Effective 5/1/2024

Part 7
Penalties and Investigations

26B-2-701 Definitions.

As used in this part:

(1) "Certificate" means a residential child care certificate issued by the office.
(2) "Certification" means an approval to operate in compliance with local or federal requirements or regulations, completed by the office or on behalf of the office for a local or federal agency.
(3) "Client" means an individual, resident, or patient who receives services from a provider.
(4) "Program or facility" means the settings, activities, services, procedures, and premises used by a provider to provide services regulated by the department.
(5) "Provider" means a license holder, certificate holder, or legally responsible person that provides services regulated by the department.

Enacted by Chapter 267, 2024 General Session

26B-2-702 Licensure.

(1) A person that operates a program or facility that requires a license, certificate, or certification under this chapter is subject to this part regardless of whether the person holds a license, certificate, or certification.
(2) A person may not offer a service, operate or provide services, or engage in any activity regulated by this chapter without holding a license, certificate, or certification issued or approved under this chapter.
(3) A person who holds a license, certificate, or certification under this chapter may only provide services to the extent allowed by the license, certificate, or certification.
(4) A person may not advertise or represent that the person holds a license, certificate, or certification required by this chapter unless the person holds that license, certificate, or certification.
(5) A person who violates this section is subject to Section 26B-1-224.

Enacted by Chapter 267, 2024 General Session

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

(1) If the department has reason to believe that a provider has failed to comply with this chapter or rules made pursuant to this chapter, the department may serve a notice of agency action to commence an adjudicative proceeding in accordance with Title 63G, Chapter 4, Administrative Procedures Act.
(2) In accordance with Title 63G, Chapter 4, Administrative Procedures Act, the department may deny, place conditions on, suspend, or revoke a license, certificate, or certification, and invoke penalties, including restricting or prohibiting new admissions to a program or facility, if the department finds that there has been:
   (a) a failure to comply with:
      (i) rules established under this chapter; or
      (ii) any lawful order of the department or a local health department, or applicable rule, statute, regulation, or requirement;
   (b) aiding, abetting, or permitting the commission of any illegal act;

(c) conduct adverse to the standards required to provide services and promote public trust, including aiding, abetting, or permitting the commission of abuse, neglect, exploitation, harm, mistreatment, or fraud; or
(d) a failure to provide applicable health and safety services for clients.
(3)
(a) The department may act on an emergency basis if the department determines immediate action is necessary to protect a client.
(b) Immediate action taken under Subsection (3)(a) may include restricting new admissions to a program or facility, or increased monitoring of the operations of a program or facility.
(4) The department may impose civil monetary penalties against any person, in a sum not to exceed $10,000 per violation, in:
(a) an administrative action in accordance with Title 63G, Chapter 4, Administrative Procedures Act;
(b) a similar administrative proceeding adopted by a county or local government; or
(c) a judicial civil proceeding.
(5) Assessment of a civil penalty or administrative penalty does not preclude the department or a local health department from:
(a) seeking criminal penalties;
(b) denying, revoking, imposing conditions on, or refusing to renew a license, certificate, or certification; or
(c) seeking injunctive or equitable remedies.
(6) If the department revokes a license, certificate, or certification, the office may not grant a new license, certificate, or certification unless:
(a) at least five years have passed since the day on which the provider was served with final notice that the provider's license, certificate, or certification was revoked; and
(b) the office determines that the interests of the public will not be jeopardized by granting the provider a new license, certificate, or certification.
(7) If the department does not renew a license, certificate, or certification because of noncompliance with the provisions of this part or rules adopted under this part, the department may not issue a new license, certificate, or certification unless:
(a) at least one year has passed since the day on which the renewal was denied;
(b) the provider complies with all renewal requirements; and
(c) the office determines that the interests of the public will not be jeopardized by issuing a new license, certificate, or certification.
(8) The office may suspend a license, certificate, or certification for up to three years.
(9) When a license, certificate, or certification has been suspended, the office may restore, or restore subject to conditions, the suspended license, certificate, or certification upon a determination that the:
(a) conditions upon which the suspension were based have been completely or partially corrected; and
(b) interests of the public will not be jeopardized by restoration of the license, certificate, or certification.
(10) If a provider fails to comply with the provisions of this chapter, the department may impose a penalty on the provider that is less than or equal to the cost incurred by the department, which may include:
(a) the cost to continue providing services, including ensuring client safety and relocating clients through the transition or closure of a program or facility;

(b) the cost to place an administrator or department representative as a monitor in a program or facility; or
(c) the cost to assess to the provider those costs incurred by the department.
(11) If a congregate care program or facility knowingly fails to comply with the provisions of Section 26B-2-124, the office may impose a penalty on the congregate care program or facility that is less than or equal to the cost of care incurred by the state for a private-placement child described in Subsection 26B-2-124(3).
(12) If the department finds that an abortion has been performed in violation of Section 76-7-314 or 76-7a-201, the department shall deny or revoke the license.
(13) A provider, program or facility, or person may commence adjudicative proceedings in accordance with Title 63G, Chapter 4, Administrative Procedures Act, regarding all agency actions that determine the legal rights, duties, privileges, immunities, or other legal interests of the provider, program or facility, or persons associated with the provider, including all office actions to grant, deny, place conditions on, revoke, suspend, withdraw, or amend an authority, right, license, certificate, or certification under this part.
(14) Subject to the requirements of federal and state law, the office shall make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to establish sanctions, penalties, and adjudicative proceedings as described in this chapter.

Enacted by Chapter 267, 2024 General Session

26B-2-704 Failure to follow certain health care claims practices -- Penalties.

(1) The department may assess a fine of up to $500 per violation against a health care facility that violates Section 31A-26-313.
(2) The department shall waive the fine described in Subsection (1) if:
(a) the health care facility demonstrates to the department that the health care facility mitigated and reversed any damage to the insured caused by the health care facility or third party's violation; or
(b) the insured does not pay the full amount due on the bill that is the subject of the violation, including any interest, fees, costs, and expenses, within 120 days after the day on which the health care facility or third party makes a report to a credit bureau or takes an action in violation of Section 31A-26-313.

Renumbered and Amended by Chapter 267, 2024 General Session

26B-2-705 Immediate access restriction.

(1) If, in any program or facility requiring a license, certificate, or certification under this part, the department finds a condition that is a clear hazard to the public health or safety, the department may immediately order that the facility restrict access and may prevent the entrance of any client onto the premises of that facility until the condition is eliminated.
(2) Parties aggrieved by the actions of the department under this section may obtain an adjudicative proceeding and judicial review.

Renumbered and Amended by Chapter 267, 2024 General Session

26B-2-706 Action by department for injunction.

Notwithstanding the existence of any other remedy, the department may, in the manner provided by law and upon the advice of the attorney general, who shall represent the department in the proceedings, maintain an action in the name of the state for injunction or other process against any person or governmental unit to restrain or prevent the establishment, conduct, management, or operation of a program or facility in violation of this chapter or rules established under this chapter.

Renumbered and Amended by Chapter 267, 2024 General Session

26B-2-707 Operating a program or facility in violation of this chapter -- Criminal penalties.

(1)

(a) In addition to the penalties in Section 26B-1-224, any person who owns, establishes, conducts, maintains, manages, or operates a program or facility in violation of this chapter is guilty of a class A misdemeanor.

(b) Conviction in a criminal proceeding does not preclude the office from:

(i) assessing a civil penalty or an administrative penalty;

(ii) denying, placing conditions on, suspending, or revoking a license, certificate, or certification; or

(iii) seeking injunctive or equitable relief.

(2) Assessment of a judicial penalty or an administrative penalty does not preclude the office from:

(a) seeking criminal penalties;

(b) denying, placing conditions on, suspending, or revoking a license, certificate, or certification; or

(c) seeking injunctive or equitable relief.

(3) Notwithstanding Subsection (1)(a) and subject to Subsection (1)(b), an individual is guilty of a class A misdemeanor if the individual knowingly and willfully offers, pays, promises to pay, solicits, or receives any remuneration, including any commission, bonus, kickback, bribe, or rebate, directly or indirectly, overtly or covertly, in cash or in kind, or engages in any split-fee arrangement in return for:

(a) referring an individual to a person for the furnishing or arranging for the furnishing of any item or service for the treatment of a substance use disorder;

(b) receiving a referred individual for the furnishing or arranging for the furnishing of any item or service for the treatment of a substance use disorder; or

(c) referring a clinical sample to a person, including a laboratory, for testing that is used toward the furnishing of any item or service for the treatment of a substance use disorder.

(4) Subsection (3) does not prohibit:

(a) any discount, payment, waiver of payment, or payment practice not prohibited by 42 U.S.C. Sec. 1320a-7(b) or regulations made under 42 U.S.C. Sec. 1320a-7(b);

(b) patient referrals within a practice group;

(c) payments by a health insurer who reimburses, provides, offers to provide, or administers health, mental health, or substance use disorder goods or services under a health benefit plan;

(d) payments to or by a health care provider, practice group, or substance use disorder treatment program that has contracted with a local mental health authority, a local substance abuse authority, a health insurer, a health care purchasing group, or the Medicare or Medicaid program to provide health, mental health, or substance use disorder services;

(e) payments by a health care provider, practice group, or substance use disorder treatment program to a health, mental health, or substance use disorder information service that provides information upon request and without charge to consumers about providers of health care goods or services to enable consumers to select appropriate providers or facilities, if the information service:

(i) does not attempt, through standard questions for solicitation of consumer criteria or through any other means, to steer or lead a consumer to select or consider selection of a particular health care provider, practice group, or substance use disorder treatment program;

(ii) does not provide or represent that the information service provides diagnostic or counseling services or assessments of illness or injury and does not make any promises of cure or guarantees of treatment; and

(iii) charges and collects fees from a health care provider, practice group, or substance use disorder treatment program participating in information services that:

(A) are set in advance;

(B) are consistent with the fair market value for those information services; and

(C) are not based on the potential value of the goods or services that a health care provider, practice group, or substance use disorder treatment program may provide to a patient; or

(f) payments by a laboratory to a person that:

(i) does not have a financial interest in or with a facility or person who refers a clinical sample to the laboratory;

(ii) is not related to an owner of a facility or a person who refers a clinical sample to the laboratory;

(iii) is not related to and does not have a financial relationship with a health care provider who orders the laboratory to conduct a test that is used toward the furnishing of an item or service for the treatment of a substance use disorder;

(iv) identifies, in advance of providing marketing or sales services, the types of clinical samples that each laboratory will receive, if the person provides marketing or sales services to more than one laboratory;

(v) the person does not identify as or hold itself out to be a laboratory or part of a network with an insurance payor, if the person provides marketing or sales services under a contract with a laboratory, as described in Subsection (4)(f)(vii)(B);

(vi) the person identifies itself in all marketing materials as a salesperson for a licensed laboratory and identifies each laboratory that the person represents, if the person provides marketing or sales services under a contract with a laboratory, as described in Subsection (4)(f)(vii)(B); and

(vii)

(A) is a sales person employed by the laboratory to market or sell the laboratory's services to a person who provides substance use disorder treatment; or

(B) is a person under contract with the laboratory to market or sell the laboratory's services to a person who provides substance use disorder treatment, if the total compensation paid by the laboratory does not exceed the total compensation that the laboratory pays to employees of the laboratory for similar marketing or sales services.

(5)

(a) A person may not knowingly or willfully, in exchange for referring an individual to a youth transportation company:

(i) offer, pay, promise to pay, solicit, or receive any remuneration directly or indirectly, overtly or covertly, in cash or in kind, including:

(A) a commission;

(B) a bonus;

(C) a kickback;

(D) a bribe; or

(E) a rebate; or
(ii) engage in any split-fee arrangement.
(b) A person who violates Subsection (5)(a) is guilty of a class A misdemeanor and shall be assessed a penalty in accordance with this part.

Renumbered and Amended by Chapter 267, 2024 General Session

26B-2-708 Injunctive relief and civil penalty for unlawful child placing -- Enforcement by county attorney or attorney general.
(1) The office or another interested person may commence an action in court to enjoin any person from violating Section 26B-2-127.
(2) The office shall:
(a) solicit information from the public relating to violations of Section 26B-2-127; and
(b) upon identifying a violation of Section 26B-2-127:
(i) send a written notice to the person who violated Section 26B-2-127 that describes the alleged violation; and
(ii) notify the following persons of the alleged violation:
(A) the local county attorney; and
(B) the Division of Professional Licensing.
(3)
(a) A county attorney or the attorney general shall institute legal action as necessary to enforce the provisions of Section 26B-2-127 after being informed of an alleged violation.
(b) If a county attorney does not take action within 30 days after the day on which the county attorney is informed of an alleged violation of Section 26B-2-127, the attorney general may be requested to take action, and shall then institute legal proceedings in place of the county attorney.
(4)
(a) In addition to the remedies provided in Subsections (1) and (3), any person found to be in violation of Section 26B-2-127 shall forfeit all proceeds identified as resulting from the transaction, and may also be assessed a civil penalty of not more than $10,000 for each violation.
(b) Each act in violation of Section 26B-2-127, including each placement or attempted placement of a child, is a separate violation.
(5)
(a) The amount recovered as a penalty under Subsection (4) shall be placed in the General Fund of the prosecuting county, or in the state General Fund if the attorney general prosecutes.
(b) If two or more governmental entities are involved in the prosecution, the court shall apportion the penalty among the entities, according to the entities' involvement.
(6) A judgment ordering the payment of any penalty or forfeiture under Subsection (4) is a lien when recorded in the judgment docket, and has the same effect and is subject to the same rules as a judgment for money in a civil action.

Renumbered and Amended by Chapter 267, 2024 General Session

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;
(D) inform the complainant that the identity of a confidential complainant may be withheld from the subject of a complaint only as provided in Subsection (3)(c)(iii); and
(E) inform the complainant that the department may be limited in its use of information provided by a confidential complainant, as provided in Subsection (3)(c)(iii)(B); and
(iii) inform the complainant that a person is guilty of a class B misdemeanor under Section 76-8-506 if the person gives false information to the department with the purpose of inducing a change in that person's or another person's license, certificate, or certification status.

(b) If the complaint concerns events that occurred more than 48 months before the day on which the complainant contacted the department, or if the complaint concerns events that occurred more than six months before the complainant contacted the department and involves a child care program, the department:
(i) shall refer the information in the complaint to the Division of Child and Family Services within the department, law enforcement, or any other appropriate agency, if the complaint suggests actions or conditions which could pose a serious risk to the safety or well-being of a client;
(ii) may not investigate or substantiate the complaint; and
(iii) may, during a regularly scheduled annual survey, inform the provider that is the subject of the complaint of allegations or concerns raised by the anonymous complainant.

(c)

(i) If the complainant elects to be a confidential complainant, the department shall determine whether the complainant wishes to remain confidential:

(A) only until the investigation of the complaint has been completed; or

(B) indefinitely.

(ii) If the complainant elects to remain confidential only until the investigation of the complaint has been completed, the department shall disclose the name of the complainant to the subject of the complaint at the completion of the investigation, but no sooner.

(iii) If the complainant elects to remain confidential indefinitely, the department:

(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.

Amended by Chapter 63, 2025 General Session