

SB0240S02 compared with SB0240

~~{Omitted text}~~ shows text that was in SB0240 but was omitted in SB0240S02

inserted text shows text that was not in SB0240 but was inserted into SB0240S02

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1

Congregate Care Modifications
2025 GENERAL SESSION
STATE OF UTAH
Chief Sponsor: Derrin R. Owens
House Sponsor:



2

3 **LONG TITLE**

4 **General Description:**

5 This bill addresses congregare care programs.

6 **Highlighted Provisions:**

7 This bill:

8 ▶ requires the Department of Health and Human Services (department) to ~~{take-}~~ make reasonable effort to determine~~{-}~~ within seven days after receiving a completed report ~~{about an individual-}~~ from the Bureau of Criminal Identification~~{-}~~ about an individual whether to grant ~~{an application for-}~~ direct patient accessto the individual;

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

12 ▶ ~~{disallows-}~~ prohibits the ~~{department-}~~ Office of Licensing (office) from:

13 • ~~{restricting-}~~ placing a restriction or ~~{prohibiting-}~~ prohibition on new admissions ~~{at a congregare care program-}~~ based on the sole ~~{basis-}~~ fact that the program is operating under a conditional license; or

15 •

SB0240 compared with SB0240S02

~~{restricting}~~ altering or ~~{altering}~~ restricting the rights of a congregate care program based on the ~~{basis}~~ sole fact that the program ~~{or facility has filed}~~ has appealed an ~~{adjudicative proceeding or}~~ agency action or an appeal ~~{, or that an}~~ or adjudicative proceeding ~~{or appeal}~~ is pending;

- 18 ▶ requires the ~~{department}~~ office, ~~{in certain circumstances}~~ if conditions are met, to:
- 19 • inspect a congregate care program;
- 20 • provide notice to a congregate care program; or
- 21 • remove restrictions and conditions on a congregate care program's license; and
- 22 ▶ makes technical changes.

25 Money Appropriated in this Bill:

26 None

27 Other Special Clauses:

28 None

30 AMENDS:

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

29 ~~{26B-2-240 , as last amended by Laws of Utah 2024, Chapter 310 , as last amended by Laws of Utah 2024, Chapter 310}~~

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

33

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

35 **Section 1. 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, contract, or licensee with the department under this part and has direct access, including:

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

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

SB0240 compared with SB0240S02

- 44 (C) an individual who provides respite care to a foster parent or an adoptive parent 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 26B-5-610;
- 49 (F) an individual who provides peer supports, has a disability or a family member with a disability,
or is in recovery from a mental illness or a substance use disorder;
- 52 (G) an individual who has lived experience with the services provided by the department, and
uses that lived experience to provide support, guidance, or services to promote resiliency and
recovery;
- 55 (H) an individual who is identified as a mental health professional, licensed under Title 58, Chapter
60, Mental Health Professional Practice Act, and engaged in 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, who is 12 years old
or older and resides in a home, that is licensed or certified by the division;
- 61 (J) an individual who is 12 years old or older and is associated with a certification, contract, or
licensee with the department under this part and has or will likely have direct access;
- 64 (K) a foster home licensee that submits an application for an annual background 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 Services or the Division of
Juvenile Justice and Youth Services;
- 70 (B) an individual who applies for employment with, or is employed by, the Department of Health and
Human Services;
- 72 (C) a parent of a person receiving services from the Division of Services for People with Disabilities, if
the parent provides direct care to and resides with the person, including if the parent provides direct
care to and resides with the person pursuant to a court order; or
- 76 (D) an individual or a department contractor who provides services in an adults only substance use
disorder program, as defined by rule adopted by the Department of Health and Human Services
in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, and who is not a
program director or a member, as defined by Section 26B-2-105, of the program.

SB0240 compared with SB0240S02

- 81 (b) "Application" means a background check application to the office.
- 82 (c) "Bureau" means the Bureau of Criminal Identification within the Department of 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 have the
opportunity for personal communication or touch with the child or vulnerable adult; or
- 93 (ii) an opportunity to view medical, financial, or other confidential personal identifying information of
the child, the child's parent or legal guardian, or the vulnerable adult.
- 96 (f)
- (i) "Direct access qualified" means that the applicant has an eligible determination 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 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 never overnight,
for a foster child.
- 102 (h) "Licensee" means an individual or a human services program licensed by the division.
- 104 (i) "Non-criminal finding" means a record maintained in:
- 105 (i) the Division of Child and Family Services' Management Information System described in Section
80-2-1001;
- 107 (ii) the Division of Child and Family Services' Licensing Information System described in Section
80-2-1002;
- 109 (iii) the Division of Aging and Adult Services' vulnerable adult abuse, neglect, or 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, Chapter 41, Sex, Kidnap,
and Child Abuse Offender Registry, or a national sex offender registry; or

SB0240 compared with SB0240S02

- 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 specified by the office;
and
- 126 (viii) other information specified by the office by rule made in accordance with Title 63G, Chapter 3,
Utah Administrative Rulemaking Act.
- 128 (2) Except as provided in Subsection (12), an applicant or a representative shall submit the 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 licensee with the
department;
- 135 (ii) ongoing monitoring of fingerprints and registries until no longer associated with a 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 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 years
immediately preceding the day on which the information described in Subsections (2)(a) through
(c) is submitted to the office, documentation establishing whether the applicant was convicted of a
crime during the time that the applicant 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 licensee with
the department, for the purpose of the office tracking the direct access qualified status of the

SB0240 compared with SB0240S02

applicant, which expires 180 days after the date on which the applicant is no longer associated with a certification, contract, or a licensee with the department.

- 150 (3) The office:
- 151 (a) shall perform the following duties as part of a background check of an applicant 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 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 regional criminal background databases as authorized under Section 53-10-108;
- 158 (ii) submit the applicant's personal identifying information and fingerprints to the bureau for a criminal history search of applicable national criminal background databases;
- 161 (iii) search the Division of Child and Family Services' Licensing Information System described in Section 80-2-1002;
- 163 (iv) search the Sex, Kidnap, and Child Abuse Offender Registry described in Title 77, Chapter 41, Sex, Kidnap, and Child Abuse Offender Registry, or a national 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 parent, search the Division of Child and Family Services' Management Information System described in Section 80-2-1001;
- 169 (vi) search the Division of Aging and Adult Services' vulnerable adult abuse, neglect, or exploitation database described in Section 26B-6-210;
- 171 (vii) search the juvenile court records for substantiated findings of severe child abuse or neglect described in Section 80-3-404; and
- 173 (viii) search the juvenile court arrest, adjudication, and disposition records, as provided under Section 78A-6-209;
- 175 (b) may conduct all or portions of a background check in connection with determining whether an applicant is direct access qualified, as provided by rule, made by the 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

SB0240 compared with SB0240S02

- (c) may submit an applicant's personal identifying information, including fingerprints, to the bureau for checking, retaining, and monitoring of state and national criminal background databases and for notifying the office of new criminal activity associated with the applicant;
- 184 (d) shall track the status of an applicant under this section to ensure that the applicant is not required to duplicate the submission of the applicant's fingerprints if the applicant is associated with more than one certification, contract, or licensee with the department;
- 188 (e) shall notify the bureau when a direct access qualified individual has not been associated with a certification, contract, or licensee with the department for a period of 180 days;
- 191 (f) shall adopt measures to strictly limit access to personal identifying information solely to the individuals responsible for processing and entering the applications for background checks and to protect the security of the personal identifying information the office reviews under this Subsection (3);
- 195 (g) as necessary to comply with the federal requirement to check a state's child abuse and neglect registry regarding any applicant working in a congregate care program, shall:
- 198 (i) search the Division of Child and Family Services' Licensing Information System described in Section 80-2-1002; and
- 200 (ii) require the child abuse and neglect registry be checked in each state where an applicant resided at any time during the five years immediately preceding the day on which the application is submitted to the office; and
- 203 (h) shall make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to implement the provisions of this Subsection (3) relating to background checks.
- 206 (4)
- (a) With the personal identifying information the office submits to the bureau under Subsection (3), the bureau shall check against state and regional criminal background databases for the applicant's criminal history.
- 209 (b) With the personal identifying information and fingerprints the office submits to the bureau under Subsection (3), the bureau shall check against national criminal background databases for the applicant's criminal history.
- 212 (c) Upon direction from the office, and with the personal identifying information and fingerprints the office submits to the bureau under Subsection (3)(c), the bureau shall:
- 214

SB0240 compared with SB0240S02

- (i) maintain a separate file of the fingerprints for search by future submissions to the local and regional criminal records databases, including latent prints; and
- 216 (ii) monitor state and regional criminal background databases and identify criminal activity associated with the applicant.
- 218 (d) The bureau is authorized to submit the fingerprints to the Federal Bureau of Investigation Next Generation Identification System, to be retained in the Federal Bureau of Investigation Next Generation Identification System for the purpose of:
- 221 (i) being searched by future submissions to the national criminal records databases, including the Federal Bureau of Investigation Next Generation Identification System and latent prints; and
- 224 (ii) monitoring national criminal background databases and identifying criminal activity associated with the applicant.
- 226 (e) The ~~[Bureau]~~ bureau shall notify and release to the office all information of criminal activity associated with the applicant.
- 228 (f) Upon notice that an individual who has direct access qualified status will no longer be associated with a certification, contract, or licensee with the department, the 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 individual's direct access to a child or a vulnerable adult has ceased, so that the Federal Bureau of Investigation will discard and destroy the retained fingerprints 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 qualified status to an applicant who, within three years from the date on which the 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, cruelty to animals, or bestiality;
- 242 (B) a violation of any pornography law, including sexual exploitation of a minor 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 76-3-203.10;

SB0240 compared with SB0240S02

- 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 Destruction;
- 254 (K) an offense included in Title 78B, Chapter 7, Protective Orders and Stalking 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 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 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 described in Section
76-10-506; or
- 270 (ii) a felony or misdemeanor offense committed outside of the state that, if committed in the state,
would constitute a violation of an offense described in Subsection (5)(a)(i).
- 273 (b)
- (i) Subsection (5)(a) does not apply to an applicant who is seeking a position as a peer support provider
or a mental health professional, if the applicant provides services in a program that serves only
adults with a primary mental health diagnosis, with or without a co-occurring substance use
disorder.
- 277 (ii) The office shall conduct a comprehensive review of an applicant described in 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 that a court
order prohibits the applicant from having direct access to a child or vulnerable adult.

282

SB0240 compared with SB0240S02

- (6) The office shall conduct a comprehensive review of an applicant's background check if the applicant:
- 284 (a) has a felony or class A misdemeanor conviction that is more than three years from the date on which the office conducts the background check, for an offense described in Subsection (5)(a);
- 287 (b) has a felony charge or conviction that is no more than 10 years from the date on which the office conducts the background check for an offense not described in Subsection (5)(a);
- 290 (c) has a felony charge or conviction that is more than 10 years from the date on which the office conducts the background check, for an offense not described in Subsection (5)(a), with criminal or non-criminal findings after the date of the felony charge or conviction;
- 294 (d) has a class B misdemeanor or class C misdemeanor conviction that is more than three years and no more than 10 years from the date on which the office conducts the 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 years from the date on which the office conducts the background check, for an offense described in Subsection (5)(a), with criminal or non-criminal findings after the date of conviction;
- 301 (f) has a misdemeanor charge or conviction that is no more than three years from the date on which the office conducts the background check for an offense not described in Subsection (5)(a);
- 304 (g) has a misdemeanor charge or conviction that is more than three years from the date on which the office conducts the background check, for an offense not described in Subsection (5)(a), with criminal or non-criminal findings after the date of charge or conviction;
- 308 (h) is currently subject to a plea in abeyance or diversion agreement for an offense described in Subsection (5)(a);
- 310 (i) appears on the Sex, Kidnap, and Child Abuse Offender Registry described in Title 77, Chapter 41, Sex, Kidnap, and Child Abuse Offender Registry, or a national sex offender registry;
- 313 (j) has a record of an adjudication in juvenile court for an act that, if committed by an 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 currently subject to a plea in abeyance or diversion agreement for a felony or a misdemeanor offense described in Subsection (5)(a);
- 319 (k) has a pending charge for an offense described in Subsection (5)(a);

SB0240 compared with SB0240S02

- 320 (l) has a listing that occurred no more than 15 years from the date on which the office conducts the background check in the Division of Child and Family Services' 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 conducts the background check in the Division of Child and Family Services' Licensing Information System described in Section 80-2-1002, with criminal or 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 conducts the background check in the Division of Aging and Adult Services' vulnerable adult abuse, neglect, or exploitation database described in Section 26B-6-210;
- 331 (o) has a listing that occurred more than 15 years from the date on which the office conducts the background check in the Division of Aging and Adult Services' vulnerable adult abuse, neglect, or exploitation database described in Section 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 which the office conducts the background check of severe child abuse or neglect 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 the office conducts the background check of severe child abuse or neglect under Section 80-3-404 or 80-3-504, with criminal or non-criminal findings after the date of 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 adult, including:
- 350 (A) actual or threatened, nonaccidental physical, mental, or financial harm;
- 351 (B) sexual abuse;
- 352 (C) sexual exploitation; or

SB0240 compared with SB0240S02

- 353 (D) negligent treatment;
- 354 (vii) any evidence provided by the applicant of rehabilitation, counseling, psychiatric 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 which the
applicant is applying; and
- 358 (ix) if the background check of an applicant is being conducted for the purpose of giving direct
access qualified status to an applicant seeking a position in a congregate care program or to
become a prospective foster or adoptive parent, any listing in the Division of Child and Family
Services' Management Information System described in Section 80-2-1001.
- 363 (b) At the conclusion of the comprehensive review, the office shall deny direct access qualified status
to an applicant if the office finds the approval would likely create a 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 under this
section.
- 368 (9)
- (a) The office may conditionally grant direct access qualified status to an applicant, for a maximum of
60 days after the day on which the office sends written notice, 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 background databases;
and
- 373 (ii) would otherwise grant direct access qualified status to the applicant under this section.
- 375 (b) The office may conditionally grant direct access qualified status to an applicant, for a maximum of
one year after the day on which the office sends written notice, without 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 adoptive parents;
and
- 380 (ii) would otherwise grant direct access qualified status to the applicant under this section.
- 382 (c) Upon receiving the results of the criminal history search of a national criminal background database,
the office shall grant or deny direct access qualified status to the applicant in accordance with this
section.
- 385 (10)

SB0240 compared with SB0240S02

- (a) Each time an applicant is associated with a licensee, the department shall review the current status of the applicant's background check to ensure the applicant is still 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 vulnerable adult without
being directly supervised unless:
- 390 (i) the individual is the parent or guardian of the child, or the guardian of the vulnerable adult;
- 392 (ii) the individual is approved by the parent or guardian of the child, or the guardian 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 voluntarily invites
the individual to visit; or
- 396 (iv) the individual only provides incidental care for a foster child on behalf of a foster parent who has
used reasonable and prudent judgment to select the individual to provide the incidental care for the
foster child.
- 399 (c) Notwithstanding any other provision of this section, an applicant who is denied direct access
qualified status shall not have direct access to a child or vulnerable adult unless the office grants
direct access qualified status to the applicant through a subsequent application in accordance with
this section.
- 403 (11) If the office denies direct access qualified status to an applicant, the applicant may request a
hearing in the department's Office of Administrative Hearings to challenge the office's decision.
- 406 (12)
- (a) This Subsection (12) applies to an applicant associated with a certification, contract, or licensee
serving adults only.
- 408 (b) A program director or a member, as defined in Section 26B-2-105, of the licensee 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, with or without a co-
occurring substance use disorder; and

416

SB0240 compared with SB0240S02

- (ii) within three years from the date on which the office conducts the background check, the applicant has a felony or misdemeanor charge or conviction or a non-criminal finding.
- 419 (13)
- (a) This Subsection (13) applies to an applicant seeking a position in a congregate care program, an applicant seeking to provide a prospective foster home, an applicant seeking to provide a prospective adoptive home, and each adult living in the home of 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 resided in the five years immediately preceding the day on which the applicant applied to be a foster or adoptive parent, to determine whether the prospective foster or adoptive parent is listed in the registry as having a substantiated or supported finding of child abuse or neglect; and
- 429 (ii) except for applicants seeking a position in a congregate care program, check the child abuse and neglect registry in each state where each adult living in the home of the prospective foster or adoptive home resided in the five years immediately preceding the day on which the applicant applied to be a foster or adoptive parent, to determine whether the adult is listed in the registry as having a substantiated or 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 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, or 80-3-303, pending completion of the background check described in Subsections (5), (6), and (7).
- 443 (d) Notwithstanding Subsections (5) through (10), the office shall deny direct access 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 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 76-5-111;

SB0240 compared with SB0240S02

- 452 (E) endangerment of a child or vulnerable adult, as described in Section 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 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 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 qualified status to an applicant if, within the five years from the date on which the office conducts the background check, the applicant was convicted of a felony 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 Act;

SB0240 compared with SB0240S02

- 486 (vii) an offense described in Title 58, Chapter 37c, Utah Controlled Substance 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 a
comprehensive review of an applicant's background check under this section if the 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 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 System described
in Section 80-2-1002;
497 (iv) has a listing in the Division of Aging and Adult Services' vulnerable adult, neglect, or exploitation
database described in Section 26B-2-210;
499 (v) has a substantiated finding of severe child abuse or neglect under Section 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 substantiated or
supported finding of a severe type of child abuse or neglect, as defined in Section 80-1-102.
- 504 (g) The department shall make reasonable effort to determine, within seven business days after the date
on which the department receives a completed report from the bureau, whether to grant certification
for direct patient access for each applicant for whom the bureau receives:
- 508 (i) the personal identification information specified by the department under Subsection (2);
510 (ii) results from other state child abuse and neglect registries, in accordance with 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 office may
make rules, consistent with this part, to:
- 515 (a) establish procedures for, and information to be examined in, the comprehensive review described in
Subsections (6), (7), and (13);~~and~~
- 517 (b) determine whether to consider an offense or incident that occurred while an individual was in the
custody of the Division of Child and Family Services or the Division of Juvenile Justice and Youth
Services for purposes of granting or denying direct access qualified status to an applicant~~[-]~~; and
- 521 (c) in accordance with Subsection 26B-2-240(9), establish fees for applications for certification for
direct patient access.

33 {Section 1. Section 26B-2-240 is amended to read:}

34

SB0240 compared with SB0240S02

26B-2-240. Department authorized to grant, deny, or revoke clearance -- Department may limit direct patient access -- Clearance.

- 36 (1) The definitions in Section 26B-2-238 apply to this section.
- 37 (2)
- (a) As provided in this section, the department may grant, deny, or revoke certification for direct patient access for an individual, including a covered individual.
- 39 (b) The department may limit the circumstances under which a covered individual granted certification for direct patient access may have direct patient access, based on the relationship factors under Subsection (4) and other mitigating factors related to patient and resident protection.
- 43 (c) The department shall [~~determine~~] take reasonable effort to determine no later than seven business days after the date on which the department receives a completed report from the Department of Public Safety's Bureau of Criminal Identification whether to grant certification for direct patient access for each applicant for whom it receives:
- 48 (i) the personal identification information specified by the department under Subsection (4)(b);
- 50 (ii) results from another state's child abuse and neglect registry, in accordance with Subsection 26B-2-120(3)(g); and
- 52 ~~(ii)~~ (iii) any fees established by the department under Subsection (9).
- 53 (d) The department shall:
- 54 (i) establish a procedure for obtaining and evaluating relevant information concerning covered individuals, including fingerprinting the applicant and submitting the prints to the Criminal Investigations and Technical Services Division of the Department of Public Safety for checking against applicable state, regional, and national criminal records files; and
- 59 (ii) require that a certification for direct patient access include a fingerprint-based criminal history background check in the databases described under Subsection (3)(a), including the inclusion of the individual's fingerprints in a rap back system.
- 62 (3) The department may review the following sources to determine whether an individual should be granted or retain certification for direct patient access, which may include:
- 64 (a) Department of Public Safety arrest, conviction, and disposition records described in Title 53, Chapter 10, Criminal Investigations and Technical Services Act, including information in state, regional, and national records files;
- 67 (b) juvenile court arrest, adjudication, and disposition records, as allowed under Section 78A-6-209;

SB0240 compared with SB0240S02

- 69 (c) federal criminal background databases available to the state;
- 70 (d) the Division of Child and Family Services Licensing Information System described in Section
80-2-1002;
- 72 (e) child abuse or neglect findings described in Section 80-3-404;
- 73 (f) the Division of Aging and Adult Services vulnerable adult abuse, neglect, or exploitation database
described in Section 26B-6-210;
- 75 (g) registries of nurse aids described in 42 C.F.R. Sec. 483.156;
- 76 (h) licensing and certification records of individuals licensed or certified by the Division of Professional
Licensing under Title 58, Occupations and Professions; and
- 78 (i) the List of Excluded Individuals and Entities database maintained by the United States Department
of Health and Human Services' Office of Inspector General.
- 80 (4) The department shall adopt rules that:
- 81 (a) specify the criteria the department will use to determine whether an individual is granted or retains
certification for direct patient access:
- 83 (i) based on an initial evaluation and ongoing review of information under Subsection (3); and
- 85 (ii) including consideration of the relationship the following may have to patient and resident
protection:
- 87 (A) warrants for arrest;
- 88 (B) arrests;
- 89 (C) convictions, including pleas in abeyance;
- 90 (D) pending diversion agreements;
- 91 (E) adjudications by a juvenile court under Section 80-6-701 if the individual is over 28 years old
and has been convicted, has pleaded no contest, or is subject to a plea in abeyance or diversion
agreement for a felony or misdemeanor, or the individual is under 28 years old; and
- 95 (F) any other findings under Subsection (3); and
- 96 (b) specify the personal identification information that must be submitted by an individual or covered
body with an application for certification for direct patient access, including:
- 99 (i) the applicant's [~~S~~ocial Security] social security number; and
- 100 (ii) fingerprints.
- 101

SB0240 compared with SB0240S02

- (5) For purposes of Subsection (4)(a), the department shall classify a crime committed in another state according to the closest matching crime under Utah law, regardless of how the crime is classified in the state where the crime was committed.
- 104 (6) The Department of Public Safety, the Administrative Office of the Courts, the Division of
Professional Licensing, and any other state agency or political subdivision of the state:
- 106 (a) shall allow the department to review the information the department may review under Subsection
(3); and
- 108 (b) except for the Department of Public Safety, may not charge the department for access to the
information.
- 110 (7) The department shall adopt measures to protect the security of the information it reviews under
Subsection (3) and strictly limit access to the information to department employees responsible for
processing an application for certification for direct patient access.
- 114 (8) The department may disclose personal identification information specified under Subsection (4)(b)
to other divisions and offices within the department to verify that the subject of the information is
not identified as a perpetrator or offender in the information sources described in Subsections (3)(d)
through (f).
- 118 (9) The department may establish fees, in accordance with Section 63J-1-504, for an application for
certification for direct patient access, which may include:
- 120 (a) the cost of obtaining and reviewing information under Subsection (3);
- 121 (b) a portion of the cost of creating and maintaining the Direct Access Clearance System database under
Section 26B-2-241; and
- 123 (c) other department costs related to the processing of the application and the ongoing review of
information pursuant to Subsection (4)(a) to determine whether certification for direct patient access
should be retained.

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

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

- 128 (1) If the department has reason to believe that a provider has failed to comply with this chapter or rules
made pursuant to this chapter, the department may serve a notice of agency action to commence an
adjudicative proceeding in accordance with Title 63G, Chapter 4, Administrative Procedures Act.
- 132 (2)

SB0240 compared with SB0240S02

- (a) In accordance with Title 63G, Chapter 4, Administrative Procedures Act, the department may deny, place conditions on, suspend, or revoke a license, certificate, or certification, and invoke penalties, including restricting or prohibiting new admissions to a program or facility, if the department finds that there has been:
- 136 [(a)] (i) a failure to comply with:
- 137 [(i)] (A) rules established under this chapter; or
- 138 [(ii)] (B) any lawful order of the department or a local health department, or applicable rule, statute, regulation, or requirement;
- 140 [(b)] (ii) aiding, abetting, or permitting the commission of any illegal act;
- 141 [(c)] (iii) conduct adverse to the standards required to provide services and promote public trust, including aiding, abetting, or permitting the commission of abuse, neglect, exploitation, harm, mistreatment, or fraud; or
- 144 [(d)] (iv) a failure to provide applicable health and safety services for clients.
- 145 (b) The department may not restrict or prohibit new admissions at a congregate care program based on ~~{the}~~ sole ~~{basis}~~ fact that the congregate care program is operating under a conditional license.
- 148 (3)
- (a) The department may act on an emergency basis if the department determines immediate action is necessary to protect a client.
- 150 (b) Immediate action taken under Subsection (3)(a) may include restricting new admissions to a program or facility, or increased monitoring of the operations of a program or facility.
- 153 (4) The department may impose civil monetary penalties against any person, in a sum not to exceed \$10,000 per violation, in:
- 155 (a) an administrative action in accordance with Title 63G, Chapter 4, Administrative Procedures Act;
- 157 (b) a similar administrative proceeding adopted by a county or local government; or
- 158 (c) a judicial civil proceeding.
- 159 (5) Assessment of a civil penalty or administrative penalty does not preclude the department or a local health department from:
- 161 (a) seeking criminal penalties;
- 162 (b) denying, revoking, imposing conditions on, or refusing to renew a license, certificate, or certification; or
- 164 (c) seeking injunctive or equitable remedies.

SB0240 compared with SB0240S02

- 165 (6) If the department revokes a license, certificate, or certification, the office may not grant a new
license, certificate, or certification unless:
- 167 (a) at least five years have passed since the day on which the provider was served with final notice that
the provider's license, certificate, or certification was revoked; and
- 169 (b) the office determines that the interests of the public will not be jeopardized by granting the provider
a new license, certificate, or certification.
- 171 (7) If the department does not renew a license, certificate, or certification because of noncompliance
with the provisions of this part or rules adopted under this part, the department may not issue a new
license, certificate, or certification unless:
- 174 (a) at least one year has passed since the day on which the renewal was denied;
- 175 (b) the provider complies with all renewal requirements; and
- 176 (c) the office determines that the interests of the public will not be jeopardized by issuing a new license,
certificate, or certification.
- 178 (8) The office may suspend a license, certificate, or certification for up to three years.
- 179 (9) When a license, certificate, or certification has been suspended, the office may restore, or restore
subject to conditions, the suspended license, certificate, or certification upon a determination that
the:
- 182 (a) conditions upon which the suspension were based have been completely or partially corrected; and
- 184 (b) interests of the public will not be jeopardized by restoration of the license, certificate, or
certification.
- 186 (10) If a provider fails to comply with the provisions of this chapter, the department may impose a
penalty on the provider that is less than or equal to the cost incurred by the department, which may
include:
- 189 (a) the cost to continue providing services, including ensuring client safety and relocating clients
through the transition or closure of a program or facility;
- 191 (b) the cost to place an administrator or department representative as a monitor in a program or facility;
or
- 193 (c) the cost to assess to the provider those costs incurred by the department.
- 194 (11)
(a) If a congregate care program or facility knowingly fails to comply with the provisions of Section
26B-2-124, the office may impose a penalty on the congregate care program or facility that is less

SB0240 compared with SB0240S02

than or equal to the cost of care incurred by the 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, withdraw, or
amend an authority, right, license, certificate, or certification under this 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 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 places a restriction or
prohibition on new admissions; and
- 606 (B) conduct subsequent inspections at least every 30 days until the the office removes the restriction or
prohibition on new admissions;
- 608 (ii) may remove a restriction or prohibition on new admissions at a congregate care program if the
office:
- 610 (A) conducts two consecutive inspections showing full compliance with the violated rules and any
corrective action required by the office;
- 612 (B) finds no new violations upon which the office may place a restriction or prohibition on new
admissions; and
- 614 (C) at least 45 days have passed since the office placed the restriction or prohibition on new admissions;
- 616 (iii) shall remove a conditional license on a congregate care program if:
- 617 (A) the congregate care program has rectified all issues for which the conditional license was initially
imposed;
- 619 (B) the department conducts three consecutive inspections showing full compliance with the violations
upon which the conditional license was initially imposed;
- 622 (C) at least 90 days have passed since the date on which the first of the three 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 conditional license on the
program.

SB0240 compared with SB0240S02

- 198 (12) If the department finds that an abortion has been performed in violation of Section 76-7-314 or
76-7a-201, the department shall deny or revoke the license.
- 200 (13)
- {(a)} A provider, program or facility, or person may commence adjudicative proceedings in accordance
with Title 63G, Chapter 4, Administrative Procedures Act, regarding all agency actions that
determine the legal rights, duties, privileges, immunities, or other legal interests of the provider,
program or facility, or persons associated with the provider, including all office actions to grant,
deny, place conditions on, revoke, suspend, withdraw, or amend an authority, right, license,
certificate, or certification under this part.
- 207 ~~{(b) The department may not deny, place a condition on, revoke, refuse to reinstate, suspend, withdraw,
or amend an authority, right, license, certificate, or certification under this part on the basis that an
affected congregate care program has appealed an agency action under Subsection (13)(a) or that an
appeal or adjudicative proceeding is pending.}~~
- 212 ~~{(c) If, at any time, the department determines that it will not remove a condition on or otherwise
unconditionally reinstate or renew a congregate care program's license, the department shall notify
the congregate care program within seven days of the department's determination.}~~
- 216 ~~{(14) The department shall:}~~
- 217 ~~{(a)}~~
- ~~{(i) conduct an inspection not more than 14 days after the date on which any restriction or prohibition
on new admissions has been issued; and}~~
- 219 ~~{(ii) conduct a subsequent inspection not more than 30 days after the date on which the inspection
under Subsection (14)(a)(i)(A) occurred;}~~
- 221 ~~{(b) remove any restriction on new admissions at a congregate care program or facility if the
department:}~~
- 223 ~~{(i) conducts two consecutive inspections showing full compliance with the violated rules upon which
the restriction on new admissions was based; and}~~
- 225 ~~{(ii) finds no new violations upon which the department may restrict new admissions under Subsection
(2)(a); and}~~
- 227 ~~{(c) remove any conditions on a congregate care program license if:}~~
- 228 ~~{(i) the congregate care program has rectified all issues for which the conditions were initially
imposed;}~~

SB0240 compared with SB0240S02

- 230 ~~{(ii) the department conducts three consecutive inspections showing full compliance with the violated~~
~~rules upon which the conditions were based;}~~
- 232 ~~{(iii) no less than 90 days have elapsed after the date on which the first of three consecutive inspections~~
~~showing full compliance occurred; and }~~
- 234 ~~{(iv) the department finds no new violations upon which the department may place conditions on the~~
~~license under Subsection (2)(a).}~~
- 236 ~~{(14){}} ~~{(15)}~~~~ Subject to the requirements of federal and state law, the office shall make rules in
accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to establish sanctions,
penalties, and adjudicative proceedings as described in this chapter.

638 Section 3. **Effective date.**

This bill takes effect on May 7, 2025.

2-20-25 4:00 PM