

**CHILD CARE AMENDMENTS**

2022 GENERAL SESSION

STATE OF UTAH

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**LONG TITLE**

**General Description:**

This bill modifies provisions related to child care.

**Highlighted Provisions:**

This bill:

- ▶ clarifies the Department of Health's authority over municipalities and counties to regulate child care programs operated by licensed or certified child care providers;
- ▶ allows a community reinvestment agency to use the agency's housing allocation to pay for the expansion of child care facilities within the agency's boundaries;
- ▶ increases the number of children that a residential child care provider may care for without obtaining a certificate from the Department of Health;
- ▶ requires the Department of Health to make rules allowing licensed and certified child care providers to provide after school care for additional children;
- ▶ removes provisions limiting the number of children under two years old that a certified residential child care provider may care for;
- ▶ requires the Office of Child Care to provide grants to child care providers that provide child care on behalf of employers, using COVID-19 relief funds;
- ▶ requires the Office of Child Care to report information about the office's expenditure of COVID-19 relief funds on an annual basis;
- ▶ requires a proposal for a housing and transportation reinvestment zone to promote the objective of increasing access to child care; and
- ▶ makes technical changes.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

33 17C-1-412, as last amended by Laws of Utah 2020, Chapter 241  
34 26-39-102, as last amended by Laws of Utah 2015, Chapter 220  
35 26-39-301, as last amended by Laws of Utah 2018, Chapter 58  
36 26-39-402, as last amended by Laws of Utah 2018, Chapter 415  
37 63I-2-235, as last amended by Laws of Utah 2021, Chapter 318  
38 63N-3-603, as last amended by Laws of Utah 2021, First Special Session, Chapter 3

39 ENACTS:

40 10-8-84.6, Utah Code Annotated 1953  
41 17-50-339, Utah Code Annotated 1953  
42 35A-3-212, Utah Code Annotated 1953

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

45 Section 1. Section 10-8-84.6 is enacted to read:

46 **10-8-84.6. Prohibition on regulation of child care programs.**

47 (1) (a) As used in this section, "child care program" means a child care facility or  
48 program operated by a person who holds a license or certificate from the Department of Health  
49 in accordance with Title 26, Chapter 39, Utah Child Care Licensing Act.

50 (b) "Child care program" does not include a child care facility or program operated by  
51 an organization that provides care pursuant to a written agreement with a municipality that  
52 provides oversight for the facility or program, as described in Subsection 26-39-403(2)(e).

53 (2) A municipality may not enact or enforce an ordinance that:

54 (a) imposes licensing or certification requirements for a child care program; or

55 (b) governs the manner in which child care is provided under a child care program.

56 Section 2. Section 17-50-339 is enacted to read:

57 **17-50-339. Prohibition on regulation of child care programs.**

58 (1) (a) As used in this section, "child care program" means a child care facility or  
59 program operated by a person who holds a license or certificate from the Department of Health  
60 in accordance with Title 26, Chapter 39, Utah Child Care Licensing Act.

61 (b) "Child care program" does not include a child care facility or program operated by  
62 an organization that provides care pursuant to a written agreement with a county that provides  
63 oversight for the facility or program, as described in Subsection 26-39-403(2)(e).

64 (2) A county may not enact or enforce an ordinance that:

65 (a) imposes licensing or certification requirements for a child care program; or

66 (b) governs the manner in which care is provided under a child care program.

67 Section 3. Section **17C-1-412** is amended to read:

68 **17C-1-412. Use of housing allocation -- Separate accounting required -- Issuance**  
69 **of bonds for housing -- Action to compel agency to provide housing allocation.**

70 (1) (a) An agency shall use the agency's housing allocation to:

71 (i) pay part or all of the cost of land or construction of income targeted housing within  
72 the boundary of the agency, if practicable in a mixed income development or area;

73 (ii) pay part or all of the cost of rehabilitation of income targeted housing within the  
74 boundary of the agency;

75 (iii) lend, grant, or contribute money to a person, public entity, housing authority,  
76 private entity or business, or nonprofit corporation for income targeted housing within the  
77 boundary of the agency;

78 (iv) plan or otherwise promote income targeted housing within the boundary of the  
79 agency;

80 (v) pay part or all of the cost of land or installation, construction, or rehabilitation of  
81 any building, facility, structure, or other housing improvement, including infrastructure  
82 improvements, related to housing located in a project area where a board has determined that a  
83 development impediment exists;

84 (vi) replace housing units lost as a result of the project area development;

85 (vii) make payments on or establish a reserve fund for bonds:

86 (A) issued by the agency, the community, or the housing authority that provides  
87 income targeted housing within the community; and

88 (B) all or part of the proceeds of which are used within the community for the purposes  
89 stated in Subsection (1)(a)(i), (ii), (iii), (iv), (v), or (vi);

90 (viii) if the community's fair share ratio at the time of the first adoption of the project  
91 area budget is at least 1.1 to 1.0, make payments on bonds:

92 (A) that were previously issued by the agency, the community, or the housing authority  
93 that provides income targeted housing within the community; and

94 (B) all or part of the proceeds of which were used within the community for the

95 purposes stated in Subsection (1)(a)(i), (ii), (iii), (iv), (v), or (vi);  
96 (ix) relocate mobile home park residents displaced by project area development;  
97 (x) subject to Subsection (7), transfer funds to a community that created the agency; or  
98 (xi) pay for or make a contribution toward the acquisition, construction, or  
99 rehabilitation of housing that:  
100 (A) is located in the same county as the agency;  
101 (B) is owned in whole or in part by, or is dedicated to supporting, a public nonprofit  
102 college or university; and  
103 (C) only students of the relevant college or university, including the students'  
104 immediate families, occupy.  
105 (b) As an alternative to the requirements of Subsection (1)(a), an agency may pay all or  
106 any portion of the agency's housing allocation to:  
107 (i) the community for use as described in Subsection (1)(a);  
108 (ii) a housing authority that provides income targeted housing within the community  
109 for use in providing income targeted housing within the community;  
110 (iii) a housing authority established by the county in which the agency is located for  
111 providing:  
112 (A) income targeted housing within the county;  
113 (B) permanent housing, permanent supportive housing, or a transitional facility, as  
114 defined in Section 35A-5-302, within the county; or  
115 (C) homeless assistance within the county;  
116 (iv) the Olene Walker Housing Loan Fund, established under Title 35A, Chapter 8,  
117 Part 5, Olene Walker Housing Loan Fund, for use in providing income targeted housing within  
118 the community; [or]  
119 (v) pay for or make a contribution toward the acquisition, construction, or  
120 rehabilitation of income targeted housing that is outside of the community if the housing is  
121 located along or near a major transit investment corridor that services the community and the  
122 related project has been approved by the community in which the housing is or will be  
123 located[.]; or  
124 (vi) pay for or make a contribution toward the expansion of child care facilities within  
125 the boundary of the agency.

126 (2) (a) An agency may combine all or any portion of the agency's housing allocation  
127 with all or any portion of one or more additional agency's housing allocations if the agencies  
128 execute an interlocal agreement in accordance with Title 11, Chapter 13, Interlocal Cooperation  
129 Act.

130 (b) An agency that has entered into an interlocal agreement as described in Subsection  
131 (2)(a), meets the requirements of Subsection (1)(a) or (1)(b) if the use of the housing allocation  
132 meets the requirements for at least one agency that is a party to the interlocal agreement.

133 (3) The agency shall create a housing fund and separately account for the agency's  
134 housing allocation, together with all interest earned by the housing allocation and all payments  
135 or repayments for loans, advances, or grants from the housing allocation.

136 (4) An agency may:

137 (a) issue bonds to finance a housing-related project under this section, including the  
138 payment of principal and interest upon advances for surveys and plans or preliminary loans;  
139 and

140 (b) issue refunding bonds for the payment or retirement of bonds under Subsection  
141 (4)(a) previously issued by the agency.

142 (5) (a) Except as provided in Subsection (5)(b), an agency shall allocate money to the  
143 housing fund each year in which the agency receives sufficient tax increment to make a  
144 housing allocation required by the project area budget.

145 (b) Subsection (5)(a) does not apply in a year in which tax increment is insufficient.

146 (6) (a) Except as provided in Subsection (5)(b), if an agency fails to provide a housing  
147 allocation in accordance with the project area budget and the housing plan adopted under  
148 Subsection 17C-2-204(2), the loan fund board may bring legal action to compel the agency to  
149 provide the housing allocation.

150 (b) In an action under Subsection (6)(a), the court:

151 (i) shall award the loan fund board reasonable attorney fees, unless the court finds that  
152 the action was frivolous; and

153 (ii) may not award the agency the agency's attorney fees, unless the court finds that the  
154 action was frivolous.

155 (7) For the purpose of offsetting the community's annual local contribution to the  
156 Homeless Shelter Cities Mitigation Restricted Account, the total amount an agency transfers in

157 a calendar year to a community under Subsections (1)(a)(x), 17C-1-409(1)(a)(v), and  
158 17C-1-411(1)(d) may not exceed the community's annual local contribution as defined in  
159 Section 35A-8-606.

160 Section 4. Section **26-39-102** is amended to read:

161 **26-39-102. Definitions.**

162 As used in this chapter:

163 (1) "Advisory committee" means the Residential Child Care Licensing Advisory  
164 Committee, created in Section 26-1-7.

165 (2) (a) "Center based child care" means, except as provided in Subsection (2)(b), a  
166 child care program licensed under this chapter.

167 (b) "Center based child care" does not include:

168 (i) a residential child care provider certified under Section 26-39-402; or

169 (ii) a facility or program exempt under Section 26-39-403.

170 (3) "Child care" means continuous care and supervision of [~~five~~] seven or more  
171 qualifying children, that is:

172 (a) in lieu of care ordinarily provided by a parent in the parent's home;

173 (b) for less than 24 hours a day; and

174 (c) for direct or indirect compensation.

175 (4) "Child care program" means a child care facility or program operated by a person  
176 who holds a license or certificate issued in accordance with this chapter.

177 (5) "Exempt provider" means a person who provides care described in Subsection  
178 26-39-403(2).

179 (6) "Licensing committee" means the Child Care Center Licensing Committee created  
180 in Section 26-1-7.

181 (7) "Public school" means:

182 (a) a school, including a charter school, that:

183 (i) is directly funded at public expense; and

184 (ii) provides education to qualifying children for any grade from first grade through  
185 twelfth grade; or

186 (b) a school, including a charter school, that provides:

187 (i) preschool or kindergarten to qualifying children, regardless of whether the preschool

188 or kindergarten is funded at public expense; and

189 (ii) education to qualifying children for any grade from first grade through twelfth  
190 grade, if each grade, from first grade to twelfth grade, that is provided at the school, is directly  
191 funded at public expense.

192 (8) "Qualifying child" means an individual who is:

193 (a) (i) under the age of 13; or

194 (ii) under the age of 18, if the person has a disability; and

195 (b) a child of:

196 (i) a person other than the person providing care to the child;

197 (ii) a licensed or certified residential child care provider, if the child is under the age of  
198 four; or

199 (iii) an employee or owner of a licensed child care center, if the child is under the age  
200 of four.

201 (9) "Residential child care" means child care provided in the home of a provider.

202 Section 5. Section **26-39-301** is amended to read:

203 **26-39-301. Duties of the department -- Enforcement of chapter -- Licensing**  
204 **committee requirements.**

205 (1) With regard to residential child care licensed or certified under this chapter, the  
206 department may:

207 (a) make and enforce rules to implement this chapter and, as necessary to protect  
208 qualifying children's common needs for a safe and healthy environment, to provide for:

209 (i) adequate facilities and equipment; and

210 (ii) competent caregivers, considering the age of the children and the type of program  
211 offered by the licensee; and

212 (b) make and enforce rules necessary to carry out the purposes of this chapter, in the  
213 following areas:

214 (i) requirements for applications, the application process, and compliance with other  
215 applicable statutes and rules;

216 (ii) documentation and policies and procedures that providers shall have in place in  
217 order to be licensed, in accordance with Subsection (1)(a);

218 (iii) categories, classifications, and duration of initial and ongoing licenses;

219 (iv) changes of ownership or name, changes in licensure status, and changes in  
220 operational status;

221 (v) license expiration and renewal, contents, and posting requirements;

222 (vi) procedures for inspections, complaint resolution, disciplinary actions, and other  
223 procedural measures to encourage and assure compliance with statute and rule; and

224 (vii) guidelines necessary to assure consistency and appropriateness in the regulation  
225 and discipline of licensees.

226 (2) The department shall enforce the rules established by the licensing committee, with  
227 the concurrence of the department, for center based child care.

228 (3) The department shall make rules that allow a licensed or certified provider to  
229 provide, without obtaining a waiver or variance from the department, after school care for a  
230 number of qualifying children in addition to the maximum number of qualifying children the  
231 provider would otherwise be permitted to care for.

232 [~~3~~] (4) Rules made under this chapter by the department, or the licensing committee  
233 with the concurrence of the department, shall be made in accordance with Title 63G, Chapter 3,  
234 Utah Administrative Rulemaking Act.

235 [~~4~~] (5) (a) The licensing committee and the department may not regulate educational  
236 curricula, academic methods, or the educational philosophy or approach of the provider.

237 (b) The licensing committee and the department shall allow for a broad range of  
238 educational training and academic background in certification or qualification of child day care  
239 directors.

240 [~~5~~] (6) In licensing and regulating child care programs, the licensing committee and  
241 the department shall reasonably balance the benefits and burdens of each regulation and, by  
242 rule, provide for a range of licensure, depending upon the needs and different levels and types  
243 of child care provided.

244 [~~6~~] (7) Notwithstanding the definition of "qualifying child" in Section 26-39-102, the  
245 licensing committee and the department shall count children through age 12 and children with  
246 disabilities through age 18 toward the minimum square footage requirement for indoor and  
247 outdoor areas, including the child of:

248 (a) a licensed residential child care provider; or

249 (b) an owner or employee of a licensed child care center.



250           ~~[(7)]~~ (8) Notwithstanding Subsection (1)(a)(i), the licensing committee and the  
251 department may not exclude floor space used for furniture, fixtures, or equipment from the  
252 minimum square footage requirement for indoor and outdoor areas if the furniture, fixture, or  
253 equipment is used:

- 254           (a) by qualifying children;
- 255           (b) for the care of qualifying children; or
- 256           (c) to store classroom materials.

257           ~~[(8)]~~ (9) (a) A child care center constructed prior to January 1, 2004, and licensed and  
258 operated as a child care center continuously since January 1, 2004, is exempt from the licensing  
259 committee's and the department's group size restrictions, if the child to caregiver ratios are  
260 maintained, and adequate square footage is maintained for specific classrooms.

261           (b) An exemption granted under Subsection ~~[(7)]~~ (9)(a) is transferrable to subsequent  
262 licensed operators at the center if a licensed child care center is continuously maintained at the  
263 center.

264           ~~[(9)]~~ (10) The licensing committee, with the concurrence of the department, shall  
265 develop, by rule, a five-year phased-in compliance schedule for playground equipment safety  
266 standards.

267           ~~[(10)]~~ (11) The department shall set and collect licensing and other fees in accordance  
268 with Section 26-1-6.

269           ~~[(11) Nothing in this chapter may be interpreted to grant a municipality or county the  
270 authority to license or certify a child care program.]~~

271           (12) Except as provided in Subsection 26-39-403(2)(e), a municipality or county may  
272 not:

- 273           (a) impose licensing or certification requirements for a child care program; or
- 274           (b) regulate the manner in which care is provided under a child care program.

275           Section 6. Section **26-39-402** is amended to read:

276           **26-39-402. Residential child care certificate.**

277           (1) A residential child care provider of ~~[five to]~~ seven or eight qualifying children shall  
278 obtain a Residential Child Care Certificate from the department, unless Section 26-39-403  
279 applies.

280           (2) The minimum qualifications for a Residential Child Care Certificate are:

- 281 (a) the submission of:
- 282 (i) an application in the form prescribed by the department;
- 283 (ii) a certification and criminal background fee established in accordance with Section  
284 26-1-6; and
- 285 (iii) in accordance with Section 26-39-404, identifying information for each adult  
286 person and each juvenile age 12 through 17 years of age who resides in the provider's home:
- 287 (A) for processing by the Department of Public Safety to determine whether any such  
288 person has been convicted of a crime;
- 289 (B) to screen for a substantiated finding of child abuse or neglect by a juvenile court;  
290 and
- 291 (C) to discover whether the person is listed in the Licensing Information System  
292 described in Section 62A-4a-1006;
- 293 (b) an initial and annual inspection of the provider's home within 90 days of sending an  
294 intent to inspect notice to:
- 295 (i) check the immunization record, as defined in Section 53G-9-301, of each qualifying  
296 child who receives child care in the provider's home;
- 297 (ii) identify serious sanitation, fire, and health hazards to qualifying children; and
- 298 (iii) make appropriate recommendations; and
- 299 (c) annual training consisting of 10 hours of department-approved training as specified  
300 by the department by administrative rule, including a current department-approved CPR and  
301 first aid course.
- 302 (3) If a serious sanitation, fire, or health hazard has been found during an inspection  
303 conducted pursuant to Subsection (2)(b), the department shall require corrective action for the  
304 serious hazards found and make an unannounced follow up inspection to determine  
305 compliance.
- 306 (4) In addition to an inspection conducted pursuant to Subsection (2)(b), the  
307 department may inspect the home of a residential care provider of [~~five to~~] seven or eight  
308 qualifying children in response to a complaint of:
- 309 (a) child abuse or neglect;
- 310 (b) serious health hazards in or around the provider's home; or
- 311 (c) providing residential child care without the appropriate certificate or license.

312 ~~[(5) Notwithstanding this section:]~~

313 ~~[(a) a license under Section 26-39-401 is required of a residential child care provider~~  
 314 ~~who cares for nine or more qualifying children;]~~

315 ~~[(b) a certified residential child care provider may not provide care to more than two~~  
 316 ~~qualifying children under the age of two; and]~~

317 ~~[(c) an inspection may be required of a residential child care provider in connection~~  
 318 ~~with a federal child care program.]~~

319 (5) (a) Except as provided in Subsection (5)(b), a license under Section 26-39-401 is  
 320 required of a residential child care provider who cares for more than eight qualifying children.

321 (b) A certified residential child care provider may provide after school care to more  
 322 than eight qualifying children without obtaining a license under Section 26-39-401, subject to  
 323 rules made by the department under Subsection 26-39-301(3).

324 (6) With respect to residential child care, the department may only make and enforce  
 325 rules necessary to implement this section.

326 Section 7. Section **35A-3-212** is enacted to read:

327 **35A-3-212. Use of COVID-19 relief funds -- Grants to child care providers --**

328 **Reporting requirements.**

329 (1) As used in this section:

330 (a) "COVID-19 relief funds" means federal funds provided to the office under:

331 (i) the American Rescue Plan Act, Pub. L. No. 117-2;

332 (ii) the Coronavirus Aid, Relief, and Economic Security Act, Pub. L. No. 116-136; or

333 (iii) the Coronavirus Response and Relief Supplemental Appropriations Act, Pub. L.

334 No. 116-260.

335 (b) (i) "Employer" means:

336 (A) a public employer;

337 (B) a private employer; or

338 (C) a cooperative organized for the purpose of providing child care for members'

339 employees.

340 (ii) "Employer" includes a local education agency, as defined in Section 53E-1-102.

341 (c) "Qualifying child care" means child care provided for an employer's employees,

342 either on-site or off-site of the employer's place of business.

343 (2) (a) Subject to availability of funds and requirements under applicable federal law,  
344 the office shall use COVID-19 relief funds to provide grants to eligible child care providers to  
345 assist in paying start-up costs associated with the provision of qualifying child care.

346 (b) To be eligible for a grant under this Subsection (2), a child care provider shall enter  
347 into a contract with an employer to provide qualifying child care on behalf of the employer.

348 (c) The office shall make rules, in accordance with Title 63G, Chapter 3, Utah  
349 Administrative Rulemaking Act, to establish criteria and procedures for applying for and  
350 awarding grants under this Subsection (2).

351 (3) In fiscal years 2022 through 2024, the office shall submit to the department, for  
352 inclusion in the department's annual written report described in Section 35A-1-109, an annual  
353 report that provides:

354 (a) a complete accounting of the COVID-19 relief funds expended by the office during  
355 the previous fiscal year;

356 (b) a description of the services, projects, and programs funded by the office with  
357 COVID-19 relief funds during the previous fiscal year, including the amount of COVID-19  
358 relief funds allocated to each service, project, or program; and

359 (c) information regarding the outcomes and effectiveness of the services, projects, and  
360 programs funded by the office with COVID-19 relief funds during the previous fiscal year.

361 Section 8. Section **63I-2-235** is amended to read:

362 **63I-2-235. Repeal dates -- Title 35A.**

363 (1) Section 35A-1-104.6 is repealed June 30, 2022.

364 (2) Section 35A-3-212 is repealed June 30, 2025.

365 Section 9. Section **63N-3-603** is amended to read:

366 **63N-3-603. Applicability, requirements, and limitations on a housing and transit**  
367 **reinvestment zone.**

368 (1) A housing and transit reinvestment zone proposal created under this part shall  
369 promote the following objectives:

370 (a) higher utilization of public transit;

371 (b) increasing availability of housing, including affordable housing;

372 (c) conservation of water resources through efficient land use;

373 (d) improving air quality by reducing fuel consumption and motor vehicle trips;

374 (e) encouraging transformative mixed-use development and investment in  
375 transportation and public transit infrastructure in strategic areas;

376 (f) strategic land use and municipal planning in major transit investment corridors as  
377 described in Subsection 10-9a-403(2); [~~and~~]

378 (g) increasing access to employment and educational opportunities[~~;~~]; and

379 (h) increasing access to child care.

380 (2) In order to accomplish the objectives described in Subsection (1), a municipality or  
381 public transit county that initiates the process to create a housing and transit reinvestment zone  
382 as described in this part shall ensure that the proposal for a housing and transit reinvestment  
383 zone includes:

384 (a) except as provided in Subsection (3), at least 10% of the proposed housing units  
385 within the housing and transit reinvestment zone are affordable housing units;

386 (b) a dedication of at least 51% of the developable area within the housing and transit  
387 reinvestment zone to residential development with an average of 50 multi-family dwelling  
388 units per acre or greater; and

389 (c) mixed-use development.

390 (3) A municipality or public transit county that, at the time the housing and transit  
391 reinvestment zone proposal is approved by the housing and transit reinvestment zone  
392 committee, meets the affordable housing guidelines of the United States Department of  
393 Housing and Urban Development at 60% area median income is exempt from the requirement  
394 described in Subsection (2)(a).

395 (4) A municipality or public transit county may only propose a housing and transit  
396 reinvestment zone that:

397 (a) subject to Subsection (5):

398 (i) (A) for a municipality, does not exceed a 1/3 mile radius of a commuter rail station;  
399 or

400 (B) for a public transit county, does not exceed a 1/3 mile radius of a public transit  
401 hub; and

402 (ii) has a total area of no more than 125 noncontiguous square acres;

403 (b) subject to Section 63N-3-607, proposes the capture of a maximum of 80% of each  
404 taxing entity's tax increment above the base year for a term of no more than 25 consecutive

405 years on each parcel within a 45-year period not to exceed the tax increment amount approved  
406 in the housing and transit reinvestment zone proposal; and

407 (c) the commencement of collection of tax increment, for all or a portion of the  
408 housing and transit reinvestment zone, will be triggered by providing notice as described in  
409 Subsection (6).

410 (5) If a parcel is bisected by the 1/3 mile radius, the full parcel may be included as part  
411 of the housing and transit reinvestment zone area and will not count against the limitations  
412 described in Subsection (4)(a).

413 (6) The notice of commencement of collection of tax increment required in Subsection  
414 (4)(c) shall be sent by mail or electronically to:

415 (a) the tax commission;

416 (b) the State Board of Education;

417 (c) the state auditor;

418 (d) the auditor of the county in which the housing and transit reinvestment zone is  
419 located;

420 (e) each taxing entity affected by the collection of tax increment from the housing and  
421 transit reinvestment zone; and

422 (f) the Governor's Office of Economic Opportunity.