

## Part 10 Management Information System and Licensing Information System

### 62A-4a-1001 Title.

This part is known as the "Management Information System and Licensing Information System."

Enacted by Chapter 77, 2006 General Session

### 62A-4a-1002 Definitions.

As used in this part:

- (1)
  - (a) Except as provided in Subsection (1)(b), "severe type of child abuse or neglect" means:
    - (i) if committed by a person 18 years of age or older:
      - (A) chronic abuse;
      - (B) severe abuse;
      - (C) sexual abuse;
      - (D) sexual exploitation;
      - (E) abandonment;
      - (F) chronic neglect; or
      - (G) severe neglect; or
    - (ii) if committed by a person under the age of 18:
      - (A) serious physical injury, as defined in Subsection 76-5-109(1), to another child which indicates a significant risk to other children; or
      - (B) sexual behavior with or upon another child which indicates a significant risk to other children.
  - (b) "Severe type of child abuse or neglect" does not include:
    - (i) the use of reasonable and necessary physical restraint or force by an educator in accordance with Subsection 53A-11-802(2) or Section 76-2-401;
    - (ii) a person's conduct that:
      - (A) is justified under Section 76-2-401; or
      - (B) constitutes the use of reasonable and necessary physical restraint or force in self-defense or otherwise appropriate to the circumstances to obtain possession of a weapon or other dangerous object in the possession or under the control of a child or to protect the child or another person from physical injury; or
    - (iii) a health care decision made for a child by the child's parent or guardian, unless, subject to Subsection 62A-4a-1004(2), the state or other party to the proceeding shows, by clear and convincing evidence, that the health care decision is not reasonable and informed.
- (2) "Significant risk" means a risk of harm that is determined to be significant in accordance with risk assessment tools and rules established by the division that focus on:
  - (a) age;
  - (b) social factors;
  - (c) emotional factors;
  - (d) sexual factors;
  - (e) intellectual factors;
  - (f) family risk factors; and
  - (g) other related considerations.

Amended by Chapter 45, 2008 General Session  
Amended by Chapter 299, 2008 General Session

**62A-4a-1003 Management Information System -- Requirements -- Contents -- Purpose -- Access.**

- (1)
- (a) The division shall develop and implement a Management Information System that meets the requirements of this section and the requirements of federal law and regulation.
  - (b) The information and records contained in the Management Information System:
    - (i) are protected records under Title 63G, Chapter 2, Government Records Access and Management Act; and
    - (ii) except as provided in Subsections (1)(c) and (d), are available only to a person with statutory authorization under Title 63G, Chapter 2, Government Records Access and Management Act, to review the information and records described in this Subsection (1)(b).
  - (c) Notwithstanding Subsection (1)(b)(ii), the information and records described in Subsection (1)(b) are available to a person:
    - (i) as provided under Subsection (6) or Section 62A-4a-1006; or
    - (ii) who has specific statutory authorization to access the information or records for the purpose of assisting the state with state and federal requirements to maintain information solely for the purpose of protecting minors and providing services to families in need.
  - (d) Notwithstanding Subsection (1)(b)(ii), the information and records described in Subsection (1)(b) may, to the extent required by Title IV-B or IV-E of the Social Security Act, be provided by the division:
    - (i) to comply with abuse and neglect registry checks requested by other states; and
    - (ii) to the United States Department of Health and Human Services for purposes of maintaining an electronic national registry of substantiated cases of abuse and neglect.
- (2) With regard to all child welfare cases, the Management Information System shall provide each caseworker and the department's office of licensing, exclusively for the purposes of foster parent licensure and monitoring, with a complete history of each child in that worker's caseload, including:
- (a) a record of all past action taken by the division with regard to that child and the child's siblings;
  - (b) the complete case history and all reports and information in the control or keeping of the division regarding that child and the child's siblings;
  - (c) the number of times the child has been in the custody of the division;
  - (d) the cumulative period of time the child has been in the custody of the division;
  - (e) a record of all reports of abuse or neglect received by the division with regard to that child's parent, parents, or guardian including:
    - (i) for each report, documentation of the:
      - (A) latest status; or
      - (B) final outcome or determination; and
    - (ii) information that indicates whether each report was found to be:
      - (A) supported;
      - (B) unsupported;
      - (C) substantiated by a juvenile court;
      - (D) unsubstantiated by a juvenile court; or
      - (E) without merit;
  - (f) the number of times the child's parent or parents failed any child and family plan; and

- (g) the number of different caseworkers who have been assigned to that child in the past.
- (3) The division's Management Information System shall:
  - (a) contain all key elements of each family's current child and family plan, including:
    - (i) the dates and number of times the plan has been administratively or judicially reviewed;
    - (ii) the number of times the parent or parents have failed that child and family plan; and
    - (iii) the exact length of time the child and family plan has been in effect; and
  - (b) alert caseworkers regarding deadlines for completion of and compliance with policy, including child and family plans.
- (4) With regard to all child protective services cases, the Management Information System shall:
  - (a) monitor the compliance of each case with:
    - (i) division rule and policy;
    - (ii) state law; and
    - (iii) federal law and regulation; and
  - (b) include the age and date of birth of the alleged perpetrator at the time the abuse or neglect is alleged to have occurred, in order to ensure accuracy regarding the identification of the alleged perpetrator.
- (5) Except as provided in Subsection (6) regarding contract providers and Section 62A-4a-1006 regarding limited access to the Licensing Information System, all information contained in the division's Management Information System is available to the department, upon the approval of the executive director, on a need-to-know basis.
- (6)
  - (a) Subject to this Subsection (6), the division may allow its contract providers, court clerks designated by the Administrative Office of the Courts, and the Office of Guardian Ad Litem to have limited access to the Management Information System.
  - (b) A division contract provider has access only to information about a person who is currently receiving services from that specific contract provider.
  - (c)
    - (i) Designated court clerks may only have access to information necessary to comply with Subsection 78B-7-202(2).
    - (ii) The Office of Guardian Ad Litem may access only the information that:
      - (A) relates to children and families where the Office of Guardian Ad Litem is appointed by a court to represent the interests of the children; and
      - (B) except as provided in Subsection (6)(d), is entered into the Management Information System on or after July 1, 2004.
  - (d) Notwithstanding Subsection (6)(c)(ii)(B), the Office of Guardian Ad Litem shall have access to all abuse and neglect referrals about children and families where the office has been appointed by a court to represent the interests of the children, regardless of the date that the information is entered into the Management Information System.
  - (e) Each contract provider and designated representative of the Office of Guardian Ad Litem who requests access to information contained in the Management Information System shall:
    - (i) take all necessary precautions to safeguard the security of the information contained in the Management Information System;
    - (ii) train its employees regarding:
      - (A) requirements for protecting the information contained in the Management Information System as required by this chapter and under Title 63G, Chapter 2, Government Records Access and Management Act; and
      - (B) the criminal penalties under Sections 62A-4a-412 and 63G-2-801 for improper release of information; and

- (iii) monitor its employees to ensure that they protect the information contained in the Management Information System as required by law.
- (f) The division shall take reasonable precautions to ensure that its contract providers comply with the requirements of this Subsection (6).
- (7) The division shall take all necessary precautions, including password protection and other appropriate and available technological techniques, to prevent unauthorized access to or release of information contained in the Management Information System.

Amended by Chapter 32, 2009 General Session

**62A-4a-1004 Risk assessment training -- Second health care opinion.**

- (1) The division shall train its child protection workers to apply the risk assessment tools and rules established under Subsection 62A-4a-1002(2).
- (2) Nothing in Subsection 62A-4a-1002(1)(b)(iii) may prohibit a parent or guardian from exercising the right to obtain a second health care opinion.

Enacted by Chapter 77, 2006 General Session

**62A-4a-1005 Supported finding of a severe type of child abuse or neglect -- Notation in Licensing Information System -- Juvenile court petition or notice to alleged perpetrator -- Rights of alleged perpetrator -- Juvenile court finding.**

- (1) If the division makes a supported finding that a person committed a severe type of child abuse or neglect, the division shall:
  - (a) serve notice of the finding on the alleged perpetrator;
  - (b) enter the following information into the Licensing Information System created in Section 62A-4a-1006:
    - (i) the name and other identifying information of the perpetrator with the supported finding, without identifying the person as a perpetrator or alleged perpetrator; and
    - (ii) a notation to the effect that an investigation regarding the person is pending; and
    - (c) if the division considers it advisable, file a petition for substantiation within one year of the supported finding.
- (2) The notice referred to in Subsection (1)(a):
  - (a) shall state that:
    - (i) the division has conducted an investigation regarding alleged abuse or neglect;
    - (ii) the division has made a supported finding that the alleged perpetrator described in Subsection (1) committed a severe type of child abuse or neglect;
    - (iii) facts gathered by the division support the supported finding;
    - (iv) as a result of the supported finding, the alleged perpetrator's name and other identifying information have been listed in the Licensing Information System in accordance with Subsection (1)(b);
    - (v) the alleged perpetrator may be disqualified from adopting a child, receiving state funds as a child care provider, or being licensed by:
      - (A) the department;
      - (B) a human services licensee;
      - (C) a child care provider or program; or
      - (D) a covered health care facility;
    - (vi) the alleged perpetrator has the rights described in Subsection (3); and

- (vii) failure to take either action described in Subsection (3)(a) within one year after service of the notice will result in the action described in Subsection (3)(b);
  - (b) shall include a general statement of the nature of the findings; and
  - (c) may not include:
    - (i) the name of a victim or witness; or
    - (ii) any privacy information related to the victim or a witness.
- (3)
- (a) Upon receipt of the notice described in Subsection (2), the alleged perpetrator has the right to:
    - (i) file a written request asking the division to review the findings made under Subsection (1);
    - (ii) except as provided in Subsection (3)(c), immediately petition the juvenile court under Section 78A-6-323; or
    - (iii) sign a written consent to:
      - (A) the supported finding made under Subsection (1); and
      - (B) entry into the Licensing Information System of:
        - (I) the alleged perpetrator's name; and
        - (II) other information regarding the supported finding made under Subsection (1).
  - (b) Except as provided in Subsection (3)(e), the alleged perpetrator's name and the information described in Subsection (1)(b) shall remain in the Licensing Information System:
    - (i) if the alleged perpetrator fails to take the action described in Subsection (3)(a) within one year after service of the notice described in Subsections (1)(a) and (2);
    - (ii) during the time that the division awaits a response from the alleged perpetrator pursuant to Subsection (3)(a); and
    - (iii) until a court determines that the severe type of child abuse or neglect upon which the Licensing Information System entry was based is unsubstantiated or without merit.
  - (c) The alleged perpetrator has no right to petition the juvenile court under Subsection (3)(a)(ii) if the court previously held a hearing on the same alleged incident of abuse or neglect pursuant to the filing of a petition under Section 78A-6-304 by some other party.
  - (d) Consent under Subsection (3)(a)(iii) by a child shall be given by the child's parent or guardian.
  - (e) Regardless of whether an appeal on the matter is pending:
    - (i) the division shall remove an alleged perpetrator's name and the information described in Subsection (1)(b) from the Licensing Information System if the severe type of child abuse or neglect upon which the Licensing Information System entry was based:
      - (A) is found to be unsubstantiated or without merit by the juvenile court under Section 78A-6-323; or
      - (B) is found to be substantiated, but is subsequently reversed on appeal; and
    - (ii) the division shall place back on the Licensing Information System an alleged perpetrator's name and information that is removed from the Licensing Information System under Subsection (3)(e)(i) if the court action that was the basis for removing the alleged perpetrator's name and information is subsequently reversed on appeal.
- (4) Upon the filing of a petition under Subsection (1)(c), the juvenile court shall make a finding of substantiated, unsubstantiated, or without merit as provided in Subsections 78A-6-323(1) and (2).
- (5) Service of the notice described in Subsections (1)(a) and (2):
- (a) shall be personal service in accordance with Utah Rules of Civil Procedure, Rule 4; and
  - (b) does not preclude civil or criminal action against the alleged perpetrator.

Amended by Chapter 3, 2008 General Session

Amended by Chapter 59, 2008 General Session  
Amended by Chapter 299, 2008 General Session

**62A-4a-1006 Licensing Information System -- Contents -- Juvenile court finding -- Protected record -- Access -- Criminal penalty.**

- (1)
  - (a) The division shall maintain a sub-part of the Management Information System established pursuant to Section 62A-4a-1003, to be known as the Licensing Information System, to be used:
    - (i) for licensing purposes; or
    - (ii) as otherwise specifically provided for by law.
  - (b) The Licensing Information System shall include only the following information:
    - (i) the information described in Subsections 62A-4a-1005(1)(b) and (3)(b);
    - (ii) consented-to supported findings by alleged perpetrators under Subsection 62A-4a-1005(3)(a)(iii); and
    - (iii) the information in the licensing part of the division's Management Information System as of May 6, 2002.
- (2) Notwithstanding Subsection (1), the department's access to information in the Management Information System for the licensure and monitoring of foster parents is governed by Sections 62A-4a-1003 and 62A-2-121.
- (3) Subject to Subsection 62A-4a-1005(3)(e), upon receipt of a finding from the juvenile court under Section 78A-6-323, the division shall:
  - (a) promptly amend the Licensing Information System; and
  - (b) enter the information in the Management Information System.
- (4)
  - (a) Information contained in the Licensing Information System is classified as a protected record under Title 63G, Chapter 2, Government Records Access and Management Act.
  - (b) Notwithstanding the disclosure provisions of Title 63G, Chapter 2, Government Records Access and Management Act, the information contained in the Licensing Information System may only be used or disclosed as specifically provided in this chapter and Section 62A-2-121.
  - (c) The information described in Subsection (4)(b) is accessible only to:
    - (i) the Office of Licensing within the department:
      - (A) for licensing purposes; or
      - (B) as otherwise specifically provided for by law;
    - (ii) the division to:
      - (A) screen a person at the request of the Office of Guardian Ad Litem:
        - (I) at the time that person seeks a paid or voluntary position with the Office of Guardian Ad Litem; and
        - (II) on an annual basis, throughout the time that the person remains with the Office of Guardian Ad Litem; and
      - (B) respond to a request for information from a person whose name is listed in the Licensing Information System;
    - (iii) persons designated by the Department of Health and approved by the Department of Human Services, only for the following purposes:
      - (A) licensing a child care program or provider; or
      - (B) determining whether a person associated with a covered health care facility, as defined by the Department of Health by rule, who provides direct care to a child, has a supported finding of a severe type of child abuse or neglect;

- (iv) persons designated by the Department of Workforce Services and approved by the Department of Human Services for the purpose of qualifying child care providers under Section 35A-3-310.5; and
- (v) the department, as specifically provided in this chapter.
- (5) The persons designated by the Department of Health under Subsection (4)(c)(iii) and the persons designated by the Department of Workforce Services under Subsection (4)(c)(iv) shall adopt measures to:
  - (a) protect the security of the Licensing Information System; and
  - (b) strictly limit access to the Licensing Information System to those persons designated by statute.
- (6) All persons designated by statute as having access to information contained in the Licensing Information System shall be approved by the Department of Human Services and receive training from the department with respect to:
  - (a) accessing the Licensing Information System;
  - (b) maintaining strict security; and
  - (c) the criminal provisions of Sections 62A-4a-412 and 63G-2-801 pertaining to the improper release of information.
- (7)
  - (a) A person, except those authorized by this chapter, may not request another person to obtain or release any other information in the Licensing Information System to screen for potential perpetrators of abuse or neglect.
  - (b) A person who requests information knowing that it is a violation of this Subsection (7) to do so is subject to the criminal penalty described in Sections 62A-4a-412 and 63G-2-801.

Amended by Chapter 32, 2009 General Session

**62A-4a-1007 False reports -- Penalties.**

- (1) The division shall send a certified letter to any person who submits a report of abuse or neglect that is placed into or included in any part of the Management Information System, if the division determines, at the conclusion of its investigation, that:
  - (a) the report is false;
  - (b) it is more likely than not that the person knew the report was false at the time that person submitted the report; and
  - (c) the reporting person's address is known or reasonably available.
- (2) The letter shall inform the reporting person of:
  - (a) the division's determination made under Subsection (1);
  - (b) the penalty for submitting false information under Section 76-8-506 and other applicable laws; and
  - (c) the obligation of the division to inform law enforcement and the person alleged to have committed abuse or neglect:
    - (i) in the present instance if law enforcement considers an immediate referral of the reporting person to law enforcement to be justified by the facts; or
    - (ii) if the reporting person submits a subsequent false report involving the same alleged perpetrator or victim.
- (3) The division may inform law enforcement and the alleged perpetrator of a report for which a letter is required to be sent under Subsection (1), if an immediate referral is justified by the facts.

- (4) The division shall inform law enforcement and the alleged perpetrator of a report for which a letter is required to be sent under Subsection (1) if a second letter is sent to the reporting person involving the same alleged perpetrator or victim.
- (5) The division shall determine, in consultation with law enforcement:
  - (a) what information should be given to an alleged perpetrator relating to a false report; and
  - (b) whether good cause exists, as defined by the division by rule, for not informing an alleged perpetrator about a false report.
- (6) Nothing in this section may be construed as requiring the division to conduct an investigation beyond what is described in Subsection (1), to determine whether or not a report is false.

Amended by Chapter 299, 2008 General Session

**62A-4a-1008 Timeframes for deletion of specified information or reports.**

- (1) Unless the executive director determines that there is good cause for keeping a report of abuse or neglect in the Management Information System, based on standards established by rule, the division shall delete any reference to:
  - (a) a report that is without merit, if no subsequent report involving the same alleged perpetrator has occurred within one year; or
  - (b) a report that is determined by a court of competent jurisdiction to be unsubstantiated or without merit, if no subsequent report involving the same alleged perpetrator has occurred within five years.
- (2)
  - (a) The division shall maintain a separation of reports as follows:
    - (i) those that are supported;
    - (ii) those that are unsupported;
    - (iii) those that are without merit;
    - (iv) those that are unsubstantiated under the law in effect prior to May 6, 2002;
    - (v) those that are substantiated under the law in effect prior to May 6, 2002; and
    - (vi) those that are consented-to supported findings under Subsection 62A-4a-1005(3)(a)(iii).
  - (b) Only persons with statutory authority have access to information contained in any of the reports identified in Subsection (2)(a).

Renumbered and Amended by Chapter 77, 2006 General Session

**62A-4a-1009 Notice and opportunity to challenge supported finding in Management Information System -- Right of judicial review.**

- (1)
  - (a) Except as provided in Subsection (2), the division shall send a notice of agency action to a person with respect to whom the division makes a supported finding. In addition, if the alleged perpetrator is under the age of 18, the division shall:
    - (i) make reasonable efforts to identify the alleged perpetrator's parent or guardian; and
    - (ii) send a notice to each parent or guardian identified under Subsection (1)(a)(i) that lives at a different address, unless there is good cause, as defined by rule, for not sending a notice to a parent or guardian.
  - (b) Nothing in this section may be construed as affecting:
    - (i) the manner in which the division conducts an investigation; or
    - (ii) the use or effect, in any other setting, of a supported finding by the division at the completion of an investigation for any purpose other than for notification under Subsection (1) (a).

- (2) Subsection (1) does not apply to a person who has been served with notice under Subsection 62A-4a-1005(1)(a).
- (3) The notice described in Subsection (1) shall state:
  - (a) that the division has conducted an investigation regarding alleged abuse, neglect, or dependency;
  - (b) that the division has made a supported finding of abuse, neglect, or dependency;
  - (c) that facts gathered by the division support the supported finding;
  - (d) that the person has the right to request:
    - (i) a copy of the report; and
    - (ii) an opportunity to challenge the supported finding by the division; and
  - (e) that failure to request an opportunity to challenge the supported finding within 30 days of receiving the notice will result in an unappealable supported finding of abuse, neglect, or dependency unless the person can show good cause for why compliance within the 30-day requirement was virtually impossible or unreasonably burdensome.
- (4)
  - (a) A person may make a request to challenge a supported finding within 30 days of a notice being received under this section.
  - (b) Upon receipt of a request under Subsection (4)(a), the Office of Administrative Hearings shall hold an adjudicative proceeding pursuant to Title 63G, Chapter 4, Administrative Procedures Act.
- (5)
  - (a) In an adjudicative proceeding held pursuant to this section, the division shall have the burden of proving, by a preponderance of the evidence, that abuse, neglect, or dependency occurred and that the alleged perpetrator was substantially responsible for the abuse or neglect that occurred.
  - (b) Any party shall have the right of judicial review of final agency action, in accordance with Title 63G, Chapter 4, Administrative Procedures Act.
  - (c) Proceedings for judicial review of a final agency action under this section shall be closed to the public.
  - (d) The Judicial Council shall make rules that ensure the confidentiality of the proceedings described in Subsection (5)(c) and the records related to the proceedings.
- (6) Except as otherwise provided in this chapter, an alleged perpetrator who, after receiving notice, fails to challenge a supported finding in accordance with this section:
  - (a) may not further challenge the finding; and
  - (b) shall have no right to:
    - (i) agency review of the finding;
    - (ii) an adjudicative hearing on the finding; or
    - (iii) judicial review of the finding.
- (7)
  - (a) Except as provided in Subsection (7)(b), an alleged perpetrator may not make a request under Subsection (4) to challenge a supported finding if a court of competent jurisdiction entered a finding, in a proceeding in which the alleged perpetrator was a party, that the alleged perpetrator is substantially responsible for the abuse, neglect, or dependency which was also the subject of the supported finding.
  - (b) Subsection (7)(a) does not apply to pleas in abeyance or diversion agreements.
  - (c) An adjudicative proceeding under Subsection (5) may be stayed during the time a judicial action on the same matter is pending.

- (8) Pursuant to Section 78A-6-323, an adjudicative proceeding on a supported finding of a type of abuse or neglect that does not constitute a severe type of child abuse or neglect may be joined in the juvenile court with an adjudicative proceeding on a supported finding of a severe type of child abuse or neglect.

Amended by Chapter 87, 2008 General Session  
Amended by Chapter 299, 2008 General Session  
Amended by Chapter 382, 2008 General Session

**62A-4a-1010 Notice and opportunity for court hearing for persons listed in Licensing Information System.**

- (1) Persons whose names were listed on the Licensing Information System as of May 6, 2002 and who have not been the subject of a court determination with respect to the alleged incident of abuse or neglect may at any time:
- (a) request review by the division of their case and removal of their name from the Licensing Information System pursuant to Subsection (3); or
  - (b) file a petition for an evidentiary hearing and a request for a finding of unsubstantiated or without merit.
- (2) Subsection (1) does not apply to an individual who has been the subject of any of the following court determinations with respect to the alleged incident of abuse or neglect:
- (a) conviction;
  - (b) adjudication under Title 78A, Chapter 6, Juvenile Court Act of 1996;
  - (c) plea of guilty;
  - (d) plea of guilty with a mental illness; or
  - (e) no contest.
- (3) If an alleged perpetrator listed on the Licensing Information System prior to May 6, 2002, requests removal of the alleged perpetrator's name from the Licensing Information System, the division shall, within 30 days:
- (a)
    - (i) review the case to determine whether the incident of alleged abuse or neglect qualifies as:
      - (A) a severe type of child abuse or neglect;
      - (B) chronic abuse; or
      - (C) chronic neglect; and
    - (ii) if the alleged abuse or neglect does not qualify as a type of abuse or neglect described in Subsections (3)(a)(i)(A) through (C), remove the alleged perpetrator's name from the Licensing Information System; or
  - (b) determine whether to file a petition for substantiation.
- (4) If the division decides to file a petition, that petition must be filed no more than 14 days after the decision.
- (5) The juvenile court shall act on the petition as provided in Subsection 78A-6-323(3).
- (6) If a person whose name appears on the Licensing Information System prior to May 6, 2002 files a petition pursuant to Section 78A-6-323 during the time that an alleged perpetrator's application for clearance to work with children or vulnerable adults is pending, the court shall hear the matter on an expedited basis.

Amended by Chapter 366, 2011 General Session