

Michael K. McKell proposes the following substitute bill:

**Congregate Care Amendments**

2025 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Michael K. McKell**

House Sponsor:

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**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 a program's 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

at any time;

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

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

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

- makes technical changes.

### **Money Appropriated in this Bill:**

None

### **Other Special Clauses:**

This bill provides a special effective date.

### **Utah Code Sections Affected:**

#### **AMENDS:**

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

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

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

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

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

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

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

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

#### **ENACTS:**

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

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

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

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

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

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

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

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

- (a) the administration and government of the department;
- (b) the conduct of the department's employees; and
- (c) the custody, use, and preservation of the records, papers, books, documents, and property of the department.

(2) The following policymaking boards, councils, and committees are created within the Department of Health and Human Services:

- (a) Board of Aging and Adult Services;
- (b) Utah State Developmental Center Board;
- (c) Health Facility Committee;
- (d) Health Data Committee;
- (e) Child Care Provider Licensing Committee;
- (f) Adult Autism Treatment Program Advisory Committee;
- (g) Youth Electronic Cigarette, Marijuana, and Other Drug Prevention Committee;[-]
- (h) Congregate Care Advisory Committee; and

~~[(h)]~~ (i) any boards, councils, or committees that are created by statute in this title.

(3) The following divisions and offices are created within the Department of Health and Human Services:

(a) relating to operations:

- (i) the Division of Finance and Administration;
- (ii) the Division of Licensing and Background Checks;
- (iii) the Division of Customer Experience;
- (iv) the Division of Data, Systems, and Evaluation; and
- (v) the Division of Continuous Quality and Improvement;

(b) relating to healthcare administration:

(i) the Division of Integrated Healthcare, which shall include responsibility for:

- (A) the state's medical assistance programs; and
- (B) behavioral health programs described in Chapter 5, Health Care - Substance Use and Mental Health;

(ii) the Division of Aging and Adult Services; and

(iii) the Division of Services for People with Disabilities;

(c) relating to community health and well-being:

- (i) the Division of Child and Family Services;
- (ii) the Division of Family Health;
- (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-1-336;

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:

(a) federal civil money penalty funds received under the federal Centers for Medicare and Medicaid Facility Licensing and Inspection Act, including any existing funds previously received and allocable to the Division of Licensing and Background Checks;

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

(c) any interest earned on the fund.

(2) Money in the fund may only be used by the department under a federally approved state plan:

(a) to assist individuals effected by a shutdown of a facility or program under this title;

(b) for administrative expenses; or

(c) for allowable activities.

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

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

As used in this part:

(1) "Abuse" means the same as that term is defined in Section 80-1-102.

~~[(1)]~~ (2) "Adoption services" means the same as that term is defined in Section 80-2-801.

~~[(2)]~~ (3) "Adult day care" means nonresidential care and supervision:

(a) for three or more adults for at least four but less than 24 hours a day; and

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

~~[(3)]~~ (4) "Applicant" means a person that applies for an initial license or a license renewal under this part.

~~[(4)]~~ (5)(a) "Associated with the licensee" means that an individual is:

(i) affiliated with a licensee as an owner, director, member of the governing body, employee, agent, provider of care, department contractor, or volunteer; or

(ii) applying to become affiliated with a licensee in a capacity described in Subsection ~~[(4)(a)(i).]~~ (5)(a)(i).

(b) "Associated with the licensee" does not include:

(i) service on the following bodies, unless that service includes direct access to a child or a vulnerable adult:

(A) a local mental health authority described in Section 17-43-301;

(B) a local substance abuse authority described in Section 17-43-201; or

(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)] (6)(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);] (6)(b)(i); and
- 177 (iv)(A) does not provide the treatment or services described in Subsection [(40)(a)]  
178 (44)(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)] (6)(b)(ii).
- 181 (b)(i) For purposes of Subsection [(5)(a)(iii)] (6)(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)] (6)(a)(iv)(B), a private school provides  
184 the treatment or services described in Subsection [(40)(a)] (44)(a) on a limited  
185 basis if:
- 186 (A) the treatment or services described in Subsection [(40)(a)] (44)(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);] (44)(a) or
- 191 (II) have a primary purpose of providing the treatment or services described in  
192 Subsection [(40)(a)] (44)(a).
- 193 (c) "Boarding school" does not include a therapeutic school.
- 194 [(6)] (7) "Certification" means a less restrictive level of licensure issued by the department.
- 195 [(7)] (8) "Child" means an individual under 18 years old.
- 196 [(8)] (9) "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;

(b) placing the child in a home for adoption; or

(c) foster home placement.

~~[(9)]~~ (10) "Child-placing agency" means a person that engages in child placing.

~~[(10)]~~ (11) "Client" means an individual who receives or has received services from a licensee.

~~[(11)]~~ (12)(a) "Congregate care program" means any of the following that provide services to a child:

(i) an outdoor youth program;

(ii) a residential support program;

(iii) a residential treatment program; or

(iv) a therapeutic school.

(b) "Congregate care program" does not include a human services program that:

(i) is licensed to serve adults; and

(ii) is approved by the office to service a child for a limited time.

~~[(12)]~~ (13) "Day treatment" means specialized treatment that is provided to:

(a) a client less than 24 hours a day; and

(b) four or more persons who:

(i) are unrelated to the owner or provider; and

(ii) have emotional, psychological, developmental, physical, or behavioral dysfunctions, impairments, or chemical dependencies.

~~[(13)]~~ (14) "Department contractor" means an individual who:

(a) provides services under a contract with the department; and

(b) due to the contract with the department, has or will likely have direct access to a child or vulnerable adult.

~~[(14)]~~ (15) "Direct access" means that an individual has, or likely will have:

(a) contact with or access to a child or vulnerable adult that provides the individual with an opportunity for personal communication or touch; or

(b) an opportunity to view medical, financial, or other confidential personal identifying information of the child, the child's parents or legal guardians, or the vulnerable adult.

~~[(15)]~~ (16) "Directly supervised" means that an individual is being supervised under the uninterrupted visual and auditory surveillance of another individual who has a current background check approval issued by the office.

~~[(16)]~~ (17) "Director" means the director of the office.

(18) "Division" means the Division of Licensing and Background Checks created under

233        Section 26B-2-103.

234        [(17)] (19) "Domestic violence" means the same as that term is defined in Section 77-36-1.

235        [(18)] (20) "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)] (21) "Elder adult" means a person 65 years old or older.

239        [(20)] (22) "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)] (23) "Foster home" means a residence that is licensed or certified by the office for the  
244        full-time substitute care of a child.

245        (24) "Harm" means the same as that term is defined in Section 80-1-102.

246        [(22)] (25) "Health benefit plan" means the same as that term is defined in Section  
247        31A-22-634.248        [(23)] (26) "Health care provider" means the same as that term is defined in Section  
249        78B-3-403.

250        [(24)] (27) "Health insurer" means the same as that term is defined in Section 31A-22-615.5.

251        [(25)] (28)(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



- (G) any other human services that are required by contract with the department to be licensed with the department.
- (b) "Human services program" does not include:
- (i) a boarding school;
  - (ii) a residential, vocational and life skills program, as defined in Section 13-53-102; or
  - (iii) a short-term relief care provider.
- ~~[(26)]~~ (29) "Indian child" means the same as that term is defined in 25 U.S.C. Sec. 1903.
- ~~[(27)]~~ (30) "Indian country" means the same as that term is defined in 18 U.S.C. Sec. 1151.
- ~~[(28)]~~ (31) "Indian tribe" means the same as that term is defined in 25 U.S.C. Sec. 1903.
- ~~[(29)]~~ (32) "Intermediate secure treatment" means 24-hour specialized residential treatment or care for an individual who:
- (a) cannot live independently or in a less restrictive environment; and
  - (b) requires, without the individual's consent or control, the use of locked doors to care for the individual.
- ~~[(30)]~~ (33) "Licensee" means an individual or a human services program licensed by the office.
- ~~[(31)]~~ (34) "Local government" means a city, town, or county.
- ~~[(32)]~~ (35) "Minor" means child.
- ~~[(33)]~~ (36) "Office" means, except as provided in Section 26B-2-120, the Office of Licensing within the department.
- (37) "Ombudsman" means the congregate care ombudsman created in Section 26B-2-124.2.
- ~~[(34)]~~ (38) "Outdoor youth program" means a program that provides:
- (a) services to a child ~~[that]~~ who has:
    - (i) a chemical dependency; or
    - (ii) a dysfunction or impairment that is emotional, psychological, developmental, physical, or behavioral;
  - (b) a 24-hour outdoor group living environment; and
  - (c)(i) regular therapy, including group, individual, or supportive family therapy; or
  - (ii) informal therapy or similar services, including wilderness therapy, adventure therapy, or outdoor behavioral healthcare.
- ~~[(35)]~~ (39) "Outpatient treatment" means individual, family, or group therapy or counseling designed to improve and enhance social or psychological functioning for those whose physical and emotional status allows them to continue functioning in their usual living

environment.

~~[(36)]~~ (40) "Practice group" or "group practice" means two or more health care providers legally organized as a partnership, professional corporation, or similar association, for which:

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

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

~~[(37)]~~ (41) "Private-placement child" means a child whose parent or guardian enters into a contract with a congregate care program for the child to receive services.

~~[(38)]~~ (42)(a) "Recovery residence" means a home, residence, or facility that meets at least two of the following requirements:

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

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

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

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

(v)(A) receives public funding; or

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

(b) "Recovery residence" does not mean:

(i) a residential treatment program;

(ii) residential support program; or

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

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

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

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

- governing the living environment.
- [(39)] (43) "Regular business hours" means:
- (a) the hours during which services of any kind are provided to a client; or
  - (b) the hours during which a client is present at the facility of a licensee.
- [(40)] (44)(a) "Residential support program" means a program that arranges for or provides the necessities of life as a protective service to individuals or families who have a disability or who are experiencing a dislocation or emergency that prevents them from providing these services for themselves or their families.
- (b) "Residential support program" includes a program that provides a supervised living environment for individuals with dysfunctions or impairments that are:
- (i) emotional;
  - (ii) psychological;
  - (iii) developmental; or
  - (iv) behavioral.
- (c) Treatment is not a necessary component of a residential support program.
- (d) "Residential support program" does not include:
- (i) a recovery residence; or
  - (ii) a program that provides residential services that are performed:
    - (A) exclusively under contract with the department and provided to individuals through the Division of Services for People with Disabilities; or
    - (B) in a facility that serves fewer than four individuals.
- [(41)] (45)(a) "Residential treatment" means a 24-hour group living environment for four or more individuals unrelated to the owner or provider that offers room or board and specialized treatment, behavior modification, rehabilitation, discipline, emotional growth, or habilitation services for persons with emotional, psychological, developmental, or behavioral dysfunctions, impairments, or chemical dependencies.
- (b) "Residential treatment" does not include a:
- (i) boarding school;
  - (ii) foster home; or
  - (iii) recovery residence.
- [(42)] (46) "Residential treatment program" means a program or facility that provides:
- (a) residential treatment; or
  - (b) intermediate secure treatment.
- [(43)] (47) "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)] (48) "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)] (49) "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)] (50) "Substance abuse disorder" or "substance use disorder" mean the same as  
391 "substance use disorder" is defined in Section 26B-5-501.

392 [(47)] (51) "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)] (51)(a) to  
399 persons with:

400 (i) a diagnosed substance use disorder; or

401 (ii) chemical dependency disorder.

402 [(48)] (52) "Therapeutic school" means a residential group living facility:

- (a) for four or more individuals that are not related to:
  - (i) the owner of the facility; or
  - (ii) the primary service provider of the facility;
- (b) that serves students who have a history of failing to function:
  - (i) at home;
  - (ii) in a public school; or
  - (iii) in a nonresidential private school; and
- (c) that offers:
  - (i) room and board; and
  - (ii) an academic education integrated with:
    - (A) specialized structure and supervision; or
    - (B) services or treatment related to:
      - (I) a disability;
      - (II) emotional development;
      - (III) behavioral development;
      - (IV) familial development; or
      - (V) social development.

[(49)] (53) "Unrelated persons" means persons other than parents, legal guardians, grandparents, brothers, sisters, uncles, or aunts.

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

- (a) provide personal protection;
- (b) provide necessities such as food, shelter, clothing, or mental or other health care;
- (c) obtain services necessary for health, safety, or welfare;
- (d) carry out the activities of daily living;
- (e) manage the adult's own resources; or
- (f) comprehend the nature and consequences of remaining in a situation of abuse, neglect, or exploitation.

[(51)] (55)(a) "Youth program" means a program designed to provide behavioral, substance use, or mental health services to minors that:

- (i) serves adjudicated or nonadjudicated youth;
- (ii) charges a fee for the program's services;
- (iii) may provide host homes or other arrangements for overnight accommodation of the youth;

- (iv) may provide all or part of the program's services in the outdoors;
- (v) may limit or censor access to parents or guardians; and
- (vi) prohibits or restricts a minor's ability to leave the program at any time of the minor's own free will.

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

[(52)] (56)(a) "Youth transportation company" means any person that transports a child for payment to or from a congregate care program in Utah.

(b) "Youth transportation company" does not include:

- (i) a relative of the child;
- (ii) a state agency; or
- (iii) a congregate care program's employee who transports the child from the congregate care program that employs the employee and returns the child to the same congregate care program.

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

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

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

(a) make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to establish:

(i) except as provided in Subsection (1)(a)(ii), basic health and safety standards for licensees, that shall be limited to:

- (A) fire safety;
- (B) food safety;
- (C) sanitation;
- (D) infectious disease control;
- (E) safety of the:
  - (I) physical facility and grounds; and
  - (II) area and community surrounding the physical facility;
- (F) transportation safety;
- (G) emergency preparedness and response;
- (H) the administration of medical standards and procedures, consistent with the related provisions of this title;
- (I) staff and client safety and protection;
- (J) the administration and maintenance of client and service records;

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

- (I) begins to reside at the licensee's residential treatment facility before the person's 18th birthday;
- (II) has resided at the licensee's residential treatment facility continuously since the time described in Subsection (1)(a)(iii)(A)(I);
- (III) has not completed the course of treatment for which the person began residing at the licensee's residential treatment facility; and
- (IV) voluntarily consents to complete the course of treatment described in Subsection (1)(a)(iii)(A)(III); or
- (B)(I) provide residential treatment services to a child who is:
- (Aa) at least 12 years old or, as approved by the [office] division, younger than 12 years old; and
- (Bb) under the custody of the department, or one of its divisions; and
- (II) provide, in the same facility as a child described in Subsection (1)(a)(iii)(B)(I), residential treatment services to a person who is:
- (Aa) at least 18 years old, but younger than 21 years old; and
- (Bb) under the custody of the department, or one of its divisions;
- (iv) minimum administration and financial requirements for licensees;
- (v) guidelines for variances from rules established under this Subsection (1);
- (vi) ethical standards, as described in Subsection 78B-6-106(3), and minimum responsibilities of a child-placing agency that provides adoption services and that is licensed under this part;
- (vii) what constitutes an "outpatient treatment program" for purposes of this part;
- (viii) a procedure requiring a licensee to provide an insurer the licensee's records related to any services or supplies billed to the insurer[;] and a procedure allowing the licensee and the insurer to contact the Insurance Department to resolve any disputes;
- (ix) a protocol for the office to investigate and process complaints about licensees;
- (x) a procedure for a licensee to:
- (A) report the use of a restraint or seclusion within one business day after the day on which the use of the restraint or seclusion occurs;~~[-and]~~
- (B) report a critical incident within one business day after the day on which the incident occurs; and
- (C) comply with any requirements of this part;
- (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

home;

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

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

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

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

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

(ii) by or against its clients; or

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

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

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

(ii) involving its clients; or

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

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

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

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

(1) As used in this section:

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

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

(i) a loss or gain of employment;

(ii) a change in marital status;

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

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

(2)(a) Subject to Subsections (2)(b) and (3), the office may, for the purpose of ascertaining compliance with this part, enter and inspect on a routine basis the facility or program of a licensee.

(b)(i) The office shall enter and inspect a congregate care program at least once each calendar quarter.

(ii) At least two of the inspections described in Subsection (2)(b)(i) shall be unannounced.

(iii) The division shall verify whether a congregate care program maintains strict compliance with the program's approved admissions criteria under Section 26B-2-124 at least quarterly.

(c) If another government entity conducts an inspection that is substantially similar to an inspection conducted by the office, the office may conclude the inspection satisfies an inspection described in Subsection (2)(b).

(3)(a) Except as provided in Subsection (3)(b):

(i) for the first two years of a foster home's license, the ~~[office]~~ division shall enter and inspect the facility once each year;

(ii) after a foster home has been licensed for two years, the ~~[office]~~ division shall enter and inspect the facility once every three years; and

(iii) for a foster home licensed for two or more years as of May 1, 2023, and that was inspected by the office on or after May 1, 2023, the office may not enter and inspect the facility until three years after the date of the last inspection.

(b)(i) If a foster home has not had a placement for more than 12 months after the date of the office's last inspection, the office shall enter and inspect the ~~[facility]~~ home within 30 days after the date on which the foster home receives a new placement.

(ii) If the license for a foster home is placed on conditions, suspended, or revoked by the office, or voluntarily returned to the office by the licensee, the office may enter and inspect the ~~[facility]~~ home on a routine basis.

(iii) If there is a material change to a foster home:

(A) the foster parent shall immediately notify the office of the material change; and

(B) the office shall inspect the foster home as soon as practicable after receiving notice of or otherwise becoming aware of the material change.

(iv) If a health and safety concern is reported to the office, the office may conduct an unannounced inspection of the foster home during regular business hours.

(c) Except as provided in Subsection (3)(b)(iv), an inspection of a foster home shall be

announced.

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

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

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

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

Public Safety, created in Section 53-10-201.

(d) "Criminal finding" means a record of:

- (i) an arrest for a criminal offense;
- (ii) a warrant for a criminal arrest;
- (iii) charges for a criminal offense; or
- (iv) a criminal conviction.

(e) "Direct access" means that an individual has, or likely will have:

- (i) contact with or access to a child or vulnerable adult by which the individual will have the opportunity for personal communication or touch with the child or vulnerable adult; or
- (ii) an opportunity to view medical, financial, or other confidential personal identifying information of the child, the child's parent or legal guardian, or the vulnerable adult.

(f)(i) "Direct access qualified" means that the applicant has an eligible determination by the office within the license and renewal time period; and

- (ii) no more than 180 days have passed since the date on which the applicant's association with a certification, contract, or licensee with the department expires.

(g) "Incidental care" means occasional care, not in excess of five hours per week and never overnight, for a foster child.

(h) "Licensee" means an individual or a human services program licensed by the division.

(i) "Non-criminal finding" means a record maintained in:

- (i) the Division of Child and Family Services' Management Information System described in Section 80-2-1001;
- (ii) the Division of Child and Family Services' Licensing Information System described in Section 80-2-1002;
- (iii) the Division of Aging and Adult Services' vulnerable adult abuse, neglect, or exploitation database described in Section 26B-6-210;
- (iv) juvenile court arrest, adjudication, and disposition records;
- (v) the Sex, Kidnap, and Child Abuse Offender Registry described in Title 77, Chapter 41, Sex, Kidnap, and Child Abuse Offender Registry, or a national sex offender registry; or
- (vi) a state child abuse or neglect registry.

(j) "Office" means the Office of Background Processing within the department.

(k) "Personal identifying information" means:

- (i) current name, former names, nicknames, and aliases;
- (ii) date of birth;
- (iii) physical address and email address;
- (iv) telephone number;
- (v) driver license or other government-issued identification;
- (vi) social security number;
- (vii) only for applicants who are 18 years old or older, fingerprints, in a form specified by the office; and
- (viii) other information specified by the office by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(2) Except as provided in Subsection (12), an applicant or a representative shall submit the following to the office:

- (a) personal identifying information;
- (b) a fee established by the office under Section 63J-1-504;
- (c) a disclosure form, specified by the office, for consent for:
  - (i) an initial background check upon association with a certification, contract, or licensee with the department;
  - (ii) ongoing monitoring of fingerprints and registries until no longer associated with a certification, contract, or licensee with the department for 180 days;
  - (iii) a background check when the office determines that reasonable cause exists; and
  - (iv) retention of personal identifying information, including fingerprints, for monitoring and notification as described in Subsections (3)(c) and (4);
- (d) if an applicant resided outside of the United States and its territories during the five years immediately preceding the day on which the information described in Subsections (2)(a) through (c) is submitted to the office, documentation establishing whether the applicant was convicted of a crime during the time that the applicant resided outside of the United States or its territories; and
- (e) an application showing an applicant's association with a certification, contract, or a licensee with the department, for the purpose of the office tracking the direct access qualified status of the applicant, which expires 180 days after the date on which the applicant is no longer associated with a certification, contract, or a licensee with the department.

(3) The office:

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



the bureau for checking, retaining, and monitoring of state and national criminal background databases and for notifying the office of new criminal activity associated with the applicant;

(d) shall track the status of an applicant under this section to ensure that the applicant is not required to duplicate the submission of the applicant's fingerprints if the applicant is associated with more than one certification, contract, or licensee with the department;

(e) shall notify the bureau when a direct access qualified individual has not been associated with a certification, contract, or licensee with the department for a period of 180 days;

(f) shall adopt measures to strictly limit access to personal identifying information solely to the individuals responsible for processing and entering the applications for background checks and to protect the security of the personal identifying information the office reviews under this Subsection (3);

(g) as necessary to comply with the federal requirement to check a state's child abuse and neglect registry regarding any applicant working in a congregate care program, shall:

(i) search the Division of Child and Family Services' Licensing Information System described in Section 80-2-1002; and

(ii) require the child abuse and neglect registry be checked in each state where an applicant resided at any time during the five years immediately preceding the day on which the application is submitted to the office; and

(h) shall make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to implement the provisions of this Subsection (3) relating to background checks.

(4)(a) With the personal identifying information the office submits to the bureau under Subsection (3), the bureau shall check against state and regional criminal background databases for the applicant's criminal history.

(b) With the personal identifying information and fingerprints the office submits to the bureau under Subsection (3), the bureau shall check against national criminal background databases for the applicant's criminal history.

(c) Upon direction from the office, and with the personal identifying information and fingerprints the office submits to the bureau under Subsection (3)(c), the bureau shall:

(i) maintain a separate file of the fingerprints for search by future submissions to the

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

- 879 (G) an offense included in Title 76, Chapter 5b, Sexual Exploitation Act;
- 880 (H) an offense included in Title 76, Chapter 7, Offenses Against the Family;
- 881 (I) an offense included in Title 76, Chapter 9, Part 4, Offenses Against Privacy;
- 882 (J) an offense included in Title 76, Chapter 10, Part 4, Weapons of Mass
- 883 Destruction;
- 884 (K) an offense included in Title 78B, Chapter 7, Protective Orders and Stalking
- 885 Injunctions;
- 886 (L) aggravated arson, as described in Section 76-6-103;
- 887 (M) aggravated burglary, as described in Section 76-6-203;
- 888 (N) aggravated exploitation of prostitution, as described in Section 76-10-1306;
- 889 (O) aggravated robbery, as described in Section 76-6-302;
- 890 (P) endangering persons in a human services program, as described in Section
- 891 26B-2-113;
- 892 (Q) failure to report, as described in Section 80-2-609;
- 893 (R) identity fraud crime, as described in Section 76-6-1102;
- 894 (S) leaving a child unattended in a motor vehicle, as described in Section
- 895 76-10-2202;
- 896 (T) riot, as described in Section 76-9-101;
- 897 (U) sexual battery, as described in Section 76-9-702.1; or
- 898 (V) threatening with or using a dangerous weapon in a fight or quarrel, as
- 899 described in Section 76-10-506; or
- 900 (ii) a felony or misdemeanor offense committed outside of the state that, if committed
- 901 in the state, would constitute a violation of an offense described in Subsection
- 902 (5)(a)(i).
- 903 (b)(i) Subsection (5)(a) does not apply to an applicant who is seeking a position as a
- 904 peer support provider or a mental health professional, if the applicant provides
- 905 services in a program that serves only adults with a primary mental health
- 906 diagnosis, with or without a co-occurring substance use disorder.
- 907 (ii) The office shall conduct a comprehensive review of an applicant described in
- 908 Subsection (5)(b)(i) in accordance with Subsection (7).
- 909 (c) [The] Subject to Subsection (5)(d), the office shall deny direct access qualified status
- 910 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, excluding a supported finding for
- 916               dependency, as defined in Section 80-1-102, within three years from the date
- 917               on which the office conducts the background check.
- 918           (d) Subsection (5)(c) does not apply retrospectively for congregate care program
- 919               employees who have an approved background screening on or before July 1, 2025.
- 920   (6) The office shall conduct a comprehensive review of an applicant's background check if
- 921   the applicant:
- 922           (a) has a felony or class A misdemeanor conviction that is more than three years from
- 923               the date on which the office conducts the background check, for an offense described
- 924               in Subsection (5)(a);
- 925           (b) has a felony charge or conviction that is no more than 10 years from the date on
- 926               which the office conducts the background check for an offense not described in
- 927               Subsection (5)(a);
- 928           (c) has a felony charge or conviction that is more than 10 years from the date on which
- 929               the office conducts the background check, for an offense not described in Subsection
- 930               (5)(a), with criminal or non-criminal findings after the date of the felony charge or
- 931               conviction;
- 932           (d) has a class B misdemeanor or class C misdemeanor conviction that is more than
- 933               three years and no more than 10 years from the date on which the office conducts the
- 934               background check for an offense described in Subsection (5)(a);
- 935           (e) has a class B misdemeanor or class C misdemeanor conviction that is more than 10
- 936               years from the date on which the office conducts the background check, for an
- 937               offense described in Subsection (5)(a), with criminal or non-criminal findings after
- 938               the date of conviction;
- 939           (f) has a misdemeanor charge or conviction that is no more than three years from the
- 940               date on which the office conducts the background check for an offense not described
- 941               in Subsection (5)(a);
- 942           (g) has a misdemeanor charge or conviction that is more than three years from the date
- 943               on which the office conducts the background check, for an offense not described in
- 944               Subsection (5)(a), with criminal or non-criminal findings after the date of charge or
- 945               conviction;
- 946           (h) is currently subject to a plea in abeyance or diversion agreement for an offense

- described in Subsection (5)(a);
- (i) appears on the Sex, Kidnap, and Child Abuse Offender Registry described in Title 77, Chapter 41, Sex, Kidnap, and Child Abuse Offender Registry, or a national sex offender registry;
  - (j) has a record of an adjudication in juvenile court for an act that, if committed by an adult, would be a felony or misdemeanor, if the applicant is:
    - (i) under 28 years old; or
    - (ii) 28 years old or older and has been convicted of, has pleaded no contest to, or is currently subject to a plea in abeyance or diversion agreement for a felony or a misdemeanor offense described in Subsection (5)(a);
  - (k) has a pending charge for an offense described in Subsection (5)(a);
  - (l) has a ~~[listing]~~ supported finding that occurred no more than 15 years from the date on which the office conducts the background check in the Division of Child and Family Services' Licensing Information System described in Section 80-2-1002;
  - (m) has a ~~[listing]~~ supported finding that occurred more than 15 years from the date on which the office conducts the background check in the Division of Child and Family Services' Licensing Information System described in Section 80-2-1002, with criminal or non-criminal findings after the date of the listing;
  - (n) has a listing that occurred no more than 15 years from the date on which the office conducts the background check in the Division of Aging and Adult Services' vulnerable adult abuse, neglect, or exploitation database described in Section 26B-6-210;
  - (o) has a listing that occurred more than 15 years from the date on which the office conducts the background check in the Division of Aging and Adult Services' vulnerable adult abuse, neglect, or exploitation database described in Section 26B-6-210, with criminal or non-criminal findings after the date of the listing;
  - (p) has a substantiated finding that occurred no more than 15 years from the date on which the office conducts the background check of severe child abuse or neglect under Section 80-3-404 or 80-3-504[-]; or
  - (q) has a substantiated finding that occurred more than 15 years from the date on which the office conducts the background check of severe child abuse or neglect under Section 80-3-404 or 80-3-504, with criminal or non-criminal findings after the date of the listing.
- (7)(a) The comprehensive review shall include an examination of:

- (i) the date of the offense or incident;
- (ii) the nature and seriousness of the offense or incident;
- (iii) the circumstances under which the offense or incident occurred;
- (iv) the age of the perpetrator when the offense or incident occurred;
- (v) whether the offense or incident was an isolated or repeated incident;
- (vi) whether the offense or incident directly relates to abuse of a child or vulnerable adult, including:
  - (A) actual or threatened, nonaccidental physical, mental, or financial harm;
  - (B) sexual abuse;
  - (C) sexual exploitation; or
  - (D) negligent treatment;
- (vii) any evidence provided by the applicant of rehabilitation, counseling, psychiatric treatment received, or additional academic or vocational schooling completed;
- (viii) the applicant's risk of harm to clientele in the program or in the capacity for which the applicant is applying; and
- (ix) if the background check of an applicant is being conducted for the purpose of giving direct access qualified status to an applicant seeking a position in a congregate care program or to become a prospective foster or adoptive parent, any listing in the Division of Child and Family Services' Management Information System described in Section 80-2-1001.

(b) At the conclusion of the comprehensive review, the office shall deny direct access qualified status to an applicant if the office finds the approval would likely create a risk of harm to a child or vulnerable adult.

(8) The office shall grant direct access qualified status to an applicant who is not denied under this section.

(9)(a) The office may conditionally grant direct access qualified status to an applicant, for a maximum of 60 days after the day on which the office sends written notice, without requiring that the applicant be directly supervised, if the office:

- (i) is awaiting the results of the criminal history search of national criminal background databases; and
- (ii) would otherwise grant direct access qualified status to the applicant under this section.

(b) The office may conditionally grant direct access qualified status to an applicant, for a maximum of one year after the day on which the office sends written notice, without

1015 requiring that the applicant be directly supervised if the office:

1016 (i) is awaiting the results of an out-of-state registry for providers other than foster and  
1017 adoptive parents; and

1018 (ii) would otherwise grant direct access qualified status to the applicant under this  
1019 section.

1020 (c) Upon receiving the results of the criminal history search of a national criminal  
1021 background database, the office shall grant or deny direct access qualified status to  
1022 the applicant in accordance with this section.

1023 (10)(a) Each time an applicant is associated with a licensee, the department shall review  
1024 the current status of the applicant's background check to ensure the applicant is still  
1025 eligible for direct access qualified status in accordance with this section.

1026 (b) A licensee may not permit an individual to have direct access to a child or a  
1027 vulnerable adult without being directly supervised unless:

1028 (i) the individual is the parent or guardian of the child, or the guardian of the  
1029 vulnerable adult;

1030 (ii) the individual is approved by the parent or guardian of the child, or the guardian  
1031 of the vulnerable adult, to have direct access to the child or the vulnerable adult;

1032 (iii) the individual is only permitted to have direct access to a vulnerable adult who  
1033 voluntarily invites the individual to visit; or

1034 (iv) the individual only provides incidental care for a foster child on behalf of a foster  
1035 parent who has used reasonable and prudent judgment to select the individual to  
1036 provide the incidental care for the foster child.

1037 (c) Notwithstanding any other provision of this section, an applicant who is denied direct  
1038 access qualified status shall not have direct access to a child or vulnerable adult  
1039 unless the office grants direct access qualified status to the applicant through a  
1040 subsequent application in accordance with this section.

1041 (11) If the office denies direct access qualified status to an applicant, the applicant may  
1042 request a hearing in the department's Office of Administrative Hearings to challenge the  
1043 office's decision.

1044 (12)(a) This Subsection (12) applies to an applicant associated with a certification,  
1045 contract, or licensee serving adults only.

1046 (b) A program director or a member, as defined in Section 26B-2-105, of the licensee  
1047 shall comply with this section.

1048 (c) The office shall conduct a comprehensive review for an applicant if:

- (i) the applicant is seeking a position:
  - (A) as a peer support provider;
  - (B) as a mental health professional; or
  - (C) in a program that serves only adults with a primary mental health diagnosis, with or without a co-occurring substance use disorder; and
- (ii) within three years from the date on which the office conducts the background check, the applicant has a felony or misdemeanor charge or conviction or a non-criminal finding.

(13)(a) This Subsection (13) applies to an applicant seeking a position in a congregate care program, an applicant seeking to provide a prospective foster home, an applicant seeking to provide a prospective adoptive home, and each adult living in the home of the prospective foster or prospective adoptive home.

(b) As federally required, the office shall:

- (i) check the child abuse and neglect registry in each state where each applicant resided in the five years immediately preceding the day on which the applicant applied to be a foster or adoptive parent, to determine whether the prospective foster or adoptive parent is listed in the registry as having a substantiated or supported finding of child abuse or neglect; and
- (ii) except for applicants seeking a position in a congregate care program, check the child abuse and neglect registry in each state where each adult living in the home of the prospective foster or adoptive home resided in the five years immediately preceding the day on which the applicant applied to be a foster or adoptive parent, to determine whether the adult is listed in the registry as having a substantiated or supported finding of child abuse or neglect.

(c) The requirements described in Subsection (13)(b) do not apply to the extent that:

- (i) federal law or rule permits otherwise; or
- (ii) the requirements would prohibit the Division of Child and Family Services or a court from placing a child with:
  - (A) a noncustodial parent under Section 80-2a-301, 80-3-302, or 80-3-303; or
  - (B) a relative, other than a noncustodial parent, under Section 80-2a-301, 80-3-302, or 80-3-303, pending completion of the background check described in Subsections (5), (6), and (7).

(d) Notwithstanding Subsections (5) through (10), the office shall deny direct access qualified status if the applicant has been convicted of:



- 1083 (i) a felony involving conduct that constitutes any of the following:
- 1084 (A) child abuse, as described in Sections 76-5-109, 76-5-109.2, and 76-5-109.3;
- 1085 (B) commission of domestic violence in the presence of a child, as described in
- 1086 Section 76-5-114;
- 1087 (C) abuse or neglect of a child with a disability, as described in Section 76-5-110;
- 1088 (D) intentional aggravated abuse of a vulnerable adult, as described in Section
- 1089 76-5-111;
- 1090 (E) endangerment of a child or vulnerable adult, as described in Section
- 1091 76-5-112.5;
- 1092 (F) aggravated murder, as described in Section 76-5-202;
- 1093 (G) murder, as described in Section 76-5-203;
- 1094 (H) manslaughter, as described in Section 76-5-205;
- 1095 (I) child abuse homicide, as described in Section 76-5-208;
- 1096 (J) homicide by assault, as described in Section 76-5-209;
- 1097 (K) kidnapping, as described in Section 76-5-301;
- 1098 (L) child kidnapping, as described in Section 76-5-301.1;
- 1099 (M) aggravated kidnapping, as described in Section 76-5-302;
- 1100 (N) human trafficking of a child, as described in Section 76-5-308.5;
- 1101 (O) an offense described in Title 76, Chapter 5, Part 4, Sexual Offenses;
- 1102 (P) sexual exploitation of a minor, as described in Title 76, Chapter 5b, Sexual
- 1103 Exploitation Act;
- 1104 (Q) aggravated exploitation of a minor, as described in Section 76-5b-201.1;
- 1105 (R) aggravated arson, as described in Section 76-6-103;
- 1106 (S) aggravated burglary, as described in Section 76-6-203;
- 1107 (T) aggravated robbery, as described in Section 76-6-302;
- 1108 (U) lewdness involving a child, as described in Section 76-9-702.5;
- 1109 (V) incest, as described in Section 76-7-102; or
- 1110 (W) domestic violence, as described in Section 77-36-1; or
- 1111 (ii) an offense committed outside the state that, if committed in the state, would
- 1112 constitute a violation of an offense described in Subsection (13)(d)(i).
- 1113 (e) Notwithstanding Subsections (5) through (10), the office shall deny direct access
- 1114 qualified status to an applicant if, within the five years from the date on which the
- 1115 office conducts the background check, the applicant was convicted of a felony
- 1116 involving conduct that constitutes a violation of any of the following:

- 1117 (i) aggravated assault, as described in Section 76-5-103;  
1118 (ii) aggravated assault by a prisoner, as described in Section 76-5-103.5;  
1119 (iii) mayhem, as described in Section 76-5-105;  
1120 (iv) an offense described in Title 58, Chapter 37, Utah Controlled Substances Act;  
1121 (v) an offense described in Title 58, Chapter 37a, Utah Drug Paraphernalia Act;  
1122 (vi) an offense described in Title 58, Chapter 37b, Imitation Controlled Substances  
1123 Act;  
1124 (vii) an offense described in Title 58, Chapter 37c, Utah Controlled Substance  
1125 Precursor Act; or  
1126 (viii) an offense described in Title 58, Chapter 37d, Clandestine Drug Lab Act.  
1127 (f) In addition to the circumstances described in Subsection (6), the office shall conduct  
1128 a comprehensive review of an applicant's background check under this section if the  
1129 applicant:  
1130 (i) has an offense described in Subsection (5)(a);  
1131 (ii) has an infraction conviction entered on a date that is no more than three years  
1132 before the date on which the office conducts the background check;  
1133 (iii) has a listing in the Division of Child and Family Services' Licensing Information  
1134 System described in Section 80-2-1002;  
1135 (iv) has a listing in the Division of Aging and Adult Services' vulnerable adult,  
1136 neglect, or exploitation database described in Section 26B-2-210;  
1137 (v) has a substantiated finding of severe child abuse or neglect under Section  
1138 80-3-404 or 80-3-504; or  
1139 (vi) has a listing on the registry check described in Subsection (13)(b) as having a  
1140 substantiated or supported finding of a severe type of child abuse or neglect, as  
1141 defined in Section 80-1-102.  
1142 (14) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the  
1143 office may make rules, consistent with this part, to:  
1144 (a) establish procedures for, and information to be examined in, the comprehensive  
1145 review described in Subsections (6), (7), and (13); and  
1146 (b) determine whether to consider an offense or incident that occurred while an  
1147 individual was in the custody of the Division of Child and Family Services or the  
1148 Division of Juvenile Justice and Youth Services for purposes of granting or denying  
1149 direct access qualified status to an applicant.  
1150 Section 8. Section **26B-2-124** is amended to read:

**26B-2-124 . Congregate care program requirements -- Admissions criteria --  
Costs incurred at health care facilities.**

~~[(1) As used in this section, "disruption plan" means a child-specific plan used:]~~

~~[(a) when the private-placement child stops receiving services from a congregate care program; and]~~

~~[(b) for transporting a private-placement child to a parent or guardian or to another congregate care program.]~~

(1) As used in this section:

(a) "Admissions criteria" means the risk factors that must be present in the life of a child in order for a congregate care program to admit the child to the program.

(b) "Approved admissions criteria" means the admissions criteria that the division has approved pursuant to Section 26B-2-124.1.

(c) "Critical incident" means an occurrence of any of the following:

(i) a self-harm, or a suicide emergency, as defined in Section 78B-4-516;

(ii) a practice that is prohibited under Section 26B-2-123;

(iii) a restraint, seclusion, or emergency safety intervention under Section 26B-2-123 occurring at the program, whether it:

(A) complies with Section 26B-2-123; or

(B) fails to comply with Section 26B-2-123;

(iv) a child's request for medical attention, except:

(A) medical attention that is part of the child's treatment plan; or

(B) when the medical attention requested does not require professional attention;

(v) a denial or an unreasonable delay of required medical attention to a child in the program;

(vi) an admittance or a transport of a child in the program to or from a medical facility;

(vii) an incident or allegation of abuse or harm to a child while in the program;

(viii) an unauthorized departure or attempted unauthorized departure of a child from the program;

(ix) a use of force, coercion, or deception in transporting a child to or from the program;

(x) a child in the program who is in crisis;

(xi) a police report or investigation involving:

(A) a child; or

- 1185 (B) an individual who has had access to the program;  
1186 (xii) a physical condition of the program's facility that jeopardizes the health, safety,  
1187 or well-being of a child; and  
1188 (xiii) any additional occurrence or condition that the division defines as a critical  
1189 incident in rule.
- 1190 (d) "Disruption plan" means instructions and a predetermined protocol, specific to an  
1191 individual child, that a congregate care program implements:  
1192 (i) if the child:  
1193 (A) is in crisis; or  
1194 (B) stops receiving services at a congregate care program; or  
1195 (ii) for transporting a child to:  
1196 (A) a parent or guardian;  
1197 (B) another congregate care program; or  
1198 (C) a health care facility, as that term is defined in Section 78B-3-403, except for  
1199 preventative or non-emergency health care.
- 1200 (e) "Qualified candidate" means, for an individual congregate care program's approved  
1201 admissions criteria, a child who meets the program's approved admissions criteria.
- 1202 (f)(i) "Risk factors" means objectively identifiable characteristics, elements, or a  
1203 combination of characteristics or elements of a child's life that, if present,  
1204 evidence an ongoing criminogenic, emotional, or behavioral concern that a  
1205 congregate care program can safely address.
- 1206 (ii) "Risk factors" include:  
1207 (A) diagnoses defined in the most recent edition of the Diagnostic and Statistical  
1208 Manual of Mental Disorders of the American Psychiatric Association; and  
1209 (B) any other characteristic, element, or combination of characteristics or elements  
1210 of a child's life that the office, in consultation with the committee, establishes  
1211 by rule.
- 1212 (2) For purposes of this section, congregate care program, as defined in 26B-2-101, does  
1213 not include a youth shelter, youth receiving center, or any other short-term or temporary  
1214 setting for children.
- 1215 (3) Notwithstanding any provision of this part, a congregate care program may not admit a  
1216 child who the program knew or should have known the program is unqualified or unable  
1217 to:  
1218 (a) safely serve; and

1219 (b) protect from reasonably foreseeable harm.

1220 [~~(2)~~] (4) A congregate care program shall~~keep the following for a private-placement child~~  
1221 ~~whose parent or guardian lives outside the state~~]:

1222 [(a) regularly updated contact information for the parent or guardian that lives outside  
1223 the state; and]

1224 [(b) a disruption plan.]

1225 (a) for each child who is admitted to the program:

1226 (i) collect and maintain:

1227 (A) contact information for each individual who the child's parent, guardian, or  
1228 sending government or private agency identifies as an authorized contact; and

1229 (B) accurate contact information for the child's parent or guardian;

1230 (ii) prepare a disruption plan tailored to the child; and

1231 (iii) prepare a suicide prevention plan, tailored to the child, and maintained and  
1232 revised as necessary to maintain the child's safety;

1233 (b) develop proposed admissions criteria that, if approved by the office:

1234 (i) prescribe with specificity the criteria by which the program shall determine  
1235 whether a child is a qualified candidate;

1236 (ii) are appropriate given the program's facilities, staffing, programming, policies,  
1237 procedures, and any other elements of the program designed to safely and  
1238 effectively serve the children who are admitted to the program;

1239 (iii) subject to Subsection (3), are the determining criteria against which the program  
1240 shall consider and determine whether a child is a qualified candidate; and

1241 (iv) the program shall utilize to determine whether any child:

1242 (A) meets the admissions criteria, and therefore is a qualified candidate for the  
1243 program; or

1244 (B) does not meet the admissions criteria, and therefore is not a qualified  
1245 candidate for the program;

1246 (c) submit proposed admissions criteria in accordance with Subsection (4)(b) with each  
1247 application for licensure or renewal of licensure;

1248 (d) subject to Subsection (5), decline to admit a child who does not meet the program's  
1249 approved admissions criteria;

1250 (e) document and report each critical incident no later than one business day after the  
1251 time at which the incident begins, to:

1252 (i) the parent or guardian of each child affected by the critical incident; and

- 1253           (ii) the office;
- 1254       (f) post a conspicuous notice:
- 1255           (i) in a common area that is frequently used and generally accessible to each child
- 1256               who is admitted to the program;
- 1257           (ii) in a bold font that is not less than 1 inch in height; and
- 1258           (iii) that includes the information and statement described in Subsection (7)(a)(i);
- 1259       (g) provide a clearly designated and dedicated telephone:
- 1260           (i) that is affixed in a common area and accessible to each child in the program;
- 1261           (ii) from which a child in the program, staff, or any other individual, may place a
- 1262               direct call to the ombudsman under Subsection 26B-2-124.2:
- 1263               (A) at any time;
- 1264               (B) without prior approval;
- 1265               (C) without interference;
- 1266               (D) with sufficient privacy to preclude another individual from hearing the
- 1267               conversation; and
- 1268               (E) subject to the whistleblower protections under Section 26B-2-124.3; and
- 1269       (h) maintain a dedicated business telephone number that directly connects a caller to an
- 1270               individual who:
- 1271               (i) is physically present at the congregate care program; and
- 1272               (ii) who has been trained to and will comply with Subsection (6).
- 1273       (5) Notwithstanding the other provisions of this section, the department may grant an
- 1274               exception to the admittance requirements of this section for a child who is in the custody
- 1275               of the Division of Child and Family Services or the Division of Juvenile Justice and
- 1276               Youth Services, if the placement is with a program operated by the department or under
- 1277               contract with the department.
- 1278       (6) If a child is in crisis, a congregate care program shall:
- 1279           (a) notify the child's parent or guardian as soon as reasonably possible but not later than
- 1280               five hours after the time at which the child's state of crisis first begins; and
- 1281           (b) make every reasonable effort to connect a child by telephone to an authorized contact
- 1282               who:
- 1283               (i) attempts to contact the child by calling the program's telephone number described
- 1284               in Subsection (4)(h); and
- 1285               (ii) is an authorized contact under Subsection 26B-2-124(2)(a)(ii).
- 1286       (7)(a) A congregate care program shall provide the following information to the persons

identified in Subsection (7)(b):

(i) the name, telephone number, email, and address of the ombudsman established under Section 26B-2-124.2, immediately below a statement:

(A) in bold font that is not less than one inch in height; and

(B) stating "ANY PERSON WHO HAS A COMPLAINT OR A CONCERN REGARDING THIS CONGREGATE CARE PROGRAM MAY CONTACT THE CONGREGATE CARE OMBUDSMAN:";

(ii) a list of the child's authorized contacts, including name, contact information, and relationship to the child to:

(A) the child's parent or guardian;

(B) any other individual designated by the child's parent or guardian as an authorized contact; and

(C) the ombudsman under Section 26B-2-124; and

(iii) on the list described in Subsection (7)(a)(ii):

(A) a copy of the division rule regarding a child who is in crisis, made pursuant to Subsection (11)(a)(iii);

(B) a notice that the program will notify each authorized contact if the program determines that the child is in crisis; and

(C) a notice that an authorized contact may contact the child by telephone if the child is in crisis.

(b) A congregate care program shall provide the information described in Subsection (7)(a) to:

(i) each child who is admitted to the program;

(ii) the child's sending government or private agency; and

(iii) the child's parent or guardian.

[(3)] (8) If a [~~private-placement child~~] child whose parent or guardian resides outside the state leaves a congregate care program without following the child's disruption plan, the congregate care program shall:

(a) notify the parent or guardian, office, and local law enforcement authorities;

(b) assist the state in locating the [~~private-placement child~~] child; and

(c) after the child is located, transport the [~~private-placement child~~] child:

(i) to a parent or guardian;

(ii) back to the [~~congregate care~~]program; or

(iii) to another [~~congregate care~~]program.

- 1321 (9) A congregate care program may not solicit or accept payment from or on behalf of a  
1322 child, unless:
- 1323 (a) the child meets the program's admissions criteria; and  
1324 (b) the child's parent or guardian has executed a contract for the program's services.
- 1325 (10)(a) The payment provisions under this Subsection (10) apply if:  
1326 (i) a child is transported to a health care facility; and  
1327 (ii) the child's parent or guardian resides outside the state.
- 1328 (b) The payment provisions under this Subsection (10) do not apply to a child who is in  
1329 state custody.
- 1330 (c) A health care facility that provides services to a child who was transported from a  
1331 congregate care program to the facility is entitled to payment in accordance with this  
1332 Subsection (10).
- 1333 (d)(i) The child's private or public health insurance policy or policies are responsible  
1334 for and shall pay all amounts owed and for which there is coverage.
- 1335 (ii) The health care facility shall bill the private or public health insurance policy or  
1336 policies, if any, for which there may be coverage, prior to seeking payment from  
1337 any other person.
- 1338 (e) The program at which the child was admitted, if any, immediately prior to  
1339 admittance at the health care facility is liable for and shall pay all amounts owed to  
1340 the health care facility after any insurance payments are received under Subsection  
1341 (10)(d); and
- 1342 (f) If a child is admitted to a health care facility for inpatient behavioral health services,  
1343 the residential treatment program described in Subsection (10)(e) shall pay to the  
1344 health care facility 85% of the health care facility's billed charges for services  
1345 provided to the child.
- 1346 (g) The residential program at which the child was most recently admitted prior to  
1347 admittance at a health care facility is liable for and shall pay all amounts owed under  
1348 Subsection (10)(c), including the reasonable costs of transport from the health care  
1349 facility to:
- 1350 (i) the child's home state residence;  
1351 (ii) another residential or inpatient care facility or program; or  
1352 (iii) any other lawful destination.
- 1353 (h) Nothing in this Subsection (10) may be construed to limit a health care facility's right  
1354 to collect payment for health care services provided.



[~~(4)~~] (11) This section does not apply to a guardian that is a state or agency.

[~~(5)~~] (12) The office shall make rules in accordance with Title 63G, Chapter 3, Utah

Administrative Rulemaking Act[~~;~~] :

(a) describing:

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

(ii) additional mandatory provisions for a discharge plan;

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

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

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

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

**26B-2-124.1 . Congregate Care Advisory Committee.**

(1)(a) As used in this section:

(i) "Committee" means the Congregate Care Advisory Committee created in Section 26B-1-204.

(ii) "Level of congregate care" means a designation of:

(A) "standard congregate care," as defined by the office, in consultation with the committee; or

(B) "intensive congregate care," as defined by the office, in consultation with the committee.

(iii) "Minimum safety requirements" means, with respect to a level of congregate care, the set of minimum required policies, procedures, staffing, programming, or other elements of the program that the office, in consultation with the committee, determines are necessary for a program of that particular level to safely serve a child who qualifies for admittance under the program's admissions criteria.

(iv) "Physician" means an individual who is licensed under Title 58, Chapter 67, Utah Medical Practice Act, or Title 58, Chapter 68, Utah Osteopathic Medical Practice Act.

(v) "Risk factors" means the same as that term is defined in Section 26B-1-124.

(2) The committee shall be composed of seven members, who the office appoints, as follows:

(a) a physician who is licensed under Title 58, Chapter 67, Utah Medical Practice Act, or

- 1389           Title 58, Chapter 68, Utah Osteopathic Medical Practice Act;
- 1390       (b) a pediatrician who:
- 1391           (i) has experience working with children in behavioral health; and
- 1392           (ii) is licensed under Title 58, Chapter 67, Utah Medical Practice Act, or Title 58,
- 1393                 Chapter 68, Utah Osteopathic Medical Practice Act;
- 1394       (c) a psychologist who is licensed under Title 58, Chapter 61, Psychologist Licensing
- 1395           Act;
- 1396       (d) a marriage and family therapist who is licensed under Title 58, Chapter 60, Mental
- 1397           Health Professional Practice Act;
- 1398       (e) a licensed therapist who:
- 1399           (i) has experience working in juvenile justice; and
- 1400           (ii) is licensed under Title 58, Chapter 60, Mental Health Professional Practice Act;
- 1401       (f) a licensed therapist who:
- 1402           (i) has experience working in congregate care programs, as defined in Section
- 1403                 26B-2-101; and
- 1404           (ii) is licensed under Title 58, Chapter 60, Mental Health Professional Practice Act;
- 1405                 and
- 1406       (g) a community representative who the office designates and who has experience in the
- 1407           congregate care industry as:
- 1408           (i) an individual who has been an admitted child at a congregate care program;
- 1409           (ii) a parent or guardian of a child who has been an admitted child at a congregate
- 1410                 care program; or
- 1411           (iii) a current or former owner or staff member of a congregate care program.
- 1412       (3) The office is authorized to and shall, in consultation with the committee:
- 1413           (a) define the levels of congregate care;
- 1414           (b) in accordance with Subsection (4), for each defined level of congregate care, adopt
- 1415                 by rule a set of applicable minimum safety requirements; and
- 1416           (c) for each application for licensure or renewal of licensure:
- 1417                 (i) review and consider the applicant's proposed admissions criteria;
- 1418                 (ii) deny a program's proposed admissions criteria if the criteria:
- 1419                         (A) are inconsistent with the definitions of the levels of care made pursuant to
- 1420                         Subsection (3)(a); or
- 1421                         (B) would fail to preclude the admittance of a child for whom the program is not
- 1422                         designed to address;

- 1423 (iii) approve a program's proposed admissions criteria if the criteria are not denied  
1424 under Subsection (3)(c)(ii); and
- 1425 (d) designate the program as a standard congregate care program or an intensive  
1426 congregate care program, based on the program's approved admissions criteria.
- 1427 (4) The minimum safety requirements under Subsection (3)(b) shall describe the minimum  
1428 operating and safety practices that a program of that level of congregate care shall  
1429 maintain, in terms of:
- 1430 (a) services;  
1431 (b) programming;  
1432 (c) facilities;  
1433 (d) staffing;  
1434 (e) policies;  
1435 (f) procedures;  
1436 (g) funding;  
1437 (h) ownership; or  
1438 (i) any other element or characteristic of a congregate care program that the office, in  
1439 consultation with the committee, determines impacts the safety of the children who  
1440 are admitted.
- 1441 (5) A majority of the members of the committee constitutes a quorum, and a vote of the  
1442 majority of the members present constitutes an action of the committee.
- 1443 (6) The director of the division shall appoint a chair from the committee's membership.
- 1444 (7)(a) The committee shall meet at least monthly until the office, in consultation with the  
1445 committee, has:
- 1446 (i) defined the levels of congregate care programs pursuant to Subsection (3)(a); and  
1447 (ii) established applicable minimum safety requirements pursuant to Subsection (3)(b).
- 1448 (b) The committee shall meet at least once per quarter after the completion of  
1449 Subsections (7)(a)(i) and (ii).
- 1450 (8) A member of the committee may not receive compensation or benefits for the member's  
1451 service but may receive per diem reimbursement and travel expenses in accordance with:
- 1452 (a) Section 63A-3-106;  
1453 (b) Section 63A-3-107; and  
1454 (c) rules made by the Division of Finance pursuant to Section 63A-3-106 or 63A-3-107.
- 1455 (9) The division shall provide staffing to support the committee.
- 1456 (10) The office shall make rules in accordance with Title 63G, Chapter 3, Utah

Administrative Rulemaking Act, to implement and enforce this section.

Section 10. Section **26B-2-124.2** is enacted to read:

**26B-2-124.2 . Congregate care ombudsman.**

(1) As used in this section:

(a) "Ombudsman" means the congregate care ombudsman created under this section.

(b) "Report" means a communication received by the ombudsman and containing information that the ombudsman determines warrants further investigation.

(2) There is created within the department the title and position of congregate care ombudsman.

(3)(a) The core roles and functions of the ombudsman include:

(i) serving as a resource and advocate for children admitted to congregate care programs; and

(ii) receiving and investigating reports pertaining to a congregate care program or staff.

(b) The ombudsmann shall meet the following minimum qualifications:

(i) have an understanding of congregate care services and supports;

(ii) have an understanding of consumer-oriented public policy advocacy; and

(iii) have an understanding of public policy and customer advocacy, including at minimum:

(A) a bachelors degree in social work, public policy, or other related field;

(B) three years of experience in a field related to social work or public policy; or

(C) a combination of experience and degree that the department deems sufficient.

(4) The ombudsman shall have the following authority and duties:

(a) to receive and consider communications pertaining to:

(i) a congregate care program; and

(ii) any individual who has accessed a congregate care program;

(b) to investigate, at the ombudsman's discretion, a report for which the department or other state agency lacks investigative authority.

(c) to interview:

(i) any child admitted to a congregate care program;

(ii) the parent or guardian of a child admitted to a congregate care program;

(iii) any individual staff of a congregate care program;

(iv) a sending or receiving agency or program, whether public or private; or

(v) any individual who has entered a program within the last year;

- (d) to enter or inspect any physical area of a program's facilities;
- (e) to access, copy, or inspect a program's records, including communications; and
- (f) to observe a program's operations, programming, or facilities;

(5) The ombudsman shall refer all reports or information received by the ombudsman to the:

- (a) department; and
- (b) any other state or local agency authorized to investigate the report or information.

(6) The ombudsman shall:

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

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

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

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

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

- (a) communicating with the ombudsman;
- (b) cooperating with the ombudsman; or
- (c) facilitating the ombudsman in performing the ombudsman's duties under Subsection 26B-2-124.2.

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

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

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

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

- (1) As used in this section:
- (a) "Anonymous complainant" means a complainant for whom the department does not have the minimum personal identifying information necessary, including the complainant's full name, to attempt to communicate with the complainant after a complaint has been made.
  - (b) "Child care program" means the same as that term is defined in Section 26B-2-401.
  - (c) "Confidential complainant" means a complainant for whom the department has the minimum personal identifying information necessary, including the complainant's full name, to attempt to communicate with the complainant after a complaint has been made, but who elects under Subsection (3)(c) not to be identified to the subject of the complaint.
  - (d) "Exempt provider" means the same as that term is defined in Section 26B-2-401.
  - (e) "Subject of the complaint" means the provider about whom the complainant is informing the department.
- (2) The department may conduct investigations necessary to enforce the provisions of this chapter.
- (3)(a) If the department receives a complaint about a program or facility or an exempt provider, the department shall:
- (i) solicit information from the complainant to determine whether the complaint suggests actions or conditions that could pose a serious risk to the safety or well-being of a client;
  - (ii) as necessary:
    - (A) encourage the complainant to disclose the minimum personal identifying information necessary, including the complainant's full name, for the department to attempt to subsequently communicate with the complainant;
    - (B) if the complaint is against a child care program or an exempt provider, inform the complainant that the department may not investigate an anonymous complaint;
    - (C) if the complaint is not against a child care program or an exempt provider, inform the complainant that the department may not use information provided by the complainant to substantiate an alleged violation of state law or department rule unless the department independently corroborates the information;

- 1559 (D) inform the complainant that the identity of a confidential complainant may be  
1560 withheld from the subject of a complaint only as provided in Subsection  
1561 (3)(c)(iii); and
- 1562 (E) inform the complainant that the department may be limited in its use of  
1563 information provided by a confidential complainant, as provided in Subsection  
1564 (3)(c)(iii)(B); and
- 1565 (iii) inform the complainant that a person is guilty of a class B misdemeanor under  
1566 Section 76-8-506 if the person gives false information to the department with the  
1567 purpose of inducing a change in that person's or another person's license,  
1568 certificate, or certification status.
- 1569 (b) ~~[If the complainant elects to be an anonymous complainant]~~ If the complaint concerns  
1570 events that occurred more than 48 months before the day on which the complainant  
1571 contacted the department, or if the complaint concerns events that occurred more than  
1572 six months before the complainant contacted the department and involves a child care  
1573 program, the department:
- 1574 (i) shall refer the information in the complaint to the Division of Child and Family  
1575 Services within the department, law enforcement, or any other appropriate agency,  
1576 if the complaint suggests actions or conditions which could pose a serious risk to  
1577 the safety or well-being of a client;
- 1578 (ii) may not investigate or substantiate the complaint~~[ if the complaint is against a~~  
1579 ~~child care program or an exempt provider]~~; and
- 1580 (iii) may, during a regularly scheduled annual survey, inform the provider that is the  
1581 subject of the complaint of allegations or concerns raised by the anonymous  
1582 complainant.
- 1583 (c)(i) If the complainant elects to be a confidential complainant, the department shall  
1584 determine whether the complainant wishes to remain confidential:
- 1585 (A) only until the investigation of the complaint has been completed; or  
1586 (B) indefinitely.
- 1587 (ii) If the complainant elects to remain confidential only until the investigation of the  
1588 complaint has been completed, the department shall disclose the name of the  
1589 complainant to the subject of the complaint at the completion of the investigation,  
1590 but no sooner.
- 1591 (iii) If the complainant elects to remain confidential indefinitely, the department:  
1592 (A) notwithstanding Subsection 63G-2-201(5)(b), may not disclose the name of

the complainant, including to the subject of the complaint; and

(B) may not use information provided by the complainant to substantiate an alleged violation of state law or department rule unless the department independently corroborates the information.

(4)(a) Prior to conducting an investigation of a program or facility or an exempt provider in response to a complaint, a department investigator shall review the complaint with the investigator's supervisor.

(b) The investigator may proceed with the investigation only if:

(i) the supervisor determines the complaint is credible;

(ii) the complaint is not from an anonymous complainant and against a child care program or an exempt provider; and

(iii) prior to the investigation, the investigator informs the subject of the complaint of:

(A) except as provided in Subsection (3)(c), the name of the complainant; and

(B) except as provided in Subsection (4)(c), the substance of the complaint.

(c) An investigator is not required to inform the subject of a complaint of the substance of the complaint prior to an investigation if doing so would jeopardize the investigation. However, the investigator shall inform the subject of the complaint of the substance of the complaint as soon as doing so will no longer jeopardize the investigation.

(5) If the department is unable to substantiate a complaint, any record related to the complaint or the investigation of the complaint:

(a) shall be classified under Title 63G, Chapter 2, Government Records Access and Management Act, as:

(i) a private or controlled record if appropriate under Section 63G-2-302 or 63G-2-304; or

(ii) a protected record under Section 63G-2-305; and

(b) if disclosed in accordance with Subsection 63G-2-201(5)(b), may not identify an individual provider, exempt provider, or complainant.

(6) Any record of the department related to a complaint is a protected record under Title 63G, Chapter 2, Government Records Access and Management Act, and, notwithstanding Subsection 63G-2-201(5)(b), may not be disclosed in a manner that identifies an individual program or facility, exempt provider, provider, or complainant.

#### Section 13. **Effective Date.**

This bill takes effect on July 1, 2025.