

## Chapter 2 Licensure of Programs and Facilities

### 62A-2-101 Definitions.

As used in this chapter:

- (1) "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.
- (2) "Applicant" means a person who applies for an initial license or a license renewal under this chapter.
- (3)
  - (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 (3)(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 or substance abuse programs, or services for the local mental health authority or substance abuse authority; or
    - (ii) a guest or visitor whose access to a child or a vulnerable adult is directly supervised at all times.
- (4)
  - (a) "Boarding school" means a private school that:
    - (i) uses a regionally accredited education program;
    - (ii) provides a residence to the school's students:
      - (A) for the purpose of enabling the school's students to attend classes at the school; and
      - (B) as an ancillary service to educating the students at the school;
    - (iii) has the primary purpose of providing the school's students with an education, as defined in Subsection (4)(b)(i); and
    - (iv)
      - (A) does not provide the treatment or services described in Subsection (28)(a); or
      - (B) provides the treatment or services described in Subsection (28)(a) on a limited basis, as described in Subsection (4)(b)(ii).
  - (b)
    - (i) For purposes of Subsection (4)(a)(iii), "education" means a course of study for one or more of grades kindergarten through 12th grade.
    - (ii) For purposes of Subsection (4)(a)(iv)(B), a private school provides the treatment or services described in Subsection (28)(a) on a limited basis if:
      - (A) the treatment or services described in Subsection (28)(a) are provided only as an incidental service to a student; and
      - (B) the school does not:

- (I) specifically solicit a student for the purpose of providing the treatment or services described in Subsection (28)(a); or
  - (II) have a primary purpose of providing the treatment or services described in Subsection (28)(a).
- (c) "Boarding school" does not include a therapeutic school.
- (5) "Child" means a person under 18 years of age.
- (6) "Child placing" means receiving, accepting, or providing custody or care for any child, temporarily or permanently, for the purpose of:
- (a) finding a person to adopt the child;
  - (b) placing the child in a home for adoption; or
  - (c) foster home placement.
- (7) "Client" means an individual who receives or has received services from a licensee.
- (8) "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.
- (9) "Department" means the Department of Human Services.
- (10) "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.
- (11) "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.
- (12) "Directly supervised" means that an individual is being supervised under the uninterrupted visual and auditory surveillance of another individual who has a current background screening approval issued by the office.
- (13) "Director" means the director of the Office of Licensing.
- (14) "Domestic violence" means the same as that term is defined in Section 77-36-1.
- (15) "Domestic violence treatment program" means a nonresidential program designed to provide psychological treatment and educational services to perpetrators and victims of domestic violence.
- (16) "Elder adult" means a person 65 years of age or older.
- (17) "Executive director" means the executive director of the department.
- (18) "Foster home" means a temporary residential living environment for the care of:
- (a)
    - (i) fewer than five foster children in the home of a licensed foster parent; or
    - (ii) five or more foster children in the home of a licensed foster parent if there are no foster children or if there is one foster child in the home at the time of the placement of a sibling group; or
  - (b)
    - (i) fewer than four foster children in the home of a certified foster parent; or

- (ii) four or more foster children in the home of a certified foster parent if there are no foster children or if there is one foster child in the home at the time of the placement of a sibling group.

(19)

(a) "Human services program" means a:

- (i) foster home;
- (ii) therapeutic school;
- (iii) youth program;
- (iv) resource family home;
- (v) recovery residence; or
- (vi) facility or program that provides:
  - (A) secure treatment;
  - (B) inpatient treatment;
  - (C) residential treatment;
  - (D) residential support;
  - (E) adult day care;
  - (F) day treatment;
  - (G) outpatient treatment;
  - (H) domestic violence treatment;
  - (I) child placing services;
  - (J) social detoxification; or
  - (K) 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 a boarding school.

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

(21) "Local government" means a city, town, metro township, or county.

(22) "Minor" has the same meaning as "child."

(23) "Office" means the Office of Licensing within the Department of Human Services.

(24) "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.

(25)

(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 abuse disorder;
- (ii) provides a living environment in which more than half of the individuals in the residence are recovering from a substance abuse disorder;
- (iii) provides or arranges for residents to receive services related to their recovery from a substance abuse 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; or

- (iii) a home, residence, or facility, in which:
  - (A) residents, by their majority vote, 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.
- (26) "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.
- (27)
  - (a) "Residential support" means arranging for or providing 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" includes providing a supervised living environment for persons with dysfunctions or impairments that are:
    - (i) emotional;
    - (ii) psychological;
    - (iii) developmental; or
    - (iv) behavioral.
  - (c) Treatment is not a necessary component of residential support.
  - (d) "Residential support" does not include:
    - (i) a recovery residence; or
    - (ii) residential services that are performed:
      - (A) exclusively under contract with the Division of Services for People with Disabilities; or
      - (B) in a facility that serves fewer than four individuals.
- (28)
  - (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.
- (29) "Residential treatment program" means a human services program that provides:
  - (a) residential treatment; or
  - (b) secure treatment.
- (30)
  - (a) "Secure treatment" means 24-hour specialized residential treatment or care for persons whose current functioning is such that they cannot live independently or in a less restrictive environment.
  - (b) "Secure treatment" differs from residential treatment to the extent that it requires intensive supervision, locked doors, and other security measures that are imposed on residents with neither their consent nor control.

- (31) "Social detoxification" means short-term residential services for persons who are experiencing or have recently experienced drug or alcohol intoxication, that are provided outside of a health care facility licensed under Title 26, Chapter 21, Health Care Facility Licensing and Inspection Act, and that include:
- (a) room and board for persons who are unrelated to the owner or manager of the facility;
  - (b) specialized rehabilitation to acquire sobriety; and
  - (c) aftercare services.
- (32) "Substance abuse treatment program" means a program:
- (a) designed to provide:
    - (i) specialized drug or alcohol treatment;
    - (ii) rehabilitation; or
    - (iii) habilitation services; and
  - (b) that provides the treatment or services described in Subsection (32)(a) to persons with:
    - (i) a diagnosed substance abuse disorder; or
    - (ii) chemical dependency disorder.
- (33) "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.
- (34) "Unrelated persons" means persons other than parents, legal guardians, grandparents, brothers, sisters, uncles, or aunts.
- (35) "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.
- (36)
- (a) "Youth program" means a nonresidential program designed to provide behavioral, substance abuse, or mental health services to minors that:
    - (i) serves adjudicated or nonadjudicated youth;

- (ii) charges a fee for its services;
  - (iii) may or may not provide host homes or other arrangements for overnight accommodation of the youth;
  - (iv) may or may not provide all or part of its services in the outdoors;
  - (v) may or may not 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.

Amended by Chapter 122, 2016 General Session

Amended by Chapter 211, 2016 General Session

Amended by Chapter 342, 2016 General Session

**62A-2-102 Purpose of licensure.**

The purpose of licensing under this chapter is to permit or authorize a public or private agency to provide defined human services programs within statutory and regulatory guidelines.

Amended by Chapter 358, 1998 General Session

**62A-2-103 Office of Licensing -- Appointment -- Qualifications of director.**

- (1) There is created the Office of Licensing within the Department of Human Services. The office shall be the licensing authority for the department, and is vested with all the powers, duties, and responsibilities described in this chapter.
- (2) The executive director shall appoint the director of the office.
- (3) The director shall have a bachelor's degree from an accredited university or college, be experienced in administration, and be knowledgeable of human services licensing.

Amended by Chapter 358, 1998 General Session

**62A-2-106 Office 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 Title 26, Utah Health Code 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) 12 years old or older; and
      - (Bb) under the custody of the Department of Human Services, 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 of Human Services, 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) minimum ethical responsibilities of an adoption agency licensed under this chapter, including prohibiting an adoption agency or its employee from misrepresenting facts or information;
  - (vii) what constitutes an "outpatient treatment program" for purposes of this chapter;
  - (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; and
  - (x) a procedure for licensees to report incidents;
  - (b) enforce rules relating to the office;
  - (c) issue licenses in accordance with this chapter;
  - (d) if the United States Department of State executes an agreement with the office that designates the office to act as an accrediting entity in accordance with the Intercountry Adoption Act of 2000, Pub. L. No. 106-279, accredit one or more agencies and persons to provide intercountry adoption services pursuant to:
    - (i) the Intercountry Adoption Act of 2000, Pub. L. No. 106-279; and
    - (ii) the implementing regulations for the Intercountry Adoption Act of 2000, Pub. L. No. 106-279;
  - (e) make rules to implement the provisions of Subsection (1)(d);
  - (f) conduct surveys and inspections of licensees and facilities in accordance with Section 62A-2-118;
  - (g) collect licensure fees;
  - (h) notify licensees of the name of a person within the department to contact when filing a complaint;
  - (i) investigate complaints regarding any licensee or human services program;
  - (j) have access to all records, correspondence, and financial data required to be maintained by a licensee;
  - (k) have authority to interview any client, family member of a client, employee, or officer of a licensee;
  - (l) have authority to deny, condition, revoke, suspend, or extend any license issued by the department under this chapter by following the procedures and requirements of Title 63G, Chapter 4, Administrative Procedures Act;
  - (m) electronically post notices of agency action issued to a human services program, with the exception of a foster home, on the office's website, in accordance with Title 63G, Chapter 2, Government Records Access and Management Act; and
  - (n) upon receiving a local government's request under Section 62A-2-108.4, 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 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;
  - (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.

Amended by Chapter 211, 2016 General Session

Amended by Chapter 342, 2016 General Session

**62A-2-108 Licensure requirements -- Expiration -- Renewal.**

- (1) Except as provided in Section 62A-2-110, a person, agency, firm, corporation, association, or governmental unit, acting severally or jointly with any other person, agency, firm, corporation, association, or governmental unit, may not establish, conduct, or maintain a human services program in this state without a valid and current license issued by and under the authority of the office as provided by this chapter and the rules under the authority of this chapter.
- (2)
  - (a) For purposes of this Subsection (2), "member" means a person or entity that is associated with another person or entity:
    - (i) as a member;
    - (ii) as a partner;
    - (iii) as a shareholder; or
    - (iv) as a person or entity involved in the ownership or management of a human services program owned or managed by the other person or entity.
  - (b) A license issued under this chapter may not be assigned or transferred.
  - (c) An application for a license under this chapter shall be treated as an application for reinstatement of a revoked license if:
    - (i)
      - (A) the person or entity applying for the license had a license revoked under this chapter; and
      - (B) the revoked license described in Subsection (2)(c)(i)(A) is not reinstated before the application described in this Subsection (2)(c) is made; or
    - (ii) a member of an entity applying for the license:
      - (A)
        - (I) had a license revoked under this chapter; and
        - (II) the revoked license described in Subsection (2)(c)(ii)(A)(I) is not reinstated before the application described in this Subsection (2)(c) is made; or
      - (B)
        - (I) was a member of an entity that had a license revoked under this chapter at any time before the license was revoked; and
        - (II) the revoked license described in Subsection (2)(c)(ii)(B)(I) is not reinstated before the application described in this Subsection (2)(c) is made.
- (3) A current license shall at all times be posted in the facility where each human services program is operated, in a place that is visible and readily accessible to the public.
- (4)

- (a) Except as provided in Subsection (4)(c), each license issued under this chapter expires at midnight 12 months from the date of issuance unless it has been:
  - (i) previously revoked by the office; or
  - (ii) voluntarily returned to the office by the licensee.
- (b) A license shall be renewed upon application and payment of the applicable fee, unless the office finds that the licensee:
  - (i) is not in compliance with the:
    - (A) provisions of this chapter; or
    - (B) rules made under this chapter;
  - (ii) has engaged in a pattern of noncompliance with the:
    - (A) provisions of this chapter; or
    - (B) rules made under this chapter;
  - (iii) has engaged in conduct that is grounds for denying a license under Section 62A-2-112; or
  - (iv) has engaged in conduct that poses a substantial risk of harm to any person.
- (c) The office may issue a renewal license that expires at midnight 24 months after the day on which it is issued if:
  - (i) the licensee has maintained a human services license for at least 24 months before the day on which the licensee applies for the renewal; and
  - (ii) the licensee has not violated this chapter or a rule made under this chapter.
- (5) Any licensee that is in operation at the time rules are made in accordance with this chapter shall be given a reasonable time for compliance as determined by the rule.
- (6)
  - (a) A license for a human services program issued under this section shall apply to a specific human services program site.
  - (b) A human services program shall obtain a separate license for each site where the human services program is operated.

Amended by Chapter 211, 2016 General Session

**62A-2-108.1 Coordination of human services and educational services -- Licensing of programs -- Procedures.**

- (1) For purposes of this section:
  - (a) "accredited private school" means a private school that is accredited by an accrediting entity recognized by the Utah State Board of Education; and
  - (b) "education entitled children" means children:
    - (i) subject to compulsory education under Section 53A-11-101.5;
    - (ii) subject to the school attendance requirements of Section 53A-11-101.7; or
    - (iii) entitled to educational services under Section 53A-15-301.
- (2) Subject to Subsection (8) or (9), a human services program may not be licensed to serve education entitled children unless the human services program presents an educational service plan that includes evidence:
  - (a) satisfactory to:
    - (i) the office; and
    - (ii)
      - (A) the local school board of the school district in which the human services program will be operated; or
      - (B) the school district superintendent of the school district in which the human services program will be operated; and

- (b) that children served by the human services program shall receive appropriate educational services satisfying the requirements of applicable law.
- (3) Subject to Subsection (8) or (9), if a human services program serves any education entitled children whose custodial parents or legal guardians reside outside the state, then the program shall also provide an educational funding plan that includes evidence:
  - (a) satisfactory to:
    - (i) the office; and
    - (ii)
      - (A) the local school board of the school district in which the human services program will be operated; or
      - (B) the school district superintendent of the school district in which the human services program will be operated; and
  - (b) that all costs for educational services to be provided to the education entitled children, including tuition, and school fees approved by the local school board, shall be borne by the human services program.
- (4) Subject to Subsection (8) or (9), and in accordance with Subsection (2), the human services program shall obtain and provide the office with a letter:
  - (a) from the entity referred to in Subsection (2)(a)(ii):
    - (i) approving the educational service plan referred to in Subsection (2); or
    - (ii)
      - (A) disapproving the educational service plan referred to in Subsection (2); and
      - (B) listing the specific requirements the human services program must meet before approval is granted; and
  - (b) from the entity referred to in Subsection (3)(a)(ii):
    - (i) approving the educational funding plan, referred to in Subsection (3); or
    - (ii)
      - (A) disapproving the educational funding plan, referred to in Subsection (3); and
      - (B) listing the specific requirements the human services program must meet before approval is granted.
- (5) Subject to Subsection (8), failure of a local school board or school district superintendent to respond to a proposed plan within 45 days of receipt of the plan is equivalent to approval of the plan by the local school board or school district superintendent if the human services program provides to the office:
  - (a) proof that:
    - (i) the human services program submitted the proposed plan to the local school board or school district superintendent; and
    - (ii) more than 45 days have passed from the day on which the plan was submitted; and
  - (b) an affidavit, on a form produced by the office, stating:
    - (i) the date that the human services program submitted the proposed plan to the local school board or school district superintendent;
    - (ii) that more than 45 days have passed from the day on which the plan was submitted; and
    - (iii) that the local school board or school district superintendent described in Subsection (5)(b)
      - (i) failed to respond to the proposed plan within 45 days from the day on which the plan was submitted.
- (6) If a licensee that is licensed to serve an education entitled child fails to comply with its approved educational service plan or educational funding plan, then:
  - (a) the office shall give the licensee notice of intent to revoke the licensee's license; and

- (b) if the licensee continues its noncompliance for more than 30 days after receipt of the notice described in Subsection (6)(a), the office shall revoke the licensee's license.
- (7) If an education entitled child whose custodial parent or legal guardian resides within the state is provided with educational services by a school district other than the school district in which the custodial parent or legal guardian resides, then the funding provisions of Section 53A-2-210 apply.
- (8) A human services program that is an accredited private school:
  - (a) for purposes of Subsection (2):
    - (i) is only required to submit proof to the office that the accreditation of the private school is current; and
    - (ii) is not required to submit an educational service plan for approval by an entity described in Subsection (2)(a)(ii);
  - (b) for purposes of Subsection (3):
    - (i) is only required to submit proof to the office that all costs for educational services provided to education entitled children will be borne by the human services program; and
    - (ii) is not required to submit an educational funding plan for approval by an entity described in Subsection (3)(a)(ii); and
  - (c) is not required to comply with Subsections (4) and (5).
- (9) Except for Subsection (7), the provisions of this section do not apply to a human services program that is:
  - (a) a foster home; and
  - (b) required to be licensed by the office.

Amended by Chapter 81, 2007 General Session

**62A-2-108.2 Licensing residential treatment programs and recovery residences --  
Notification of local government.**

- (1)
  - (a) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the office shall make rules that establish categories of residential treatment and recovery residence licenses based on differences in the types of residential treatment programs and recovery residences.
  - (b) The categories referred to in Subsection (1)(a) may be based on differences in:
    - (i) services offered;
    - (ii) types of clients served;
    - (iii) risks posed to the community; or
    - (iv) other factors that make regulatory differences advisable.
- (2) Subject to the requirements of federal and state law, and pursuant to the authority granted by Section 62A-2-106, the office shall establish and enforce rules that:
  - (a) relate generally to all categories of residential treatment program and recovery residence licenses; and
  - (b) relate to specific categories of residential treatment program and recovery residence licenses on the basis of the regulatory needs, as determined by the office, of residential treatment programs and recovery residences within those specific categories.
- (3)
  - (a) Beginning July 1, 2014, the office shall charge an annual licensing fee, set by the office in accordance with the procedures described in Section 63J-1-504, to a recovery residence in an amount that will pay for the cost of the licensing and inspection requirements described in this section and in Section 62A-2-106.

- (b) The office shall deposit the licensing fees described in this section in the General Fund as a dedicated credit to be used solely to pay for the cost of the licensing and inspection requirements described in this section and in Section 62A-2-106.
- (4) Before submitting an application for a license to operate a residential treatment program, the applicant shall serve notice of its intent to operate a residential treatment program on the governing body of:
  - (a) the city in which the residential treatment program will be located; or
  - (b) if the residential treatment program will be located in the unincorporated area of a county, the county in which the residential treatment program will be located.
- (5) The notice described in Subsection (4) shall include the following information relating to the residential treatment program:
  - (a) an accurate description of the residential treatment program;
  - (b) the location where the residential treatment program will be operated;
  - (c) the services that will be provided by the residential treatment program;
  - (d) the type of clients that the residential treatment program will serve;
  - (e) the category of license for which the residential treatment program is applying to the office;
  - (f) the name, telephone number, and address of a person that may be contacted to make inquiries about the residential treatment program; and
  - (g) any other information that the office may require by rule.
- (6) When submitting an application for a license to operate a residential treatment program, the applicant shall include with the application:
  - (a) a copy of the notice described in Subsection (4); and
  - (b) proof that the applicant served the notice described in Subsection (4) on the governing body described in Subsection (4).

Amended by Chapter 240, 2014 General Session

**62A-2-108.4 Request by local government.**

- (1) A local government may request that the office notify the local government of new human services program license applications for human services programs located within the local government's jurisdiction.
- (2) Subsection (1) does not apply to foster homes.

Enacted by Chapter 342, 2016 General Session

**62A-2-108.5 Notification requirement for child placing agencies that provide foster home services -- Rulemaking authority.**

- (1) The office shall require a child placing agency that provides foster home services to notify a foster parent that if the foster parent signs as the responsible adult for a foster child to receive a driver license under Section 53-3-211:
  - (a) the foster parent is jointly and severally liable with the minor for civil compensatory damages caused by the minor when operating a motor vehicle upon a highway as provided under Subsections 53-3-211(2) and (4); and
  - (b) the foster parent may file with the Driver License Division a verified written request that the learner permit or driver license be canceled in accordance with Section 53-3-211 if the foster child no longer resides with the foster parent.

- (2) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the office may make rules establishing the procedures for a child placing agency to provide the notification required under this section.

Enacted by Chapter 314, 2008 General Session

**62A-2-108.8 Residential support program -- Temporary homeless youth shelter.**

In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the office shall make rules that establish age-appropriate and gender-appropriate sleeping quarters in temporary homeless youth shelters, as defined in Section 62A-4a-501, that provide overnight shelter to minors.

Enacted by Chapter 312, 2014 General Session

**62A-2-109 License application -- Classification of information.**

- (1) An application for a license under this chapter shall be made to the office and shall contain information that is necessary to comply with approved rules.
- (2) Information received by the office through reports and inspections shall be classified in accordance with Title 63G, Chapter 2, Government Records Access and Management Act.

Amended by Chapter 75, 2009 General Session

**62A-2-110 Exclusions from chapter.**

The provisions of this chapter do not apply to:

- (1) a facility or program owned or operated by an agency of the United States government;
- (2) a facility or program operated by or under an exclusive contract with the Department of Corrections;
- (3) unless required otherwise by a contract with the department, individual or group counseling by a mental health professional licensed under Title 58, Chapter 60, Mental Health Professional Practice Act;
- (4) a general acute hospital, small health care facility, specialty hospital, nursing care facility, or other health care facility licensed by the Department of Health under Title 26, Chapter 21, Health Care Facility Licensing and Inspection Act; or
- (5) a boarding school.

Amended by Chapter 188, 2005 General Session

**62A-2-111 Adjudicative proceedings.**

- (1) Whenever the office has reason to believe that a licensee is in violation of this chapter or rules made under this chapter, the office may commence adjudicative proceedings to determine the legal rights of the licensee by serving notice of agency action in accordance with Title 63G, Chapter 4, Administrative Procedures Act.
- (2) A licensee, human services program, or individual may commence adjudicative proceedings, in accordance with Title 63G, Chapter 4, Administrative Procedures Act, regarding all office actions that determine the legal rights, duties, privileges, immunities, or other legal interests of the licensee, human services program, or persons associated with the licensee, including all office actions to grant, deny, place conditions on, revoke, suspend, withdraw, or amend an authority, right, or license under this chapter.

Amended by Chapter 382, 2008 General Session

**62A-2-112 Violations -- Penalties.**

- (1) The office may deny, place conditions on, suspend, or revoke a human services license, if it finds, related to the human services program:
  - (a) that there has been a failure to comply with the rules established under this chapter;
  - (b) evidence of aiding, abetting, or permitting the commission of any illegal act; or
  - (c) evidence of 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.
- (2) The office may restrict or prohibit new admissions to a human services program, if it finds:
  - (a) that there has been a failure to comply with rules established under this chapter;
  - (b) evidence of aiding, abetting, or permitting the commission of any illegal act; or
  - (c) evidence of 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.

Amended by Chapter 211, 2016 General Session

**62A-2-113 License revocation -- Suspension.**

- (1) If a license is revoked, the office may not grant a new license unless:
  - (a) the human services program provides satisfactory evidence to the office that the conditions upon which revocation was based have been corrected;
  - (b) the human services program is inspected by the office and found to be in compliance with all provisions of this chapter and applicable rules;
  - (c) at least five years have passed since the day on which the licensee is served with final notice that the license is revoked; and
  - (d) the office determines that the interests of the public will not be jeopardized by granting the license.
- (2) The office may suspend a license for no longer than one year.
- (3) When a license has been suspended, the office may restore, or restore subject to conditions, the suspended license upon a determination that the:
  - (a) conditions upon which the suspension was based have been completely or partially corrected; and
  - (b) interests of the public will not be jeopardized by restoration of the license.

Amended by Chapter 211, 2016 General Session

**62A-2-115 Injunctive relief and other legal procedures.**

In addition to, and notwithstanding, any other remedy provided by law the department may, in a 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, management, or operation of a human services program or facility in violation of this chapter or rules established under this chapter.

Amended by Chapter 75, 2009 General Session

**62A-2-116 Violation -- Criminal penalties.**

- (1)
  - (a) A person who owns, establishes, conducts, maintains, manages, or operates a human services program in violation of this chapter is guilty of a class A misdemeanor if the violation endangers or harms the health, welfare, or safety of persons participating in that program.
  - (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; or
    - (iii) seeking injunctive or equitable relief.
- (2) Any person that violates a provision of this chapter, lawful orders of the office, or rules adopted under this chapter may be assessed a penalty not to exceed the sum of \$10,000 per violation, in:
  - (a) a judicial civil proceeding; or
  - (b) an administrative action in accordance with Title 63G, Chapter 4, Administrative Procedures Act.
- (3) 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; or
  - (c) seeking injunctive or equitable relief.
- (4) The office may assess the human services program the cost incurred by the office in placing a monitor.

Amended by Chapter 211, 2016 General Session

**62A-2-117 Licensure of tribal foster homes.**

- (1) The Indian Child Welfare Act, 25 U.S.C. Secs. 1901-1963, provides that Indian tribes may develop and implement tribal foster home standards.
- (2) The office shall give full faith and credit to an Indian tribe's certification or licensure of tribal foster homes according to standards developed and approved by the Indian tribe, pursuant to the Indian Child Welfare Act, 25 U.S.C. Secs. 1901-1963.
- (3) If the Indian tribe has not developed standards, the office shall license tribal foster homes pursuant to this chapter.

Amended by Chapter 188, 2005 General Session

**62A-2-117.5 Foster care by a child's relative.**

- (1) In accordance with state and federal law, the division shall provide for licensure of a child's relative for foster or substitute care, when the child is in the temporary custody or custody of the Division of Child and Family Services. If it is determined that, under federal law, allowance is made for an approval process requiring less than full foster parent licensure proceedings for a child's relative, the division shall establish an approval process to accomplish that purpose.
- (2) For purposes of this section:
  - (a) "Custody" and "temporary custody" mean the same as those terms are defined in Section 62A-4a-101.
  - (b) "Relative" means the same as that term is defined in Section 78A-6-307.

Amended by Chapter 3, 2008 General Session

**62A-2-118 Administrative inspections.**

- (1) The office may, for the purpose of ascertaining compliance with this chapter, enter and inspect on a routine basis the facility of a licensee.
- (2) Before conducting an inspection under Subsection (1), 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 62A-2-116.
- (3) In conducting an inspection under Subsection (1), the office may, after meeting the requirements of Subsection (2):
  - (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.
- (4) An inspection conducted under Subsection (1) shall be during regular business hours and may be announced or unannounced.
- (5) The licensee shall make copies of inspection reports available to the public upon request.
- (6) 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 chapter.

Amended by Chapter 188, 2005 General Session

**62A-2-119 Adoption of inspections, examinations, and studies.**

The office may adopt an inspection, examination, or study conducted by a public or private entity, as identified by rule, to determine whether a licensee has complied with a licensing requirement imposed by virtue of this chapter.

Enacted by Chapter 358, 1998 General Session

**62A-2-120 Background check -- Direct access to children or vulnerable adults.**

- (1) As used in this section:
  - (a) "Applicant" means:
    - (i) a person described in Section 62A-2-101;
    - (ii) an individual who:
      - (A) is associated with a licensee; and
      - (B) has or will likely have direct access to a child or a vulnerable adult;
    - (iii) an individual who provides respite care to a foster parent or an adoptive parent on more than one occasion;
    - (iv) a department contractor; or
    - (v) a guardian submitting an application on behalf of an individual, other than the child or vulnerable adult who is receiving the service, if the individual is 12 years of age or older and:
      - (A) resides in a home, that is licensed or certified by the office, with the child or vulnerable adult who is receiving services; or
      - (B) is a person or individual described in Subsection (1)(a)(i), (ii), (iii), or (iv).

- (b) "Application" means a background screening application to the office.
  - (c) "Bureau" means the Bureau of Criminal Identification within the Department of Public Safety, created in Section 53-10-201.
  - (d) "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 number or other government-issued identification number;
    - (vi) social security number;
    - (vii) only for applicants who are 18 years of age 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)
- (a) Except as provided in Subsection (14), an applicant shall submit the following to the office:
    - (i) personal identifying information;
    - (ii) a fee established by the office under Section 63J-1-504; and
    - (iii) a form, specified by the office, for consent for:
      - (A) an initial background check upon submission of the information described under Subsection (2)(a);
      - (B) a background check at the applicant's annual renewal;
      - (C) a background check when the office determines that reasonable cause exists; and
      - (D) retention of personal identifying information, including fingerprints, for monitoring and notification as described in Subsections (3)(d) and (4).
  - (b) In addition to the requirements described in Subsection (2)(a), if an applicant spent time outside of the United States and its territories during the five years immediately preceding the day on which the information described in Subsection (2)(a) is submitted to the office, the office may require the applicant to submit documentation establishing whether the applicant was convicted of a crime during the time that the applicant spent outside of the United States or its territories.
- (3) The office:
- (a) shall perform the following duties as part of a background check of 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 Department of Human Services, Division of Child and Family Services' Licensing Information System described in Section 62A-4a-1006;
    - (iv) search the Department of Human Services, Division of Aging and Adult Services' vulnerable adult abuse, neglect, or exploitation database described in Section 62A-3-311.1;
    - (v) search the juvenile court records for substantiated findings of severe child abuse or neglect described in Section 78A-6-323; and
    - (vi) search the juvenile court arrest, adjudication, and disposition records, as provided under Section 78A-6-209;

- (b) shall conduct a background check of an applicant for an initial background check upon submission of the information described under Subsection (2)(a);
  - (c) may conduct all or portions of a background check of an applicant, 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;
  - (d) 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;
  - (e) shall track the status of an approved applicant under this section to ensure that an approved applicant is not required to duplicate the submission of the applicant's fingerprints if the applicant applies for:
    - (i) more than one license;
    - (ii) direct access to a child or a vulnerable adult in more than one human services program; or
    - (iii) direct access to a child or a vulnerable adult under a contract with the department;
  - (f) shall track the status of each license and each individual with direct access to a child or a vulnerable adult and notify the Bureau when the license has expired or the individual's direct access to a child or a vulnerable adult has ceased;
  - (g) shall adopt measures to strictly limit access to personal identifying information solely to the office employees responsible for processing the applications for background checks and to protect the security of the personal identifying information the office reviews under this Subsection (3); 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)(d), the Bureau shall:
    - (i) maintain a separate file of the fingerprints for search by future submissions to the local and regional criminal records databases, including latent prints; and
    - (ii) monitor state and regional criminal background databases and identify criminal activity associated with the applicant.
  - (d) The Bureau is authorized to submit the fingerprints to the Federal Bureau of Investigation Next Generation Identification System, to be retained in the Federal Bureau of Investigation Next Generation Identification System for the purpose of:
    - (i) being searched by future submissions to the national criminal records databases, including the Federal Bureau of Investigation Next Generation Identification System and latent prints; and
    - (ii) monitoring national criminal background databases and identifying criminal activity associated with the applicant.
  - (e) The Bureau shall notify and release to the office all information of criminal activity associated with the applicant.

- (f) Upon notice from the office that a license has expired or an individual's direct access to a child or a vulnerable adult has ceased, the Bureau shall:
- (i) discard and destroy any retained fingerprints; and
  - (ii) notify the Federal Bureau of Investigation when the license has expired or an individual's direct access to a child or a vulnerable adult has ceased, so that the Federal Bureau of Investigation will discard and destroy the retained fingerprints from the Federal Bureau of Investigation Next Generation Identification System.
- (5)
- (a) After conducting the background check described in Subsections (3) and (4), the office shall deny an application to an applicant who, within 10 years before the day on which the applicant submits information to the office under Subsection (2) for a background check, has been convicted of any of the following, regardless of whether the offense is a felony, a misdemeanor, or an infraction:
    - (i) an offense identified as domestic violence, lewdness, voyeurism, battery, cruelty to animals, or bestiality;
    - (ii) a violation of any pornography law, including sexual exploitation of a minor;
    - (iii) prostitution;
    - (iv) an offense included in:
      - (A) Title 76, Chapter 5, Offenses Against the Person;
      - (B) Section 76-5b-201, Sexual Exploitation of a Minor; or
      - (C) Title 76, Chapter 7, Offenses Against the Family;
    - (v) aggravated arson, as described in Section 76-6-103;
    - (vi) aggravated burglary, as described in Section 76-6-203;
    - (vii) aggravated robbery, as described in Section 76-6-302;
    - (viii) identity fraud crime, as described in Section 76-6-1102; or
    - (ix) a conviction for a felony or misdemeanor offense committed outside of the state that, if committed in the state, would constitute a violation of an offense described in Subsections (5)(a)(i) through (viii).
  - (b) If the office denies an application to an applicant based on a conviction described in Subsection (5)(a), the applicant is not entitled to a comprehensive review described in Subsection (6).
- (6)
- (a) The office shall conduct a comprehensive review of an applicant's background check if the applicant has:
    - (i) a conviction for any felony offense, not described in Subsection (5)(a), regardless of the date of the conviction;
    - (ii) a conviction for a misdemeanor offense, not described in Subsection (5)(a), and designated by the office, by rule, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, if the conviction is within five years before the day on which the applicant submits information to the office under Subsection (2) for a background check;
    - (iii) a conviction for any offense described in Subsection (5)(a) that occurred more than 10 years before the day on which the applicant submitted information under Subsection (2)(a);
    - (iv) pleaded no contest to or is currently subject to a plea in abeyance or diversion agreement for any offense described in Subsection (5)(a);
    - (v) a listing in the Department of Human Services, Division of Child and Family Services' Licensing Information System described in Section 62A-4a-1006;
    - (vi) a listing in the Department of Human Services, Division of Aging and Adult Services' vulnerable adult abuse, neglect, or exploitation database described in Section 62A-3-311.1;

- (vii) a record in the juvenile court of a substantiated finding of severe child abuse or neglect described in Section 78A-6-323;
- (viii) 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:
  - (A) under 28 years of age; or
  - (B) 28 years of age 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); or
- (ix) a pending charge for an offense described in Subsection (5)(a).
- (b) The comprehensive review described in Subsection (6)(a) 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 or mental 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; and
  - (viii) any other pertinent information.
- (c) At the conclusion of the comprehensive review described in Subsection (6)(a), the office shall deny an application to an applicant if the office finds that approval would likely create a risk of harm to a child or a vulnerable adult.
- (d) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the office may make rules, consistent with this chapter, to establish procedures for the comprehensive review described in this Subsection (6).
- (7) Subject to Subsection (10), the office shall approve an application to an applicant who is not denied under Subsection (5), (6), or (13).
- (8)
  - (a) The office may conditionally approve an application of an applicant, for a maximum of 60 days after the day on which the office sends written notice to the applicant under Subsection (12), 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 approve an application of the applicant under Subsection (7).
  - (b) Upon receiving the results of the criminal history search of national criminal background databases, the office shall approve or deny the application of the applicant in accordance with Subsections (5) through (7).
- (9) A licensee or department contractor may not permit an individual to have direct access to a child or a vulnerable adult unless, subject to Subsection (10):
  - (a) the individual is associated with the licensee or department contractor and:
    - (i) the individual's application is approved by the office under this section;
    - (ii) the individual's application is conditionally approved by the office under Subsection (8); or
    - (iii)

- (A) the individual has submitted the background check information described in Subsection (2) to the office;
  - (B) the office has not determined whether to approve the applicant's application; and
  - (C) the individual is directly supervised by an individual who has a current background screening approval issued by the office under this section and is associated with the licensee or department contractor;
- (b)
- (i) the individual is associated with the licensee or department contractor;
  - (ii) the individual has a current background screening approval issued by the office under this section;
  - (iii) one of the following circumstances, that the office has not yet reviewed under Subsection (6), applies to the individual:
    - (A) the individual was charged with an offense described in Subsection (5)(a);
    - (B) the individual is listed in the Licensing Information System, described in Section 62A-4a-1006;
    - (C) the individual is listed in the vulnerable adult abuse, neglect, or exploitation database, described in Section 62A-3-311.1;
    - (D) the individual has a record in the juvenile court of a substantiated finding of severe child abuse or neglect, described in Section 78A-6-323; or
    - (E) the individual has a record of an adjudication in juvenile court for an act that, if committed by an adult, would be a felony or a misdemeanor; and
  - (iv) the individual is directly supervised by an individual who:
    - (A) has a current background screening approval issued by the office under this section; and
    - (B) is associated with the licensee or department contractor;
- (c) the individual:
- (i) is not associated with the licensee or department contractor; and
  - (ii) is directly supervised by an individual who:
    - (A) has a current background screening approval issued by the office under this section; and
    - (B) is associated with the licensee or department contractor;
  - (d) the individual is the parent or guardian of the child, or the guardian of the vulnerable adult;
  - (e) the individual is approved by the parent or guardian of the child, or the guardian of the vulnerable adult, to have direct access to the child or the vulnerable adult; or
  - (f) the individual is only permitted to have direct access to a vulnerable adult who voluntarily invites the individual to visit.
- (10) An individual may not have direct access to a child or a vulnerable adult if the individual is prohibited by court order from having that access.
- (11) Notwithstanding any other provision of this section, an individual for whom the office denies an application may not have supervised or unsupervised direct access to a child or vulnerable adult unless the office approves a subsequent application by the individual.
- (12)
- (a) Within 30 days after the day on which the office receives the background check information for an applicant, the office shall give written notice to:
    - (i) the applicant, and the licensee or department contractor, of the office's decision regarding the background check and findings; and
    - (ii) the applicant of any convictions and potentially disqualifying charges and adjudications found in the search.
  - (b) With the notice described in Subsection (12)(a), the office shall also give the applicant the details of any comprehensive review conducted under Subsection (6).

- (c) If the notice under Subsection (12)(a) states that the applicant's application is denied, the notice shall further advise the applicant that the applicant may, under Subsection 62A-2-111(2), request a hearing in the department's Office of Administrative Hearings, to challenge the office's decision.
- (d) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the office shall make rules, consistent with this chapter:
  - (i) defining procedures for the challenge of its background check decision described in Subsection (12)(c); and
  - (ii) expediting the process for renewal of a license under the requirements of this section and other applicable sections.
- (13) This section does not apply to a department contractor, or an applicant for an initial license, or license renewal, regarding a substance abuse program that provides services to adults only.
- (14)
  - (a) Except as provided in Subsection (14)(b), in addition to the other requirements of this section, if the background check of an applicant is being conducted for the purpose of licensing a prospective foster home or approving a prospective adoptive placement of a child in state custody, 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 parent or adoptive parent, to determine whether the prospective foster parent or prospective adoptive parent is listed in the registry as having a substantiated or supported finding of child abuse or neglect; and
    - (ii) check the child abuse and neglect registry in each state where each adult living in the home of the applicant described in Subsection (14)(a)(i) resided in the five years immediately preceding the day on which the applicant applied to be a foster parent 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.
  - (b) The requirements described in Subsection (14)(a) 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 62A-4a-209, 78A-6-307, or 78A-6-307.5; or
      - (B) a relative, other than a noncustodial parent, under Section 62A-4a-209, 78A-6-307, or 78A-6-307.5, pending completion of the background check described in Subsection (5).
  - (c) Notwithstanding Subsections (5) through (9), the office shall deny a license or a license renewal to a prospective foster parent or a prospective adoptive parent if the applicant has been convicted of:
    - (i) a felony involving conduct that constitutes any of the following:
      - (A) child abuse, as described in Section 76-5-109;
      - (B) commission of domestic violence in the presence of a child, as described in Section 76-5-109.1;
      - (C) abuse or neglect of a child with a disability, as described in Section 76-5-110;
      - (D) endangerment of a child or vulnerable adult, as described in Section 76-5-112.5;
      - (E) aggravated murder, as described in Section 76-5-202;
      - (F) murder, as described in Section 76-5-203;
      - (G) manslaughter, as described in Section 76-5-205;
      - (H) child abuse homicide, as described in Section 76-5-208;
      - (I) homicide by assault, as described in Section 76-5-209;

- (J) kidnapping, as described in Section 76-5-301;
- (K) child kidnapping, as described in Section 76-5-301.1;
- (L) aggravated kidnapping, as described in Section 76-5-302;
- (M) an offense described in Title 76, Chapter 5, Part 4, Sexual Offenses;
- (N) sexual exploitation of a minor, as described in Section 76-5b-201;
- (O) aggravated arson, as described in Section 76-6-103;
- (P) aggravated burglary, as described in Section 76-6-203;
- (Q) aggravated robbery, as described in Section 76-6-302; or
- (R) domestic violence, as described in Section 77-36-1; or
- (ii) an offense committed outside the state that, if committed in the state, would constitute a violation of an offense described in Subsection (14)(c)(i).
- (d) Notwithstanding Subsections (5) through (9), the office shall deny a license or license renewal to a prospective foster parent or a prospective adoptive parent if, within the five years immediately preceding the day on which the individual's application or license would otherwise be approved, the applicant was convicted of a felony involving conduct that constitutes a violation of any of the following:
  - (i) aggravated assault, as described in Section 76-5-103;
  - (ii) aggravated assault by a prisoner, as described in Section 76-5-103.5;
  - (iii) mayhem, as described in Section 76-5-105;
  - (iv) an offense described in Title 58, Chapter 37, Utah Controlled Substances Act;
  - (v) an offense described in Title 58, Chapter 37a, Utah Drug Paraphernalia Act;
  - (vi) an offense described in Title 58, Chapter 37b, Imitation Controlled Substances Act;
  - (vii) an offense described in Title 58, Chapter 37c, Utah Controlled Substance Precursor Act; or
  - (viii) an offense described in Title 58, Chapter 37d, Clandestine Drug Lab Act.
- (e) In addition to the circumstances described in Subsection (6)(a), the office shall conduct the comprehensive review of an applicant's background check pursuant to this section if the registry check described in Subsection (14)(a) indicates that the individual is listed in a child abuse and neglect registry of another state as having a substantiated or supported finding of a severe type of child abuse or neglect as defined in Section 62A-4a-1002.

Amended by Chapter 122, 2016 General Session

**62A-2-121 Access to abuse and neglect information.**

- (1) For purposes of this section:
  - (a) "Direct service worker" means the same as that term is defined in Section 62A-5-101.
  - (b) "Personal care attendant" means the same as that term is defined in Section 62A-3-101.
- (2) With respect to a licensee, a direct service worker, or a personal care attendant, the department may access only the Licensing Information System of the Division of Child and Family Services created by Section 62A-4a-1006 and juvenile court records under Subsection 78A-6-323(6), for the purpose of:
  - (a)
    - (i) determining whether a person associated with a licensee, with direct access to children:
      - (A) is listed in the Licensing Information System; or
      - (B) has a substantiated finding by a juvenile court of a severe type of child abuse or neglect under Subsections 78A-6-323(1) and (2); and
    - (ii) informing a licensee that a person associated with the licensee:
      - (A) is listed in the Licensing Information System; or

- (B) has a substantiated finding by a juvenile court of a severe type of child abuse or neglect under Subsections 78A-6-323(1) and (2);
- (b)
  - (i) determining whether a direct service worker:
    - (A) is listed in the Licensing Information System; or
    - (B) has a substantiated finding by a juvenile court of a severe type of child abuse or neglect under Subsections 78A-6-323(1) and (2); and
  - (ii) informing a direct service worker or the direct service worker's employer that the direct service worker:
    - (A) is listed in the Licensing Information System; or
    - (B) has a substantiated finding by a juvenile court of a severe type of child abuse or neglect under Subsections 78A-6-323(1) and (2); or
- (c)
  - (i) determining whether a personal care attendant:
    - (A) is listed in the Licensing Information System; or
    - (B) has a substantiated finding by a juvenile court of a severe type of child abuse or neglect under Subsections 78A-6-323(1) and (2); and
  - (ii) informing a person described in Subsections 62A-3-101(9)(a)(i) through (iv) that a personal care attendant:
    - (A) is listed in the Licensing Information System; or
    - (B) has a substantiated finding by a juvenile court of a severe type of child abuse or neglect under Subsections 78A-6-323(1) and (2).
- (3) Notwithstanding Subsection (2), the department may access the Division of Child and Family Services' Management Information System under Section 62A-4a-1003:
  - (a) for the purpose of licensing and monitoring foster parents;
  - (b) for the purposes described in Subsection 62A-4a-1003(1)(d); and
  - (c) for the purpose described in Section 62A-1-118.
- (4) The department shall receive and process personal identifying information under Subsection 62A-2-120(1) for the purposes described in Subsection (2).
- (5) The department shall adopt rules under Title 63G, Chapter 3, Utah Administrative Rulemaking Act, consistent with this chapter, defining the circumstances under which a person may have direct access or provide services to children when:
  - (a) the person is listed in the Licensing Information System of the Division of Child and Family Services created by Section 62A-4a-1006; or
  - (b) juvenile court records show that a court made a substantiated finding under Section 78A-6-323, that the person committed a severe type of child abuse or neglect.

Amended by Chapter 348, 2016 General Session

**62A-2-122 Access to vulnerable adult abuse and neglect information.**

- (1) For purposes of this section:
  - (a) "Direct service worker" means the same as that term is defined in Section 62A-5-101.
  - (b) "Personal care attendant" means the same as that term is defined in Section 62A-3-101.
- (2) With respect to a licensee, a direct service worker, or a personal care attendant, the department may access the database created by Section 62A-3-311.1 for the purpose of:
  - (a)
    - (i) determining whether a person associated with a licensee, with direct access to vulnerable adults, has a supported or substantiated finding of:

- (A) abuse;
  - (B) neglect; or
  - (C) exploitation; and
- (ii) informing a licensee that a person associated with the licensee has a supported or substantiated finding of:
- (A) abuse;
  - (B) neglect; or
  - (C) exploitation;
- (b)
- (i) determining whether a direct service worker has a supported or substantiated finding of:
- (A) abuse;
  - (B) neglect; or
  - (C) exploitation; and
- (ii) informing a direct service worker or the direct service worker's employer that the direct service worker has a supported or substantiated finding of:
- (A) abuse;
  - (B) neglect; or
  - (C) exploitation; or
- (c)
- (i) determining whether a personal care attendant has a supported or substantiated finding of:
- (A) abuse;
  - (B) neglect; or
  - (C) exploitation; and
- (ii) informing a person described in Subsections 62A-3-101(9)(a)(i) through (iv) that a personal care attendant has a supported or substantiated finding of:
- (A) abuse;
  - (B) neglect; or
  - (C) exploitation.
- (3) The department shall receive and process personal identifying information under Subsection 62A-2-120(1) for the purposes described in Subsection (2).
- (4) The department shall adopt rules under Title 63G, Chapter 3, Utah Administrative Rulemaking Act, consistent with this chapter and Title 62A, Chapter 3, Part 3, Abuse, Neglect, or Exploitation of a Vulnerable Adult, defining the circumstances under which a person may have direct access or provide services to vulnerable adults when the person is listed in the statewide database of the Division of Aging and Adult Services created by Section 62A-3-311.1 as having a supported or substantiated finding of abuse, neglect, or exploitation.

Amended by Chapter 348, 2016 General Session