

Part 4 Licensing

26-39-401 Licensure requirements -- Expiration -- Renewal.

- (1) Except as provided in Section 26-39-403, a person shall be licensed or certified in accordance with this chapter if the person:
 - (a) provides or offers child care; or
 - (b) provides care to qualifying children and requests to be licensed.
- (2) The department may issue licenses for a period not exceeding 24 months to child care providers who meet the requirements of:
 - (a) this chapter; and
 - (b) the department's rules governing child care programs.
- (3) A license issued under this chapter is not assignable or transferable.

Renumbered and Amended by Chapter 111, 2008 General Session

26-39-402 Residential child care certificate.

- (1)
 - (a) A residential child care provider of five to eight qualifying children shall obtain a Residential Child Care Certificate from the department, unless Section 26-39-403 applies.
 - (b) The minimum qualifications for a Residential Child Care Certificate are:
 - (i) the submission of:
 - (A) an application in the form prescribed by the department;
 - (B) a certification and criminal background fee established in accordance with Section 26-1-6; and
 - (C) in accordance with Section 26-39-404, identifying information for each adult person and each juvenile age 12 through 17 years of age who resides in the provider's home:
 - (I) for processing by the Department of Public Safety to determine whether any such person has been convicted of a crime;
 - (II) to screen for a substantiated finding of child abuse or neglect by a juvenile court; and
 - (III) to discover whether the person is listed in the Licensing Information System described in Section 62A-4a-1006;
 - (ii) an initial and annual inspection of the provider's home within 90 days of sending an intent to inspect notice to:
 - (A) check the immunization record of each qualifying child who receives child care in the provider's home;
 - (B) identify serious sanitation, fire, and health hazards to qualifying children; and
 - (C) make appropriate recommendations; and
 - (iii) annual training consisting of 10 hours of department-approved training as specified by the department by administrative rule, including a current department-approved CPR and first aid course.
 - (c) If a serious sanitation, fire, or health hazard has been found during an inspection conducted pursuant to Subsection (1)(b)(ii), the department shall require corrective action for the serious hazards found and make an unannounced follow up inspection to determine compliance.
 - (d) In addition to an inspection conducted pursuant to Subsection (1)(b)(ii), the department may inspect the home of a residential care provider of five to eight qualifying children in response to a complaint of:

- (i) child abuse or neglect;
 - (ii) serious health hazards in or around the provider's home; or
 - (iii) providing residential child care without the appropriate certificate or license.
- (2) Notwithstanding this section:
- (a) a license under Section 26-39-401 is required of a residential child care provider who cares for nine or more qualifying children;
 - (b) a certified residential child care provider may not provide care to more than two qualifying children under the age of two; and
 - (c) an inspection may be required of a residential child care provider in connection with a federal child care program.
- (3) With respect to residential child care, the department may only make and enforce rules necessary to implement this section.

Renumbered and Amended by Chapter 111, 2008 General Session

26-39-403 Exclusions from chapter -- Criminal background checks by an excluded person.

- (1) The provisions and requirements of this chapter do not apply to:
- (a) a facility or program owned or operated by an agency of the United States government;
 - (b) group counseling provided by a mental health therapist, as defined in Section 58-60-102, who is licensed to practice in this state;
 - (c) a health care facility licensed pursuant to Title 26, Chapter 21, Health Care Facility Licensing and Inspection Act;
 - (d) care provided to qualifying children by or in the homes of parents, legal guardians, grandparents, brothers, sisters, uncles, or aunts;
 - (e) care provided to qualifying children, in the home of the provider, for less than four hours a day or on a sporadic basis, unless that child care directly affects or is related to a business licensed in this state; or
 - (f) care provided at a residential support program that is licensed by the Department of Human Services.
- (2) The licensing and certification requirements of this chapter do not apply to:
- (a) care provided to qualifying children as part of a course of study at or a program administered by an educational institution that is regulated by the boards of education of this state, a private education institution that provides education in lieu of that provided by the public education system, or by a parochial education institution;
 - (b) care provided to qualifying children by a public or private institution of higher education, if the care is provided in connection with a course of study or program, relating to the education or study of children, that is provided to students of the institution of higher education;
 - (c) care provided to qualifying children at a public school by an organization other than the public school, if:
 - (i) the care is provided under contract with the public school or on school property; or
 - (ii) the public school accepts responsibility and oversight for the care provided by the organization;
 - (d) care provided to qualifying children as part of a summer camp that operates on federal land pursuant to a federal permit; or
 - (e) care provided by an organization that:
 - (i) qualifies for tax exempt status under Section 501(c)(3) of the Internal Revenue Code;
 - (ii) is provided pursuant to a written agreement with:
 - (A) a municipality, as defined in Section 10-1-104, that provides oversight for the program; or

- (B) a county that provides oversight for the program; and
- (iii) is provided to children who are over the age of four and under the age of 13.
- (3) An exempt provider shall submit to the department:
 - (a) the information required under Subsections 26-39-404(1) and (2); and
 - (b) of the children receiving care from the exempt provider:
 - (i) the number of children who are less than two years old;
 - (ii) the number of children who are at least two years old and less than five years old; and
 - (iii) the number of children who are five years old or older.
- (4) An exempt provider shall post, in a conspicuous location near the entrance of the exempt provider's facility, a notice prepared by the department that:
 - (a) states that the facility is exempt from licensure and certification; and
 - (b) provides the department's contact information for submitting a complaint.
- (5) The department may not release the information it collects under Subsection (3) except in an aggregate count of children receiving care from exempt providers, without identifying a specific provider.

Amended by Chapter 220, 2015 General Session

26-39-404 Disqualified individuals -- Criminal history checks -- Payment of costs.

- (1)
 - (a) Each exempt provider and each person requesting a residential certificate or to be licensed or to renew a license under this chapter shall submit to the department the name and other identifying information, which shall include fingerprints, of existing, new, and proposed:
 - (i) owners;
 - (ii) directors;
 - (iii) members of the governing body;
 - (iv) employees;
 - (v) providers of care;
 - (vi) volunteers, except parents of children enrolled in the programs; and
 - (vii) all adults residing in a residence where child care is provided.
 - (b) A person seeking renewal of a residential certificate or license under this section is not required to submit fingerprints of an individual referred to in Subsections (1)(a)(i) through (vi), if:
 - (i) the individual has resided in Utah for the last five years and applied for a certificate or license before July 1, 2013;
 - (ii) the individual has:
 - (A) previously submitted fingerprints under this section for a national criminal history record check; and
 - (B) resided in Utah continuously since that time; or
 - (iii) as of May 3, 1999, the individual had one of the relationships under Subsection (1)(a) with a child care provider having a residential certificate or licensed under this section and the individual has resided in Utah continuously since that time.
 - (c)
 - (i) The Utah Division of Criminal Investigation and Technical Services within the Department of Public Safety shall process the information required under Subsection (1)(a) to determine whether the individual has been convicted of any crime.
 - (ii) The Utah Division of Criminal Investigation and Technical Services shall submit fingerprints required under Subsection (1)(a) to the FBI for a national criminal history record check.

- (iii) A person required to submit information to the department under Subsection (1) shall pay the cost of conducting the record check described in this Subsection (1)(c).
- (2)
- (a) Each person requesting a residential certificate or to be licensed or to renew a license under this chapter shall submit to the department the name and other identifying information of any person age 12 through 17 who resides in the residence where the child care is provided. The identifying information required for a person age 12 through 17 does not include fingerprints.
 - (b) The department shall access the juvenile court records to determine whether a person described in Subsection (1) or (2)(a) has been adjudicated in juvenile court of committing an act which if committed by an adult would be a felony or misdemeanor if:
 - (i) the person described in Subsection (1) is under the age of 28; or
 - (ii) the person described in Subsection (1) is:
 - (A) over the age of 28; and
 - (B) has been convicted, has pleaded no contest, or is currently subject to a plea in abeyance or diversion agreement for a felony or misdemeanor.
- (3) Except as provided in Subsection (4), a licensee under this chapter or an exempt provider may not permit a person who has been convicted, has pleaded no contest, or is currently subject to a plea in abeyance or diversion agreement for any felony or misdemeanor, or if the provisions of Subsection (2)(b) apply, who has been adjudicated in juvenile court of committing an act which if committed by an adult would be a felony or a misdemeanor, to:
- (a) provide child care;
 - (b) provide volunteer services for a child care program or an exempt provider;
 - (c) reside at the premises where child care is provided; or
 - (d) function as an owner, director, or member of the governing body of a child care program or an exempt provider.
- (4)
- (a) The department may, by rule, exempt the following from the restrictions of Subsection (3):
 - (i) specific misdemeanors; and
 - (ii) specific acts adjudicated in juvenile court, which if committed by an adult would be misdemeanors.
 - (b) In accordance with criteria established by rule, the executive director may consider and exempt individual cases involving misdemeanors, not otherwise exempt under Subsection (4)
 - (a) from the restrictions of Subsection (3).

Amended by Chapter 220, 2015 General Session