

**LICENSURE AND REGULATION OF
PROGRAMS AND FACILITIES**

2005 GENERAL SESSION

STATE OF UTAH

Sponsor: Thomas V. Hatch

LONG TITLE

General Description:

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

Highlighted Provisions:

This bill:

- ▶ modifies and enacts defined terms;
- ▶ amends the responsibilities and rulemaking duties of the Office of Licensing;
- ▶ lists grounds for refusing to renew a license;
- ▶ provides requirements for a human services program to obtain approval of educational service and funding plans;
- ▶ imposes requirements for licensing and for making rules regarding the licensing of residential treatment programs;
- ▶ requires applicants for a license to operate a residential treatment program to provide a description of the program and notice of intent to operate a residential treatment program to the governing body of the city or county where the program intends to operate;
- ▶ provides that a local government may request that the office designate a local government employee as a certified local inspector;
- ▶ describes the powers of, and restrictions on, a certified local inspector;
- ▶ describes the responsibilities of a local government relating to a certified local



- 28 inspector;
- 29 ▶ provides that records received by the Office of Licensing through reports and
- 30 inspections shall be classified in accordance with the Government Records and
- 31 Access Management Act;
- 32 ▶ provides that Title 62A, Chapter 2, Licensure of Programs and Facilities, does not
- 33 apply to boarding schools or certain licensed mental health professionals;
- 34 ▶ provides that the Office of Licensing may place conditions on licenses;
- 35 ▶ lists standards for determining whether to reissue a revoked license;
- 36 ▶ provides that a revoked license may not be reissued until at least one year after final
- 37 notice of the revocation is served;
- 38 ▶ provides that a license may be suspended for up to one year;
- 39 ▶ provides that full faith and credit be extended to an Indian tribe’s licensure of tribal
- 40 foster homes;
- 41 ▶ permits records to be copied during administrative inspections;
- 42 ▶ provides standards for:
- 43 • conducting and reviewing background checks; and
- 44 • granting persons direct access to children and vulnerable adults;
- 45 ▶ provides that substance abuse treatment programs that provide services to adults
- 46 only are not required to submit identifying information to the Office of Licensing
- 47 for criminal background checks;
- 48 ▶ provides the Department of Human Services with access to records to conduct
- 49 background checks;
- 50 ▶ provides that the Department of Human Services may inform a local government
- 51 that a certified local inspector applicant is listed in those records;
- 52 ▶ provides that a person who is a representative of private residential treatment
- 53 facilities shall be included on the Board of Child and Family Services; and
- 54 ▶ makes technical changes.

55 Monies Appropriated in this Bill:

56 None

57 Other Special Clauses:

58 None

59 **Utah Code Sections Affected:**

60 AMENDS:

- 61 **62A-2-101**, as last amended by Chapter 22, Laws of Utah 2003
- 62 **62A-2-105**, as last amended by Chapter 119, Laws of Utah 2003
- 63 **62A-2-106**, as last amended by Chapter 119, Laws of Utah 2003
- 64 **62A-2-108**, as last amended by Chapter 358, Laws of Utah 1998
- 65 **62A-2-108.1**, as last amended by Chapter 42, Laws of Utah 1997
- 66 **62A-2-109**, as last amended by Chapter 358, Laws of Utah 1998
- 67 **62A-2-110**, as last amended by Chapter 358, Laws of Utah 1998
- 68 **62A-2-111**, as last amended by Chapter 358, Laws of Utah 1998
- 69 **62A-2-112**, as last amended by Chapter 358, Laws of Utah 1998
- 70 **62A-2-113**, as last amended by Chapter 358, Laws of Utah 1998
- 71 **62A-2-116**, as last amended by Chapter 358, Laws of Utah 1998
- 72 **62A-2-117**, as enacted by Chapter 358, Laws of Utah 1998
- 73 **62A-2-118**, as enacted by Chapter 358, Laws of Utah 1998
- 74 **62A-2-120**, as last amended by Chapter 300, Laws of Utah 2002
- 75 **62A-2-121**, as last amended by Chapter 86, Laws of Utah 2004
- 76 **62A-2-122**, as enacted by Chapter 300, Laws of Utah 2002
- 77 **62A-4a-102**, as last amended by Chapter 246, Laws of Utah 2003
- 78 **62A-4a-116.2**, as last amended by Chapter 86, Laws of Utah 2004
- 79 **78-3a-320**, as last amended by Chapter 210, Laws of Utah 2003

80 ENACTS:

- 81 **62A-2-108.2**, Utah Code Annotated 1953
- 82 **62A-2-108.3**, Utah Code Annotated 1953



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

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

86 **62A-2-101. Definitions.**

87 As used in this chapter:

- 88 (1) "Adult day care" means [~~continuous~~] nonresidential care and supervision;
- 89 (a) for three or more adults for at least four but less than 24 hours a day[;]; and

90 **(b)** that meets the needs of functionally impaired adults through a comprehensive
91 program that provides a variety of health, social, recreational, and related support services in a
92 protective setting.

93 **(2) (a)** "Boarding school" means a regionally accredited private school that:

94 **(i)** provides a residence to the school's students:

95 **(A)** for the purpose of enabling the school's students to attend classes at the school; and

96 **(B)** as an ancillary service to educating the students at the school;

97 **(ii)** has the primary purpose of providing the school's students with an education, as

98 defined in Subsection (2)(b)(i); and

99 **(iii) (A)** does not provide the treatment or services described in Subsection (27)(a); or

100 **(B)** provides the treatment or services described in Subsection (27)(a) on a limited

101 basis, as described in Subsection (2)(b)(ii).

102 **(b) (i)** For purposes of Subsection (2)(a)(ii), "education" means a course of study for
103 one or more of grades kindergarten through 12th grade.

104 **(ii)** For purposes of Subsection (2)(a)(iii)(B), a private school provides the treatment or
105 services described in Subsection (27)(a) on a limited basis if:

106 **(A)** the treatment or services described in Subsection (27)(a) are provided only as an
107 incidental service to a student; and

108 **(B)** the school does not:

109 **(I)** specifically solicit a student for the purpose of providing the treatment or services
110 described in Subsection (27)(a); or

111 **(II)** have a primary purpose of providing the services described in Subsection (27)(a).

112 **(3)** "Certified local inspector" means a person certified by the office, pursuant to
113 Subsection 62A-2-108.3(1), to conduct an inspection described in Subsection 62A-2-108.3(4).

114 **(4)** "Certified local inspector applicant" means a person for which designation as a
115 certified local inspector is sought under Section 62A-2-108.3.

116 ~~(5)~~ **(5)** "Child" means a person under 18 years of age.

117 ~~(6)~~ **(6)** "Child placing" means receiving, accepting, or providing custody or care for
118 any child [under 18 years of age], temporarily or permanently, for the purpose of:

119 **(a)** finding a person to adopt the child;

120 **(b)** placing the child [temporarily or permanently] in a home for adoption; or

- 121 (c) foster home placement.
- 122 [~~(4)~~] (7) "Client" means an individual who receives or has received services from a
 123 [~~human services~~] licensee [~~under this chapter~~].
- 124 [~~(5)~~] (8) "Day treatment" means specialized treatment [~~for~~] that is provided to:
 125 (a) a client less than 24 hours a day [~~for~~]; and
 126 (b) four or more persons who:
 127 (i) are unrelated to the owner or provider; and [~~who~~]
 128 (ii) have emotional, psychological, developmental, physical, or behavioral
 129 dysfunctions, impairments, or chemical dependencies. [~~Day treatment is provided in lieu of, or~~
 130 in coordination with, a more restrictive residential or inpatient environment or service.]
- 131 [~~(6)~~] (9) "Department" means the Department of Human Services.
- 132 [~~(7)~~] (10) "Direct access" means that an individual has, or likely will have, contact with
 133 or access to a child or vulnerable adult that provides the individual with an opportunity for
 134 personal communication or touch.
- 135 [~~(8)~~] (11) "Director" means the director of the Office of Licensing.
- 136 (12) "Domestic violence" is as defined in Section 77-36-1.
- 137 [~~(9)~~] (13) "Domestic violence treatment program" means a nonresidential program
 138 designed to provide psychological treatment and educational services to perpetrators and
 139 victims of domestic violence.
- 140 [~~(10)~~] (14) "Elder adult" means a person 65 years of age or older.
- 141 [~~(11)~~] (15) "Executive director" means the executive director of the department.
- 142 (16) "Foster home" means a temporary residential living environment for the care of:
 143 (a) fewer than four foster children in the home of a licensed or certified foster parent;
 144 or
 145 (b) four or more children in the home of a licensed or certified foster parent if the
 146 children are siblings.
- 147 [~~(12)~~] (17) (a) "Human services [~~licensee~~ or "~~licensee~~"] program" means a:
 148 (i) foster home;
 149 (ii) youth program[;];
 150 (iii) resource family home[;]; or [a]
 151 (iv) facility or program[; licensed by the department,] that provides [care,];

- 152 (A) secure treatment[;];
- 153 (B) inpatient treatment[;];
- 154 (C) residential treatment[;];
- 155 (D) residential support[;];
- 156 (E) adult day care[;];
- 157 (F) day treatment[;];
- 158 (G) outpatient treatment[;];
- 159 (H) domestic violence treatment[;];
- 160 (I) child placing services[;];
- 161 (J) social detoxification[;]; or
- 162 (K) any other human services that are required by contract with the department to be
- 163 licensed with the department.

164 (b) "Human services program" does not include a boarding school.

165 (18) "Licensee" means a person or human services program licensed by the office.

166 [(13)] (19) "Licensing board" means the Human Services Licensing Board.

167 (20) "Local government" means a:

168 (a) city; or

169 (b) county.

170 [(14)] (21) "Minor" has the same meaning as "child."

171 [(15)] (22) "Office" means the Office of Licensing within the Department of Human
172 Services.

173 [(16)] (23) "Outpatient treatment" means individual, family, or group therapy or
174 counseling designed to improve and enhance social or psychological functioning for those
175 whose physical and emotional status allows them to continue functioning in their usual living
176 environment.

177 [(17)] (24) (a) "Person associated with the licensee" means a person:

178 (i) affiliated with a licensee as an owner, director, member of the governing body,
179 employee, agent, provider of care, or volunteer [~~of a human services licensee~~]; or [~~of an~~
180 applicant]

181 (ii) applying to become affiliated with a licensee in any capacity listed under
182 Subsection (24)(a)(i).

183 (b) Notwithstanding Subsection ~~[(17)]~~ (24)(a), "person associated with the licensee"
 184 does not include an individual serving on ~~[either of]~~ the following bodies unless that individual
 185 has direct access to children or vulnerable adults:

186 (i) a local mental health authority under Section 17-43-301 ~~[or]~~;
 187 (ii) a local substance abuse authority under Section 17-43-201; or
 188 ~~[(ii)]~~ (iii) a board of an organization operating under a contract to provide
 189 [comprehensive]:

190 (A) mental health or substance abuse programs; or
 191 (B) services for the local mental health authority or substance abuse authority.
 192 (c) "Person associated with the licensee" does not include a guest or visitor whose
 193 access to children or vulnerable adults is directly supervised by the licensee at all times.

194 (25) "Regular business hours" means:

195 (a) the hours during which services of any kind are provided to a client; or
 196 (b) the hours during which a client is present at the facility of a licensee.

197 ~~[(18)]~~ (26) (a) "Residential support" means arranging for or providing the necessities of
 198 life as a protective service to individuals or families who are disabled or who are experiencing
 199 a dislocation or emergency ~~[which] that~~ prevents them from providing these services for
 200 themselves or their families. ~~[Treatment is not a necessary component of residential support.]~~

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

203 (i) dysfunctions or impairments that are:

204 (A) emotional;
 205 (B) psychological;
 206 (C) developmental; or
 207 (D) behavioral; or
 208 (ii) chemical dependencies.

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

210 ~~[(19)]~~ (27) (a) "Residential treatment" means a 24-hour group living environment for
 211 four or more individuals unrelated to the owner or provider that offers room or board and
 212 specialized treatment, behavior modification, rehabilitation, discipline, emotional growth, or
 213 habilitation services for persons with emotional, psychological, developmental, or behavioral

214 dysfunctions, impairments, or chemical dependencies. [~~In residential treatment, individuals are~~
215 ~~assisted in acquiring the social and behavioral skills necessary for living independently in the~~
216 ~~community.~~]

217 (b) "Residential treatment" does not include a:

218 (i) boarding school; or

219 (ii) foster home.

220 (28) "Residential treatment program" means a human services program that provides:

221 (a) residential treatment; or

222 (b) secure treatment.

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

225 [~~(21)~~ (29) (a) "Secure treatment" means 24-hour specialized residential treatment or
226 care for persons whose current functioning is such that they cannot live independently or in a
227 less restrictive environment.

228 (b) "Secure treatment" differs from residential treatment to the extent that it requires
229 intensive supervision, locked doors, and other security measures [~~which~~] that are imposed on
230 residents with neither their consent nor control.

231 [~~(22)~~ (30) "Social detoxification" means short-term residential services for persons
232 who are [~~intoxicated~~] experiencing or have recently experienced drug or alcohol intoxication,
233 that are provided outside of a health care facility licensed under Title 26, Chapter 21, Health
234 Care Facility [~~Licensure~~] Licensing and Inspection Act, and that include:

235 (a) room and board for persons who are unrelated to the owner or manager of the
236 facility;

237 (b) specialized rehabilitation to acquire sobriety; and

238 (c) aftercare services.

239 (31) "Substance abuse treatment program" means a program:

240 (a) designed to provide:

241 (i) specialized drug or alcohol treatment;

242 (ii) rehabilitation; or

243 (iii) habilitation services; and

244 (b) that provides the treatment or services described in Subsection (31)(a) to persons

245 with:

246 (i) a diagnosed substance abuse disorder; or

247 (ii) chemical dependency disorder.

248 [~~(23)~~] (32) "Unrelated persons" means persons other than parents, legal guardians,
249 grandparents, brothers, sisters, uncles, or aunts.

250 [~~(24)~~] (33) "Vulnerable adult" means an elder adult or an adult who has a temporary or
251 permanent mental or physical impairment that substantially affects the person's ability to:

252 (a) provide personal protection;

253 (b) provide necessities such as food, shelter, clothing, or mental or other health care;

254 (c) obtain services necessary for health, safety, or welfare;

255 (d) carry out the activities of daily living;

256 (e) manage the adult's own resources; or

257 (f) comprehend the nature and consequences of remaining in a situation of abuse,
258 neglect, or exploitation.

259 [~~(25)~~] (34) (a) "Youth program" means a nonresidential program[;] designed to provide
260 behavioral, substance abuse or mental health services to minors that:

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

262 (ii) charges a fee for its services;

263 (iii) may or may not provide host homes or other arrangements for overnight
264 accommodation of the youth;

265 (iv) may or may not provide all or part of its services in the outdoors;

266 (v) may or may not limit or censor access to parents or guardians; and

267 (vi) prohibits or restricts a minor's ability to leave the program at any time of [~~his~~] the
268 minor's own free will.

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

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

272 **62A-2-105. Licensing board responsibilities.**

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

275 (a) approving, denying, suspending, and revoking licenses [~~for human services~~

276 ~~licensees and facilities~~];

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

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

279 (d) licensing of all persons and human services [~~licensees~~] programs that are required

280 to be licensed under this chapter; and

281 (e) notification to providers and subproviders of rights and responsibilities including

282 who to contact within the department when filing a complaint against a licensee or [~~facility~~]

283 human services program, and the responsibility of the department to follow up once contacted.

284 (2) The licensing board shall:

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

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

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

290 (d) advise the department as requested, concerning enforcement of rules established
291 under this chapter.

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

293 **62A-2-106. Office responsibilities.**

294 [~~The office shall:~~]

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

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

298 [~~(a)~~] (i) basic health and safety standards for licensees, which shall be limited to the
299 following:

300 [(i)] (A) fire safety;

301 [(ii)] (B) food safety;

302 [(iii)] (C) sanitation;

303 [(iv)] (D) infectious disease control;

304 [(v)] (E) safety of the:

305 (I) physical [~~plant;~~] facility and grounds; and

306 (II) area and community surrounding the physical facility;

307 ~~[(vi)]~~ (F) transportation safety;
308 ~~[(vii)]~~ (G) emergency preparedness and response;
309 ~~[(viii)]~~ (H) the administration of medical standards and procedures, consistent with the
310 related provisions of this title; ~~[and]~~
311 ~~[(ix)]~~ (I) ~~[consumer]~~ staff and client safety and protection;
312 (J) the administration and maintenance of client and service records;
313 (K) staff qualifications and training;
314 (L) staff to client ratios; and
315 (M) access to firearms;
316 (ii) procedures and standards for permitting a licensee to:
317 (A) provide in the same facility and under the same conditions as children, residential
318 treatment services to a person 18 years old or older who:
319 (I) begins to reside at the licensee's residential treatment facility before the person's
320 18th birthday;
321 (II) has resided at the licensee's residential treatment facility continuously since the
322 time described in Subsection (1)(a)(ii)(A)(I);
323 (III) has not completed the course of treatment for which the person began residing at
324 the licensee's residential treatment facility; and
325 (IV) voluntarily consents to complete the course of treatment described in Subsection
326 (1)(a)(ii)(A)(III); or
327 (B) (I) provide residential treatment services to a child who is:
328 (Aa) 12 years old or older; and
329 (Bb) under the custody of the Division of Juvenile Justice Services; and
330 (II) provide, in the same facility as a child described in Subsection (1)(a)(ii)(B)(I),
331 residential treatment services to a person who is:
332 (Aa) at least 18 years old, but younger than 21 years old; and
333 (Bb) under the custody of the Division of Juvenile Justice Services;
334 ~~[(b)]~~ (iii) minimum administration and financial requirements for licensees; and
335 ~~[(c)]~~ (iv) guidelines for variances from rules established under this Subsection (1);
336 ~~[(2)]~~ (b) enforce rules~~[:(a)]~~ approved by the licensing board;
337 ~~[(b)]~~ in effect on January 1, 1998, that apply to a service or program for which a

338 licensee is not under contract with a division listed in Section 62A-1-105 to provide until rules
 339 are established pursuant to Subsection (2)(c); and]

340 [~~(c)~~ established after July 1, 1999, by a policymaking board created by Section
 341 62A-1-105 which:]

342 [(i) shall be limited to:]

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

344 [(B) staff qualifications; and]

345 [(C) staff to client ratios; and]

346 [(ii) may only apply to a service or program for which a licensee is not under contract
 347 with a division listed in Section 62A-1-105 to provide;]

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

349 [(4)] (d) conduct surveys and inspections of licensees and facilities in accordance with
 350 Section 62A-2-118;

351 [(5)] (e) collect licensure fees;

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

353 [(7) provide notification to licensee or facility, including providers and subproviders;

354 of]

355 (g) notify licensees of the name of a person within the department to contact when
 356 filing a complaint;

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

359 [(9)] (i) have access to all records, correspondence, and financial data required to be
 360 maintained by a licensee [or facility];

361 [(10)] (j) have authority to interview any client, family member of a client, employee,
 362 or officer of a [human services] licensee [or facility]; and

363 [(11)] (k) have authority to deny, condition, revoke, suspend, or extend any license
 364 issued by the department under this chapter by following the procedures and requirements of
 365 Title 63, Chapter 46b, Administrative Procedures Act.

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

- 369 (a) immediately report to law enforcement any criminal activity committed:
 370 (i) on the premises where the licensee operates its human services program;
 371 (ii) by or against its clients; or
 372 (iii) by or against a staff member while the staff member is on duty;
 373 (b) immediately report to emergency medical services any medical emergency:
 374 (i) on the premises where the licensee operates its human services program;
 375 (ii) involving its clients; or
 376 (iii) involving a staff member while the staff member is on duty; and
 377 (c) immediately report other emergencies that occur on the premises where the licensee
 378 operates its human services program to the appropriate emergency services agency.

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

380 **62A-2-108. Licensure requirements -- Expiration -- Renewal.**

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

387 (2) (a) For purposes of this Subsection (2), "member" means a person or entity that is
 388 associated with another person or entity:

389 (i) as a member;

390 (ii) as a partner;

391 (iii) as a shareholder; or

392 (iv) as a person or entity involved in the ownership or management of a residential
 393 treatment program owned or managed by the other person or entity.

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

396 (c) An application for a license under this chapter shall be treated as an application for
 397 reinstatement of a revoked license if:

398 (i) (A) the person or entity applying for the license had a license revoked under this
 399 chapter; and

400 (B) the revoked license described in Subsection (2)(c)(i)(A) is not reinstated before the
401 application described in this Subsection (2)(c) is made; or

402 (ii) (A) a member of an entity applying for the license:

403 (I) (Aa) had a license revoked under this chapter; and

404 (Bb) the revoked license described in Subsection (2)(c)(ii)(A)(I)(Aa) is not reinstated
405 before the application described in this Subsection (2)(c) is made; or

406 (II) (Aa) was a member of an entity that had a license revoked under this chapter at any
407 time before the license was revoked; and

408 (Bb) the revoked license described in Subsection (2)(c)(ii)(A)(II)(Aa) is not reinstated
409 before the application described in this Subsection (2)(c) is made.

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

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

415 (i) previously revoked by the office; or

416 (ii) voluntarily returned to the office by the [~~human services~~] licensee.

417 (b) A license shall be renewed upon application and payment of the applicable fee,
418 unless the office finds that the licensee [~~or facility has~~]:

419 (i) is not [~~complied~~] in compliance with the:

420 (A) provisions of this chapter; or

421 (B) rules made under this chapter[-];

422 (ii) has engaged in a pattern of noncompliance with the:

423 (A) provisions of this chapter; or

424 (B) rules made under this chapter;

425 (iii) has engaged in conduct that is grounds for denying a license under Section
426 62A-2-112; or

427 (iv) has engaged in conduct that poses a substantial risk of harm to any person.

428 (5) Any licensee [~~or facility which~~] that is in operation at the time rules are made in
429 accordance with this chapter shall be given a reasonable time for compliance as determined by
430 the rule.

431 (6) (a) A license for a human services program issued under this section shall apply to
 432 a specific human services program site.

433 (b) A human services program shall obtain a separate license for each site where the
 434 human services program is operated.

435 Section 5. Section **62A-2-108.1** is amended to read:

436 **62A-2-108.1. Coordination of human services and educational services --**
 437 **Licensing of programs -- Procedures.**

438 (1) For purposes of this section:

439 (a) "accredited private school" means a private school that is accredited by an
 440 accrediting entity recognized by the Utah State Board of Education; and

441 (b) "education entitled children" means children:

442 (i) subject to compulsory education under Section 53A-11-101; or

443 (ii) entitled to educational services under Section 53A-15-301.

444 ~~[(1)] (2) [A]~~ Subject to Subsection (8), a human services program may not be licensed
 445 to serve [children subject to compulsory education under Section 53A-11-101 or entitled to
 446 educational services under Section 53A-15-301] education entitled children unless the human
 447 services program presents an educational service plan that includes evidence:

448 (a) satisfactory to:

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

450 (ii) (A) the local school board of the school district in which the human services
 451 program will be operated; or

452 (B) the school district superintendent of the school district in which the human services
 453 program will be operated; and

454 (b) that children served by the human services program shall receive appropriate
 455 educational services satisfying the requirements of applicable law.

456 ~~[(2)] (3) [If the]~~ Subject to Subsection (8), if a human services program [is to be
 457 permitted to serve any children] serves any education entitled children whose custodial parents
 458 or legal guardians reside outside the state, then the program shall also provide an educational
 459 funding plan that includes evidence:

460 (a) satisfactory [evidence] to:

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

462 (ii) (A) the local school board of the school district in which the human services
463 program will be operated; or

464 (B) the school district superintendent of the school district in which the human services
465 program will be operated; and

466 (b) that all costs for educational services to be provided to [those students] the
467 education entitled children, including tuition and school fees approved by the local school
468 board, shall be borne by the human services program.

469 ~~[(3) If the local school board finds the educational service plan and the educational~~
470 ~~funding plan to be adequate, then the board shall provide the licensing authority with a letter of~~
471 ~~approval.]~~

472 ~~[(4) If the local school board finds the educational service plan and the educational~~
473 ~~funding plan to be inadequate, then the board shall provide the licensing authority with a letter~~
474 ~~of disapproval, together with the specific requirements the human services program must meet~~
475 ~~before licensure is granted.]~~

476 (4) Subject to Subsection (8) and in accordance with Subsection (2), the human
477 services program shall obtain and provide the office with a letter:

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

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

480 (ii) (A) disapproving the educational service plan referred to in Subsection (2); and

481 (B) listing the specific requirements the human services program must meet before
482 approval is granted; and

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

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

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

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

488 (5) [Failure] Subject to Subsection (8), failure of a local school board or school district
489 superintendent to respond to a proposed plan within 45 days of receipt of the plan is equivalent
490 to approval of the plan by the local school board[-] or school district superintendent if the
491 human services program provides to the office:

492 (a) proof that:

493 (i) the human services program submitted the proposed plan to the local school board
494 or school district superintendent; and

495 (ii) more than 45 days have passed from the day on which the plan was submitted; and

496 (b) an affidavit, on a form produced by the office, stating:

497 (i) the date that the human services program submitted the proposed plan to the local
498 school board or school district superintendent;

499 (ii) that more than 45 days have passed from the day on which the plan was submitted;

500 and

501 (iii) that the local school board or school district superintendent described in
502 Subsection (5)(b)(i) failed to respond to the proposed plan within 45 days from the day on
503 which the plan was submitted.

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

507 (a) the [~~licensing authority~~] office shall give the [~~program~~] licensee notice of intent to
508 revoke the [~~license~~] licensee's license; and[;]

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

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

516 (8) A human services program that is an accredited private school:

517 (a) for purposes of Subsection (2):

518 (i) is only required to submit an educational service plan for approval by the office; and

519 (ii) is not required to submit an educational service plan for approval by an entity
520 described in Subsection (2)(a)(ii);

521 (b) for purposes of Subsection (3):

522 (i) is only required to submit an educational funding plan for approval by the office;

523 and

524 (ii) is not required to submit an educational funding plan for approval by an entity
525 described in Subsection (3)(a)(ii); and

526 (c) is not required to comply with Subsections (4) and (5).

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

528 **62A-2-108.2. Licensing residential treatment programs -- Notification of local**
529 **government.**

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

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

534 (i) services offered;

535 (ii) types of clients served;

536 (iii) risks posed to the community; or

537 (iv) other factors that make regulatory differences advisable.

538 (2) Subject to the requirements of federal and state law, and pursuant to the authority
539 granted by Section 62A-2-106, the office shall establish and enforce rules that:

540 (a) relate generally to all categories of residential treatment program licenses; and

541 (b) relate to specific categories of residential treatment program licenses on the basis of
542 the regulatory needs, as determined by the office, of residential treatment programs within
543 those specific categories.

544 (3) Before submitting an application for a license to operate a residential treatment
545 program, the applicant shall serve notice of its intent to operate a residential treatment program
546 on the governing body of:

547 (a) the city in which the residential treatment program will be located; or

548 (b) if the residential treatment program will be located in the unincorporated area of a
549 county, the county in which the residential treatment program will be located.

550 (4) The notice described in Subsection (3) shall include the following information
551 relating to the residential treatment program:

552 (a) an accurate description of the residential treatment program;

553 (b) the location where the residential treatment program will be operated;

554 (c) the services that will be provided by the residential treatment program;

- 555 (d) the type of clients that the residential treatment program will serve;
556 (e) the category of license for which the residential treatment program is applying to
557 the office;
558 (f) the name, telephone number, and address of a person that may be contacted to make
559 inquiries about the residential treatment program; and
560 (g) any other information that the office may require by rule.
561 (5) When submitting an application for a license to operate a residential treatment
562 program, the applicant shall include with the application:
563 (a) a copy of the notice described in Subsection (3); and
564 (b) proof that the applicant served the notice described in Subsection (3) on the
565 governing body described in Subsection (3).
566 Section 7. Section **62A-2-108.3** is enacted to read:
567 **62A-2-108.3. Local government -- Certified local inspector -- Local inspection of a**
568 **residential treatment facility -- Reporting violations.**
569 (1) (a) Subject to this Subsection (1) and Subsection (3), the office shall designate, or
570 renew the designation of, a local government employee as a certified local inspector if:
571 (i) the governing body of a local government gives the office written notice:
572 (A) of the name of an employee of the local government; and
573 (B) requesting that the office designate the employee described in Subsection
574 (1)(a)(i)(A) as a certified local inspector; and
575 (ii) the employee described in Subsection (1)(a)(i) successfully completes the training
576 described in Subsection (1)(b).
577 (b) Before designating a local government employee as a certified local inspector, the
578 office shall:
579 (i) provide training to the local government employee on:
580 (A) this chapter;
581 (B) the rules established under:
582 (I) Subsection (2); and
583 (II) Subsection 62A-2-106(1)(a);
584 (C) the Fourth Amendment to the Constitution of the United States; and
585 (D) other issues relating to conducting the inspections described in Subsection (4); and

586 (ii) conduct a criminal background check of the local government employee pursuant
587 to the same procedures established for a criminal background check of an applicant for an
588 initial license under Section 62A-2-120.

589 (c) Subject to Subsection (6), the office may not designate a person as a certified local
590 inspector:

591 (i) unless the office approves the person to have direct access to children or vulnerable
592 adults pursuant to Section 62A-2-120; or

593 (ii) if the office determines that, based on the conduct of the person, it is not in the
594 public's best interest to designate the person as a certified local inspector.

595 (d) The office shall provide to a certified local inspector identification that:

596 (i) identifies the person as a certified local inspector;

597 (ii) contains a photograph of the certified local inspector;

598 (iii) states the date on which the certification of the certified local inspector expires;

599 and

600 (iv) identifies the geographic location where the certified local inspector is authorized
601 to conduct an inspection.

602 (e) Nothing in this section shall be construed to require a local government to employ a
603 certified local inspector.

604 (2) The office shall make rules in accordance with Title 63, Chapter 46a, Utah
605 Administrative Rulemaking Act, to establish procedures for:

606 (a) complying with this section; and

607 (b) the conduct of inspections by a certified local inspector.

608 (3) For purposes of Subsection (1):

609 (a) the designation of a person as a certified local inspector shall expire one calendar
610 year from the day on which the designation is made;

611 (b) the designation of a person as a certified local inspector may not be renewed unless
612 Subsection (1) is complied with, including:

613 (i) providing a refresher course on the training described in Subsection (1)(b)(i); and

614 (ii) conducting a new criminal background check pursuant to Subsection (1)(b)(ii); and

615 (c) the office:

616 (i) shall revoke a person's designation as a certified local inspector if:

617 (A) subject to Subsection (6), the person commits an act that is grounds for refusing to
618 designate a person as a certified local inspector;

619 (B) the person's local government employer requests that the designation described in
620 this Subsection (3)(c)(i) be revoked; or

621 (C) the person is no longer employed by a local government, unless:

622 (I) the person is employed by another local government; and

623 (II) the governing body of the local government described in Subsection (3)(c)(i)(C)(I),
624 requests, in writing, that the person's designation as a certified local inspector continue; and

625 (ii) subject to Subsection (6), may revoke a person's designation as a certified local
626 inspector if the person violates:

627 (A) this section; or

628 (B) a rule made by the department that relates to this section.

629 (4) (a) Subject to Subsection (4)(b), a certified local inspector may inspect a residential
630 treatment facility of a licensee:

631 (i) if the certified local inspector is an employee of a local government that is a:

632 (A) (I) city; and

633 (II) the residential treatment facility is located within the city; or

634 (B) (I) county; and

635 (II) the residential treatment facility is located within the unincorporated area of the
636 county;

637 (ii) only during regular business hours;

638 (iii) pursuant to:

639 (A) this section; and

640 (B) the rules made by the office under this section; and

641 (iv) to determine whether the residential treatment facility is in compliance with the
642 requirements of:

643 (A) this chapter; and

644 (B) the rules made pursuant to this chapter.

645 (b) Notwithstanding Subsection (4)(a), a certified local inspector, may not:

646 (i) inspect a residential treatment facility of a licensee:

647 (A) if the office instructs the certified local inspector to not conduct an inspection; or

648 (B) except in an emergency, without giving the office prior notice of the inspection;

649 and

650 (ii) unless otherwise authorized by law, examine or obtain any record of a residential
651 treatment facility, including a record relating to:

652 (A) a client of the residential treatment facility;

653 (B) an employee of the residential treatment facility; or

654 (C) an incident that occurs at the residential treatment facility.

655 (c) Within 24 hours, excluding weekends and holidays, of conducting an inspection
656 under this Subsection (4), the inspector shall provide the office with a written report informing
657 the office of the details of the inspection, including any violation by the licensee of:

658 (i) this chapter; or

659 (ii) the rules made pursuant to this chapter.

660 (5) (a) A local government employee who is a certified local inspector:

661 (i) may not take any action pursuant to this section without approval from the certified
662 local inspector's local government employer;

663 (ii) when taking any action pursuant to this section, shall at all times be considered an
664 employee of the certified local inspector's local government employer; and

665 (iii) is not an employee of the:

666 (A) office; or

667 (B) department.

668 (b) If a certified local inspector acts or fails to act in a way that would otherwise incur
669 any liability to the office or the department, the certified local inspector's local government
670 employer shall indemnify, defend, and hold harmless the office and the department for that
671 liability.

672 (c) (i) A local government employer of a certified local inspector is primarily
673 responsible for the training of the local government employer's certified local inspector.

674 (ii) The training described in Subsection (1)(b)(i) that is provided by the office is
675 supplemental to the primary training responsibility of the certified local inspector's local
676 government employer.

677 (d) The local government employer of a certified local inspector shall be responsible to
678 pay the certified local inspector for all action taken by the certified local inspector under this

679 section, including:

680 (i) conducting an inspection;

681 (ii) preparing an inspection report for the office; and

682 (iii) participating in training.

683 (6) (a) For purposes of Subsection (1), and Subsections (3)(c)(i)(A) and (3)(c)(ii), if the
684 office determines to not designate or renew the designation of a person as a certified local
685 inspector, the office shall notify the person and the governing body of the local government
686 that employs the person:

687 (i) of the determination described in this Subsection (6)(a);

688 (ii) of the reasons for the determination described in this Subsection (6)(a); and

689 (iii) that the person or the local government, or both, may request a hearing in the
690 department's Office of Administrative Hearings, to challenge the office's decision.

691 (b) A person for whom a hearing is requested under Subsection (6)(a)(iii) is not a
692 certified local inspector until:

693 (i) a final decision is made that the office should designate the person as a certified
694 local inspector; and

695 (ii) (A) all appeals of the determination described in Subsection (6)(a) are exhausted;

696 or

697 (B) the time for an appeal described in Subsection (6)(b)(ii)(A) has expired.

698 (7) (a) If the office determines that a residential treatment facility has violated this
699 chapter or the rules made pursuant to this chapter, the office shall provide written notice of the
700 violation to the governing body of:

701 (i) the city that the residential treatment facility is located in; or

702 (ii) the county that the residential treatment facility is located in, if the residential
703 treatment facility is located in the unincorporated area of the county.

704 (b) The written notice described in Subsection (7)(a):

705 (i) subject to Subsection (7)(b)(ii), shall include:

706 (A) the name of the residential treatment facility;

707 (B) the location of the residential treatment facility;

708 (C) the date and time that the violation occurred; and

709 (D) the provision of the statute or rule that is violated; and

710 (ii) may not include:
 711 (A) the name of any person connected with the violation; or
 712 (B) any information prohibited from disclosure by Title 63, Chapter 2, Government
 713 Records Access and Management Act.

714 (c) A local government may seek additional information relating to a violation
 715 described in this Subsection (7) to the extent permitted by Title 63, Chapter 2, Government
 716 Records Access and Management Act.

717 Section 8. Section **62A-2-109** is amended to read:

718 **62A-2-109. License application -- Classification of information.**

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

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

725 Section 9. Section **62A-2-110** is amended to read:

726 **62A-2-110. Exclusions from chapter.**

727 The provisions of this chapter do not apply to:

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

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

732 (3) [~~private~~] unless required otherwise by a contract with the department, individual or
 733 group counseling by a mental health professional licensed [~~practitioner~~] under Title 58, Chapter
 734 60, Mental Health Professional Practice Act; [or]

735 (4) a general acute hospital, small health care facility, specialty hospital, nursing care
 736 facility, or other health care facility licensed by the Department of Health under [~~Section~~
 737 ~~26-21-2~~] Title 26, Chapter 21, Health Care Facility Licensing and Inspection Act; or

738 (5) a boarding school.

739 Section 10. Section **62A-2-111** is amended to read:

740 **62A-2-111. Adjudicative proceedings.**

741 (1) Whenever the office has reason to believe that a [~~human services~~] licensee [~~or~~
 742 ~~facility~~] is in violation of this chapter or rules made under this chapter, the office may
 743 commence adjudicative proceedings to determine the legal rights of the [~~human services~~]
 744 licensee [~~or facility~~] by serving notice of agency action in accordance with Title 63, Chapter
 745 46b, Administrative Procedures Act.

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

753 Section 11. Section **62A-2-112** is amended to read:

754 **62A-2-112. Violations -- Penalties.**

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

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

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

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

760 (2) restrict or prohibit new admissions to a human services program or facility, if it
 761 finds;

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

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

766 Section 12. Section **62A-2-113** is amended to read:

767 **62A-2-113. License revocation -- Suspension.**

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

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

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

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

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

778 (2) The office may ~~[only]~~ suspend a license for ~~[a period of time which does not~~
779 ~~exceed the current expiration date of that license]~~ no longer than one year.

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

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

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

785 Section 13. Section **62A-2-116** is amended to read:

786 **62A-2-116. Violation -- Criminal penalties.**

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

791 Section 14. Section **62A-2-117** is amended to read:

792 **62A-2-117. Licensure of tribal foster homes.**

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

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

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

800 Section 15. Section **62A-2-118** is amended to read:

801 **62A-2-118. Administrative inspections.**

802 (1) The office may, for the purpose of ascertaining compliance with ~~[the provisions of]~~

803 this chapter, enter and inspect on a routine basis the facility of a licensee.

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

806 (a) give proper identification;

807 (b) request to see the applicable license;

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

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

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

813 (a) inspect the physical facilities;

814 (b) inspect and copy records and documents;

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

816 (d) observe the licensee in operation.

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

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

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

824 Section 16. Section **62A-2-120** is amended to read:

825 **62A-2-120. Criminal background checks -- Direct access to children or**
826 **vulnerable adults.**

827 (1) (a) ~~[An]~~ Except as provided in Subsection (7), an applicant for an initial license or
828 a license renewal under this chapter shall submit to the ~~[department]~~ office the names and other
829 identifying information, which may include fingerprints, of all persons associated with the
830 licensee, as defined in Section 62A-2-101, with direct access to children or vulnerable adults.

831 ~~[This information for a given person associated with the licensee shall be submitted before that~~
832 ~~person is permitted to have direct access to children or vulnerable adults.]~~

833 (b) The Criminal Investigations and Technical Services Division of the Department of

834 Public Safety, or the office as authorized under Section 53-10-108, shall process ~~[that]~~ the
835 information described in Subsection (1)(a) to determine whether the individual has been
836 convicted of any crime.

837 (c) If an individual has not continuously lived in Utah for the five years immediately
838 preceding the day on which the information referred to in Subsection (1)(a) is submitted to the
839 office, the individual shall submit fingerprints for a FBI national criminal history record check.
840 The fingerprints shall be submitted to the FBI through the Criminal Investigations and
841 Technical Services Division.

842 (2) The ~~[department]~~ office shall approve a person for whom identifying information is
843 submitted under Subsection (1) to have direct access to children or vulnerable adults in the
844 licensee program ~~[serving children or vulnerable adults]~~ if:

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

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

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

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

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

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

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

858 (i) felony;

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

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

861 (3) ~~[The department]~~ Unless at least ten years have passed since the date of conviction,
862 the office may not approve a person to have direct access to children or vulnerable adults in the
863 ~~[licensee program serving children or vulnerable adults if the person has at any time]~~ licensee's
864 human services program if that person has been convicted of an offense, whether a felony,

865 misdemeanor, or infraction, that ~~[was]~~ is:

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

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

868 (c) prostitution;

869 (d) ~~[identified]~~ included in:

870 (i) Title 76, [Utah Criminal Code, as an offense against the family or an offense against
871 the person; or] Chapter 5, Offenses Against the Person;

872 ~~[(e)]~~ (ii) [identified in] Title 76, [Utah Criminal Code, as a sexual offense:] Chapter 5a,

873 Sexual Exploitation of Children; or

874 (iii) Title 76, Chapter 7, Offenses Against the Family; or

875 (e) a conviction in:

876 (i) (A) another state, territory, or district of the United States; or

877 (B) a federal court of the United States; and

878 (ii) for an offense that, if committed in the state, would constitute a violation of an
879 offense described in Subsection (3)(d).

880 (4) (a) If a person for whom identifying information is submitted under Subsection (1)
881 is not approved by the ~~[department]~~ office under Subsection (2) or (3) to have direct access to
882 children or vulnerable adults in the licensee program ~~[serving children or vulnerable adults]~~,
883 the ~~[department]~~ office shall conduct a comprehensive review of criminal and court records and
884 related circumstances if ~~[a person for whom identifying information is submitted under~~
885 Subsection (1)] the reason the approval is not granted is due solely to one or more of the
886 following:

887 (i) ~~[has been convicted at any time of]~~ a conviction for:

888 (A) any felony not listed in Subsection (3);

889 ~~[(ii) has been convicted within five years of the date of the search of:]~~

890 ~~[(A)]~~ (B) any misdemeanor or infraction, not listed in Subsection (3)[; or], within five
891 years of the date of the search;

892 ~~[(B) any infraction not listed in Subsection (3); or]~~

893 ~~[(iii) has been convicted at any time of]~~

894 (C) a protective order or ex parte protective order violation under Section [76-5-18]

895 76-5-108 or a similar statute in another state[;]; or

896 (D) any felony, misdemeanor, or infraction listed in Subsection (3) if at least ten years
897 have passed since the date of conviction;

898 (ii) a plea of guilty or no contest to a pending:

899 (A) felony;

900 (B) misdemeanor not listed in Subsection (3); or

901 (C) infraction not listed in Subsection (3);

902 (iii) the person is listed in the statewide database of the Division of Aging and Adult
903 Services created by Section 62A-3-311.1;

904 (iv) juvenile court records show that a court made a substantiated finding, under
905 Section 78-3a-320, that the person committed a severe type of child abuse or neglect; or

906 (v) the person is listed in the Licensing Information System of the Division of Child
907 and Family Services created by Section 62A-4a-116.2.

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

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

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

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

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

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

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

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

918 (B) sexual abuse;

919 (C) sexual exploitation; and

920 (D) negligent treatment;

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

923 and

924 (viii) any other pertinent information.

925 (c) At the conclusion of the comprehensive review under [~~this~~] Subsection (4)(a), the
926 [~~department~~] office shall [~~either~~] approve [~~or not approve~~] the person who is the subject of the

927 review to have direct access to children or vulnerable adults, [~~based upon the determination of~~
928 ~~the department and the Human Services Licensing Board of whether or not granting approval~~
929 ~~would~~] unless it finds that approval will likely create a risk of harm to a child or vulnerable
930 adult.

931 (d) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
932 [~~department~~] office may make rules, consistent with this chapter, defining procedures for the
933 comprehensive review described in this Subsection (4).

934 (5) (a) For purposes of this Subsection (5), "directly supervised" means that the person
935 being supervised is under the uninterrupted visual and auditory surveillance of the person doing
936 the supervising.

937 (b) A licensee may not permit any person to have direct access to a child or a
938 vulnerable adult unless that person is:

939 (i) associated with the licensee and:

940 (A) approved by the office to have direct access to children or vulnerable adults under
941 this section; or

942 (B) (I) the office has not determined whether to approve that person to have direct
943 access to children or vulnerable adults;

944 (II) the information described in Subsection (1)(a), relating to that person, is submitted
945 to the department; and

946 (III) that person is directly supervised by a person associated with the licensee who is
947 approved by the office to have direct access to children or vulnerable adults under this section;
948 or

949 (ii) (A) not associated with the licensee; and

950 (B) directly supervised by a person associated with the licensee who is approved by the
951 office to have direct access to children or vulnerable adults under this section.

952 [~~(5)~~] (6) (a) Within 30 days after receiving the identifying information for a person
953 under Subsection (1), the [~~department~~] office shall give written notice to the person and to the
954 [~~human services~~] licensee or applicant with whom the person is associated of:

955 (i) the [~~department's~~] office's decision regarding its background screening clearance
956 and findings; and

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

958 (b) With the notice described in Subsection ~~[(5)]~~ (6)(a), the ~~[department]~~ office shall
 959 also give to the person the details of any comprehensive review conducted under Subsection
 960 (4).

961 (c) If the notice under Subsection ~~[(5)]~~ (6)(a) states that the person is not approved to
 962 have direct access to children or vulnerable adults, the notice shall further advise the persons to
 963 whom the notice is given that either the person or the ~~[human services]~~ licensee or applicant
 964 with whom the person is associated, or both, may, ~~[pursuant to]~~ under Subsection
 965 62A-2-111(2), request a hearing in the department's Office of Administrative Hearings, to
 966 challenge the ~~[department's]~~ office's decision.

967 (d) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
 968 ~~[department]~~ office shall make rules, consistent with this chapter:

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

971 (ii) expediting the process for renewal of a license ~~[pursuant to]~~ under the requirements
 972 of this section and other applicable sections.

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

976 Section 17. Section **62A-2-121** is amended to read:

977 **62A-2-121. Access to abuse and neglect information.**

978 (1) With respect to ~~[human services licensees]~~ a licensee, or a certified local inspector
 979 applicant, the department may access only the Licensing Information System of the Division of
 980 Child and Family Services created by Section 62A-4a-116.2 and juvenile court records under
 981 Subsection 78-3a-320~~[(4)]~~(6), for the purpose of:

982 (a) (i) determining whether a person associated with ~~[a]~~ the licensee, with direct access
 983 to children~~[-]~~:

984 (A) is listed in the Licensing Information System; or

985 (B) has a substantiated finding by a juvenile court of a severe type of child abuse or
 986 neglect under Subsections 78-3a-320(1) and (2); and

987 ~~[(b)]~~ (ii) informing a licensee that a person associated with the licensee;

988 (A) is listed in the Licensing Information System; or

989 (B) has a substantiated finding by a juvenile court of a severe type of child abuse or
 990 neglect under Subsections 78-3a-320(1) and (2)[-]; or

991 (b) (i) determining whether a certified local inspector applicant:

992 (A) is listed in the Licensing Information System; or

993 (B) has a substantiated finding by a juvenile court of a severe type of child abuse or
 994 neglect under Subsections 78-3a-320(1) and (2); and

995 (ii) informing a local government that a certified local inspector applicant:

996 (A) is listed in the Licensing Information System; or

997 (B) has a substantiated finding by a juvenile court of a severe type of child abuse or
 998 neglect under Subsections 78-3a-320(1) and (2).

999 (2) Notwithstanding Subsection (1), the department may access the Division of Child
 1000 and Family Service's Management Information System under Section 62A-4a-116 for the
 1001 purpose of licensing and monitoring foster parents.

1002 (3) After receiving identifying information for a person under Subsection
 1003 62A-2-120(1), the department shall process the information for the purposes described in
 1004 Subsection (1).

1005 (4) The department shall adopt rules under Title 63, Chapter 46a, Utah Administrative
 1006 Rulemaking Act, consistent with this chapter, defining the circumstances under which a person
 1007 [~~who has~~] may have direct access or provide services to children [~~and who~~] when:

1008 (a) the person is listed in the Licensing Information System [~~or has~~] of the Division of
 1009 Child and Family Services created by Section 62A-4a-116.2; or

1010 (b) juvenile court records show that a court made a substantiated finding [~~by a court~~
 1011 of], under Section 78-3a-320, that the person committed a severe type of child abuse or neglect
 1012 [~~under Subsections 78-3a-320(1) and (2) may provide services to children].~~

1013 Section 18. Section **62A-2-122** is amended to read:

1014 **62A-2-122. Access to vulnerable adult abuse and neglect information.**

1015 (1) With respect to [~~human services licensees~~] a licensee, or a certified local inspector
 1016 applicant, the department may access the data base created by Section 62A-3-311.1 for the
 1017 purpose of:

1018 (a) (i) determining whether a person associated with [~~a~~] the licensee, with direct access
 1019 to vulnerable adults, has a substantiated finding of:

1020 (A) abuse[;];
 1021 (B) neglect[;]; or
 1022 (C) exploitation; and
 1023 ~~(b)~~ (ii) informing a licensee that a person associated with the licensee has a
 1024 substantiated finding of:

1025 (A) abuse[;];
 1026 (B) neglect[;]; or
 1027 (C) exploitation[;]; or
 1028 (b) (i) determining whether a certified local inspector applicant has a substantiated
 1029 finding of:

1030 (A) abuse;
 1031 (B) neglect; or
 1032 (C) exploitation; and
 1033 (ii) informing a local government that a certified local inspector applicant has a
 1034 substantiated finding of:

1035 (A) abuse;
 1036 (B) neglect; or
 1037 (C) exploitation.
 1038 (2) After receiving identifying information for a person under Subsection
 1039 62A-2-120(1), the department shall process the information for the purposes described in
 1040 Subsection (1).
 1041 (3) The department shall adopt rules under Title 63, Chapter 46a, Utah Administrative
 1042 Rulemaking Act, consistent with this chapter and consistent with Section 62A-3-311.1,
 1043 defining the circumstances under which a person ~~[who has]~~ may have direct access or provide
 1044 services to vulnerable adults ~~[and who has a substantiated finding of abuse, neglect, or~~
 1045 ~~exploitation may provide services to vulnerable adults]~~ when the person is listed in the
 1046 statewide database of the Division of Aging and Adult Services created by Section
 1047 62A-3-311.1.

1048 Section 19. Section **62A-4a-102** is amended to read:
 1049 **62A-4a-102. Board of Child and Family Services.**

1050 (1) (a) The Board of Child and Family Services, created in accordance with this section

1051 and with Sections 62A-1-105 and 62A-1-107, is responsible for establishing by rule, [pursuant
1052 to] under Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the policy of the
1053 division in accordance with the requirements of this chapter and Title 78, Chapter 3a, Juvenile
1054 Court Act of 1996, regarding abuse, neglect, and dependency proceedings, and domestic
1055 violence services. The board is responsible to see that the legislative purposes for the division
1056 are carried out.

1057 (b) (i) The governor shall appoint, with the consent of the Senate, [~~++~~] 12 members to
1058 the Board of Child and Family Services.

1059 (ii) Except as required by Subsection (1)(b)(iii), as terms of current board members
1060 expire, the governor shall appoint each new member or reappointed member to a four-year
1061 term.

1062 (iii) Notwithstanding the requirements of Subsection (1)(b)(ii), the governor shall, at
1063 the time of appointment or reappointment, adjust the length of terms to ensure that the terms of
1064 board members are staggered so that approximately half of the board is appointed every two
1065 years.

1066 (c) The board shall include:

1067 [~~(c) Two~~] (i) two members [~~of the board shall be persons~~] who are or have been
1068 consumers~~;~~];

1069 (ii) two members [~~of the board shall be persons~~] who are actively involved in children's
1070 issues specifically related to abuse and neglect~~[-, one member shall be];~~

1071 (iii) a licensed foster parent~~[-, one member shall be];~~

1072 (iv) a recognized expert in the social, developmental, and mental health needs of
1073 children~~[-, one member shall be];~~

1074 (v) a physician licensed to practice medicine in this state who is [~~also~~];

1075 (A) a board certified pediatrician; and [~~who is~~]

1076 (B) an expert in child abuse and neglect~~[-, and one member shall be];~~

1077 (vi) a representative of private residential treatment facilities; and

1078 (vii) an adult relative of a child who is or has been in the foster care system.

1079 (d) [~~Six~~] Seven members of the board are necessary to constitute a quorum at any
1080 meeting.

1081 (e) When a vacancy occurs in the membership for any reason, the replacement shall be

1082 appointed for the unexpired term.

1083 (2) (a) [~~Members~~] A member shall receive no compensation or benefits for [~~their~~] the
1084 member's services, but may receive per diem and expenses incurred in the performance of the
1085 member's official duties at the rates established by the Division of Finance under Sections
1086 63A-3-106 and 63A-3-107.

1087 (b) [~~Members~~] A member may decline to receive per diem and expenses for [~~their~~] the
1088 member's service.

1089 (3) The board shall:

1090 (a) approve fee schedules for programs within the division;

1091 (b) in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act,
1092 establish, by rule, policies to ensure that private citizens, consumers, foster parents, private
1093 contract providers, allied state and local agencies, and others are provided with an opportunity
1094 to comment and provide input regarding any new policy or proposed revision of an existing
1095 policy; and

1096 (c) provide a mechanism for:

1097 (i) systematic and regular review of existing policy; and [~~for~~]

1098 (ii) consideration of policy changes proposed by the persons and agencies described in
1099 Subsection (3)(b).

1100 (4) (a) The board shall establish policies for the determination of eligibility for services
1101 offered by the division in accordance with this chapter.

1102 (b) The division may, by rule, establish eligibility standards for consumers.

1103 (5) The board shall adopt and maintain rules and policies regarding placement for
1104 adoption or foster care that are consistent with, and no more restrictive than, applicable
1105 statutory provisions.

1106 Section 20. Section **62A-4a-116.2** is amended to read:

1107 **62A-4a-116.2. Licensing Information System -- Contents -- Juvenile court finding**
1108 **-- Protected record -- Access -- Criminal penalty.**

1109 (1) (a) The division shall maintain a sub-part of the Management Information System
1110 established pursuant to Section 62A-4a-116, to be known as the Licensing Information System,
1111 to be used;

1112 (i) solely for licensing purposes[-]; or

1113 (ii) as otherwise specifically provided for by law.
1114 (b) The Licensing Information System shall include only the following information:
1115 ~~[(a)]~~ (i) the information described in Subsections 62A-4a-116.1(1)(a) and (6)(b);
1116 ~~[(b)]~~ (ii) consented-to supported findings by alleged perpetrators under Subsection
1117 62A-4a-116.1(6)(a)(iii); and
1118 ~~[(c)]~~ (iii) the information in the licensing part of the division's Management
1119 Information System as of May 6, 2002.

1120 (2) Notwithstanding Subsection (1), the department's access to information in the
1121 Management Information System for the licensure and monitoring of foster parents is governed
1122 by Sections 62A-4a-116 and 62A-2-121.

1123 (3) ~~[The]~~ (a) Subject to subsection (3)(b), upon receipt of a finding from the juvenile
1124 court under Section 78-3a-320, the division shall:

1125 (i) promptly amend the Licensing Information System~~[- upon receipt of a finding from~~
1126 ~~the juvenile court under Section 78-3a-320, and shall enter the same]; and~~

1127 (ii) enter the information in the Management Information System. ~~[However,]~~
1128 (b) Notwithstanding Subsection (3)(a), if a finding of unsubstantiated or without merit
1129 is appealed, the supported finding shall not be amended until the appeal is concluded.

1130 (4) (a) Information contained in the Licensing Information System is classified as a
1131 protected record under Title 63, Chapter 2, Government Records Access and Management Act.

1132 (b) Notwithstanding the disclosure provisions of Title 63, Chapter 2, Government
1133 Records Access and Management Act, the information contained in the Licensing Information
1134 System may only be used or disclosed as specifically provided in this chapter and Section
1135 62A-2-121 ~~[and]~~.

1136 (c) The information described in Subsection (4)(b) is accessible only to:
1137 ~~[(a)]~~ (i) the Office of Licensing within the department~~[-];~~
1138 (A) for licensing purposes ~~[only]; or~~
1139 (B) as otherwise specifically provided for by law;
1140 ~~[(b)]~~ (ii) the division~~[- for the following purposes]:~~
1141 ~~[(i)]~~ (A) to screen a person at the request of the Office of the Guardian Ad Litem
1142 Director~~[-];~~
1143 (I) at the time that person seeks a paid or voluntary position with the Office of the

1144 Guardian Ad Litem Director; and

1145 (II) each year [~~thereafter that~~] after the person described in Subsection (4)(c)(ii)(A)(I)
1146 remains with that office; and

1147 [~~(ii) to~~] (B) respond to a request for information from a person whose name is listed in
1148 the Licensing Information System;

1149 [~~(e)~~] (iii) two persons designated by and within the Department of Health, only for the
1150 following purposes:

1151 [~~(i)~~] (A) licensing a child care program or provider; or

1152 [~~(ii)~~] (B) determining whether a person associated with a covered health care facility,
1153 as defined by the Department of Health by rule, who provides direct care to a child, has a
1154 supported finding of severe child abuse or neglect; and

1155 [~~(d)~~] (iv) the department, as specifically provided in this chapter.

1156 (5) The two persons designated by the Department of Health under Subsection (4)(c)
1157 shall adopt measures to:

1158 (a) protect the security of the Licensing Information System; and

1159 (b) strictly limit access to the Licensing Information System to those persons
1160 designated by statute.

1161 (6) All persons designated by statute as having access to information contained in the
1162 Licensing Information System shall receive training from the department with respect to:

1163 (a) accessing the Licensing Information System;

1164 (b) maintaining strict security; and

1165 (c) the criminal provisions of Sections 62A-4a-412 and 63-2-801 pertaining to the
1166 improper release of information.

1167 (7) (a) [~~No~~] A person, except those authorized by this chapter, may not request another
1168 person to obtain or release any other information in the Licensing Information System to screen
1169 for potential perpetrators of child abuse or neglect.

1170 (b) A person who requests information knowing that it is a violation of this Subsection
1171 (7) to do so is subject to the criminal penalty described in Sections 62A-4a-412 and 63-2-801.

1172 Section 21. Section **78-3a-320** is amended to read:

1173 **78-3a-320. Additional finding at adjudication hearing -- Petition -- Court records.**

1174 (1) Upon the filing with the court of a petition under Section 78-3a-305 by the Division

1175 of Child and Family Services or any interested person informing the court, among other things,
1176 that the division has made a supported finding of one or more of the severe types of child abuse
1177 or neglect described in Subsection 62A-4a-116.1(2), the court shall:

- 1178 (a) make a finding of substantiated, unsubstantiated, or without merit;
1179 (b) include the finding described in Subsection (1)(a) in a written order; and
1180 (c) deliver a certified copy of the order described in Subsection (1)(b) to the division.

1181 (2) The judicial finding under Subsection (1) shall be made:

- 1182 (a) as part of ~~[or]~~ the adjudication hearing;
1183 (b) at the conclusion of the adjudication hearing; or
1184 ~~[(b)]~~ (c) as part of a court order entered pursuant to a written stipulation of the parties.

1185 (3) (a) Any person described in Subsection 62A-4a-116.6(1) may at any time file with
1186 the court a petition for removal of the person's name from the Licensing Information System.

1187 (b) At the conclusion of the hearing on the petition, the court shall:

- 1188 ~~[(a)]~~ (i) make a finding of substantiated, unsubstantiated, or without merit;
1189 ~~[(b)]~~ (ii) include the finding described in Subsection (1)(a) in a written order; and
1190 ~~[(c)]~~ (iii) deliver a certified copy of the order described in Subsection (1)(b) to the

1191 division.

1192 (4) A proceeding for adjudication of a supported finding of a nonsevere type of abuse
1193 or neglect under this section may be joined in the juvenile court with an adjudication of a
1194 severe type of abuse or neglect.

1195 (5) If a person whose name appears on the Licensing Information system prior to May
1196 6, 2002 files a petition during the time that an alleged perpetrator's application for clearance to
1197 work with children or vulnerable adults is pending, the court shall hear the matter and enter a
1198 final decision no later than 60 days after the filing of the petition.

1199 (6) For the purposes of licensing under Sections 26-21-9.5, 26-39-105.5, 62A-1-118,
1200 and for the purposes described in Section 62A-2-121:

1201 (a) the court shall make available records of its findings under Subsections (1) and (2)
1202 for licensing purposes, only to those with statutory authority to access also the Licensing
1203 Information System created under Section 62A-4a-116.2; and

1204 (b) any appellate court shall make available court records of appeals from juvenile
1205 court decisions under Subsections (1), (2), (3), and (4) for licensing purposes, only to those

1206 with statutory authority to access also the Licensing Information System.

Legislative Review Note
as of 1-5-05 2:10 PM

Based on a limited legal review, this legislation has not been determined to have a high probability of being held unconstitutional.

Office of Legislative Research and General Counsel

State Impact

The Office of Licensing will require an additional one-half FTE to implement provisions of this legislation, at an annual cost of \$44,300 (including \$2,000 of one-time equipment costs). Fiscal impact to local counties will be minor.

	<u>FY 2006</u> <u>Approp.</u>	<u>FY 2007</u> <u>Approp.</u>	<u>FY 2006</u> <u>Revenue</u>	<u>FY 2007</u> <u>Revenue</u>
General Fund	\$44,300	\$42,300	\$0	\$0
TOTAL	\$44,300	\$42,300	\$0	\$0

Individual and Business Impact

Fiscal impact to licensees should be minimal.

Office of the Legislative Fiscal Analyst