

Derrin R. Owens proposes the following substitute bill:

Congregate Care Modifications

2025 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Derrin R. Owens

House Sponsor: Jefferson S. Burton

LONG TITLE

General Description:

This bill addresses congregate care programs.

Highlighted Provisions:

This bill:

▸ requires the Department of Health and Human Services (department) to make reasonable effort to determine within seven days after receiving a completed report from the Bureau of Criminal Identification about an individual whether to grant direct patient access to the individual;

▸ authorizes the department to establish fees for applications for certification for direct patient access;

▸ prohibits the Office of Licensing (office) from:

• placing a restriction or prohibition on new admissions based on the sole fact that the program is operating under a conditional license; or

• altering or restricting the rights of a congregate care program based on the sole fact that the program has appealed an agency action or an appeal or adjudicative proceeding is pending;

▸ requires the office, if conditions are met, to:

• inspect a congregate care program;

• provide notice to a congregate care program; or

• remove restrictions ~~and conditions~~ **on new admissions or a conditional**

license~~[on a congregate care program's license]~~ ~~←~~ **;** and

▸ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

28 None

29 **Utah Code Sections Affected:**

30 AMENDS:

31 **26B-2-120**, as last amended by Laws of Utah 2024, Chapter 234

32 **26B-2-703**, as enacted by Laws of Utah 2024, Chapter 267

33

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

35 Section 12. Section **26B-2-120** is amended to read:

36 **26B-2-120 . Background check -- Direct access to children or vulnerable adults.**

37 (1) As used in this section:

38 (a)(i) "Applicant" means an individual who is associated with a certification,
39 contract, or licensee with the department under this part and has direct access,
40 including:

41 (A) an adoptive parent or prospective adoptive parent, including an applicant for
42 an adoption in accordance with Section 78B-6-128;

43 (B) a foster parent or prospective foster parent;

44 (C) an individual who provides respite care to a foster parent or an adoptive parent
45 on more than one occasion;

46 (D) an individual who transports a child for a youth transportation company;

47 (E) an individual who provides certified peer support, as defined in Section
48 26B-5-610;

49 (F) an individual who provides peer supports, has a disability or a family member
50 with a disability, or is in recovery from a mental illness or a substance use
51 disorder;

52 (G) an individual who has lived experience with the services provided by the
53 department, and uses that lived experience to provide support, guidance, or
54 services to promote resiliency and recovery;

55 (H) an individual who is identified as a mental health professional, licensed under
56 Title 58, Chapter 60, Mental Health Professional Practice Act, and engaged in
57 the practice of mental health therapy, as defined in Section 58-60-102;

58 (I) an individual, other than the child or vulnerable adult receiving the service,
59 who is 12 years old or older and resides in a home, that is licensed or certified
60 by the division;

61 (J) an individual who is 12 years old or older and is associated with a certification,

- 62 contract, or licensee with the department under this part and has or will likely
63 have direct access;
- 64 (K) a foster home licensee that submits an application for an annual background
65 screening as required by Subsection 26B-2-105(4)(d)(iii); or
66 (L) a short-term relief care provider.
- 67 (ii) "Applicant" does not include:
- 68 (A) an individual who is in the custody of the Division of Child and Family
69 Services or the Division of Juvenile Justice and Youth Services;
- 70 (B) an individual who applies for employment with, or is employed by, the
71 Department of Health and Human Services;
- 72 (C) a parent of a person receiving services from the Division of Services for
73 People with Disabilities, if the parent provides direct care to and resides with
74 the person, including if the parent provides direct care to and resides with the
75 person pursuant to a court order; or
- 76 (D) an individual or a department contractor who provides services in an adults
77 only substance use disorder program, as defined by rule adopted by the
78 Department of Health and Human Services in accordance with Title 63G,
79 Chapter 3, Utah Administrative Rulemaking Act, and who is not a program
80 director or a member, as defined by Section 26B-2-105, of the program.
- 81 (b) "Application" means a background check application to the office.
- 82 (c) "Bureau" means the Bureau of Criminal Identification within the Department of
83 Public Safety, created in Section 53-10-201.
- 84 (d) "Criminal finding" means a record of:
- 85 (i) an arrest for a criminal offense;
- 86 (ii) a warrant for a criminal arrest;
- 87 (iii) charges for a criminal offense; or
- 88 (iv) a criminal conviction.
- 89 (e) "Direct access" means that an individual has, or likely will have:
- 90 (i) contact with or access to a child or vulnerable adult by which the individual will
91 have the opportunity for personal communication or touch with the child or
92 vulnerable adult; or
- 93 (ii) an opportunity to view medical, financial, or other confidential personal
94 identifying information of the child, the child's parent or legal guardian, or the
95 vulnerable adult.

- 96 (f)(i) "Direct access qualified" means that the applicant has an eligible determination
97 by the office within the license and renewal time period; and
98 (ii) no more than 180 days have passed since the date on which the applicant's
99 association with a certification, contract, or licensee with the department expires.
- 100 (g) "Incidental care" means occasional care, not in excess of five hours per week and
101 never overnight, for a foster child.
- 102 (h) "Licensee" means an individual or a human services program licensed by the
103 division.
- 104 (i) "Non-criminal finding" means a record maintained in:
105 (i) the Division of Child and Family Services' Management Information System
106 described in Section 80-2-1001;
107 (ii) the Division of Child and Family Services' Licensing Information System
108 described in Section 80-2-1002;
109 (iii) the Division of Aging and Adult Services' vulnerable adult abuse, neglect, or
110 exploitation database described in Section 26B-6-210;
111 (iv) juvenile court arrest, adjudication, and disposition records;
112 (v) the Sex, Kidnap, and Child Abuse Offender Registry described in Title 77,
113 Chapter 41, Sex, Kidnap, and Child Abuse Offender Registry, or a national sex
114 offender registry; or
115 (vi) a state child abuse or neglect registry.
- 116 (j) "Office" means the Office of Background Processing within the department.
- 117 (k) "Personal identifying information" means:
118 (i) current name, former names, nicknames, and aliases;
119 (ii) date of birth;
120 (iii) physical address and email address;
121 (iv) telephone number;
122 (v) driver license or other government-issued identification;
123 (vi) social security number;
124 (vii) only for applicants who are 18 years old or older, fingerprints, in a form
125 specified by the office; and
126 (viii) other information specified by the office by rule made in accordance with Title
127 63G, Chapter 3, Utah Administrative Rulemaking Act.
- 128 (2) Except as provided in Subsection (12), an applicant or a representative shall submit the
129 following to the office:

- 130 (a) personal identifying information;
- 131 (b) a fee established by the office under Section 63J-1-504;
- 132 (c) a disclosure form, specified by the office, for consent for:
- 133 (i) an initial background check upon association with a certification, contract, or
- 134 licensee with the department;
- 135 (ii) ongoing monitoring of fingerprints and registries until no longer associated with a
- 136 certification, contract, or licensee with the department for 180 days;
- 137 (iii) a background check when the office determines that reasonable cause exists; and
- 138 (iv) retention of personal identifying information, including fingerprints, for
- 139 monitoring and notification as described in Subsections (3)(c) and (4);
- 140 (d) if an applicant resided outside of the United States and its territories during the five
- 141 years immediately preceding the day on which the information described in
- 142 Subsections (2)(a) through (c) is submitted to the office, documentation establishing
- 143 whether the applicant was convicted of a crime during the time that the applicant
- 144 resided outside of the United States or its territories; and
- 145 (e) an application showing an applicant's association with a certification, contract, or a
- 146 licensee with the department, for the purpose of the office tracking the direct access
- 147 qualified status of the applicant, which expires 180 days after the date on which the
- 148 applicant is no longer associated with a certification, contract, or a licensee with the
- 149 department.
- 150 (3) The office:
- 151 (a) shall perform the following duties as part of a background check of an applicant
- 152 before the office grants or denies direct access qualified status to an applicant:
- 153 (i) check state and regional criminal background databases for the applicant's
- 154 criminal history by:
- 155 (A) submitting personal identifying information to the bureau for a search; or
- 156 (B) using the applicant's personal identifying information to search state and
- 157 regional criminal background databases as authorized under Section 53-10-108;
- 158 (ii) submit the applicant's personal identifying information and fingerprints to the
- 159 bureau for a criminal history search of applicable national criminal background
- 160 databases;
- 161 (iii) search the Division of Child and Family Services' Licensing Information System
- 162 described in Section 80-2-1002;
- 163 (iv) search the Sex, Kidnap, and Child Abuse Offender Registry described in Title

- 164 77, Chapter 41, Sex, Kidnap, and Child Abuse Offender Registry, or a national
165 sex offender registry for an applicant 18 years old or older;
- 166 (v) if the applicant is associated with a licensee for a prospective foster or adoptive
167 parent, search the Division of Child and Family Services' Management
168 Information System described in Section 80-2-1001;
- 169 (vi) search the Division of Aging and Adult Services' vulnerable adult abuse, neglect,
170 or exploitation database described in Section 26B-6-210;
- 171 (vii) search the juvenile court records for substantiated findings of severe child abuse
172 or neglect described in Section 80-3-404; and
- 173 (viii) search the juvenile court arrest, adjudication, and disposition records, as
174 provided under Section 78A-6-209;
- 175 (b) may conduct all or portions of a background check in connection with determining
176 whether an applicant is direct access qualified, as provided by rule, made by the
177 office in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act:
178 (i) for an annual renewal; or
179 (ii) when the office determines that reasonable cause exists;
- 180 (c) may submit an applicant's personal identifying information, including fingerprints, to
181 the bureau for checking, retaining, and monitoring of state and national criminal
182 background databases and for notifying the office of new criminal activity associated
183 with the applicant;
- 184 (d) shall track the status of an applicant under this section to ensure that the applicant is
185 not required to duplicate the submission of the applicant's fingerprints if the applicant
186 is associated with more than one certification, contract, or licensee with the
187 department;
- 188 (e) shall notify the bureau when a direct access qualified individual has not been
189 associated with a certification, contract, or licensee with the department for a period
190 of 180 days;
- 191 (f) shall adopt measures to strictly limit access to personal identifying information solely
192 to the individuals responsible for processing and entering the applications for
193 background checks and to protect the security of the personal identifying information
194 the office reviews under this Subsection (3);
- 195 (g) as necessary to comply with the federal requirement to check a state's child abuse
196 and neglect registry regarding any applicant working in a congregate care program,
197 shall:

- 198 (i) search the Division of Child and Family Services' Licensing Information System
199 described in Section 80-2-1002; and
- 200 (ii) require the child abuse and neglect registry be checked in each state where an
201 applicant resided at any time during the five years immediately preceding the day
202 on which the application is submitted to the office; and
- 203 (h) shall make rules, in accordance with Title 63G, Chapter 3, Utah Administrative
204 Rulemaking Act, to implement the provisions of this Subsection (3) relating to
205 background checks.
- 206 (4)(a) With the personal identifying information the office submits to the bureau under
207 Subsection (3), the bureau shall check against state and regional criminal background
208 databases for the applicant's criminal history.
- 209 (b) With the personal identifying information and fingerprints the office submits to the
210 bureau under Subsection (3), the bureau shall check against national criminal
211 background databases for the applicant's criminal history.
- 212 (c) Upon direction from the office, and with the personal identifying information and
213 fingerprints the office submits to the bureau under Subsection (3)(c), the bureau shall:
- 214 (i) maintain a separate file of the fingerprints for search by future submissions to the
215 local and regional criminal records databases, including latent prints; and
- 216 (ii) monitor state and regional criminal background databases and identify criminal
217 activity associated with the applicant.
- 218 (d) The bureau is authorized to submit the fingerprints to the Federal Bureau of
219 Investigation Next Generation Identification System, to be retained in the Federal
220 Bureau of Investigation Next Generation Identification System for the purpose of:
- 221 (i) being searched by future submissions to the national criminal records databases,
222 including the Federal Bureau of Investigation Next Generation Identification
223 System and latent prints; and
- 224 (ii) monitoring national criminal background databases and identifying criminal
225 activity associated with the applicant.
- 226 (e) The ~~[Bureau]~~ bureau shall notify and release to the office all information of criminal
227 activity associated with the applicant.
- 228 (f) Upon notice that an individual who has direct access qualified status will no longer
229 be associated with a certification, contract, or licensee with the department, the
230 bureau shall:
- 231 (i) discard and destroy any retained fingerprints; and

232 (ii) notify the Federal Bureau of Investigation when the license has expired or an
233 individual's direct access to a child or a vulnerable adult has ceased, so that the
234 Federal Bureau of Investigation will discard and destroy the retained fingerprints
235 from the Federal Bureau of Investigation Next Generation Identification System.

236 (5)(a) Except as provided in Subsection (5)(b), the office shall deny direct access
237 qualified status to an applicant who, within three years from the date on which the
238 office conducts the background check, was convicted of:

239 (i) a felony or misdemeanor involving conduct that constitutes any of the following:

240 (A) an offense identified as domestic violence, lewdness, voyeurism, battery,
241 cruelty to animals, or bestiality;

242 (B) a violation of any pornography law, including sexual exploitation of a minor
243 or aggravated sexual exploitation of a minor;

244 (C) sexual solicitation or prostitution;

245 (D) a violent offense committed in the presence of a child, as described in Section
246 76-3-203.10;

247 (E) an offense included in Title 76, Chapter 4, Part 4, Enticement of a Minor;

248 (F) an offense included in Title 76, Chapter 5, Offenses Against the Individual;

249 (G) an offense included in Title 76, Chapter 5b, Sexual Exploitation Act;

250 (H) an offense included in Title 76, Chapter 7, Offenses Against the Family;

251 (I) an offense included in Title 76, Chapter 9, Part 4, Offenses Against Privacy;

252 (J) an offense included in Title 76, Chapter 10, Part 4, Weapons of Mass
253 Destruction;

254 (K) an offense included in Title 78B, Chapter 7, Protective Orders and Stalking
255 Injunctions;

256 (L) aggravated arson, as described in Section 76-6-103;

257 (M) aggravated burglary, as described in Section 76-6-203;

258 (N) aggravated exploitation of prostitution, as described in Section 76-10-1306;

259 (O) aggravated robbery, as described in Section 76-6-302;

260 (P) endangering persons in a human services program, as described in Section
261 26B-2-113;

262 (Q) failure to report, as described in Section 80-2-609;

263 (R) identity fraud crime, as described in Section 76-6-1102;

264 (S) leaving a child unattended in a motor vehicle, as described in Section
265 76-10-2202;

- 266 (T) riot, as described in Section 76-9-101;
- 267 (U) sexual battery, as described in Section 76-9-702.1; or
- 268 (V) threatening with or using a dangerous weapon in a fight or quarrel, as
- 269 described in Section 76-10-506; or
- 270 (ii) a felony or misdemeanor offense committed outside of the state that, if committed
- 271 in the state, would constitute a violation of an offense described in Subsection
- 272 (5)(a)(i).
- 273 (b)(i) Subsection (5)(a) does not apply to an applicant who is seeking a position as a
- 274 peer support provider or a mental health professional, if the applicant provides
- 275 services in a program that serves only adults with a primary mental health
- 276 diagnosis, with or without a co-occurring substance use disorder.
- 277 (ii) The office shall conduct a comprehensive review of an applicant described in
- 278 Subsection (5)(b)(i) in accordance with Subsection (7).
- 279 (c) The office shall deny direct access qualified status to an applicant if the office finds
- 280 that a court order prohibits the applicant from having direct access to a child or
- 281 vulnerable adult.
- 282 (6) The office shall conduct a comprehensive review of an applicant's background check if
- 283 the applicant:
- 284 (a) has a felony or class A misdemeanor conviction that is more than three years from
- 285 the date on which the office conducts the background check, for an offense described
- 286 in Subsection (5)(a);
- 287 (b) has a felony charge or conviction that is no more than 10 years from the date on
- 288 which the office conducts the background check for an offense not described in
- 289 Subsection (5)(a);
- 290 (c) has a felony charge or conviction that is more than 10 years from the date on which
- 291 the office conducts the background check, for an offense not described in Subsection
- 292 (5)(a), with criminal or non-criminal findings after the date of the felony charge or
- 293 conviction;
- 294 (d) has a class B misdemeanor or class C misdemeanor conviction that is more than
- 295 three years and no more than 10 years from the date on which the office conducts the
- 296 background check for an offense described in Subsection (5)(a);
- 297 (e) has a class B misdemeanor or class C misdemeanor conviction that is more than 10
- 298 years from the date on which the office conducts the background check, for an
- 299 offense described in Subsection (5)(a), with criminal or non-criminal findings after

- 300 the date of conviction;
- 301 (f) has a misdemeanor charge or conviction that is no more than three years from the
302 date on which the office conducts the background check for an offense not described
303 in Subsection (5)(a);
- 304 (g) has a misdemeanor charge or conviction that is more than three years from the date
305 on which the office conducts the background check, for an offense not described in
306 Subsection (5)(a), with criminal or non-criminal findings after the date of charge or
307 conviction;
- 308 (h) is currently subject to a plea in abeyance or diversion agreement for an offense
309 described in Subsection (5)(a);
- 310 (i) appears on the Sex, Kidnap, and Child Abuse Offender Registry described in Title
311 77, Chapter 41, Sex, Kidnap, and Child Abuse Offender Registry, or a national sex
312 offender registry;
- 313 (j) has a record of an adjudication in juvenile court for an act that, if committed by an
314 adult, would be a felony or misdemeanor, if the applicant is:
- 315 (i) under 28 years old; or
- 316 (ii) 28 years old or older and has been convicted of, has pleaded no contest to, or is
317 currently subject to a plea in abeyance or diversion agreement for a felony or a
318 misdemeanor offense described in Subsection (5)(a);
- 319 (k) has a pending charge for an offense described in Subsection (5)(a);
- 320 (l) has a listing that occurred no more than 15 years from the date on which the office
321 conducts the background check in the Division of Child and Family Services'
322 Licensing Information System described in Section 80-2-1002;
- 323 (m) has a listing that occurred more than 15 years from the date on which the office
324 conducts the background check in the Division of Child and Family Services'
325 Licensing Information System described in Section 80-2-1002, with criminal or
326 non-criminal findings after the date of the listing;
- 327 (n) has a listing that occurred no more than 15 years from the date on which the office
328 conducts the background check in the Division of Aging and Adult Services'
329 vulnerable adult abuse, neglect, or exploitation database described in Section
330 26B-6-210;
- 331 (o) has a listing that occurred more than 15 years from the date on which the office
332 conducts the background check in the Division of Aging and Adult Services'
333 vulnerable adult abuse, neglect, or exploitation database described in Section

- 334 26B-6-210, with criminal or non-criminal findings after the date of the listing;
- 335 (p) has a substantiated finding that occurred no more than 15 years from the date on
- 336 which the office conducts the background check of severe child abuse or neglect
- 337 under Section 80-3-404 or 80-3-504[-]; or
- 338 (q) has a substantiated finding that occurred more than 15 years from the date on which
- 339 the office conducts the background check of severe child abuse or neglect under
- 340 Section 80-3-404 or 80-3-504, with criminal or non-criminal findings after the date of
- 341 the listing.
- 342 (7)(a) The comprehensive review shall include an examination of:
- 343 (i) the date of the offense or incident;
- 344 (ii) the nature and seriousness of the offense or incident;
- 345 (iii) the circumstances under which the offense or incident occurred;
- 346 (iv) the age of the perpetrator when the offense or incident occurred;
- 347 (v) whether the offense or incident was an isolated or repeated incident;
- 348 (vi) whether the offense or incident directly relates to abuse of a child or vulnerable
- 349 adult, including:
- 350 (A) actual or threatened, nonaccidental physical, mental, or financial harm;
- 351 (B) sexual abuse;
- 352 (C) sexual exploitation; or
- 353 (D) negligent treatment;
- 354 (vii) any evidence provided by the applicant of rehabilitation, counseling, psychiatric
- 355 treatment received, or additional academic or vocational schooling completed;
- 356 (viii) the applicant's risk of harm to clientele in the program or in the capacity for
- 357 which the applicant is applying; and
- 358 (ix) if the background check of an applicant is being conducted for the purpose of
- 359 giving direct access qualified status to an applicant seeking a position in a
- 360 congregate care program or to become a prospective foster or adoptive parent, any
- 361 listing in the Division of Child and Family Services' Management Information
- 362 System described in Section 80-2-1001.
- 363 (b) At the conclusion of the comprehensive review, the office shall deny direct access
- 364 qualified status to an applicant if the office finds the approval would likely create a
- 365 risk of harm to a child or vulnerable adult.
- 366 (8) The office shall grant direct access qualified status to an applicant who is not denied
- 367 under this section.

- 368 (9)(a) The office may conditionally grant direct access qualified status to an applicant,
369 for a maximum of 60 days after the day on which the office sends written notice,
370 without requiring that the applicant be directly supervised, if the office:
- 371 (i) is awaiting the results of the criminal history search of national criminal
372 background databases; and
 - 373 (ii) would otherwise grant direct access qualified status to the applicant under this
374 section.
- 375 (b) The office may conditionally grant direct access qualified status to an applicant, for a
376 maximum of one year after the day on which the office sends written notice, without
377 requiring that the applicant be directly supervised if the office:
- 378 (i) is awaiting the results of an out-of-state registry for providers other than foster and
379 adoptive parents; and
 - 380 (ii) would otherwise grant direct access qualified status to the applicant under this
381 section.
- 382 (c) Upon receiving the results of the criminal history search of a national criminal
383 background database, the office shall grant or deny direct access qualified status to
384 the applicant in accordance with this section.
- 385 (10)(a) Each time an applicant is associated with a licensee, the department shall review
386 the current status of the applicant's background check to ensure the applicant is still
387 eligible for direct access qualified status in accordance with this section.
- 388 (b) A licensee may not permit an individual to have direct access to a child or a
389 vulnerable adult without being directly supervised unless:
- 390 (i) the individual is the parent or guardian of the child, or the guardian of the
391 vulnerable adult;
 - 392 (ii) the individual is approved by the parent or guardian of the child, or the guardian
393 of the vulnerable adult, to have direct access to the child or the vulnerable adult;
 - 394 (iii) the individual is only permitted to have direct access to a vulnerable adult who
395 voluntarily invites the individual to visit; or
 - 396 (iv) the individual only provides incidental care for a foster child on behalf of a foster
397 parent who has used reasonable and prudent judgment to select the individual to
398 provide the incidental care for the foster child.
- 399 (c) Notwithstanding any other provision of this section, an applicant who is denied direct
400 access qualified status shall not have direct access to a child or vulnerable adult
401 unless the office grants direct access qualified status to the applicant through a

- 402 subsequent application in accordance with this section.
- 403 (11) If the office denies direct access qualified status to an applicant, the applicant may
404 request a hearing in the department's Office of Administrative Hearings to challenge the
405 office's decision.
- 406 (12)(a) This Subsection (12) applies to an applicant associated with a certification,
407 contract, or licensee serving adults only.
- 408 (b) A program director or a member, as defined in Section 26B-2-105, of the licensee
409 shall comply with this section.
- 410 (c) The office shall conduct a comprehensive review for an applicant if:
- 411 (i) the applicant is seeking a position:
- 412 (A) as a peer support provider;
- 413 (B) as a mental health professional; or
- 414 (C) in a program that serves only adults with a primary mental health diagnosis,
415 with or without a co-occurring substance use disorder; and
- 416 (ii) within three years from the date on which the office conducts the background
417 check, the applicant has a felony or misdemeanor charge or conviction or a
418 non-criminal finding.
- 419 (13)(a) This Subsection (13) applies to an applicant seeking a position in a congregate
420 care program, an applicant seeking to provide a prospective foster home, an applicant
421 seeking to provide a prospective adoptive home, and each adult living in the home of
422 the prospective foster or prospective adoptive home.
- 423 (b) As federally required, the office shall:
- 424 (i) check the child abuse and neglect registry in each state where each applicant
425 resided in the five years immediately preceding the day on which the applicant
426 applied to be a foster or adoptive parent, to determine whether the prospective
427 foster or adoptive parent is listed in the registry as having a substantiated or
428 supported finding of child abuse or neglect; and
- 429 (ii) except for applicants seeking a position in a congregate care program, check the
430 child abuse and neglect registry in each state where each adult living in the home
431 of the prospective foster or adoptive home resided in the five years immediately
432 preceding the day on which the applicant applied to be a foster or adoptive parent,
433 to determine whether the adult is listed in the registry as having a substantiated or
434 supported finding of child abuse or neglect.
- 435 (c) The requirements described in Subsection (13)(b) do not apply to the extent that:

- 436 (i) federal law or rule permits otherwise; or
437 (ii) the requirements would prohibit the Division of Child and Family Services or a
438 court from placing a child with:
439 (A) a noncustodial parent under Section 80-2a-301, 80-3-302, or 80-3-303; or
440 (B) a relative, other than a noncustodial parent, under Section 80-2a-301, 80-3-302,
441 or 80-3-303, pending completion of the background check described in
442 Subsections (5), (6), and (7).
- 443 (d) Notwithstanding Subsections (5) through (10), the office shall deny direct access
444 qualified status if the applicant has been convicted of:
445 (i) a felony involving conduct that constitutes any of the following:
446 (A) child abuse, as described in Sections 76-5-109, 76-5-109.2, and 76-5-109.3;
447 (B) commission of domestic violence in the presence of a child, as described in
448 Section 76-5-114;
449 (C) abuse or neglect of a child with a disability, as described in Section 76-5-110;
450 (D) intentional aggravated abuse of a vulnerable adult, as described in Section
451 76-5-111;
452 (E) endangerment of a child or vulnerable adult, as described in Section
453 76-5-112.5;
454 (F) aggravated murder, as described in Section 76-5-202;
455 (G) murder, as described in Section 76-5-203;
456 (H) manslaughter, as described in Section 76-5-205;
457 (I) child abuse homicide, as described in Section 76-5-208;
458 (J) homicide by assault, as described in Section 76-5-209;
459 (K) kidnapping, as described in Section 76-5-301;
460 (L) child kidnapping, as described in Section 76-5-301.1;
461 (M) aggravated kidnapping, as described in Section 76-5-302;
462 (N) human trafficking of a child, as described in Section 76-5-308.5;
463 (O) an offense described in Title 76, Chapter 5, Part 4, Sexual Offenses;
464 (P) sexual exploitation of a minor, as described in Title 76, Chapter 5b, Sexual
465 Exploitation Act;
466 (Q) aggravated exploitation of a minor, as described in Section 76-5b-201.1;
467 (R) aggravated arson, as described in Section 76-6-103;
468 (S) aggravated burglary, as described in Section 76-6-203;
469 (T) aggravated robbery, as described in Section 76-6-302;

- 470 (U) lewdness involving a child, as described in Section 76-9-702.5;
- 471 (V) incest, as described in Section 76-7-102; or
- 472 (W) domestic violence, as described in Section 77-36-1; or
- 473 (ii) an offense committed outside the state that, if committed in the state, would
- 474 constitute a violation of an offense described in Subsection (13)(d)(i).
- 475 (e) Notwithstanding Subsections (5) through (10), the office shall deny direct access
- 476 qualified status to an applicant if, within the five years from the date on which the
- 477 office conducts the background check, the applicant was convicted of a felony
- 478 involving conduct that constitutes a violation of any of the following:
- 479 (i) aggravated assault, as described in Section 76-5-103;
- 480 (ii) aggravated assault by a prisoner, as described in Section 76-5-103.5;
- 481 (iii) mayhem, as described in Section 76-5-105;
- 482 (iv) an offense described in Title 58, Chapter 37, Utah Controlled Substances Act;
- 483 (v) an offense described in Title 58, Chapter 37a, Utah Drug Paraphernalia Act;
- 484 (vi) an offense described in Title 58, Chapter 37b, Imitation Controlled Substances
- 485 Act;
- 486 (vii) an offense described in Title 58, Chapter 37c, Utah Controlled Substance
- 487 Precursor Act; or
- 488 (viii) an offense described in Title 58, Chapter 37d, Clandestine Drug Lab Act.
- 489 (f) In addition to the circumstances described in Subsection (6), the office shall conduct
- 490 a comprehensive review of an applicant's background check under this section if the
- 491 applicant:
- 492 (i) has an offense described in Subsection (5)(a);
- 493 (ii) has an infraction conviction entered on a date that is no more than three years
- 494 before the date on which the office conducts the background check;
- 495 (iii) has a listing in the Division of Child and Family Services' Licensing Information
- 496 System described in Section 80-2-1002;
- 497 (iv) has a listing in the Division of Aging and Adult Services' vulnerable adult,
- 498 neglect, or exploitation database described in Section 26B-2-210;
- 499 (v) has a substantiated finding of severe child abuse or neglect under Section
- 500 80-3-404 or 80-3-504; or
- 501 (vi) has a listing on the registry check described in Subsection (13)(b) as having a
- 502 substantiated or supported finding of a severe type of child abuse or neglect, as
- 503 defined in Section 80-1-102.

504 (g) The department shall make reasonable effort to determine, within seven business
 505 days after the date on which the department receives a completed report from the
 506 bureau, whether to grant certification for direct patient access for each applicant for
 507 whom the bureau receives:

508 (i) the personal identification information specified by the department under
 509 Subsection (2):

510 (ii) results from other state child abuse and neglect registries, in accordance with
 511 Subsection (3)(g); and

512 (iii) any fees established by the department under Subsection (14).

513 (14) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
 514 office may make rules, consistent with this part, to:

515 (a) establish procedures for, and information to be examined in, the comprehensive
 516 review described in Subsections (6), (7), and (13);~~and~~

517 (b) determine whether to consider an offense or incident that occurred while an
 518 individual was in the custody of the Division of Child and Family Services or the
 519 Division of Juvenile Justice and Youth Services for purposes of granting or denying
 520 direct access qualified status to an applicant~~[-]~~ ; and

521 (c) in accordance with Subsection 26B-2-240(9), establish fees for applications for
 522 certification for direct patient access.

523 Section 1. Section **26B-2-703** is amended to read:

524 **26B-2-703 . Sanctions -- Penalties and adjudicative procedure -- Rulemaking.**

525 (1) If the department has reason to believe that a provider has failed to comply with this
 526 chapter or rules made pursuant to this chapter, the department may serve a notice of
 527 agency action to commence an adjudicative proceeding in accordance with Title 63G,
 528 Chapter 4, Administrative Procedures Act.

529 (2)(a) In accordance with Title 63G, Chapter 4, Administrative Procedures Act, the
 530 department may deny, place conditions on, suspend, or revoke a license, certificate,
 531 or certification, and invoke penalties, including restricting or prohibiting new
 532 admissions to a program or facility, if the department finds that there has been:

533 ~~(a)~~ (i) a failure to comply with:

534 ~~(i)~~ (A) rules established under this chapter; or

535 ~~(ii)~~ (B) any lawful order of the department or a local health department, or
 536 applicable rule, statute, regulation, or requirement;

537 ~~(b)~~ (ii) aiding, abetting, or permitting the commission of any illegal act;

538 [(e)] (iii) conduct adverse to the standards required to provide services and promote
 539 public trust, including aiding, abetting, or permitting the commission of abuse,
 540 neglect, exploitation, harm, mistreatment, or fraud; or

541 [(d)] (iv) a failure to provide applicable health and safety services for clients.

542 (b) The department may not restrict or prohibit new admissions at a congregate care
 543 program based on ~~§~~ → **the** ← ~~§~~ sole fact that the congregate care program is
 543a operating under a
 544 conditional license.

545 (3)(a) The department may act on an emergency basis if the department determines
 546 immediate action is necessary to protect a client.

547 (b) Immediate action taken under Subsection (3)(a) may include restricting new
 548 admissions to a program or facility, or increased monitoring of the operations of a
 549 program or facility.

550 (4) The department may impose civil monetary penalties against any person, in a sum not to
 551 exceed \$10,000 per violation, in:

552 (a) an administrative action in accordance with Title 63G, Chapter 4, Administrative
 553 Procedures Act;

554 (b) a similar administrative proceeding adopted by a county or local government; or

555 (c) a judicial civil proceeding.

556 (5) Assessment of a civil penalty or administrative penalty does not preclude the
 557 department or a local health department from:

558 (a) seeking criminal penalties;

559 (b) denying, revoking, imposing conditions on, or refusing to renew a license,
 560 certificate, or certification; or

561 (c) seeking injunctive or equitable remedies.

562 (6) If the department revokes a license, certificate, or certification, the office may not grant
 563 a new license, certificate, or certification unless:

564 (a) at least five years have passed since the day on which the provider was served with
 565 final notice that the provider's license, certificate, or certification was revoked; and

566 (b) the office determines that the interests of the public will not be jeopardized by
 567 granting the provider a new license, certificate, or certification.

568 (7) If the department does not renew a license, certificate, or certification because of
 569 noncompliance with the provisions of this part or rules adopted under this part, the
 570 department may not issue a new license, certificate, or certification unless:

- 571 (a) at least one year has passed since the day on which the renewal was denied;
- 572 (b) the provider complies with all renewal requirements; and
- 573 (c) the office determines that the interests of the public will not be jeopardized by
- 574 issuing a new license, certificate, or certification.
- 575 (8) The office may suspend a license, certificate, or certification for up to three years.
- 576 (9) When a license, certificate, or certification has been suspended, the office may restore,
- 577 or restore subject to conditions, the suspended license, certificate, or certification upon a
- 578 determination that the:
- 579 (a) conditions upon which the suspension were based have been completely or partially
- 580 corrected; and
- 581 (b) interests of the public will not be jeopardized by restoration of the license, certificate,
- 582 or certification.
- 583 (10) If a provider fails to comply with the provisions of this chapter, the department may
- 584 impose a penalty on the provider that is less than or equal to the cost incurred by the
- 585 department, which may include:
- 586 (a) the cost to continue providing services, including ensuring client safety and
- 587 relocating clients through the transition or closure of a program or facility;
- 588 (b) the cost to place an administrator or department representative as a monitor in a
- 589 program or facility; or
- 590 (c) the cost to assess to the provider those costs incurred by the department.
- 591 (11)(a) If a congregate care program or facility knowingly fails to comply with the
- 592 provisions of Section 26B-2-124, the office may impose a penalty on the congregate
- 593 care program or facility that is less than or equal to the cost of care incurred by the
- 594 state for a private-placement child described in Subsection 26B-2-124(3).
- 595 (b) The office may not deny, place a condition on, revoke, refuse to reinstate, suspend,
- 596 withdraw, or amend an authority, right, license, certificate, or certification under this
- 597 part based on the sole fact that:
- 598 (i) a program has appealed an agency action; or
- 599 (ii) an appeal or adjudicative proceeding is pending.
- 600 (c) The office shall notify a congregate care program within seven days of determining
- 601 that the office will not remove a condition on, reinstate, or renew a program's license.
- 602 (d) The office:
- 603 (i) shall:
- 604 (A) conduct an initial inspection within 14 days after the date on which the office

- 605 places a restriction or prohibition on new admissions; and
- 606 (B) conduct subsequent inspections at least every 30 days until the the office
- 607 removes the restriction or prohibition on new admissions;
- 608 (ii) may remove a restriction or prohibition on new admissions at a congregate care
- 609 program if ~~the~~ → [~~the office~~] ← ~~the~~ :
- 610 (A) ~~the~~ → the office ← ~~the~~ conducts two consecutive inspections showing full
- 610a compliance with the
- 611 violated rules and any corrective action required by the office;
- 612 (B) ~~the~~ → the office ← ~~the~~ finds no new violations upon which the office may
- 612a place a restriction or
- 613 prohibition on new admissions; and
- 614 (C) at least 45 days have passed since the office placed the restriction or
- 615 prohibition on new admissions;
- 616 (iii) shall remove a conditional license on a congregate care program if:
- 617 (A) the ~~the~~ → [~~congregate care~~] ← ~~the~~ program has rectified all issues for which
- 617a the conditional
- 618 license was initially imposed;
- 619 (B) the department conducts three consecutive inspections showing full
- 620 compliance with the violations upon which the conditional license was initially
- 621 imposed;
- 622 (C) at least 90 days have passed since the date on which the first of the three
- 623 inspections described in Subsection (11)(d)(iii)(B) occurred; and
- 624 (D) the office finds no new violations upon which the office may place a
- 625 conditional license on the program.
- 626 (12) If the department finds that an abortion has been performed in violation of Section
- 627 76-7-314 or 76-7a-201, the department shall deny or revoke the license.
- 628 (13) A provider, program or facility, or person may commence adjudicative proceedings in
- 629 accordance with Title 63G, Chapter 4, Administrative Procedures Act, regarding all
- 630 agency actions that determine the legal rights, duties, privileges, immunities, or other
- 631 legal interests of the provider, program or facility, or persons associated with the
- 632 provider, including all office actions to grant, deny, place conditions on, revoke,
- 633 suspend, withdraw, or amend an authority, right, license, certificate, or certification
- 634 under this part.
- 635 (14) Subject to the requirements of federal and state law, the office shall make rules in

636 accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to establish
637 sanctions, penalties, and adjudicative proceedings as described in this chapter.

638 Section 14. **Effective Date.**

639 This bill takes effect on May 7, 2025.