

CHILD CARE AMENDMENTS

2003 GENERAL SESSION

STATE OF UTAH

Sponsor: Beverly Ann Evans

This act modifies provisions related to child care in Utah. The act modifies definitions related to providing child care services. It modifies the functions and duties of the Office of Child Care and requires an annual report by the office on the status of child care in the state. The act increases the membership of the Child Care Advisory Committee and provides specific responsibilities for the committee. The act modifies the roles and relationships of individuals and entities who have statutory responsibilities related to the Child Care Expendable Trust Fund and makes certain technical changes.

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

AMENDS:

26-39-102, as last amended by Chapter 77, Laws of Utah 1999

26-39-104, as last amended by Chapter 77, Laws of Utah 1999

35A-3-102, as last amended by Chapter 9, Laws of Utah 2001

35A-3-201, as renumbered and amended by Chapter 375, Laws of Utah 1997

35A-3-203, as last amended by Chapter 143, Laws of Utah 2001

35A-3-205, as last amended by Chapter 1, Laws of Utah 1998

35A-3-206, as last amended by Chapter 256, Laws of Utah 2002

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

Section 1. Section **26-39-102** is amended to read:

26-39-102. Definitions.

As used in this chapter:

(1) "Child" means:

(a) a child of a person other than the provider of child care;

(b) a child of a licensed or certified residential child care provider who is under the age of four; and

(c) a child of an employee or owner of a licensed child care center who is under the age

of four.

(2) "Child care" means continuous care and supervision of five or more children [~~under 14 years of age~~] through age 12 and children with disabilities through age 18, in lieu of care ordinarily provided by parents in their own home, for less than 24 hours a day, for direct or indirect compensation.

(3) "Child care program" means a child care facility or program operated by a person [~~pursuant to~~] who holds a license issued in accordance with this chapter.

(4) "Residential child care" means child care provided in the home of a provider.

Section 2. Section **26-39-104** is amended to read:

26-39-104. Duties of the department.

(1) With regard to child care programs licensed [~~pursuant to~~] under this chapter, the department may:

(a) make and enforce rules to implement [~~the provisions of~~] this chapter and, as necessary to protect children's common needs for a safe and healthy environment, to provide for:

(i) adequate facilities and equipment; and

(ii) competent caregivers considering the age of the children and the type of program offered by the licensee;

(b) make and enforce rules necessary to carry out the purposes of this chapter, in the following areas:

(i) requirements for applications, the application process, and compliance with other applicable statutes and rules;

(ii) documentation and policies and procedures that providers shall have in place in order to be licensed, in accordance with Subsection (1)(a);

(iii) categories, classifications, and duration of initial and ongoing licenses;

(iv) changes of ownership or name, changes in licensure status, and changes in operational status;

(v) license expiration and renewal, contents, and posting requirements;

(vi) procedures for inspections, complaint resolution, disciplinary actions, and other

procedural measures to encourage and assure compliance with statute and rule; and

(vii) guidelines necessary to assure consistency and appropriateness in the regulation and discipline of licensees; and

(c) set and collect licensing and other fees in accordance with Section 26-1-6.

(2) (a) The department may not regulate educational curricula, academic methods, or the educational philosophy or approach of the provider.

(b) The department shall allow for a broad range of educational training and academic background in certification or qualification of child day care directors.

(3) In licensing and regulating child care programs, the department shall reasonably balance the benefits and burdens of each regulation and, by rule, provide for a range of licensure, depending upon the needs and different levels and types of child care provided.

(4) Notwithstanding the definition of "child" in Subsection 26-39-102(1), the department shall count children [~~under the age of 14~~] through age 12 and children with disabilities through age 18 toward the minimum square footage requirement for indoor and outdoor areas, including the child of:

(a) a licensed residential child care provider; or

(b) an owner or employee of a licensed child care center.

Section 3. Section **35A-3-102** is amended to read:

35A-3-102. Definitions.

~~[As]~~ Unless otherwise specified, as used in this chapter:

(1) "Applicant" means a person who requests assistance under this chapter.

(2) "Average monthly number of families" means the average number of families who received cash assistance on a monthly basis during the previous federal fiscal year, starting from October 1, 1998 to September 30, 1999, and continuing each year thereafter.

(3) "Cash assistance" means a monthly dollar amount of cash a client is eligible to receive under Section 35A-3-302.

(4) "Child care services" means care of a child for a portion of the day that is less than 24 hours in a qualified setting, as defined by rule, by a responsible person who is not the child's

parent or legal guardian.

(5) "Date of enrollment" means the date on which the applicant was approved as eligible for cash assistance.

(6) "Director" means the director of the division.

(7) "Diversion" means a single payment of cash assistance under Section 35A-3-303 to a client who is eligible for but does not require extended cash assistance under Part 3, Family Employment Program.

(8) "Division" means the Division of Employment Development.

(9) "Education or training" means:

- (a) basic remedial education;
- (b) adult education;
- (c) high school education;
- (d) education to obtain the equivalent of a high school diploma;
- (e) education to learn English as a second language;
- (f) applied technology training;
- (g) employment skills training; or
- (h) on-the-job training.

(10) "Full-time education or training" means training on a full-time basis as defined by the educational institution attended by the parent client.

(11) "General assistance" means financial assistance provided to a person who is not otherwise eligible for cash assistance under Part 3, Family Employment Program, because that person does not live in a family with a related dependent child.

(12) "Parent client" means a person who enters into an employment plan with the division to qualify for cash assistance under Part 3, Family Employment Program.

(13) (a) "Passenger vehicle" means a self-propelled, two-axle vehicle intended primarily for operation on highways and used by an applicant or client to meet basic transportation needs and has a fair market value below 40% of the applicable amount of the federal luxury passenger automobile tax established in 26 U.S.C. Sec. 4001 and adjusted annually for inflation.

- (b) "Passenger vehicle" does not include:
 - (i) a commercial vehicle, as defined in Section 41-1a-102;
 - (ii) an off-highway vehicle, as defined in Section 41-1a-102; or
 - (iii) a motor home, as defined in Section 13-14-102.

(14) "Plan" or "state plan" means the state plan submitted to the Secretary of the United States Department of Health and Human Services to receive funding from the United States through the Temporary Assistance for Needy Families Block Grant.

(15) "Single minor parent" means a person under 18 years of age who is not married and has a minor child in ~~[his]~~ the person's care and custody.

Section 4. Section **35A-3-201** is amended to read:

35A-3-201. Definitions.

As used in this part:

(1) "Child care" means the services referred to in Subsection 35A-3-102(4) provided for:

- (a) children through age 12; and
- (b) children with disabilities through age 18.

(2) "Child care provider association" means an association:

- (a) that has functioned as a child care provider association in the state for at least three years; and
- (b) is affiliated with a national child care provider association.

~~[(1)]~~ (3) "Committee" means the Child Care Advisory Committee created in Section 35A-3-205.

~~[(2)]~~ (4) "Director" means the director of the Office of Child Care.

~~[(3)]~~ (5) "Office" means the Office of Child Care created in Section 35A-3-202.

Section 5. Section **35A-3-203** is amended to read:

35A-3-203. Functions and duties of office -- Annual report.

The office shall:

(1) assess critical child care needs throughout the state on an ongoing basis and focus its activities on helping to meet the most critical needs;

(2) provide child care subsidy services for income-eligible children through age 12 and for income-eligible children with disabilities through age 18;

~~[(1)]~~ (3) provide information:

- (a) to employers for the development of options for child care in the work place; and
- (b) for educating the public in obtaining quality child care;

~~[(2)]~~ (4) coordinate services for quality child care training and child care resource and referral core services;

~~[(3)]~~ (5) apply for, accept, or expend gifts or donations from public or private sources;

~~[(4)]~~ (6) provide administrative support services to the committee;

~~[(5)]~~ (7) work collaboratively with the following for the delivery of quality child care and early childhood programs, and school age programs ~~[in]~~ throughout the state:

- (a) the State Board of Education;
- (b) the Department of Community and Economic Development; and
- (c) the Department of Health;

~~[(6)]~~ (8) research child care programs and public policy that will improve quality and accessibility and that will further the purposes of the office and child care, early childhood programs, and school age programs; ~~[and]~~

~~[(7)]~~ (9) provide planning and technical assistance for the development and implementation of programs in communities that lack child care, early childhood programs, and school age programs; ~~[and]~~

~~[(8)]~~ (10) provide organizational support for the establishment of nonprofit organizations approved by the Child Care Advisory Committee, created in Section 35A-3-205~~[-]; and~~

(11) provide a written report on the status of child care in Utah to the Legislature by November 1 of each year through the Workforce Services and Community and Economic Development Interim Committee.

Section 6. Section **35A-3-205** is amended to read:

35A-3-205. Creation of committee.

- (1) There is created a Child Care Advisory Committee.

(2) The committee shall counsel and advise the office in fulfilling its statutory obligations[-] to include:

(a) a review of and recommendations on the office's annual budget;

(b) recommendations on how the office might best respond to child care needs throughout the state; and

(c) recommendations on the use of new monies that come into the office, including those for the Child Care Fund.

(3) The committee ~~shall be~~ is composed of ~~[13]~~ the following members ~~[as follows]~~, with special attention given to insure diversity and representation from both urban and rural groups:

(a) one expert in early childhood development ~~[appointed by the executive director in accordance with Subsection (4)];~~

(b) one child care provider who operates a center ~~[appointed by the executive director in accordance with Subsection (4)];~~

(c) one child care provider who operates a family child care business ~~[appointed by the executive director in accordance with Subsection (4)];~~

(d) one parent ~~[of preschool or elementary school-aged children appointed by the executive director in accordance with Subsection (4)]~~ who receives a child care subsidy from the office and is representative of single-parent households with children through age 12;

(e) one representative of two-parent households with children through age 12 using child care;

~~[(e)]~~ (f) one representative from the public at-large ~~[appointed by the director in accordance with Subsection (4)];~~

~~[(f)]~~ (g) one representative of the State Office of Education;

~~[(g)]~~ (h) one representative of the Department of Health;

(i) one representative of the Department of Human Services;

(j) one representative of the Department of Community and Economic Development;

~~[(h)]~~ (k) two representatives from the corporate community ~~[appointed by the executive~~

~~director in accordance with Subsection (4)], one who is a recent "Family Friendly" award winner and who received the award because of efforts in the child care arena;~~

~~[(i)] (l) two representatives from the small business community [appointed by the executive director in accordance with Subsection (4)];~~

~~[(j)] (m) one representative from child care advocacy groups [appointed by the executive director in accordance with Subsection (4); and];~~

~~[(k) one representative from the Division of Employment Development appointed by the executive director.]~~

(n) one representative of children with disabilities;

(o) one representative from the state Head Start Association appointed by the association;

(p) one representative from each child care provider association; and

(q) one representative of a child care resource and referral center appointed by the organization representing child care resource and referral agencies.

~~[(4) Of those members appointed by the executive director under Subsection (3), with the exception of the representative from the Division of Employment Development, no more than five may be from the same political party.]~~

(4) (a) The executive director shall appoint the members designated in Subsections (3)(a) through (f) and (k) through (n).

(b) The head of the respective departments shall appoint the members referred to in Subsections (3)(g) through (j).

(c) Each child care provider association shall appoint its respective member referred to in Subsection (3)(p).

(5) (a) Except as required by Subsection (5)(b), as terms of current committee members expire, the ~~[executive director]~~ appointing authority shall appoint each new member or reappointed member to a four-year term.

(b) Notwithstanding the requirements of Subsection (5)(a), the ~~[executive director]~~ appointing authority shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of committee members are staggered so that approximately half of

the committee is appointed every two years.

(6) When a vacancy occurs in the membership for any reason, including missing three consecutive meetings where the member has not been excused by the chair prior to or during the meeting, the replacement shall be appointed for the unexpired term.

(7) A majority of the members constitutes a quorum for the transaction of business.

(8) (a) The executive director shall select a chair from the committee membership. [~~The chair's term of office expires on April 1 of each year and a~~]

(b) A chair may serve no more than two one-year terms as chair.

(9) (a) ~~(i)~~ Members who are not government employees may not receive compensation or benefits for their services, but may receive per diem and expenses incurred in the performance of the member's official duties at the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

~~[(ii) Members may decline to receive per diem and expenses for their service.]~~

(b) ~~(i)~~ State government officer and employee members who do not receive salary, per diem, or expenses from their agency for their service may receive per diem and expenses incurred in the performance of their official duties from the committee at the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

~~[(i)]~~ (c) ~~[State government officer and employee members]~~ Members identified in Subsections (9)(a) and (b) may decline to receive per diem and expenses for their service.

Section 7. Section **35A-3-206** is amended to read:

35A-3-206. Restricted special revenue fund -- Use of monies -- Committee and director duties -- Restrictions.

(1) There is created a restricted special revenue fund known as the "Child Care Fund."

(2) The ~~[executive]~~ director of the office shall administer the fund under the direction of the committee.

(3) (a) The office may form nonprofit corporations or foundations controlled by the director of the office and the committee to aid and assist the office in attaining its charitable, research, and educational objectives.

(b) The nonprofit corporations or foundations may receive and administer Legislative appropriations, government grants, contracts, and private gifts to carry out their public purposes.

(c) Monies collected by the nonprofit corporation or foundation may be deposited in the Child Care Fund.

(d) A nonprofit foundation controlled by the director of the office and the committee shall submit to the Division of Finance, within 60 days after the close of the foundation's fiscal year, a financial report summarizing the foundation's financial position and results of operations of the most recent fiscal year.

(4) (a) There shall be deposited into the fund money from numerous sources, including, grants, private foundations, and individual donors.

~~[(3)]~~ (b) The fund shall be used to accept monies designated for child care initiatives improving the quality, affordability, or accessibility of child care.

~~[(4)]~~ (5) The monies in the fund that are not restricted to a specific use under federal law or by donors may not be expended without approval of the committee.

~~[(5) There shall be deposited into the fund money from numerous sources including grants, private foundations, or individual donors.]~~

(6) The state treasurer shall invest the monies in the fund ~~[shall be invested by the state treasurer pursuant to]~~ under Title 51, Chapter 7, State Money Management Act, except that all interest or other earnings derived from the fund monies shall be deposited in the fund.

(7) The monies in the fund may not be used for administrative expenses of the ~~[department]~~ office normally provided for by legislative appropriation.

(8) The committee shall:

(a) advise the director of the office on child care needs in the state and on relevant operational aspects of any grant, loan, or revenue collection program established under this part;

(b) recommend specific child care projects to the director of the office;

(c) recommend policy and procedures for administering the fund;

(d) make recommendations on grants, loans, or contracts from the fund for any of the child care activities authorized under this part;

(e) establish the criteria by which loans and grants will be made;

(f) determine the order in which approved child care projects will be funded;

(g) make recommendations regarding the distribution of money from the fund in accordance with the procedures, conditions, and restrictions placed upon the monies by the donors; and

(h) have joint responsibility with the office to solicit public and private funding for the fund.

(9) Fund monies [~~may~~] shall be used for any of the following activities:

- (a) training of child care providers;
- (b) scholarships and grants for child care providers' professional development;
- (c) child care public awareness and consumer education services;
- (d) child care provider recruitment;
- (e) Office of Child Care sponsored activities;
- (f) matching money for obtaining grants; or
- (g) other activities that will assist in the improvement of child care quality, affordability, or accessibility.

(10) The [~~executive~~] director of the office, with the consent of the committee and the executive director, may grant, lend, or contract fund money for child care purposes to:

- (a) local governments;
- (b) nonprofit community, charitable, or neighborhood-based organizations;
- (c) regional or statewide nonprofit organizations; or
- (d) child care providers.

(11) Preference may be given but awards may not be limited to applicants for fund monies that demonstrate any of the following:

- (a) programmatic or financial need;
- (b) diversity of clientele or geographic location; and
- (c) coordination with or enhancement of existing services.

(12) The executive director or the executive director's designee shall monitor the

activities of the recipients of grants, loans, or contracts issued from the fund on an annual basis to ensure compliance with the terms and conditions imposed on the recipient by the fund.

(13) The entities receiving grants, loans, or contracts shall provide the [~~executive~~] director of the office with an annual accounting of how the monies they received from the fund have been spent.

(14) (a) The [~~executive~~] director of the office shall make an annual report to the committee regarding the status of the fund and the programs and [~~the~~] services funded by the fund.

(b) The report shall be included as a component of the report to the Legislature required under Subsection 35A-3-203(11).