

Michael K. McKell proposes the following substitute bill:

**Congregate Care Amendments**

2025 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Michael K. McKell**

House Sponsor:

---

---

**LONG TITLE**

**General Description:**

This bill addresses congregate care programs.

**Highlighted Provisions:**

This bill:

- ▶ defines terms;
- ▶ creates the Congregate Care Advisory Committee (committee);
- ▶ authorizes and directs the Office of Licensing (office), in consultation with the committee, to:
  - set minimum safety requirements for congregate care programs;
  - review proposed admissions criteria that a program submits in connection with an application for or renewal of licensure;
  - deny or accept programs' proposed admissions criteria;
- ▶ creates the position of congregate care ombudsman (ombudsman);
- ▶ authorizes and directs the ombudsman to receive and investigate reports regarding congregate care programs;
- ▶ creates the Licensed Provider Civil Money Penalty Fund;
- ▶ denies direct access qualified status for certain individuals;
- ▶ establishes requirements for congregate care programs, including that the programs:
  - adopt admissions criteria by which to determine whether an individual child is a qualified candidate for the program;
  - maintain a list of a child's authorized contacts who may contact the child if the child is in crisis;
  - notify the authorized contacts and the parent or guardian of a child who is in crisis;
  - post notice within the program regarding the ombudsman;
  - provide a dedicated telephone from which a child or staff may contact the ombudsman

29 at any time;

30 • provide disclosures to a child, the child's parent or guardian, and the child's authorized  
31 contacts;

32 ▶ establishes responsibility for payment to a health care facility that provides services to a  
33 child, including transportation costs; and

34 ▶ establishes whistleblower protections for individuals who report a concern to, or who  
35 facilitate or cooperate with, the ombudsman; and

36 ▶ makes technical changes.

37 **Money Appropriated in this Bill:**

38 None

39 **Other Special Clauses:**

40 This bill provides a special effective date.

41 **Utah Code Sections Affected:**

42 AMENDS:

43 **26B-1-204**, as last amended by Laws of Utah 2024, Chapters 240, 404 and 506

44 **26B-1-334**, as enacted by Laws of Utah 2023, Chapter 325

45 **26B-2-101**, as last amended by Laws of Utah 2024, Chapters 240, 267, 307, and 438

46 **26B-2-104**, as last amended by Laws of Utah 2024, Chapters 240, 307

47 **26B-2-107**, as last amended by Laws of Utah 2024, Chapters 267, 307

48 **26B-2-120**, as last amended by Laws of Utah 2024, Chapter 234

49 **26B-2-124**, as renumbered and amended by Laws of Utah 2023, Chapter 305

50 **26B-2-709**, as renumbered and amended by Laws of Utah 2024, Chapter 267

51 ENACTS:

52 **26B-1-336**, Utah Code Annotated 1953

53 **26B-2-124.1**, Utah Code Annotated 1953

54 **26B-2-124.2**, Utah Code Annotated 1953

55 **26B-2-124.3**, Utah Code Annotated 1953



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

58 Section 1. Section **26B-1-204** is amended to read:

59 **26B-1-204 . Creation of boards, divisions, and offices -- Power to organize**  
60 **department.**

61 (1) The executive director shall make rules in accordance with Title 63G, Chapter 3, Utah  
62 Administrative Rulemaking Act, and not inconsistent with law for:

- 63 (a) the administration and government of the department;
- 64 (b) the conduct of the department's employees; and
- 65 (c) the custody, use, and preservation of the records, papers, books, documents, and
- 66 property of the department.
- 67 (2) The following policymaking boards, councils, and committees are created within the
- 68 Department of Health and Human Services:
- 69 (a) Board of Aging and Adult Services;
- 70 (b) Utah State Developmental Center Board;
- 71 (c) Health Facility Committee;
- 72 (d) Health Data Committee;
- 73 (e) Child Care Provider Licensing Committee;
- 74 (f) Adult Autism Treatment Program Advisory Committee;
- 75 (g) Youth Electronic Cigarette, Marijuana, and Other Drug Prevention Committee;[-]
- 76 (h) Congregate Care Advisory Committee; and
- 77 [~~h~~] (i) any boards, councils, or committees that are created by statute in this title.
- 78 (3) The following divisions and offices are created within the Department of Health and
- 79 Human Services:
- 80 (a) relating to operations:
- 81 (i) the Division of Finance and Administration;
- 82 (ii) the Division of Licensing and Background Checks;
- 83 (iii) the Division of Customer Experience;
- 84 (iv) the Division of Data, Systems, and Evaluation; and
- 85 (v) the Division of Continuous Quality and Improvement;
- 86 (b) relating to healthcare administration:
- 87 (i) the Division of Integrated Healthcare, which shall include responsibility for:
- 88 (A) the state's medical assistance programs; and
- 89 (B) behavioral health programs described in Chapter 5, Health Care - Substance
- 90 Use and Mental Health;
- 91 (ii) the Division of Aging and Adult Services; and
- 92 (iii) the Division of Services for People with Disabilities;
- 93 (c) relating to community health and well-being:
- 94 (i) the Division of Child and Family Services;
- 95 (ii) the Division of Family Health;
- 96 (iii) the Division of Population Health;

97 (iv) the Division of Juvenile Justice and Youth Services;

98 (v) the Office of Families; and

99 (vi) the Office of Recovery Services; and

100 (d) relating to clinical services, the Division of Health Access.

101 (4) The executive director may establish offices to facilitate management of the department  
102 as required by, and in accordance with this title.

103 (5) From July 1, 2022, through June 30, 2023, the executive director may adjust the  
104 organizational structure relating to the department, including the organization of the  
105 department's divisions and offices, notwithstanding the organizational structure  
106 described in this title.

107 Section 2. Section **26B-1-334** is amended to read:

108 **26B-1-334 . Licensed Provider Assessment Fund -- Creation -- Deposits -- Uses.**

109 (1) There is created an expendable special revenue fund known as the "Licensed Provider  
110 Assessment Fund" consisting of:

111 (a) the assessments collected under, and any interest and penalties levied with the  
112 administration of:

113 (i) Title 26B, Chapter 2, Part 2, Health Care Facility Licensing and Inspection Act,  
114 except assessments that comprise the Licensed Provider Civil Money Penalty  
115 Fund pursuant to Section 26B;

116 (ii) [~~Title 26B, Chapter 1, Part 4, Child Care Licensing~~] Title 26B, Chapter 2, Part 4,  
117 Child Care Licensing; and

118 (iii) Title 26B, Chapter 2, Part 1, Human Services Programs and Facilities;

119 (b) money appropriated or otherwise made available by the Legislature; and

120 (c) any interest earned on the fund.

121 (2) Money in the fund may only be used by the department:

122 (a) for upgrades to and maintenance of licensing databases and applications;

123 (b) for training for providers and staff;

124 (c) to assist individuals during a facility shutdown; or

125 (d) for administrative expenses, if the administrative expenses for the fiscal year do not  
126 exceed 3% of the money deposited into the fund during the fiscal year.

127 Section 3. Section **26B-1-336** is enacted to read:

128 **26B-1-336 . Licensed Provider Civil Money Penalty Fund.**

129 (1) There is created an expendable special revenue fund known as the "Licensed Provider  
130 Civil Money Penalty Fund" consisting of:

- 131 (a) federal civil money penalty funds received under the federal Centers for Medicare  
 132 and Medicaid Facility Licensing and Inspection Act, including any existing funds  
 133 previously received and allocable to the Division of Licensing and Background  
 134 Checks;  
 135 (b) money appropriated or otherwise made available by the Legislature; and  
 136 (c) any interest earned on the fund.
- 137 (2) Money in the fund may only be used by the department under a federally approved state  
 138 plan:  
 139 (a) to assist individuals effected by a shutdown of a facility or program under this title;  
 140 (b) for administrative expenses; or  
 141 (c) for allowable activities.

142 Section 4. Section **26B-2-101** is amended to read:

143 **26B-2-101 . Definitions.**

144 As used in this part:

- 145 (1) "Abuse" means the same as that term is defined in Section 80-1-102.  
 146 ~~[(1)]~~ (2) "Adoption services" means the same as that term is defined in Section 80-2-801.  
 147 ~~[(2)]~~ (3) "Adult day care" means nonresidential care and supervision:  
 148 (a) for three or more adults for at least four but less than 24 hours a day; and  
 149 (b) that meets the needs of functionally impaired adults through a comprehensive  
 150 program that provides a variety of health, social, recreational, and related support  
 151 services in a protective setting.
- 152 ~~[(3)]~~ (4) "Applicant" means a person that applies for an initial license or a license r  
 153 (5) renewal under this part.
- 154 ~~[(4)]~~ (6)(a) "Associated with the licensee" means that an individual is:  
 155 (i) affiliated with a licensee as an owner, director, member of the governing body,  
 156 employee, agent, provider of care, department contractor, or volunteer; or  
 157 (ii) applying to become affiliated with a licensee in a capacity described in  
 158 Subsection ~~[(4)(a)(i)-] (6)(a)(i).~~
- 159 (b) "Associated with the licensee" does not include:  
 160 (i) service on the following bodies, unless that service includes direct access to a  
 161 child or a vulnerable adult:  
 162 (A) a local mental health authority described in Section 17-43-301;  
 163 (B) a local substance abuse authority described in Section 17-43-201; or  
 164 (C) a board of an organization operating under a contract to provide mental health

165 or substance use programs, or services for the local mental health authority or  
166 substance abuse authority; or

167 (ii) a guest or visitor whose access to a child or a vulnerable adult is directly  
168 supervised at all times.

169 [(5)] (7)(a) "Boarding school" means a private school that:

170 (i) uses a regionally accredited education program;

171 (ii) provides a residence to the school's students:

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

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

175 (iii) has the primary purpose of providing the school's students with an education, as  
176 defined in Subsection [(5)(b)(i);-] (7)(b)(i); and

177 (iv)(A) does not provide the treatment or services described in Subsection [(40)(a)]  
178 (45)(a); or

179 (B) provides the treatment or services described in Subsection [(40)(a)] (45)(a) on  
180 a limited basis, as described in Subsection [(5)(b)(ii)] (7)(b)(ii).

181 (b)(i) For purposes of Subsection [(5)(a)(iii)] (7)(a)(iii), "education" means a course  
182 of study for one or more grades from kindergarten through grade 12.

183 (ii) For purposes of Subsection [(5)(a)(iv)(B)] (7)(a)(iv)(B), a private school provides  
184 the treatment or services described in Subsection [(40)(a)] (45)(a) on a limited  
185 basis if:

186 (A) the treatment or services described in Subsection [(40)(a)] (45)(a) are provided  
187 only as an incidental service to a student; and

188 (B) the school does not:

189 (I) specifically solicit a student for the purpose of providing the treatment or  
190 services described in Subsection [(40)(a);-] (45)(a) or

191 (II) have a primary purpose of providing the treatment or services described in  
192 Subsection [(40)(a)] (45)(a).

193 (c) "Boarding school" does not include a therapeutic school.

194 [(6)] (8) "Certification" means a less restrictive level of licensure issued by the department.

195 [(7)] (9) "Child" means an individual under 18 years old.

196 [(8)] (10) "Child placing" means receiving, accepting, or providing custody or care for any  
197 child, temporarily or permanently, for the purpose of:

198 (a) finding a person to adopt the child;

- 199 (b) placing the child in a home for adoption; or  
200 (c) foster home placement.
- 201 ~~[(9)]~~ (11) "Child-placing agency" means a person that engages in child placing.  
202 ~~[(10)]~~ (12) "Client" means an individual who receives or has received services from a  
203 licensee.
- 204 ~~[(11)]~~ (13)(a) "Congregate care program" means any of the following that provide  
205 services to a child:
- 206 (i) an outdoor youth program;
  - 207 (ii) a residential support program;
  - 208 (iii) a residential treatment program; or
  - 209 (iv) a therapeutic school.
- 210 (b) "Congregate care program" does not include a human services program that:  
211 (i) is licensed to serve adults; and  
212 (ii) is approved by the office to service a child for a limited time.
- 213 ~~[(12)]~~ (14) "Day treatment" means specialized treatment that is provided to:  
214 (a) a client less than 24 hours a day; and  
215 (b) four or more persons who:  
216 (i) are unrelated to the owner or provider; and  
217 (ii) have emotional, psychological, developmental, physical, or behavioral  
218 dysfunctions, impairments, or chemical dependencies.
- 219 ~~[(13)]~~ (15) "Department contractor" means an individual who:  
220 (a) provides services under a contract with the department; and  
221 (b) due to the contract with the department, has or will likely have direct access to a  
222 child or vulnerable adult.
- 223 ~~[(14)]~~ (16) "Direct access" means that an individual has, or likely will have:  
224 (a) contact with or access to a child or vulnerable adult that provides the individual with  
225 an opportunity for personal communication or touch; or  
226 (b) an opportunity to view medical, financial, or other confidential personal identifying  
227 information of the child, the child's parents or legal guardians, or the vulnerable adult.
- 228 ~~[(15)]~~ (17) "Directly supervised" means that an individual is being supervised under the  
229 uninterrupted visual and auditory surveillance of another individual who has a current  
230 background check approval issued by the office.
- 231 ~~[(16)]~~ (18) "Director" means the director of the office.
- 232 (19) "Division" means the Division of Licensing and Background Checks created under

- 233        Section 26B-2-103.
- 234    [~~(17)~~] (20) "Domestic violence" means the same as that term is defined in Section 77-36-1.
- 235    [~~(18)~~] (21) "Domestic violence treatment program" means a nonresidential program
- 236        designed to provide psychological treatment and educational services to perpetrators and
- 237        victims of domestic violence.
- 238    [~~(19)~~] (22) "Elder adult" means a person 65 years old or older.
- 239    [~~(20)~~] (23) "Emergency safety intervention" means a tactic used to protect staff or a client
- 240        from being physically injured, utilized by an appropriately trained direct care staff and
- 241        only performed in accordance with a nationally or regionally recognized curriculum in
- 242        the least restrictive manner to restore staff or client safety.
- 243    [~~(21)~~] (24) "Foster home" means a residence that is licensed or certified by the office for the
- 244        full-time substitute care of a child.
- 245    (25) "Harm" means the same as that term is defined in Section 80-1-102.
- 246    [~~(22)~~] (26) "Health benefit plan" means the same as that term is defined in Section
- 247        31A-22-634.
- 248    [~~(23)~~] (27) "Health care provider" means the same as that term is defined in Section
- 249        78B-3-403.
- 250    [~~(24)~~] (28) "Health insurer" means the same as that term is defined in Section 31A-22-615.5.
- 251    [~~(25)~~] (29)(a) "Human services program" means:
- 252        (i) a foster home;
- 253        (ii) a therapeutic school;
- 254        (iii) a youth program;
- 255        (iv) an outdoor youth program;
- 256        (v) a residential treatment program;
- 257        (vi) a residential support program;
- 258        (vii) a resource family home;
- 259        (viii) a recovery residence; or
- 260        (ix) a facility or program that provides:
- 261            (A) adult day care;
- 262            (B) day treatment;
- 263            (C) outpatient treatment;
- 264            (D) domestic violence treatment;
- 265            (E) child-placing services;
- 266            (F) social detoxification; or



267 (G) any other human services that are required by contract with the department to  
268 be licensed with the department.

269 (b) "Human services program" does not include:

270 (i) a boarding school;

271 (ii) a residential, vocational and life skills program, as defined in Section 13-53-102;

272 or

273 (iii) a short-term relief care provider.

274 ~~[(26)]~~ (30) "Indian child" means the same as that term is defined in 25 U.S.C. Sec. 1903.

275 ~~[(27)]~~ (31) "Indian country" means the same as that term is defined in 18 U.S.C. Sec. 1151.

276 ~~[(28)]~~ (32) "Indian tribe" means the same as that term is defined in 25 U.S.C. Sec. 1903.

277 ~~[(29)]~~ (33) "Intermediate secure treatment" means 24-hour specialized residential treatment  
278 or care for an individual who:

279 (a) cannot live independently or in a less restrictive environment; and

280 (b) requires, without the individual's consent or control, the use of locked doors to care  
281 for the individual.

282 ~~[(30)]~~ (34) "Licensee" means an individual or a human services program licensed by the  
283 office.

284 ~~[(31)]~~ (35) "Local government" means a city, town, or county.

285 ~~[(32)]~~ (36) "Minor" means child.

286 ~~[(33)]~~ (37) "Office" means, except as provided in Section 26B-2-120, the Office of  
287 Licensing within the department.

288 (38) "Ombudsman" means the congregate care ombudsman created in Section 26B-2-124.2.

289 ~~[(34)]~~ (39) "Outdoor youth program" means a program that provides:

290 (a) services to a child ~~[that]~~ who has:

291 (i) a chemical dependency; or

292 (ii) a dysfunction or impairment that is emotional, psychological, developmental,  
293 physical, or behavioral;

294 (b) a 24-hour outdoor group living environment; and

295 (c)(i) regular therapy, including group, individual, or supportive family therapy; or

296 (ii) informal therapy or similar services, including wilderness therapy, adventure  
297 therapy, or outdoor behavioral healthcare.

298 ~~[(35)]~~ (40) "Outpatient treatment" means individual, family, or group therapy or counseling  
299 designed to improve and enhance social or psychological functioning for those whose  
300 physical and emotional status allows them to continue functioning in their usual living

301 environment.

302 [~~(36)~~] (41) "Practice group" or "group practice" means two or more health care providers  
303 legally organized as a partnership, professional corporation, or similar association, for  
304 which:

305 (a) substantially all of the services of the health care providers who are members of the  
306 group are provided through the group and are billed in the name of the group and  
307 amounts received are treated as receipts of the group; and

308 (b) the overhead expenses of and the income from the practice are distributed in  
309 accordance with methods previously determined by members of the group.

310 [~~(37)~~] (42) "Private-placement child" means a child whose parent or guardian enters into a  
311 contract with a congregate care program for the child to receive services.

312 [~~(38)~~] (43)(a) "Recovery residence" means a home, residence, or facility that meets at  
313 least two of the following requirements:

314 (i) provides a supervised living environment for individuals recovering from a  
315 substance use disorder;

316 (ii) provides a living environment in which more than half of the individuals in the  
317 residence are recovering from a substance use disorder;

318 (iii) provides or arranges for residents to receive services related to the resident's  
319 recovery from a substance use disorder, either on or off site;

320 (iv) is held out as a living environment in which individuals recovering from  
321 substance abuse disorders live together to encourage continued sobriety; or

322 (v)(A) receives public funding; or

323 (B) is run as a business venture, either for-profit or not-for-profit.

324 (b) "Recovery residence" does not mean:

325 (i) a residential treatment program;

326 (ii) residential support program; or

327 (iii) a home, residence, or facility, in which:

328 (A) residents, by a majority vote of the residents, establish, implement, and  
329 enforce policies governing the living environment, including the manner in  
330 which applications for residence are approved and the manner in which  
331 residents are expelled;

332 (B) residents equitably share rent and housing-related expenses; and

333 (C) a landlord, owner, or operator does not receive compensation, other than fair  
334 market rental income, for establishing, implementing, or enforcing policies

335 governing the living environment.

336 [~~(39)~~] (44) "Regular business hours" means:

337 (a) the hours during which services of any kind are provided to a client; or

338 (b) the hours during which a client is present at the facility of a licensee.

339 [~~(40)~~] (45)(a) "Residential support program" means a program that arranges for or

340 provides the necessities of life as a protective service to individuals or families who

341 have a disability or who are experiencing a dislocation or emergency that prevents

342 them from providing these services for themselves or their families.

343 (b) "Residential support program" includes a program that provides a supervised living

344 environment for individuals with dysfunctions or impairments that are:

345 (i) emotional;

346 (ii) psychological;

347 (iii) developmental; or

348 (iv) behavioral.

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

350 (d) "Residential support program" does not include:

351 (i) a recovery residence; or

352 (ii) a program that provides residential services that are performed:

353 (A) exclusively under contract with the department and provided to individuals

354 through the Division of Services for People with Disabilities; or

355 (B) in a facility that serves fewer than four individuals.

356 [~~(41)~~] (46)(a) "Residential treatment" means a 24-hour group living environment for four

357 or more individuals unrelated to the owner or provider that offers room or board and

358 specialized treatment, behavior modification, rehabilitation, discipline, emotional

359 growth, or habilitation services for persons with emotional, psychological,

360 developmental, or behavioral dysfunctions, impairments, or chemical dependencies.

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

362 (i) boarding school;

363 (ii) foster home; or

364 (iii) recovery residence.

365 [~~(42)~~] (47) "Residential treatment program" means a program or facility that provides:

366 (a) residential treatment; or

367 (b) intermediate secure treatment.

368 [~~(43)~~] (48) "Seclusion" means the involuntary confinement of an individual in a room or an

- 369 area:
- 370 (a) away from the individual's peers; and
- 371 (b) in a manner that physically prevents the individual from leaving the room or area.
- 372 ~~[(44)]~~ (49) "Short-term relief care provider" means an individual who:
- 373 (a) provides short-term and temporary relief care to a foster parent:
- 374 (i) for less than six consecutive nights; and
- 375 (ii) in the short-term relief care provider's home;
- 376 (b) is an immediate family member or relative, as those terms are defined in Section
- 377 80-3-102, of the foster parent;
- 378 (c) is direct access qualified, as that term is defined in Section 26B-2-120;
- 379 (d) has been approved to provide short-term relief care by the department;
- 380 (e) is not reimbursed by the department for the temporary relief care provided; and
- 381 (f) is not an immediate family member or relative, as those terms are defined in Section
- 382 80-3-102, of the foster child.
- 383 ~~[(45)]~~ (50) "Social detoxification" means short-term residential services for persons who are
- 384 experiencing or have recently experienced drug or alcohol intoxication, that are provided
- 385 outside of a health care facility licensed under Part 2, Health Care Facility Licensing and
- 386 Inspection, and that include:
- 387 (a) room and board for persons who are unrelated to the owner or manager of the facility;
- 388 (b) specialized rehabilitation to acquire sobriety; and
- 389 (c) aftercare services.
- 390 ~~[(46)]~~ (51) "Substance abuse disorder" or "substance use disorder" mean the same as
- 391 "substance use disorder" is defined in Section 26B-5-501.
- 392 ~~[(47)]~~ (52) "Substance abuse treatment program" or "substance use disorder treatment
- 393 program" means a program:
- 394 (a) designed to provide:
- 395 (i) specialized drug or alcohol treatment;
- 396 (ii) rehabilitation; or
- 397 (iii) habilitation services; and
- 398 (b) that provides the treatment or services described in Subsection ~~[(47)(a)]~~ (52)(a) to
- 399 persons with:
- 400 (i) a diagnosed substance use disorder; or
- 401 (ii) chemical dependency disorder.
- 402 ~~[(48)]~~ (53) "Therapeutic school" means a residential group living facility:

- 403 (a) for four or more individuals that are not related to:
- 404 (i) the owner of the facility; or
- 405 (ii) the primary service provider of the facility;
- 406 (b) that serves students who have a history of failing to function:
- 407 (i) at home;
- 408 (ii) in a public school; or
- 409 (iii) in a nonresidential private school; and
- 410 (c) that offers:
- 411 (i) room and board; and
- 412 (ii) an academic education integrated with:
- 413 (A) specialized structure and supervision; or
- 414 (B) services or treatment related to:
- 415 (I) a disability;
- 416 (II) emotional development;
- 417 (III) behavioral development;
- 418 (IV) familial development; or
- 419 (V) social development.
- 420 [~~(49)~~] (54) "Unrelated persons" means persons other than parents, legal guardians,
- 421 grandparents, brothers, sisters, uncles, or aunts.
- 422 [~~(50)~~] (55) "Vulnerable adult" means an elder adult or an adult who has a temporary or
- 423 permanent mental or physical impairment that substantially affects the person's ability to:
- 424 (a) provide personal protection;
- 425 (b) provide necessities such as food, shelter, clothing, or mental or other health care;
- 426 (c) obtain services necessary for health, safety, or welfare;
- 427 (d) carry out the activities of daily living;
- 428 (e) manage the adult's own resources; or
- 429 (f) comprehend the nature and consequences of remaining in a situation of abuse,
- 430 neglect, or exploitation.
- 431 [~~(51)~~] (56)(a) "Youth program" means a program designed to provide behavioral,
- 432 substance use, or mental health services to minors that:
- 433 (i) serves adjudicated or nonadjudicated youth;
- 434 (ii) charges a fee for the program's services;
- 435 (iii) may provide host homes or other arrangements for overnight accommodation of
- 436 the youth;

- 437 (iv) may provide all or part of the program's services in the outdoors;
- 438 (v) may limit or censor access to parents or guardians; and
- 439 (vi) prohibits or restricts a minor's ability to leave the program at any time of the
- 440 minor's own free will.
- 441 (b) "Youth program" does not include recreational programs such as Boy Scouts, Girl
- 442 Scouts, 4-H, and other such organizations.
- 443 ~~[(52)]~~ (57)(a) "Youth transportation company" means any person that transports a child
- 444 for payment to or from a congregate care program in Utah.
- 445 (b) "Youth transportation company" does not include:
- 446 (i) a relative of the child;
- 447 (ii) a state agency; or
- 448 (iii) a congregate care program's employee who transports the child from the
- 449 congregate care program that employs the employee and returns the child to the
- 450 same congregate care program.

451 Section 5. Section **26B-2-104** is amended to read:

452 **26B-2-104 . Division responsibilities.**

- 453 (1) Subject to the requirements of federal and state law, the office shall:
- 454 (a) make rules in accordance with Title 63G, Chapter 3, Utah Administrative
- 455 Rulemaking Act, to establish:
- 456 (i) except as provided in Subsection (1)(a)(ii), basic health and safety standards for
- 457 licensees, that shall be limited to:
- 458 (A) fire safety;
- 459 (B) food safety;
- 460 (C) sanitation;
- 461 (D) infectious disease control;
- 462 (E) safety of the:
- 463 (I) physical facility and grounds; and
- 464 (II) area and community surrounding the physical facility;
- 465 (F) transportation safety;
- 466 (G) emergency preparedness and response;
- 467 (H) the administration of medical standards and procedures, consistent with the
- 468 related provisions of this title;
- 469 (I) staff and client safety and protection;
- 470 (J) the administration and maintenance of client and service records;

- 471 (K) staff qualifications and training, including standards for permitting experience  
472 to be substituted for education, unless prohibited by law;
- 473 (L) staff to client ratios;
- 474 (M) access to firearms; and
- 475 (N) the prevention of abuse, neglect, exploitation, harm, mistreatment, or fraud;
- 476 (ii) basic health and safety standards for therapeutic schools, that shall be limited to:
- 477 (A) fire safety, except that the standards are limited to those required by law or  
478 rule under Title 53, Chapter 7, Part 2, Fire Prevention and Fireworks Act;
- 479 (B) food safety;
- 480 (C) sanitation;
- 481 (D) infectious disease control, except that the standards are limited to:
- 482 (I) those required by law or rule under this title, or Title 26A, Local Health  
483 Authorities; and
- 484 (II) requiring a separate room for clients who are sick;
- 485 (E) safety of the physical facility and grounds, except that the standards are  
486 limited to those required by law or rule under Title 53, Chapter 7, Part 2, Fire  
487 Prevention and Fireworks Act;
- 488 (F) transportation safety;
- 489 (G) emergency preparedness and response;
- 490 (H) access to appropriate medical care, including:
- 491 (I) subject to the requirements of law, designation of a person who is  
492 authorized to dispense medication; and
- 493 (II) storing, tracking, and securing medication;
- 494 (I) staff and client safety and protection that permits the school to provide for the  
495 direct supervision of clients at all times;
- 496 (J) the administration and maintenance of client and service records;
- 497 (K) staff qualifications and training, including standards for permitting experience  
498 to be substituted for education, unless prohibited by law;
- 499 (L) staff to client ratios;
- 500 (M) access to firearms; and
- 501 (N) the prevention of abuse, neglect, exploitation, harm, mistreatment, or fraud;
- 502 (iii) procedures and standards for permitting a licensee to:
- 503 (A) provide in the same facility and under the same conditions as children,  
504 residential treatment services to a person 18 years old or older who:

- 505 (I) begins to reside at the licensee's residential treatment facility before the  
506 person's 18th birthday;
- 507 (II) has resided at the licensee's residential treatment facility continuously since  
508 the time described in Subsection (1)(a)(iii)(A)(I);
- 509 (III) has not completed the course of treatment for which the person began  
510 residing at the licensee's residential treatment facility; and
- 511 (IV) voluntarily consents to complete the course of treatment described in  
512 Subsection (1)(a)(iii)(A)(III); or
- 513 (B)(I) provide residential treatment services to a child who is:
- 514 (Aa) at least 12 years old or, as approved by the [office] division, younger  
515 than 12 years old; and
- 516 (Bb) under the custody of the department, or one of its divisions; and
- 517 (II) provide, in the same facility as a child described in Subsection  
518 (1)(a)(iii)(B)(I), residential treatment services to a person who is:
- 519 (Aa) at least 18 years old, but younger than 21 years old; and
- 520 (Bb) under the custody of the department, or one of its divisions;
- 521 (iv) minimum administration and financial requirements for licensees;
- 522 (v) guidelines for variances from rules established under this Subsection (1);
- 523 (vi) ethical standards, as described in Subsection 78B-6-106(3), and minimum  
524 responsibilities of a child-placing agency that provides adoption services and that  
525 is licensed under this part;
- 526 (vii) what constitutes an "outpatient treatment program" for purposes of this part;
- 527 (viii) a procedure requiring a licensee to provide an insurer the licensee's records  
528 related to any services or supplies billed to the insurer[;] and a procedure allowing  
529 the licensee and the insurer to contact the Insurance Department to resolve any  
530 disputes;
- 531 (ix) a protocol for the office to investigate and process complaints about licensees;
- 532 (x) a procedure for a licensee to:
- 533 (A) report the use of a restraint or seclusion within one business day after the day  
534 on which the use of the restraint or seclusion occurs;[~~and~~]
- 535 (B) report a critical incident within one business day after the day on which the  
536 incident occurs; and
- 537 (C) comply with any requirements of this part;
- 538 (xi) guidelines for the policies and procedures described in Sections 26B-2-109 and



- 539 26B-2-123;
- 540 (xii) a procedure for the [~~office~~] division to review and approve the policies and
- 541 procedures described in Sections 26B-2-109 and 26B-2-123; [~~and~~]
- 542 (xiii) a requirement that each human services program publicly post information that
- 543 informs an individual how to submit a complaint about a human services program
- 544 to the [~~office~~] division; and
- 545 (xiv) requirements for disruption plans under Section 26B-2-124;
- 546 (b) enforce rules relating to the [~~office~~] division;
- 547 (c) issue licenses in accordance with this part;
- 548 (d) if the United States Department of State executes an agreement with the [~~office~~]
- 549 division that designates the [~~office~~] division to act as an accrediting entity in
- 550 accordance with the Intercountry Adoption Act of 2000, Pub. L. No. 106-279,
- 551 accredit one or more agencies and persons to provide intercountry adoption services
- 552 pursuant to:
- 553 (i) the Intercountry Adoption Act of 2000, Pub. L. No. 106-279; and
- 554 (ii) the implementing regulations for the Intercountry Adoption Act of 2000, Pub. L.
- 555 No. 106-279;
- 556 (e) make rules to implement the provisions of Subsection (1)(d);
- 557 (f) conduct surveys and inspections of licensees and facilities in accordance with Section
- 558 26B-2-107;
- 559 (g) collect licensure fees;
- 560 (h) notify licensees of the name of a person within the department to contact when filing
- 561 a complaint;
- 562 (i) investigate complaints regarding any licensee or human services program;
- 563 (j) have access to all records, correspondence, and financial data required to be
- 564 maintained by a licensee;
- 565 (k) have authority to interview any client, family member of a client, employee, or
- 566 officer of a licensee;
- 567 (l) have authority to deny, condition, revoke, suspend, or extend any license issued by
- 568 the department under this part by following the procedures and requirements of Title
- 569 63G, Chapter 4, Administrative Procedures Act;
- 570 (m) cooperate with the Division of Child and Family Services to condition, revoke, or
- 571 suspend the license of a foster home when a child welfare caseworker from the
- 572 Division of Child and Family Services identifies a safety concern with the foster

573 home;

574 (n) electronically post notices of agency action issued to a human services program, with  
575 the exception of a foster home, on the [~~office's-~~] division's website, in accordance with  
576 Title 63G, Chapter 2, Government Records Access and Management Act; and

577 (o) upon receiving a local government's request under Section 26B-2-118, notify the  
578 local government of new human services program license applications, except for  
579 foster homes, for human services programs located within the local government's  
580 jurisdiction.

581 (2) In establishing rules under Subsection (1)(a)(ii)(G), the [~~office-~~] division shall require a  
582 licensee to establish and comply with an emergency response plan that requires clients  
583 and staff to:

584 (a) immediately report to law enforcement any significant criminal activity, as defined  
585 by rule, committed:

586 (i) on the premises where the licensee operates its human services program;

587 (ii) by or against its clients; or

588 (iii) by or against a staff member while the staff member is on duty;

589 (b) immediately report to emergency medical services any medical emergency, as  
590 defined by rule:

591 (i) on the premises where the licensee operates [~~its human services program~~] a  
592 program;

593 (ii) involving its clients; or

594 (iii) involving a staff member while the staff member is on duty; and

595 (c) immediately report other emergencies that occur on the premises where the licensee  
596 operates its human services program to the appropriate emergency services agency.

597 Section 6. Section **26B-2-107** is amended to read:

598 **26B-2-107 . Administrative inspections.**

599 (1) As used in this section:

600 (a) "Foster home" does not include a residence that is licensed or certified for proctor  
601 care or care by a professional parent.

602 (b) "Material change" means a significant change in circumstances that may include:

603 (i) a loss or gain of employment;

604 (ii) a change in marital status;

605 (iii) a change of individuals living in the home; or

606 (iv) other changes that may affect a foster child's well-being.

- 607 (2)(a) Subject to Subsections (2)(b) and (3), the office may, for the purpose of  
608 ascertaining compliance with this part, enter and inspect on a routine basis the facility  
609 or program of a licensee.
- 610 (b)(i) The office shall enter and inspect a congregate care program at least once each  
611 calendar quarter.
- 612 (ii) At least two of the inspections described in Subsection (2)(b)(i) shall be  
613 unannounced.
- 614 (iii) The division shall verify whether a congregate care program maintains strict  
615 compliance with the program's approved admissions criteria under Section  
616 26B-2-124 at least quarterly.
- 617 (c) If another government entity conducts an inspection that is substantially similar to an  
618 inspection conducted by the office, the office may conclude the inspection satisfies  
619 an inspection described in Subsection (2)(b).
- 620 (3)(a) Except as provided in Subsection (3)(b):
- 621 (i) for the first two years of a foster home's license, the [~~office~~] division shall enter  
622 and inspect the facility once each year;
- 623 (ii) after a foster home has been licensed for two years, the [~~office~~] division shall enter  
624 and inspect the facility once every three years; and
- 625 (iii) for a foster home licensed for two or more years as of May 1, 2023, and that was  
626 inspected by the office on or after May 1, 2023, the office may not enter and  
627 inspect the facility until three years after the date of the last inspection.
- 628 (b)(i) If a foster home has not had a placement for more than 12 months after the date  
629 of the office's last inspection, the office shall enter and inspect the [~~facility~~] home  
630 within 30 days after the date on which the foster home receives a new placement.
- 631 (ii) If the license for a foster home is placed on conditions, suspended, or revoked by  
632 the office, or voluntarily returned to the office by the licensee, the office may  
633 enter and inspect the [~~facility~~] home on a routine basis.
- 634 (iii) If there is a material change to a foster home:
- 635 (A) the foster parent shall immediately notify the office of the material change; and  
636 (B) the office shall inspect the foster home as soon as practicable after receiving  
637 notice of or otherwise becoming aware of the material change.
- 638 (iv) If a health and safety concern is reported to the office, the office may conduct an  
639 unannounced inspection of the foster home during regular business hours.
- 640 (c) Except as provided in Subsection (3)(b)(iv), an inspection of a foster home shall be

- 641 announced.
- 642 (4) Before conducting an inspection under Subsection (2) or (3), the office shall, after  
 643 identifying the person in charge:
- 644 (a) give proper identification;
- 645 (b) request to see the applicable license;
- 646 (c) describe the nature and purpose of the inspection; and
- 647 (d) if necessary, explain the authority of the office to conduct the inspection and the  
 648 penalty for refusing to permit the inspection as provided in Section 26B-2-707.
- 649 (5) In conducting an inspection under Subsection (2) or (3), the office may, after meeting  
 650 the requirements of Subsection (4):
- 651 (a) inspect the physical facilities;
- 652 (b) inspect and copy records and documents;
- 653 (c) interview officers, employees, clients, family members of clients, and others; and  
 654 (d) observe the licensee in operation.
- 655 (6) An inspection conducted under Subsection (2) shall be during regular business hours  
 656 and may be announced or unannounced.
- 657 (7) The licensee shall make copies of inspection reports available to the public upon request.
- 658 (8) The provisions of this section apply to on-site inspections and do not restrict the office  
 659 from contacting family members, neighbors, or other individuals, or from seeking  
 660 information from other sources to determine compliance with this part.

661 Section 7. Section **26B-2-120** is amended to read:

662 **26B-2-120 . Background check -- Direct access to children or vulnerable adults.**

- 663 (1) As used in this section:
- 664 (a)(i) "Applicant" means an individual who is associated with a certification,  
 665 contract, or licensee with the department under this part and has direct access,  
 666 including:
- 667 (A) an adoptive parent or prospective adoptive parent, including an applicant for  
 668 an adoption in accordance with Section 78B-6-128;
- 669 (B) a foster parent or prospective foster parent;
- 670 (C) an individual who provides respite care to a foster parent or an adoptive parent  
 671 on more than one occasion;
- 672 (D) an individual who transports a child for a youth transportation company;
- 673 (E) an individual who provides certified peer support, as defined in Section  
 674 26B-5-610;

- 675 (F) an individual who provides peer supports, has a disability or a family member  
676 with a disability, or is in recovery from a mental illness or a substance use  
677 disorder;
- 678 (G) an individual who has lived experience with the services provided by the  
679 department, and uses that lived experience to provide support, guidance, or  
680 services to promote resiliency and recovery;
- 681 (H) an individual who is identified as a mental health professional, licensed under  
682 Title 58, Chapter 60, Mental Health Professional Practice Act, and engaged in  
683 the practice of mental health therapy, as defined in Section 58-60-102;
- 684 (I) an individual, other than the child or vulnerable adult receiving the service,  
685 who is 12 years old or older and resides in a home, that is licensed or certified  
686 by the division;
- 687 (J) an individual who is 12 years old or older and is associated with a certification,  
688 contract, or licensee with the department under this part and has or will likely  
689 have direct access;
- 690 (K) a foster home licensee that submits an application for an annual background  
691 screening as required by Subsection 26B-2-105(4)(d)(iii); or
- 692 (L) a short-term relief care provider.
- 693 (ii) "Applicant" does not include:
- 694 (A) an individual who is in the custody of the Division of Child and Family  
695 Services or the Division of Juvenile Justice and Youth Services;
- 696 (B) an individual who applies for employment with, or is employed by, the  
697 Department of Health and Human Services;
- 698 (C) a parent of a person receiving services from the Division of Services for  
699 People with Disabilities, if the parent provides direct care to and resides with  
700 the person, including if the parent provides direct care to and resides with the  
701 person pursuant to a court order; or
- 702 (D) an individual or a department contractor who provides services in an adults  
703 only substance use disorder program, as defined by rule adopted by the  
704 Department of Health and Human Services in accordance with Title 63G,  
705 Chapter 3, Utah Administrative Rulemaking Act, and who is not a program  
706 director or a member, as defined by Section 26B-2-105, of the program.
- 707 (b) "Application" means a background check application to the office.
- 708 (c) "Bureau" means the Bureau of Criminal Identification within the Department of

- 709 Public Safety, created in Section 53-10-201.
- 710 (d) "Criminal finding" means a record of:
- 711 (i) an arrest for a criminal offense;
- 712 (ii) a warrant for a criminal arrest;
- 713 (iii) charges for a criminal offense; or
- 714 (iv) a criminal conviction.
- 715 (e) "Direct access" means that an individual has, or likely will have:
- 716 (i) contact with or access to a child or vulnerable adult by which the individual will
- 717 have the opportunity for personal communication or touch with the child or
- 718 vulnerable adult; or
- 719 (ii) an opportunity to view medical, financial, or other confidential personal
- 720 identifying information of the child, the child's parent or legal guardian, or the
- 721 vulnerable adult.
- 722 (f)(i) "Direct access qualified" means that the applicant has an eligible determination
- 723 by the office within the license and renewal time period; and
- 724 (ii) no more than 180 days have passed since the date on which the applicant's
- 725 association with a certification, contract, or licensee with the department expires.
- 726 (g) "Incidental care" means occasional care, not in excess of five hours per week and
- 727 never overnight, for a foster child.
- 728 (h) "Licensee" means an individual or a human services program licensed by the
- 729 division.
- 730 (i) "Non-criminal finding" means a record maintained in:
- 731 (i) the Division of Child and Family Services' Management Information System
- 732 described in Section 80-2-1001;
- 733 (ii) the Division of Child and Family Services' Licensing Information System
- 734 described in Section 80-2-1002;
- 735 (iii) the Division of Aging and Adult Services' vulnerable adult abuse, neglect, or
- 736 exploitation database described in Section 26B-6-210;
- 737 (iv) juvenile court arrest, adjudication, and disposition records;
- 738 (v) the Sex, Kidnap, and Child Abuse Offender Registry described in Title 77,
- 739 Chapter 41, Sex, Kidnap, and Child Abuse Offender Registry, or a national sex
- 740 offender registry; or
- 741 (vi) a state child abuse or neglect registry.
- 742 (j) "Office" means the Office of Background Processing within the department.

- 743 (k) "Personal identifying information" means:
- 744 (i) current name, former names, nicknames, and aliases;
- 745 (ii) date of birth;
- 746 (iii) physical address and email address;
- 747 (iv) telephone number;
- 748 (v) driver license or other government-issued identification;
- 749 (vi) social security number;
- 750 (vii) only for applicants who are 18 years old or older, fingerprints, in a form
- 751 specified by the office; and
- 752 (viii) other information specified by the office by rule made in accordance with Title
- 753 63G, Chapter 3, Utah Administrative Rulemaking Act.
- 754 (2) Except as provided in Subsection (12), an applicant or a representative shall submit the
- 755 following to the office:
- 756 (a) personal identifying information;
- 757 (b) a fee established by the office under Section 63J-1-504;
- 758 (c) a disclosure form, specified by the office, for consent for:
- 759 (i) an initial background check upon association with a certification, contract, or
- 760 licensee with the department;
- 761 (ii) ongoing monitoring of fingerprints and registries until no longer associated with a
- 762 certification, contract, or licensee with the department for 180 days;
- 763 (iii) a background check when the office determines that reasonable cause exists; and
- 764 (iv) retention of personal identifying information, including fingerprints, for
- 765 monitoring and notification as described in Subsections (3)(c) and (4);
- 766 (d) if an applicant resided outside of the United States and its territories during the five
- 767 years immediately preceding the day on which the information described in
- 768 Subsections (2)(a) through (c) is submitted to the office, documentation establishing
- 769 whether the applicant was convicted of a crime during the time that the applicant
- 770 resided outside of the United States or its territories; and
- 771 (e) an application showing an applicant's association with a certification, contract, or a
- 772 licensee with the department, for the purpose of the office tracking the direct access
- 773 qualified status of the applicant, which expires 180 days after the date on which the
- 774 applicant is no longer associated with a certification, contract, or a licensee with the
- 775 department.
- 776 (3) The office:

- 777 (a) shall perform the following duties as part of a background check of an applicant  
778 before the office grants or denies direct access qualified status to an applicant:
- 779 (i) check state and regional criminal background databases for the applicant's  
780 criminal history by:
- 781 (A) submitting personal identifying information to the bureau for a search; or  
782 (B) using the applicant's personal identifying information to search state and  
783 regional criminal background databases as authorized under Section 53-10-108;
- 784 (ii) submit the applicant's personal identifying information and fingerprints to the  
785 bureau for a criminal history search of applicable national criminal background  
786 databases;
- 787 (iii) search the Division of Child and Family Services' Licensing Information System  
788 described in Section 80-2-1002;
- 789 (iv) search the Sex, Kidnap, and Child Abuse Offender Registry described in Title  
790 77, Chapter 41, Sex, Kidnap, and Child Abuse Offender Registry, or a national  
791 sex offender registry for an applicant 18 years old or older;
- 792 (v) search the Division of Child and Family Services' Management Information  
793 System in Section 80-2-1001, if the applicant is: [is associated with] : [a licensee  
794 for]
- 795 (A) a prospective foster or adoptive parent; [~~search the Division of Child and~~  
796 Family Services' Management Information System described in Section  
797 80-2-1001;]
- 798 (B) an employee of a congregate care program; or  
799 (C) an adult who lives in a foster home.
- 800 (vi) search the Division of Aging and Adult Services' vulnerable adult abuse, neglect,  
801 or exploitation database described in Section 26B-6-210;
- 802 (vii) search the juvenile court records for substantiated findings of severe child abuse  
803 or neglect described in Section 80-3-404; and
- 804 (viii) search the juvenile court arrest, adjudication, and disposition records, as  
805 provided under Section 78A-6-209;
- 806 (b) may conduct all or portions of a background check in connection with determining  
807 whether an applicant is direct access qualified, as provided by rule, made by the  
808 office in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act:
- 809 (i) for an annual renewal; or  
810 (ii) when the office determines that reasonable cause exists;



- 811 (c) may submit an applicant's personal identifying information, including fingerprints, to  
812 the bureau for checking, retaining, and monitoring of state and national criminal  
813 background databases and for notifying the office of new criminal activity associated  
814 with the applicant;
- 815 (d) shall track the status of an applicant under this section to ensure that the applicant is  
816 not required to duplicate the submission of the applicant's fingerprints if the applicant  
817 is associated with more than one certification, contract, or licensee with the  
818 department;
- 819 (e) shall notify the bureau when a direct access qualified individual has not been  
820 associated with a certification, contract, or licensee with the department for a period  
821 of 180 days;
- 822 (f) shall adopt measures to strictly limit access to personal identifying information solely  
823 to the individuals responsible for processing and entering the applications for  
824 background checks and to protect the security of the personal identifying information  
825 the office reviews under this Subsection (3);
- 826 (g) as necessary to comply with the federal requirement to check a state's child abuse  
827 and neglect registry regarding any applicant working in a congregate care program,  
828 shall:
- 829 (i) search the Division of Child and Family Services' Licensing Information System  
830 described in Section 80-2-1002; and
- 831 (ii) require the child abuse and neglect registry be checked in each state where an  
832 applicant resided at any time during the five years immediately preceding the day  
833 on which the application is submitted to the office; and
- 834 (h) shall make rules, in accordance with Title 63G, Chapter 3, Utah Administrative  
835 Rulemaking Act, to implement the provisions of this Subsection (3) relating to  
836 background checks.
- 837 (4)(a) With the personal identifying information the office submits to the bureau under  
838 Subsection (3), the bureau shall check against state and regional criminal background  
839 databases for the applicant's criminal history.
- 840 (b) With the personal identifying information and fingerprints the office submits to the  
841 bureau under Subsection (3), the bureau shall check against national criminal  
842 background databases for the applicant's criminal history.
- 843 (c) Upon direction from the office, and with the personal identifying information and  
844 fingerprints the office submits to the bureau under Subsection (3)(c), the bureau shall:

- 845 (i) maintain a separate file of the fingerprints for search by future submissions to the  
846 local and regional criminal records databases, including latent prints; and
- 847 (ii) monitor state and regional criminal background databases and identify criminal  
848 activity associated with the applicant.
- 849 (d) The bureau is authorized to submit the fingerprints to the Federal Bureau of  
850 Investigation Next Generation Identification System, to be retained in the Federal  
851 Bureau of Investigation Next Generation Identification System for the purpose of:
- 852 (i) being searched by future submissions to the national criminal records databases,  
853 including the Federal Bureau of Investigation Next Generation Identification  
854 System and latent prints; and
- 855 (ii) monitoring national criminal background databases and identifying criminal  
856 activity associated with the applicant.
- 857 (e) The ~~[Bureau]~~ bureau shall notify and release to the office all information of criminal  
858 activity associated with the applicant.
- 859 (f) Upon notice that an individual who has direct access qualified status will no longer  
860 be associated with a certification, contract, or licensee with the department, the  
861 bureau shall:
- 862 (i) discard and destroy any retained fingerprints; and
- 863 (ii) notify the Federal Bureau of Investigation when the license has expired or an  
864 individual's direct access to a child or a vulnerable adult has ceased, so that the  
865 Federal Bureau of Investigation will discard and destroy the retained fingerprints  
866 from the Federal Bureau of Investigation Next Generation Identification System.
- 867 (5)(a) Except as provided in Subsection (5)(b), the office shall deny direct access  
868 qualified status to an applicant who, within three years from the date on which the  
869 office conducts the background check, was convicted of:
- 870 (i) a felony or misdemeanor involving conduct that constitutes any of the following:
- 871 (A) an offense identified as domestic violence, lewdness, voyeurism, battery,  
872 cruelty to animals, or bestiality;
- 873 (B) a violation of any pornography law, including sexual exploitation of a minor  
874 or aggravated sexual exploitation of a minor;
- 875 (C) sexual solicitation or prostitution;
- 876 (D) a violent offense committed in the presence of a child, as described in Section  
877 76-3-203.10;
- 878 (E) an offense included in Title 76, Chapter 4, Part 4, Enticement of a Minor;

- 879 (F) an offense included in Title 76, Chapter 5, Offenses Against the Individual;  
 880 (G) an offense included in Title 76, Chapter 5b, Sexual Exploitation Act;  
 881 (H) an offense included in Title 76, Chapter 7, Offenses Against the Family;  
 882 (I) an offense included in Title 76, Chapter 9, Part 4, Offenses Against Privacy;  
 883 (J) an offense included in Title 76, Chapter 10, Part 4, Weapons of Mass  
 884 Destruction;  
 885 (K) an offense included in Title 78B, Chapter 7, Protective Orders and Stalking  
 886 Injunctions;  
 887 (L) aggravated arson, as described in Section 76-6-103;  
 888 (M) aggravated burglary, as described in Section 76-6-203;  
 889 (N) aggravated exploitation of prostitution, as described in Section 76-10-1306;  
 890 (O) aggravated robbery, as described in Section 76-6-302;  
 891 (P) endangering persons in a human services program, as described in Section  
 892 26B-2-113;  
 893 (Q) failure to report, as described in Section 80-2-609;  
 894 (R) identity fraud crime, as described in Section 76-6-1102;  
 895 (S) leaving a child unattended in a motor vehicle, as described in Section  
 896 76-10-2202;  
 897 (T) riot, as described in Section 76-9-101;  
 898 (U) sexual battery, as described in Section 76-9-702.1; or  
 899 (V) threatening with or using a dangerous weapon in a fight or quarrel, as  
 900 described in Section 76-10-506; or  
 901 (ii) a felony or misdemeanor offense committed outside of the state that, if committed  
 902 in the state, would constitute a violation of an offense described in Subsection  
 903 (5)(a)(i).  
 904 (b)(i) Subsection (5)(a) does not apply to an applicant who is seeking a position as a  
 905 peer support provider or a mental health professional, if the applicant provides  
 906 services in a program that serves only adults with a primary mental health  
 907 diagnosis, with or without a co-occurring substance use disorder.  
 908 (ii) The office shall conduct a comprehensive review of an applicant described in  
 909 Subsection (5)(b)(i) in accordance with Subsection (7).  
 910 (c) The office shall deny direct access qualified status to an applicant [if] who:  
 911 (i) ~~[the office finds that]~~ a court order prohibits ~~[the applicant]~~ from having direct  
 912 access to a child or vulnerable adult[-] ; or

- 913           (ii) is an applicant for a congregate care program and:  
914                (A) is subject to an open investigation for a non-criminal finding; or  
915                (B) has a supported non-criminal finding within three years from the date on  
916                which the office conducts the background check.
- 917 (6) The office shall conduct a comprehensive review of an applicant's background check if  
918 the applicant:
- 919       (a) has a felony or class A misdemeanor conviction that is more than three years from  
920       the date on which the office conducts the background check, for an offense described  
921       in Subsection (5)(a);
- 922       (b) has a felony charge or conviction that is no more than 10 years from the date on  
923       which the office conducts the background check for an offense not described in  
924       Subsection (5)(a);
- 925       (c) has a felony charge or conviction that is more than 10 years from the date on which  
926       the office conducts the background check, for an offense not described in Subsection  
927       (5)(a), with criminal or non-criminal findings after the date of the felony charge or  
928       conviction;
- 929       (d) has a class B misdemeanor or class C misdemeanor conviction that is more than  
930       three years and no more than 10 years from the date on which the office conducts the  
931       background check for an offense described in Subsection (5)(a);
- 932       (e) has a class B misdemeanor or class C misdemeanor conviction that is more than 10  
933       years from the date on which the office conducts the background check, for an  
934       offense described in Subsection (5)(a), with criminal or non-criminal findings after  
935       the date of conviction;
- 936       (f) has a misdemeanor charge or conviction that is no more than three years from the  
937       date on which the office conducts the background check for an offense not described  
938       in Subsection (5)(a);
- 939       (g) has a misdemeanor charge or conviction that is more than three years from the date  
940       on which the office conducts the background check, for an offense not described in  
941       Subsection (5)(a), with criminal or non-criminal findings after the date of charge or  
942       conviction;
- 943       (h) is currently subject to a plea in abeyance or diversion agreement for an offense  
944       described in Subsection (5)(a);
- 945       (i) appears on the Sex, Kidnap, and Child Abuse Offender Registry described in Title  
946       77, Chapter 41, Sex, Kidnap, and Child Abuse Offender Registry, or a national sex

- 947 offender registry;
- 948 (j) has a record of an adjudication in juvenile court for an act that, if committed by an  
949 adult, would be a felony or misdemeanor, if the applicant is:
- 950 (i) under 28 years old; or
- 951 (ii) 28 years old or older and has been convicted of, has pleaded no contest to, or is  
952 currently subject to a plea in abeyance or diversion agreement for a felony or a  
953 misdemeanor offense described in Subsection (5)(a);
- 954 (k) has a pending charge for an offense described in Subsection (5)(a);
- 955 (l) has a listing that occurred no more than 15 years from the date on which the office  
956 conducts the background check in the Division of Child and Family Services'  
957 Licensing Information System described in Section 80-2-1002;
- 958 (m) has a listing that occurred more than 15 years from the date on which the office  
959 conducts the background check in the Division of Child and Family Services'  
960 Licensing Information System described in Section 80-2-1002, with criminal or  
961 non-criminal findings after the date of the listing;
- 962 (n) has a listing that occurred no more than 15 years from the date on which the office  
963 conducts the background check in the Division of Aging and Adult Services'  
964 vulnerable adult abuse, neglect, or exploitation database described in Section  
965 26B-6-210;
- 966 (o) has a listing that occurred more than 15 years from the date on which the office  
967 conducts the background check in the Division of Aging and Adult Services'  
968 vulnerable adult abuse, neglect, or exploitation database described in Section  
969 26B-6-210, with criminal or non-criminal findings after the date of the listing;
- 970 (p) has a substantiated finding that occurred no more than 15 years from the date on  
971 which the office conducts the background check of severe child abuse or neglect  
972 under Section 80-3-404 or 80-3-504[-]; or
- 973 (q) has a substantiated finding that occurred more than 15 years from the date on which  
974 the office conducts the background check of severe child abuse or neglect under  
975 Section 80-3-404 or 80-3-504, with criminal or non-criminal findings after the date of  
976 the listing.
- 977 (7)(a) The comprehensive review shall include an examination of:
- 978 (i) the date of the offense or incident;
- 979 (ii) the nature and seriousness of the offense or incident;
- 980 (iii) the circumstances under which the offense or incident occurred;

- 981 (iv) the age of the perpetrator when the offense or incident occurred;  
982 (v) whether the offense or incident was an isolated or repeated incident;  
983 (vi) whether the offense or incident directly relates to abuse of a child or vulnerable  
984 adult, including:  
985 (A) actual or threatened, nonaccidental physical, mental, or financial harm;  
986 (B) sexual abuse;  
987 (C) sexual exploitation; or  
988 (D) negligent treatment;  
989 (vii) any evidence provided by the applicant of rehabilitation, counseling, psychiatric  
990 treatment received, or additional academic or vocational schooling completed;  
991 (viii) the applicant's risk of harm to clientele in the program or in the capacity for  
992 which the applicant is applying; and  
993 (ix) if the background check of an applicant is being conducted for the purpose of  
994 giving direct access qualified status to an applicant seeking a position in a  
995 congregate care program or to become a prospective foster or adoptive parent, any  
996 listing in the Division of Child and Family Services' Management Information  
997 System described in Section 80-2-1001.
- 998 (b) At the conclusion of the comprehensive review, the office shall deny direct access  
999 qualified status to an applicant if the office finds the approval would likely create a  
1000 risk of harm to a child or vulnerable adult.
- 1001 (8) The office shall grant direct access qualified status to an applicant who is not denied  
1002 under this section.
- 1003 (9)(a) The office may conditionally grant direct access qualified status to an applicant,  
1004 for a maximum of 60 days after the day on which the office sends written notice,  
1005 without requiring that the applicant be directly supervised, if the office:  
1006 (i) is awaiting the results of the criminal history search of national criminal  
1007 background databases; and  
1008 (ii) would otherwise grant direct access qualified status to the applicant under this  
1009 section.
- 1010 (b) The office may conditionally grant direct access qualified status to an applicant, for a  
1011 maximum of one year after the day on which the office sends written notice, without  
1012 requiring that the applicant be directly supervised if the office:  
1013 (i) is awaiting the results of an out-of-state registry for providers other than foster and  
1014 adoptive parents; and

- 1015 (ii) would otherwise grant direct access qualified status to the applicant under this  
1016 section.
- 1017 (c) Upon receiving the results of the criminal history search of a national criminal  
1018 background database, the office shall grant or deny direct access qualified status to  
1019 the applicant in accordance with this section.
- 1020 (10)(a) Each time an applicant is associated with a licensee, the department shall review  
1021 the current status of the applicant's background check to ensure the applicant is still  
1022 eligible for direct access qualified status in accordance with this section.
- 1023 (b) A licensee may not permit an individual to have direct access to a child or a  
1024 vulnerable adult without being directly supervised unless:
- 1025 (i) the individual is the parent or guardian of the child, or the guardian of the  
1026 vulnerable adult;
- 1027 (ii) the individual is approved by the parent or guardian of the child, or the guardian  
1028 of the vulnerable adult, to have direct access to the child or the vulnerable adult;
- 1029 (iii) the individual is only permitted to have direct access to a vulnerable adult who  
1030 voluntarily invites the individual to visit; or
- 1031 (iv) the individual only provides incidental care for a foster child on behalf of a foster  
1032 parent who has used reasonable and prudent judgment to select the individual to  
1033 provide the incidental care for the foster child.
- 1034 (c) Notwithstanding any other provision of this section, an applicant who is denied direct  
1035 access qualified status shall not have direct access to a child or vulnerable adult  
1036 unless the office grants direct access qualified status to the applicant through a  
1037 subsequent application in accordance with this section.
- 1038 (11) If the office denies direct access qualified status to an applicant, the applicant may  
1039 request a hearing in the department's Office of Administrative Hearings to challenge the  
1040 office's decision.
- 1041 (12)(a) This Subsection (12) applies to an applicant associated with a certification,  
1042 contract, or licensee serving adults only.
- 1043 (b) A program director or a member, as defined in Section 26B-2-105, of the licensee  
1044 shall comply with this section.
- 1045 (c) The office shall conduct a comprehensive review for an applicant if:
- 1046 (i) the applicant is seeking a position:
- 1047 (A) as a peer support provider;
- 1048 (B) as a mental health professional; or

- 1049 (C) in a program that serves only adults with a primary mental health diagnosis,  
1050 with or without a co-occurring substance use disorder; and
- 1051 (ii) within three years from the date on which the office conducts the background  
1052 check, the applicant has a felony or misdemeanor charge or conviction or a  
1053 non-criminal finding.
- 1054 (13)(a) This Subsection (13) applies to an applicant seeking a position in a congregate  
1055 care program, an applicant seeking to provide a prospective foster home, an applicant  
1056 seeking to provide a prospective adoptive home, and each adult living in the home of  
1057 the prospective foster or prospective adoptive home.
- 1058 (b) As federally required, the office shall:
- 1059 (i) check the child abuse and neglect registry in each state where each applicant  
1060 resided in the five years immediately preceding the day on which the applicant  
1061 applied to be a foster or adoptive parent, to determine whether the prospective  
1062 foster or adoptive parent is listed in the registry as having a substantiated or  
1063 supported finding of child abuse or neglect; and
- 1064 (ii) except for applicants seeking a position in a congregate care program, check the  
1065 child abuse and neglect registry in each state where each adult living in the home  
1066 of the prospective foster or adoptive home resided in the five years immediately  
1067 preceding the day on which the applicant applied to be a foster or adoptive parent,  
1068 to determine whether the adult is listed in the registry as having a substantiated or  
1069 supported finding of child abuse or neglect.
- 1070 (c) The requirements described in Subsection (13)(b) do not apply to the extent that:
- 1071 (i) federal law or rule permits otherwise; or
- 1072 (ii) the requirements would prohibit the Division of Child and Family Services or a  
1073 court from placing a child with:
- 1074 (A) a noncustodial parent under Section 80-2a-301, 80-3-302, or 80-3-303; or
- 1075 (B) a relative, other than a noncustodial parent, under Section 80-2a-301, 80-3-302,  
1076 or 80-3-303, pending completion of the background check described in  
1077 Subsections (5), (6), and (7).
- 1078 (d) Notwithstanding Subsections (5) through (10), the office shall deny direct access  
1079 qualified status if the applicant has been convicted of:
- 1080 (i) a felony involving conduct that constitutes any of the following:
- 1081 (A) child abuse, as described in Sections 76-5-109, 76-5-109.2, and 76-5-109.3;
- 1082 (B) commission of domestic violence in the presence of a child, as described in



- 1083 Section 76-5-114;
- 1084 (C) abuse or neglect of a child with a disability, as described in Section 76-5-110;
- 1085 (D) intentional aggravated abuse of a vulnerable adult, as described in Section
- 1086 76-5-111;
- 1087 (E) endangerment of a child or vulnerable adult, as described in Section
- 1088 76-5-112.5;
- 1089 (F) aggravated murder, as described in Section 76-5-202;
- 1090 (G) murder, as described in Section 76-5-203;
- 1091 (H) manslaughter, as described in Section 76-5-205;
- 1092 (I) child abuse homicide, as described in Section 76-5-208;
- 1093 (J) homicide by assault, as described in Section 76-5-209;
- 1094 (K) kidnapping, as described in Section 76-5-301;
- 1095 (L) child kidnapping, as described in Section 76-5-301.1;
- 1096 (M) aggravated kidnapping, as described in Section 76-5-302;
- 1097 (N) human trafficking of a child, as described in Section 76-5-308.5;
- 1098 (O) an offense described in Title 76, Chapter 5, Part 4, Sexual Offenses;
- 1099 (P) sexual exploitation of a minor, as described in Title 76, Chapter 5b, Sexual
- 1100 Exploitation Act;
- 1101 (Q) aggravated exploitation of a minor, as described in Section 76-5b-201.1;
- 1102 (R) aggravated arson, as described in Section 76-6-103;
- 1103 (S) aggravated burglary, as described in Section 76-6-203;
- 1104 (T) aggravated robbery, as described in Section 76-6-302;
- 1105 (U) lewdness involving a child, as described in Section 76-9-702.5;
- 1106 (V) incest, as described in Section 76-7-102; or
- 1107 (W) domestic violence, as described in Section 77-36-1; or
- 1108 (ii) an offense committed outside the state that, if committed in the state, would
- 1109 constitute a violation of an offense described in Subsection (13)(d)(i).
- 1110 (e) Notwithstanding Subsections (5) through (10), the office shall deny direct access
- 1111 qualified status to an applicant if, within the five years from the date on which the
- 1112 office conducts the background check, the applicant was convicted of a felony
- 1113 involving conduct that constitutes a violation of any of the following:
- 1114 (i) aggravated assault, as described in Section 76-5-103;
- 1115 (ii) aggravated assault by a prisoner, as described in Section 76-5-103.5;
- 1116 (iii) mayhem, as described in Section 76-5-105;

- 1117 (iv) an offense described in Title 58, Chapter 37, Utah Controlled Substances Act;
- 1118 (v) an offense described in Title 58, Chapter 37a, Utah Drug Paraphernalia Act;
- 1119 (vi) an offense described in Title 58, Chapter 37b, Imitation Controlled Substances
- 1120 Act;
- 1121 (vii) an offense described in Title 58, Chapter 37c, Utah Controlled Substance
- 1122 Precursor Act; or
- 1123 (viii) an offense described in Title 58, Chapter 37d, Clandestine Drug Lab Act.
- 1124 (f) In addition to the circumstances described in Subsection (6), the office shall conduct
- 1125 a comprehensive review of an applicant's background check under this section if the
- 1126 applicant:
- 1127 (i) has an offense described in Subsection (5)(a);
- 1128 (ii) has an infraction conviction entered on a date that is no more than three years
- 1129 before the date on which the office conducts the background check;
- 1130 (iii) has a listing in the Division of Child and Family Services' Licensing Information
- 1131 System described in Section 80-2-1002;
- 1132 (iv) has a listing in the Division of Aging and Adult Services' vulnerable adult,
- 1133 neglect, or exploitation database described in Section 26B-2-210;
- 1134 (v) has a substantiated finding of severe child abuse or neglect under Section
- 1135 80-3-404 or 80-3-504; or
- 1136 (vi) has a listing on the registry check described in Subsection (13)(b) as having a
- 1137 substantiated or supported finding of a severe type of child abuse or neglect, as
- 1138 defined in Section 80-1-102.
- 1139 (14) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
- 1140 office may make rules, consistent with this part, to:
- 1141 (a) establish procedures for, and information to be examined in, the comprehensive
- 1142 review described in Subsections (6), (7), and (13); and
- 1143 (b) determine whether to consider an offense or incident that occurred while an
- 1144 individual was in the custody of the Division of Child and Family Services or the
- 1145 Division of Juvenile Justice and Youth Services for purposes of granting or denying
- 1146 direct access qualified status to an applicant.
- 1147 Section 8. Section **26B-2-124** is amended to read:
- 1148 **26B-2-124 . Congregate care program requirements -- Admissions criteria --**
- 1149 **Costs incurred at health care facilities.**
- 1150 [~~(1) As used in this section, "disruption plan" means a child-specific plan used;~~]

- 1151        ~~[(a) when the private-placement child stops receiving services from a congregate care~~  
1152            ~~program; and]~~
- 1153        ~~[(b) for transporting a private-placement child to a parent or guardian or to another~~  
1154            ~~congregate care program.]~~
- 1155        (1) As used in this section:
- 1156        (a) "Admissions criteria" means the risk factors that must be present in the life of a child  
1157            in order for a congregate care program to admit the child to the program.
- 1158        (b) "Approved admissions criteria" means the admissions criteria that the division has  
1159            approved pursuant to Section 26B-2-124.1.
- 1160        (c) "Critical incident" means an occurrence of any of the following:
- 1161            (i) a self-harm, or a suicide emergency, as defined in Section 78B-4-516;
- 1162            (ii) a practice that is prohibited under Section 26B-2-123;
- 1163            (iii) a restraint, seclusion, or emergency safety intervention under Section 26B-2-123  
1164                occurring at the program, whether it:
- 1165                (A) complies with Section 26B-2-123; or
- 1166                (B) fails to comply with Section 26B-2-123;
- 1167            (iv) a child's request for medical attention, except:
- 1168                (A) medical attention that is part of the child's treatment plan; or
- 1169                (B) when the medical attention requested does not require professional attention;
- 1170            (v) a denial or an unreasonable delay of required medical attention to a child in the  
1171                program;
- 1172            (vi) an admittance or a transport of a child in the program to or from a medical  
1173                facility;
- 1174            (vii) an incident or allegation of abuse or harm to a child while in the program;
- 1175            (viii) an unauthorized departure or attempted unauthorized departure of a child from  
1176                the program;
- 1177            (ix) a use of force, coercion, or deception in transporting a child to or from the  
1178                program;
- 1179            (x) a child in the program who is in crisis;
- 1180            (xi) a police report or investigation involving:
- 1181                (A) a child; or
- 1182                (B) an individual who has had access to the program;
- 1183            (xii) a physical condition of the program's facility that jeopardizes the health, safety,  
1184                or well-being of a child; and

- 1185 (xiii) any additional occurrence or condition that the division defines as a critical  
 1186 incident in rule.
- 1187 (d) "Disruption plan" means instructions and a predetermined protocol, specific to an  
 1188 individual child, that a congregate care program implements:
- 1189 (i) if the child:
- 1190 (A) is in crisis; or  
 1191 (B) stops receiving services at a congregate care program; or
- 1192 (ii) for transporting a child to:
- 1193 (A) a parent or guardian;  
 1194 (B) another congregate care program; or  
 1195 (C) a health care facility, as that term is defined in Section 78B-3-403, except for  
 1196 preventative or non-emergency health care.
- 1197 (e) "Qualified candidate" means, for an individual congregate care program's approved  
 1198 admissions criteria, a child who meets the program's approved admissions criteria.
- 1199 (f)(i) "Risk factors" means objectively identifiable characteristics, elements, or a  
 1200 combination of characteristics or elements of a child's life that, if present,  
 1201 evidence an ongoing emotional or behavioral concern that a congregate care  
 1202 program can safely address.
- 1203 (ii) "Risk factors" include:
- 1204 (A) diagnoses defined in the most recent edition of the Diagnostic and Statistical  
 1205 Manual of Mental Disorders of the American Psychiatric Association; and  
 1206 (B) any other characteristic, element, or combination of characteristics or elements  
 1207 of a child's life that the office, in consultation with the committee, establishes  
 1208 by rule.
- 1209 (2) Notwithstanding any provision of this part, a congregate care program may not admit a  
 1210 child who the program is unqualified or unable to:
- 1211 (a) safely serve; and  
 1212 (b) protect from reasonably foreseeable harm.
- 1213 [~~(2)~~] (3) A congregate care program shall[~~keep the following for a private-placement child~~  
 1214 whose parent or guardian lives outside the state]:
- 1215 [(a) regularly updated contact information for the parent or guardian that lives outside  
 1216 the state; and]
- 1217 [(b) a disruption plan.]
- 1218 (a) for each child who is admitted to the program:

- 1219 (i) collect and maintain:
- 1220 (A) contact information for each individual who the child's parent, guardian, or
- 1221 sending government or private agency identifies as an authorized contact; and
- 1222 (B) accurate contact information for the child's parent or guardian;
- 1223 (ii) prepare a disruption plan tailored to the child; and
- 1224 (iii) prepare a suicide prevention plan, tailored to the child, and maintained and
- 1225 revised as necessary to maintain the child's safety;
- 1226 (b) develop proposed admissions criteria that, if approved by the office:
- 1227 (i) prescribe with specificity the criteria by which the program shall determine
- 1228 whether a child is a qualified candidate;
- 1229 (ii) are appropriate given the program's facilities, staffing, programming, policies,
- 1230 procedures, and any other elements of the program designed to safely and
- 1231 effectively serve the children who are admitted to the program;
- 1232 (iii) subject to Subsection (2), are the determining criteria against which the program
- 1233 shall consider and determine whether a child is a qualified candidate; and
- 1234 (iv) the program shall utilize to determine whether any child:
- 1235 (A) meets the admissions criteria, and therefore is a qualified candidate for the
- 1236 program; or
- 1237 (B) does not meet the admissions criteria, and therefore is not a qualified
- 1238 candidate for the program;
- 1239 (c) submit proposed admissions criteria in accordance with Subsection (3)(b) with each
- 1240 application for licensure or renewal of licensure;
- 1241 (d) decline to admit a child who does not meet the program's approved admissions
- 1242 criteria;
- 1243 (e) document and report each critical incident no later than one business day after the
- 1244 time at which the incident begins, to:
- 1245 (i) the parent or guardian of each child affected by the critical incident; and
- 1246 (ii) the office;
- 1247 (f) post a conspicuous notice:
- 1248 (i) in a common area that is frequently used and generally accessible to each child
- 1249 who is admitted to the program;
- 1250 (ii) in a bold font that is not less than 1 inch in height; and
- 1251 (iii) that includes the information and statement described in Subsection (5)(b)(i);
- 1252 (g) provide a clearly designated and dedicated telephone;

- 1253 (i) that is affixed in a common area and accessible to each child in the program;  
 1254 (ii) from which a child in the program, staff, or any other individual, may place a  
 1255 direct call to the ombudsman under Subsection 26B-2-124.2;  
 1256 (A) at any time;  
 1257 (B) without prior approval;  
 1258 (C) without interference;  
 1259 (D) with sufficient privacy to preclude another individual from hearing the  
 1260 conversation; and  
 1261 (E) subject to the whistleblower protections under Section 26B-2-124.3; and  
 1262 (h) maintain a dedicated business telephone number that directly connects a caller to an  
 1263 individual who:  
 1264 (i) is physically present at the congregate care program; and  
 1265 (ii) who has been trained to and will comply with Subsection (4).  
 1266 (4) If a child is in crisis, a congregate care program shall:  
 1267 (a) notify the child's parent or guardian as soon as reasonably possible but not later than  
 1268 five hours after the time at which the child's state of crisis first begins; and  
 1269 (b) make every reasonable effort to connect a child by telephone to an authorized contact  
 1270 who:  
 1271 (i) attempts to contact the child by calling the program's telephone number described  
 1272 in Subsection (3)(h); and  
 1273 (ii) is an authorized contact under Subsection 26B-2-124(2)(a)(ii).  
 1274 (5)(a) A congregate care program shall provide the following information to the persons  
 1275 identified in Subsection (5)(b):  
 1276 (i) the name, telephone number, email, and address of the ombudsman established  
 1277 under Section 26B-2-124.2, immediately below a statement:  
 1278 (A) in bold font that is not less than one inch in height; and  
 1279 (B) stating "ANY PERSON WHO HAS A COMPLAINT OR A CONCERN  
 1280 REGARDING THIS CONGREGATE CARE PROGRAM MAY CONTACT  
 1281 THE CONGREGATE CARE OMBUDSMAN:";  
 1282 (ii) a list of the child's authorized contacts, including name, contact information, and  
 1283 relationship to the child to:  
 1284 (A) the child's parent or guardian;  
 1285 (B) any other individual designated by the child's parent or guardian as an  
 1286 authorized contact; and

- 1287 (C) the ombudsman under Section 26B-2-124; and  
 1288 (iii) on the list described in Subsection (5)(b)(ii):  
 1289 (A) a copy of the division rule regarding a child who is in crisis, made pursuant to  
 1290 Subsection (11)(a)(iii);  
 1291 (B) a notice that the program will notify each authorized contact if the program  
 1292 determines that the child is in crisis; and  
 1293 (C) a notice that an authorized contact may contact the child by telephone if the  
 1294 child is in crisis.
- 1295 (b) A congregate care program shall provide the information described in Subsection  
 1296 (5)(a) to:  
 1297 (i) each child who is admitted to the program;  
 1298 (ii) the child's sending government or private agency; and  
 1299 (iii) the child's parent or guardian.
- 1300 ~~[(3)]~~ (6) If a [~~private-placement child~~] child whose parent or guardian resides outside the  
 1301 state leaves a congregate care program without following the child's disruption plan, the  
 1302 congregate care program shall:  
 1303 (a) notify the parent or guardian, office, and local law enforcement authorities;  
 1304 (b) assist the state in locating the [~~private-placement child~~] child; and  
 1305 (c) after the child is located, transport the [~~private-placement child~~] child:  
 1306 (i) to a parent or guardian;  
 1307 (ii) back to the [~~congregate care~~] program; or  
 1308 (iii) to another [~~congregate care~~] program.
- 1309 (7) A congregate care program may not solicit or accept payment from or on behalf of a  
 1310 child, unless:  
 1311 (a) the child meets the program's admissions criteria; and  
 1312 (b) the child's parent or guardian has executed a contract for the program's services.
- 1313 (8)(a) The payment provisions under this Subsection (8) apply if:  
 1314 (i) a child is transported to a health care facility; and  
 1315 (ii) the child's parent or guardian resides outside the state.  
 1316 (b) A health care facility that provides services to a child who was transported from a  
 1317 congregate care program to the facility is entitled to payment in accordance with this  
 1318 Subsection (8).  
 1319 (c)(i) The child's private or public health insurance policy or policies are responsible  
 1320 for and shall pay all amounts owed and for which there is coverage.

- 1321           (ii) The health care facility shall bill the private or public health insurance policy or  
 1322           policies, if any, for which there may be coverage, prior to seeking payment from  
 1323           any other person.
- 1324           (d) The program at which the child was most recently admitted prior to admittance at the  
 1325           health care facility is liable for and shall pay all amounts owed to the health care  
 1326           facility after any insurance payments received under Subsection (8)(a)(i); and
- 1327           (e) If a child is admitted to a health care facility for inpatient behavioral health services,  
 1328           the residential treatment program described in Subsection (8)(a)(ii) shall pay a flat  
 1329           daily inpatient rate equal to the inpatient rates on the fee schedule utilized by the  
 1330           Public Employees Health Plan, as of the first date that services were provided to the  
 1331           child.
- 1332           (f) The residential program at which the child was most recently admitted prior to  
 1333           admittance at a health care facility is liable for and shall pay all amounts owed under  
 1334           Subsection (8)(b), including the reasonable costs of transport from the health care  
 1335           facility to:
- 1336               (i) the child's home state residence;  
 1337               (ii) another residential or inpatient care facility or program; or  
 1338               (iii) any other lawful destination.
- 1339           (g) Nothing in this Subsection (8) may be construed to limit a health care facility's right  
 1340           to collect payment for health care services provided.

1341 [(4)] (9) This section does not apply to a guardian that is a state or agency.

1342 [(5)] (10) The office shall make rules in accordance with Title 63G, Chapter 3, Utah  
 1343 Administrative Rulemaking Act[;] :

1344 (a) describing:

1345 [(a)] (i) additional mandatory provisions for a disruption plan;[-]

1346 (ii) additional mandatory provisions for a discharge plan;

1347 (iii) objective criteria that a congregate care program shall apply in determining  
 1348           whether a child is in crisis; and

1349 [(b)] (iv) how a congregate care program shall notify the office when a [  
 1350           private-placement child] child begins receiving services[-] ; and

1351 (b) defining key terms and establishing rules and procedures to implement and enforce  
 1352           this section.

1353 Section 9. Section **26B-2-124.1** is enacted to read:

1354 **26B-2-124.1 . Congregate care advisory committee.**



- 1355 (1)(a) For purposes of this section:
- 1356 (i) "Committee" means the congregate care advisory committee created in Section
- 1357 26B-1-204.
- 1358 (ii) "Level of congregate care" means a designation of:
- 1359 (A) "standard congregate care," as defined by the office, in consultation with the
- 1360 committee; or
- 1361 (B) "intensive congregate care," as defined by the office, in consultation with the
- 1362 committee.
- 1363 (iii) "Minimum safety requirements" means, with respect to a level of congregate
- 1364 care, the set of minimum required policies, procedures, staffing, programming, or
- 1365 other elements of the program that the office, in consultation with the committee,
- 1366 determines are necessary for a program of that particular level to safely serve a
- 1367 child who qualifies for admittance under the program's admissions criteria.
- 1368 (iv) "Risk factors" means the same as that term is defined in Section 26B-1-124.
- 1369 (2) The committee shall be composed of seven members, who the office appoints, as
- 1370 follows:
- 1371 (a) a physician who is licensed under Title 58, Chapter 67, Utah Medical Practice Act, or
- 1372 Title 58, Chapter 68, Utah Osteopathic Medical Practice Act;
- 1373 (b) a psychologist licensed under Title 58, Chapter 61, Psychologist Licensing Act;
- 1374 (c) four individuals, each of whom is a clinical social worker, certified social worker, or
- 1375 professional counselor, licensed under Title 58, Chapter 60, Mental Health
- 1376 Professional Practice Act; and
- 1377 (d) a community representative, who the office designates and who has experience in the
- 1378 congregate care industry as:
- 1379 (i) a child who has formerly been an admitted child at a congregate care program;
- 1380 (ii) a parent or guardian of a child who has formerly been an admitted child at a
- 1381 congregate care program; or
- 1382 (iii) a current or former owner or staff member of a congregate care program.
- 1383 (3) The office is authorized to and shall, in consultation with the committee:
- 1384 (a) define the levels of congregate care;
- 1385 (b) in accordance with Subsection (4), for each defined level of congregate care, adopt
- 1386 by rule a set of applicable minimum safety requirements; and
- 1387 (c) for each application for licensure or renewal of licensure:
- 1388 (i) review and consider the applicant's proposed admissions criteria;

- 1389           (ii) deny a program's proposed admissions criteria if the criteria:
- 1390                 (A) are inconsistent with the definitions of the levels of care made pursuant to
- 1391                 Subsection (3)(a); or
- 1392                 (B) would fail to preclude the admittance of a child for whom the program is not
- 1393                 designed to address;
- 1394           (iii) approve a program's proposed admissions criteria if the criteria are not denied
- 1395                 under Subsection (3)(c)(ii); and
- 1396           (d) designate the program as a standard congregate care program or an intensive
- 1397                 congregate care program, based on the program's approved admissions criteria.
- 1398 (4) The minimum safety requirements under Subsection (3)(b) shall describe the minimum
- 1399                 operating and safety practices that a program of that level of congregate care shall
- 1400                 maintain, in terms of:
- 1401                 (a) services;
- 1402                 (b) programming;
- 1403                 (c) facilities;
- 1404                 (d) staffing;
- 1405                 (e) policies;
- 1406                 (f) procedures;
- 1407                 (g) funding;
- 1408                 (h) ownership; or
- 1409                 (i) any other element or characteristic of a congregate care program that the office, in
- 1410                 consultation with the committee, determines impacts the safety of the children who
- 1411                 are admitted.
- 1412 (5) A majority of the members of the committee constitutes a quorum, and a vote of the
- 1413                 majority of the members present constitutes an action of the committee.
- 1414 (6) The director of the division shall appoint a chair from the committee's membership.
- 1415 (7)(a) The committee shall meet at least monthly until the office, in consultation with the
- 1416                 committee, has:
- 1417                 (i) defined the levels of congregate care programs pursuant to Subsection (3)(a); and
- 1418                 (ii) established applicable minimum safety requirements pursuant to Subsection (3)(b).
- 1419           (b) The committee shall meet at least once per quarter after the completion of Subsection
- 1420                 (7)(a)(i) and (ii).
- 1421 (8) A member of the committee may not receive compensation or benefits for the member's
- 1422                 service but may receive per diem reimbursement and travel expenses in accordance with:

- 1423 (a) Section 63A-3-106;  
1424 (b) Section 63A-3-107; and  
1425 (c) rules made by the Division of Finance pursuant to Section 63A-3-106 or 63A-3-107.  
1426 (9) The division shall provide staffing to support the committee.  
1427 (10) The office shall make rules in accordance with Title 63G, Chapter 3, Utah  
1428 Administrative Rulemaking Act, to implement and enforce this section.  
1429 Section 10. Section **26B-2-124.2** is enacted to read:  
1430 **26B-2-124.2 . Congregate care ombudsman.**  
1431 (1) As used in this section:  
1432 (a) "Ombudsman" means the congregate care ombudsman created under this section.  
1433 (b) "Report" means a communication received by the ombudsman and containing  
1434 information that the ombudsman determines warrants further investigation.  
1435 (2) There is created within the department the title and position of congregate care  
1436 ombudsman.  
1437 (3) The core roles and functions of the ombudsman include:  
1438 (a) serving as a resource and advocate for children admitted to congregate care  
1439 programs; and  
1440 (b) receiving and investigating reports pertaining to a congregate care program or staff .  
1441 (4) The ombudsman shall have the following authority and duties:  
1442 (a) to receive and consider communications pertaining to:  
1443 (i) a congregate care program; and  
1444 (ii) any individual who has accessed a congregate care program;  
1445 (b) to investigate, at the ombudsman's discretion, a report received by:  
1446 (i) interviewing:  
1447 (A) any child admitted to a congregate care program;  
1448 (B) the parent or guardian of a child admitted to a congregate care program;  
1449 (C) any individual staff of a congregate care program;  
1450 (D) a sending or receiving agency or program, whether public or private; or  
1451 (E) any individual who has entered a program within the last year;  
1452 (ii) entering or inspecting any area of a program's facilities;  
1453 (iii) accessing, copying, or inspecting a program's records, including  
1454 communications; and  
1455 (iv) observing a program's operations, programming, or facilities;  
1456 (c) to enter or inspect any area of a program;

- 1457 (d) to access, copy, or inspect any records, including communications, of a program; and  
1458 (e) to pursue an appointment of a guardian ad litem to represent a child, if the  
1459 ombudsman determines that the appointment would be in the best interest of a child.

1460 (5) The ombudsman shall:

- 1461 (a) keep generally accepted business hours; and  
1462 (b) maintain a messaging system to receive calls and collect messages during  
1463 non-operating hours.

1464 (6) The office shall make rules in accordance with Title 63G, Chapter 3, Utah  
1465 Administrative Rulemaking Act, to implement and enforce this section.

1466 Section 11. Section **26B-2-124.3** is enacted to read:

1467 **26B-2-124.3 . Whistleblower protections.**

1468 (1) A congregate care program may not take any adverse action against a child or any other  
1469 individual for:

- 1470 (a) communicating with the ombudsman;  
1471 (b) cooperating with the ombudsman; or  
1472 (c) facilitating an investigation of the ombudsman.

1473 (2) An adverse action under Subsection (1) includes:

- 1474 (a) a termination;  
1475 (b) a demotion;  
1476 (c) a suspension;  
1477 (d) a reduction in hours;  
1478 (e) harassment;  
1479 (f) intimidation;  
1480 (g) creating a hostile work environment;  
1481 (h) threatening to report an employee to licensing agencies or law enforcement without  
1482 cause;  
1483 (i) a reduction in pay, benefits, or access to opportunities; or  
1484 (j) any other action that would deter a reasonable employee from performing any action  
1485 described in Subsection (1).

1486 Section 12. Section **26B-2-709** is amended to read:

1487 **26B-2-709 . Complaint investigations -- Records.**

1488 (1) As used in this section:

- 1489 (a) "Anonymous complainant" means a complainant for whom the department does not  
1490 have the minimum personal identifying information necessary, including the

- 1491 complainant's full name, to attempt to communicate with the complainant after a  
1492 complaint has been made.
- 1493 (b) "Child care program" means the same as that term is defined in Section 26B-2-401.
- 1494 (c) "Confidential complainant" means a complainant for whom the department has the  
1495 minimum personal identifying information necessary, including the complainant's  
1496 full name, to attempt to communicate with the complainant after a complaint has  
1497 been made, but who elects under Subsection (3)(c) not to be identified to the subject  
1498 of the complaint.
- 1499 (d) "Exempt provider" means the same as that term is defined in Section 26B-2-401.
- 1500 (e) "Subject of the complaint" means the provider about whom the complainant is  
1501 informing the department.
- 1502 (2) The department may conduct investigations necessary to enforce the provisions of this  
1503 chapter.
- 1504 (3)(a) If the department receives a complaint about a program or facility or an exempt  
1505 provider, the department shall:
- 1506 (i) solicit information from the complainant to determine whether the complaint  
1507 suggests actions or conditions that could pose a serious risk to the safety or  
1508 well-being of a client;
- 1509 (ii) as necessary:
- 1510 (A) encourage the complainant to disclose the minimum personal identifying  
1511 information necessary, including the complainant's full name, for the  
1512 department to attempt to subsequently communicate with the complainant;
- 1513 (B) if the complaint is against a child care program or an exempt provider, inform  
1514 the complainant that the department may not investigate an anonymous  
1515 complaint;
- 1516 (C) if the complaint is not against a child care program or an exempt provider,  
1517 inform the complainant that the department may not use information provided  
1518 by the complainant to substantiate an alleged violation of state law or  
1519 department rule unless the department independently corroborates the  
1520 information;
- 1521 (D) inform the complainant that the identity of a confidential complainant may be  
1522 withheld from the subject of a complaint only as provided in Subsection  
1523 (3)(c)(iii); and
- 1524 (E) inform the complainant that the department may be limited in its use of

- 1525 information provided by a confidential complainant, as provided in Subsection  
1526 (3)(c)(iii)(B); and
- 1527 (iii) inform the complainant that a person is guilty of a class B misdemeanor under  
1528 Section 76-8-506 if the person gives false information to the department with the  
1529 purpose of inducing a change in that person's or another person's license,  
1530 certificate, or certification status.
- 1531 (b) ~~[If the complainant elects to be an anonymous complainant]~~ If the complaint concerns  
1532 events that occurred more than 48 months before the day on which the complainant  
1533 contacted the department, or if the complaint concerns events that occurred more than  
1534 six months before the complainant contacted the department and involves a child care  
1535 program, the department:
- 1536 (i) shall refer the information in the complaint to the Division of Child and Family  
1537 Services within the department, law enforcement, or any other appropriate agency,  
1538 if the complaint suggests actions or conditions which could pose a serious risk to  
1539 the safety or well-being of a client;
- 1540 (ii) may not investigate or substantiate the complaint~~[ if the complaint is against a~~  
1541 ~~child care program or an exempt provider]~~; and
- 1542 (iii) may, during a regularly scheduled annual survey, inform the provider that is the  
1543 subject of the complaint of allegations or concerns raised by the anonymous  
1544 complainant.
- 1545 (c)(i) If the complainant elects to be a confidential complainant, the department shall  
1546 determine whether the complainant wishes to remain confidential:
- 1547 (A) only until the investigation of the complaint has been completed; or  
1548 (B) indefinitely.
- 1549 (ii) If the complainant elects to remain confidential only until the investigation of the  
1550 complaint has been completed, the department shall disclose the name of the  
1551 complainant to the subject of the complaint at the completion of the investigation,  
1552 but no sooner.
- 1553 (iii) If the complainant elects to remain confidential indefinitely, the department:
- 1554 (A) notwithstanding Subsection 63G-2-201(5)(b), may not disclose the name of  
1555 the complainant, including to the subject of the complaint; and  
1556 (B) may not use information provided by the complainant to substantiate an  
1557 alleged violation of state law or department rule unless the department  
1558 independently corroborates the information.

- 1559 (4)(a) Prior to conducting an investigation of a program or facility or an exempt provider  
1560 in response to a complaint, a department investigator shall review the complaint with  
1561 the investigator's supervisor.
- 1562 (b) The investigator may proceed with the investigation only if:
- 1563 (i) the supervisor determines the complaint is credible;
- 1564 (ii) the complaint is not from an anonymous complainant and against a child care  
1565 program or an exempt provider; and
- 1566 (iii) prior to the investigation, the investigator informs the subject of the complaint of:
- 1567 (A) except as provided in Subsection (3)(c), the name of the complainant; and
- 1568 (B) except as provided in Subsection (4)(c), the substance of the complaint.
- 1569 (c) An investigator is not required to inform the subject of a complaint of the substance  
1570 of the complaint prior to an investigation if doing so would jeopardize the  
1571 investigation. However, the investigator shall inform the subject of the complaint of  
1572 the substance of the complaint as soon as doing so will no longer jeopardize the  
1573 investigation.
- 1574 (5) If the department is unable to substantiate a complaint, any record related to the  
1575 complaint or the investigation of the complaint:
- 1576 (a) shall be classified under Title 63G, Chapter 2, Government Records Access and  
1577 Management Act, as:
- 1578 (i) a private or controlled record if appropriate under Section 63G-2-302 or  
1579 63G-2-304; or
- 1580 (ii) a protected record under Section 63G-2-305; and
- 1581 (b) if disclosed in accordance with Subsection 63G-2-201(5)(b), may not identify an  
1582 individual provider, exempt provider, or complainant.
- 1583 (6) Any record of the department related to a complaint is a protected record under Title  
1584 63G, Chapter 2, Government Records Access and Management Act, and,  
1585 notwithstanding Subsection 63G-2-201(5)(b), may not be disclosed in a manner that  
1586 identifies an individual program or facility, exempt provider, provider, or complainant.
- 1587 **Section 13. Effective Date.**
- 1588 This bill takes effect on July 1, 2025.