has a substantiated finding
705 of abuse, neglect, or exploitation.

706 (2) After receiving identifying information for a person under Subsection 62A-2-120(1), the
707 department shall process the information for the purposes described in Subsection (1).

708 (3) The department shall adopt rules under Title 63, Chapter 46a, Utah Administrative
709 Rulemaking Act, consistent with this chapter and consistent with Section 62A-3-311.1, defining the
710 circumstances under which a person [~~who has~~] may have direct access to vulnerable adults [~~and who~~
711 ~~has a substantiated finding of abuse, neglect, or exploitation may provide services to vulnerable~~
712 ~~adults~~] when the person is listed in the statewide database of the Division of Aging and Adult Services
713 created by Section 62A-3-311.1.

Legislative Review Note
as of 10-21-04 4:10 PM

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel