

1 **DEPARTMENT OF HUMAN SERVICES OFFICE**
2 **OF LICENSING REVISIONS**

3 1998 GENERAL SESSION

4 STATE OF UTAH

5 **Sponsor: J. Brent Haymond**

6 AN ACT RELATING TO HUMAN SERVICES; PERMITTING THE DEPARTMENT TO
7 SCREEN CERTAIN EMPLOYEES AND VOLUNTEERS FOR SUBSTANTIATED
8 REPORTS OF ABUSE OR NEGLECT; DEFINING TERMS; CHANGING THE HUMAN
9 SERVICES LICENSING COMMITTEE TO A BOARD; AUTHORIZING THE OFFICE OF
10 LICENSING ADOPT LICENSING RULES RELATED TO BASIC HEALTH AND SAFETY
11 STANDARDS; PERMITTING THE OFFICE TO IMPOSE FINES FOR LICENSING
12 VIOLATIONS; PERMITTING THE OFFICE TO EXTEND A LICENSE AS AN INCENTIVE
13 FOR COMPLIANCE WITH LICENSING RULES; AUTHORIZING THE OFFICE TO
14 CERTIFY TRIBAL FOSTER HOMES; CLARIFYING THE AUTHORITY OF THE OFFICE
15 TO CONDUCT INSPECTIONS AND TO ADOPT THE INSPECTION REPORTS OF OTHER
16 ENTITIES; REQUIRING A BACKGROUND CHECK OF CARE GIVERS; PERMITTING
17 THE OFFICE TO SCREEN CARE GIVERS FOR SUBSTANTIATED REPORTS OF ABUSE
18 OR NEGLECT; AND CREATING A RESTRICTED ACCOUNT INTO WHICH FINES ARE
19 DEPOSITED FOR LICENSEE TRAINING.

20 This act affects sections of Utah Code Annotated 1953 as follows:

21 AMENDS:

22 **62A-2-101**, as last amended by Chapter 196, Laws of Utah 1997

23 **62A-2-102**, as enacted by Chapter 1, Laws of Utah 1988

24 **62A-2-103**, as last amended by Chapter 5, Laws of Utah 1991

25 **62A-2-104**, as last amended by Chapter 243, Laws of Utah 1996

26 **62A-2-105**, as last amended by Chapters 28 and 108, Laws of Utah 1995

27 **62A-2-106**, as last amended by Chapter 172, Laws of Utah 1991

1 **62A-2-107**, as last amended by Chapters 5 and 172, Laws of Utah 1991

2 **62A-2-108**, as last amended by Chapter 172, Laws of Utah 1991

3 **62A-2-109**, as last amended by Chapter 12, Laws of Utah 1994

4 **62A-2-110**, as last amended by Chapter 172, Laws of Utah 1991

5 **62A-2-111**, as last amended by Chapter 172, Laws of Utah 1991

6 **62A-2-112**, as last amended by Chapter 172, Laws of Utah 1991

7 **62A-2-113**, as last amended by Chapter 172, Laws of Utah 1991

8 **62A-2-115**, as last amended by Chapter 172, Laws of Utah 1991

9 **62A-2-116**, as last amended by Chapter 172, Laws of Utah 1991

10 **62A-4a-413**, as last amended by Chapters 196 and 329, Laws of Utah 1997

11 **62A-4a-601**, as renumbered and amended by Chapter 260, Laws of Utah 1994

12 ENACTS:

13 **62A-1-118**, Utah Code Annotated 1953

14 **62A-2-117**, Utah Code Annotated 1953

15 **62A-2-118**, Utah Code Annotated 1953

16 **62A-2-119**, Utah Code Annotated 1953

17 **62A-2-120**, Utah Code Annotated 1953

18 **62A-2-121**, Utah Code Annotated 1953

19 **62A-2-122**, Utah Code Annotated 1953

20 REPEALS AND REENACTS:

21 **62A-2-114**, as last amended by Chapter 108, Laws of Utah 1997

22 REPEALS:

23 **62A-2-106.1**, as enacted by Chapter 172, Laws of Utah 1991

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

25 Section 1. Section **62A-1-118** is enacted to read:

26 **62A-1-118. Access to abuse and neglect information to screen employees and**
27 **volunteers.**

28 (1) With respect to department employees and volunteers, the department may only access
29 information in the Division of Child and Family Service's management information system created
30 by Section 62A-4a-116 and the Division of Aging and Adult Services database created by Section
31 62A-3-311.1 for the purpose of determining at the time of hire and each year thereafter whether

1 a department employee or volunteer has a substantiated report of abuse or neglect but only if
2 identification as a possible perpetrator of abuse or neglect is directly relevant to the employment
3 or volunteer activities of that person.

4 (2) A department employee or volunteer to whom Subsection (1) applies shall submit to
5 the department his name and other identifying information upon request.

6 (3) The department shall process the information to determine whether the employee or
7 volunteer has a substantiated report of child abuse or neglect.

8 (4) The department shall adopt rules defining permissible and impermissible work-related
9 activities for a department employee or volunteer with one or more substantiated report of abuse
10 or neglect.

11 Section 2. Section **62A-2-101** is amended to read:

12 **62A-2-101. Definitions.**

13 As used in this chapter:

14 (1) "Adult day care" means continuous care and supervision for three or more adults for
15 at least four but less than 24 hours a day, that meets the needs of functionally impaired adults
16 through a comprehensive program that provides a variety of health, social, recreational, and related
17 support services in a protective setting.

18 (2) "Child placing" means receiving, accepting, or providing custody or care for any child
19 under 18 years of age, temporarily or permanently, for the purpose of:

- 20 (a) finding a person to adopt the child;
- 21 (b) placing the child temporarily or permanently in a home for adoption; or
- 22 (c) foster home placement.

23 ~~[(3) "Comprehensive mental health treatment" means a community program which:]~~

24 ~~[(a) makes mental health services available to persons of all ages who are experiencing an~~
25 ~~emergency mental dysfunction; and]~~

26 ~~[(b) provides at least the following continuum of services:]~~

27 ~~[(i) inpatient;]~~

28 ~~[(ii) residential support;]~~

29 ~~[(iii) day treatment; and]~~

30 ~~[(iv) outpatient treatment.]~~

31 ~~[(4) "Comprehensive substance abuse treatment" means a community program operated~~

1 by or under contract with a local substance abuse authority that provides at least the following
2 services:]

3 ~~[(a) social detoxification;]~~

4 ~~[(b) residential treatment;]~~

5 ~~[(c) outpatient treatment;]~~

6 ~~[(d) day treatment; and]~~

7 ~~[(e) residential support.]~~

8 (3) "Client" means an individual who receives or has received services from a human
9 services licensee under this chapter.

10 ~~[(5)] (4) "Day treatment" means specialized treatment for less than 24 hours a day for four~~
11 ~~or more persons who are unrelated to the owner or provider and who have emotional,~~
12 ~~psychological, developmental, physical, or behavioral dysfunctions, impairments, or chemical~~
13 ~~dependencies. Day treatment is provided in lieu of, or in coordination with, a more restrictive~~
14 ~~residential or inpatient environment or service.~~

15 ~~[(6)] (5) "Department" means the Department of Human Services.~~

16 ~~[(7)] (6) "Director" means the director of the Office of Licensing.~~

17 ~~[(8)] (7) "Domestic violence treatment program" means a nonresidential program designed~~
18 ~~to provide psychological treatment and educational services to perpetrators and victims of~~
19 ~~domestic violence.~~

20 ~~[(9) "Driving under the influence-educational services" means an instructional program~~
21 ~~for court-referred alcohol and drug offenders for ten or more hours.]~~

22 ~~[(10)] (8) "Executive director" means the executive director of the Department of Human~~
23 ~~Services.~~

24 ~~[(11)] (9) "Human services [program] licensee" or "licensee" means a youth program,~~
25 ~~resource family home, or a facility or program that provides care, secure treatment, inpatient~~
26 ~~treatment, residential treatment, residential support, adult day care, day treatment, outpatient~~
27 ~~treatment, [comprehensive mental health treatment, comprehensive substance abuse treatment,]~~
28 ~~domestic violence treatment, child placing services, or [driving under the influence-educational~~
29 ~~services] social detoxification.~~

30 ~~[(12) "Inpatient treatment" means a 24-hour hospital-based, live-in treatment service for~~
31 ~~persons with emotional, psychological, developmental, or behavioral dysfunctions, impairments,~~

1 or chemical dependencies, whose current functioning is such that they cannot live independently
2 or in a less restrictive environment. Inpatient treatment services may include, but are not limited
3 to, assessment, examinations, diagnosis, individual, group, and family counseling, skills training,
4 medication, or detoxification. Inpatient treatment services are provided by or under the direction
5 and supervision of a physician licensed to practice medicine in this state:]

6 [(13)] (10) "Licensing [~~committee~~] board" means the Human Services Licensing
7 [~~Committee~~] Board.

8 [(14)] (11) "Office" means the Office of Licensing within the Department of Human
9 Services.

10 [(15)] (12) "Outpatient treatment" means individual, family, or group therapy or
11 counseling designed to improve and enhance social or psychological functioning for those whose
12 physical and emotional status allows them to continue functioning in their usual living
13 environment.

14 (13) "Person associated with a licensee" means an owner, director, member of the
15 governing body, employee, provider of care, and volunteer of a human services licensee.

16 [(16)] (14) "Residential support" means arranging for or providing the necessities of life
17 as a protective service to individuals or families who are disabled or who are experiencing a
18 dislocation or emergency which prevents them from providing these services for themselves or
19 their families. Treatment is not a necessary component of residential support.

20 [(17)] (15) "Residential treatment" means a 24-hour group living environment for four or
21 more individuals unrelated to the owner or provider that offers room or board and specialized
22 treatment, rehabilitation, or habilitation services for persons with emotional, psychological,
23 developmental, or behavioral dysfunctions, impairments, or chemical dependencies. In residential
24 treatment, individuals are assisted in acquiring the social and behavioral skills necessary for living
25 independently in the community.

26 (16) "Resource family home" means a home licensed to provide services to a child in the
27 custody of the state and includes a foster care home and a legal risk home.

28 [(18)] (17) "Secure treatment" means 24-hour specialized residential treatment or care for
29 persons whose current functioning is such that they cannot live independently or in a less
30 restrictive environment. Secure treatment differs from residential treatment to the extent that it
31 requires intensive supervision, locked doors, and other security measures which are imposed on

1 residents with neither their consent nor control.

2 [(19)] (18) "Social detoxification" means short-term residential services for persons who
3 are intoxicated, that are provided outside of a health care facility licensed under Title 26, Chapter
4 21, Health Care Facility Licensure and Inspection Act, and that include:

- 5 (a) room and board for persons who are unrelated to the owner or manager of the facility;
- 6 (b) specialized rehabilitation to acquire sobriety; and
- 7 (c) aftercare services.

8 [(20)] (19) "Unrelated persons" means persons other than parents, legal guardians,
9 grandparents, brothers, sisters, uncles, or aunts.

10 [(21)] (20) "Youth program" means a nonresidential program designed to provide
11 behavioral, substance abuse, or mental health services to minors that:

- 12 (a) serves either adjudicated or nonadjudicated youth;
- 13 (b) charges a fee for its services;
- 14 (c) may or may not provide host homes or other arrangements for overnight
15 accommodation of the youth;
- 16 (d) may or may not provide all or part of its services in the outdoors;
- 17 (e) may or may not limit or censor access to parents or guardians;
- 18 (f) prohibits or restricts a minor's ability to leave the program at any time of his own free
19 will; and

20 (g) will not apply to recreational programs such as Boy Scouts, Girl Scouts, 4-H, and other
21 such organizations.

22 Section 3. Section **62A-2-102** is amended to read:

23 **62A-2-102. Purpose of licensure.**

24 The purpose of licensing under this chapter is to permit or authorize a public or private
25 agency to provide defined [social] human services programs within statutory and regulatory
26 guidelines. [The issuance of a social service license designates that the program has the capacity
27 to provide the service for which it is licensed.]

28 Section 4. Section **62A-2-103** is amended to read:

29 **62A-2-103. Office of Licensing -- Appointment -- Qualifications of director.**

30 (1) There is created the Office of Licensing within the Department of Human Services.
31 The office shall be the licensing authority for the department, and is vested with all the powers,

1 duties, and responsibilities described in this chapter.

2 (2) The executive director shall appoint the director of the office.

3 (3) The director shall have a bachelor's degree from an accredited university or college,
4 be experienced in administration, and be knowledgeable of human services licensing.

5 Section 5. Section **62A-2-104** is amended to read:

6 **62A-2-104. Human Services Licensing Board -- Composition -- Meetings -- Expenses.**

7 (1) There is established the Human Services Licensing [~~Committee, composed~~] Board
8 consisting of the following nine members [~~who shall be~~] appointed by the executive director[~~-~~
9 ~~Members of that committee shall be representative of consumers of social service programs;~~
10 ~~public and private providers of human services programs who are subject to licensure under this~~
11 ~~chapter, and the general public.];~~

12 (a) one individual who represents child and family services licensees;

13 (b) one individual who represents disability services licensees;

14 (c) one individual who represents youth correction licensees;

15 (d) one individual who represents aging and adult services licensees;

16 (e) one individual who represents mental health services licensees;

17 (f) one individual who represents substance abuse services licensees; and

18 (g) three individuals who represent clients or the general public.

19 (2) (a) Except as required by Subsection (2)(b), as terms of current [~~committee~~] board
20 members expire, the executive director shall appoint each new member or reappointed member
21 to a four-year term.

22 (b) Notwithstanding the requirements of Subsection (2)(a), the executive director shall,
23 at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of
24 [~~committee~~] board members are staggered so that approximately half of the [~~committee~~] board
25 is appointed every two years.

26 (c) The [~~committee~~] board shall annually elect a chair from its membership.

27 (3) When a vacancy occurs in the membership for any reason, the replacement shall be
28 appointed for the unexpired term.

29 (4) The licensing [~~committee~~] board shall meet at least quarterly, or more frequently as
30 determined by the director, the chair, or three or more members of the [~~committee~~] board. Five
31 members constitute a quorum and a vote of the majority of the members present constitutes [~~an~~]

1 the action of the [committee] board.

2 (5) (a) Members shall receive no compensation or benefits for their services, but may
3 receive per diem and expenses incurred in the performance of the member’s official duties at the
4 rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

5 (b) Members may decline to receive per diem and expenses for their service.

6 Section 6. Section **62A-2-105** is amended to read:

7 **62A-2-105. Licensing board responsibilities.**

8 (1) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
9 licensing [committee] board shall review and approve rules regarding:

10 (a) approving, denying, suspending, and revoking licenses for human [service programs]
11 services licensees and facilities;

12 (b) conditional licenses, variances from department rule, and exclusions;

13 (c) the protection of the basic health and safety of [participants in human services
14 programs] clients; [and]

15 (d) licensing of all human services [programs] licensees that are required to be licensed
16 under this chapter[-]; and

17 (e) a standard fine schedule for violations of this chapter.

18 (2) The licensing [committee] board shall:

19 (a) define information that shall be submitted to the department with an application for a
20 license;

21 (b) review and approve fees, in accordance with Section 63-38-3.2, for licenses issued
22 under this chapter;

23 (c) represent the community and the human services [program providers] licensees; and

24 (d) advise the department as requested, concerning enforcement of rules established under
25 this chapter.

26 Section 7. Section **62A-2-106** is amended to read:

27 **62A-2-106. Office responsibilities.**

28 The office shall:

29 (1) make rules to establish basic health and safety standards for licensees on the following:

30 (a) life safety;

31 (b) criminal or abuse history of a person associated with a licensee;

- 1 (c) physical plant and equipment;
2 (d) minimum financial requirements for licensees;
3 (e) maintenance of client records in consultation with the policymaking boards created by
4 Section 62A-1-105;
5 (f) staff qualifications in consultation with the policymaking boards created by Section
6 62A-1-105;
7 (g) staff to client ratios in consultation with the policymaking boards created by Section
8 62A-1-105;
9 (h) medication administration, consistent with related provisions of this title;
10 (i) food services;
11 (j) client rights;
12 (k) a standard fine schedule for violations of this chapter consistent with Section
13 62A-2-112; and
14 (l) guidelines for variances from department rules established under this Subsection (1);
15 [(1)] (2) enforce all rules [made] approved by the licensing [committee] board;
16 [(2)] (3) issue licenses in accordance with this chapter;
17 [(3)] (4) conduct surveys and inspections of [~~human services programs~~] licensees and
18 facilities in accordance with Section 62A-2-118;
19 (5) impose and collect fines for licensing violations in accordance with Section
20 62A-2-112;
21 [(4)] (6) collect licensure fees;
22 [(5)] (7) provide necessary administrative support to the licensing [committee] board;
23 [(6)] (8) investigate complaints regarding any [~~human services program~~] licensee or
24 facility;
25 [(7)] (9) have access to all records, correspondence, and financial data required to be
26 maintained by a [~~human services program~~] licensee or facility;
27 [(8)] (10) have authority to interview any employee or officer of a human services
28 [~~program~~] licensee or facility; and
29 [(9)] (11) have authority to revoke, suspend, or extend any license issued by the
30 department under this chapter by following the procedures and requirements of Title 63, Chapter
31 46b, Administrative Procedures Act.

1 Section 8. Section **62A-2-107** is amended to read:

2 **62A-2-107. Coordination with Department of Health -- Joint inspection of facilities.**

3 (1) The office and the licensing [~~committee~~] board shall coordinate rulemaking and
4 licensure activities with the Department of Health to avoid duplication and inconsistency.
5 Wherever possible and advisable, inspection of [~~social-service~~] human services facilities that also
6 qualify as health care facilities under Section 26-21-2 shall be conducted;

7 (a) jointly by the Department of Human Services and the Department of Health; or

8 (b) pursuant to Section 62A-2-119.

9 (2) Distribution of any costs incurred in joint inspections and fees collected for joint
10 licensure shall be determined through a process established by the Department of Human Services
11 and the Department of Health.

12 Section 9. Section **62A-2-108** is amended to read:

13 **62A-2-108. Licensure requirements -- Expiration -- Renewal.**

14 (1) Except as [~~otherwise~~] provided [~~by law~~] in Section 62A-2-110, no person, agency,
15 firm, corporation, association, or governmental unit, acting severally or jointly with any other
16 person, agency, firm, corporation, association, or governmental unit, may establish, conduct, or
17 maintain a human services program or facility in this state without a valid and current license
18 issued by and under the authority of the department as provided by this chapter and the rules of
19 the licensing [~~committee~~] board.

20 (2) No license issued under this chapter is assignable or transferable.

21 (3) A current license shall at all times be posted in each human services program or
22 facility, in a place that is visible and readily accessible to the public.

23 (4) (a) Each license issued under this chapter expires at midnight 12 months from the date
24 of issuance unless it has been;

25 (i) previously revoked by the office [~~or~~];

26 (ii) voluntarily returned to the office by the human services [~~program~~] licensee; or

27 (iii) extended for up to an additional 12 months pursuant to Section 62A-2-114.

28 (b) A license shall be renewed [~~annually~~] upon application and payment of the applicable
29 fee, unless the office finds that the [~~human-services-program~~] licensee or facility has not complied
30 with the provisions of or rules made under this chapter [~~or rules made under Section 62A-2-105~~].

31 (5) Any [~~human-services-program~~] licensee or facility which is in operation at the time

1 rules are made in accordance with this chapter shall be given a reasonable time for compliance as
2 determined by the [licensing committee] rule.

3 Section 10. Section **62A-2-109** is amended to read:

4 **62A-2-109. License application -- Classification of information.**

5 (1) An application for a license under this chapter shall be made to the office [~~on forms~~
6 ~~supplied by the office,~~] and shall contain information that the committee determines is necessary[;]
7 in accordance with established rules.

8 (2) Information received by the office through reports and inspections shall be classified
9 as public in accordance with Title 63, Chapter 2, Government Records Access and Management
10 Act.

11 Section 11. Section **62A-2-110** is amended to read:

12 **62A-2-110. Exclusions from chapter.**

13 The provisions of this chapter do not apply to:

14 (1) a facility or program owned or operated by an agency of the United States government;

15 (2) a facility or program [~~regulated or~~] operated by or under an exclusive contract with the
16 Department of Corrections;

17 (3) private individual or group counseling by a licensed practitioner; or

18 (4) a general acute hospital, small health care facility, specialty hospital, nursing care
19 facility, or other health care facility licensed by the Department of Health under Section 26-21-2.

20 Section 12. Section **62A-2-111** is amended to read:

21 **62A-2-111. Adjudicative proceedings.**

22 (1) Whenever the office has reason to believe that a human services [~~program~~] licensee
23 or facility is in violation of this chapter or rules made under this chapter, the office may commence
24 adjudicative proceedings to determine the legal rights of the human services [~~program~~] licensee
25 or facility by serving notice of agency action in accordance with Title 63, Chapter 46b,
26 Administrative Procedures Act.

27 (2) A human services licensee or individual may commence adjudicative proceedings, in
28 accordance with Title 63, Chapter 46b, Administrative Procedures Act, regarding all office actions
29 that determine the legal rights, duties, privileges, immunities, or other legal interests of the human
30 services licensee or persons associated with the licensee, including all office actions to grant, deny,
31 revoke, suspend, modify, annul, withdraw, or amend an authority, right, or license under this

1 chapter.

2 Section 13. Section **62A-2-112** is amended to read:

3 **62A-2-112. Violations -- Penalties.**

4 (1) If the office finds that a violation has occurred under Section 62A-2-111, it may:

5 [~~1~~] (a) impose a fine or deny, suspend, or revoke a license, if it finds that there has been
6 a failure to comply with the rules [~~made~~] approved by the [~~committee~~] board, or if it finds evidence
7 of aiding, abetting, or permitting the commission of any illegal act; or

8 [~~2~~] (b) restrict or prohibit new admissions to a human services program or facility, if it
9 finds that there has been a failure to comply with rules [~~made~~] approved by the [~~committee~~] board,
10 or if it finds evidence of aiding, abetting, or permitting the commission of any illegal act in the
11 human services facility [~~or program~~].

12 (2) A fine imposed under Subsection (1)(a) shall be in accordance with the fine schedule
13 established by rule and may not exceed \$500 for a single violation. Each day a violation of this
14 chapter occurs constitutes a single violation and is subject to a separate fine, but in no event may
15 the aggregate amount of any fine exceed \$5,000.

16 Section 14. Section **62A-2-113** is amended to read:

17 **62A-2-113. License revocation -- Suspension.**

18 (1) If a license is revoked [~~under Section 62A-2-112~~], the office may grant a new license
19 after:

20 (a) satisfactory evidence is submitted to the office, evidencing that the conditions upon
21 which revocation was based have been corrected; and

22 (b) inspection and compliance with all provisions of this chapter and applicable rules.

23 (2) The office may only suspend a license for a period of time which does not exceed the
24 current expiration date of that license.

25 (3) When a license has been suspended, the office may completely or partially restore the
26 suspended license upon a determination that the:

27 (a) conditions upon which the suspension was based have been completely or partially
28 corrected; and

29 (b) interests of the public will not be jeopardized by restoration of the license.

30 Section 15. Section **62A-2-114** is repealed and reenacted to read:

31 **62A-2-114. Compliance incentives.**

1 The department shall, in accordance with rule, provide incentives to a licensee that
2 consistently meets health and safety standards. These rewards may include:

3 (1) reducing fees; or

4 (2) extending the duration of a license for up to an additional 12 months.

5 Section 16. Section **62A-2-115** is amended to read:

6 **62A-2-115. Injunctive relief and other legal procedures.**

7 In addition to, and notwithstanding, any other remedy provided by law the department may,
8 in a manner provided by law and upon the advice of the attorney general, who shall represent the
9 department in the proceedings, maintain an action in the name of the state for injunction or other
10 process against any person or governmental unit to restrain or prevent the establishment,
11 management, or operation of a human services [program] facility in violation of this chapter or
12 rules [~~made~~] approved by the [~~committee~~] board.

13 Section 17. Section **62A-2-116** is amended to read:

14 **62A-2-116. Violation -- Criminal penalties.**

15 A person who owns, establishes, conducts, maintains, manages, or operates a human
16 services [~~program or~~] facility in violation of this chapter or rules [~~made~~] approved by the
17 [~~committee~~] board or who refuses to allow an inspection pursuant to Section 62A-2-118 is guilty
18 of a class A misdemeanor [~~if the violation endangers or harms the health, welfare, or safety of~~
19 ~~persons participating in that program~~].

20 Section 18. Section **62A-2-117** is enacted to read:

21 **62A-2-117. Certification of Tribal Foster Homes.**

22 (1) The Indian Child Welfare Act, 25 U.S.C. Secs. 1901-1963, provides that tribes may
23 develop and implement tribal foster homes.

24 (2) The office shall license tribal foster homes on tribal lands according to standards
25 developed and approved by the tribe, pursuant to the Indian Child Welfare Act, 25 U.S.C. Secs.
26 1901-1963.

27 (3) If the tribe has not developed standards, the office shall license tribal foster homes
28 pursuant to this chapter.

29 Section 19. Section **62A-2-118** is enacted to read:

30 **62A-2-118. Administrative inspections.**

31 (1) The office may, for the purpose of ascertaining compliance with the provisions of this

1 chapter, enter and inspect on routine basis the facility of a licensee.

2 (2) Before conducting an inspection under Subsection (1), the office shall, after identifying
3 the person in charge:

4 (a) give proper identification;

5 (b) request to see the applicable license;

6 (c) describe the nature and purpose of the inspection; and

7 (d) if necessary, explain the authority of the office to conduct the inspection and the
8 penalty for refusing to permit the inspection as provided in Section 62A-2-116.

9 (3) In conducting an inspection under Subsection (1), the division may, after meeting the
10 requirements of Subsection (2):

11 (a) inspect the physical facilities;

12 (b) inspect records and documents;

13 (c) interview officers and employees; and

14 (d) observe the licensee in operation.

15 (4) An inspection conducted under Subsection (1) shall be during regular business hours
16 and may be announced or unannounced.

17 (5) The human services licensee shall make copies of inspection reports available to the
18 public upon request.

19 Section 20. Section **62A-2-119** is enacted to read:

20 **62A-2-119. Adoption of inspections, examinations, and studies.**

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

24 Section 21. Section **62A-2-120** is enacted to read:

25 **62A-2-120. Criminal background checks.**

26 (1) (a) A human services licensee or individual applying for or renewing a license to
27 provide child-placing services, youth programs, substitute care, foster care, or institutionalized care
28 to children, shall submit to the department the name and other identifying information, which may
29 include fingerprints, of persons associated with the licensee.

30 (b) The Law Enforcement and Technical Services Division of the Department of Public
31 Safety shall process that information to determine whether the individual has been convicted of

1 any crime.

2 (c) At the discretion of the department, if an individual has not lived in Utah for the time
3 specified by rule, or if there is a justifiable reason to believe that the individual may have a
4 criminal record in another state, the individual shall submit fingerprints for a FBI national criminal
5 history record check. The fingerprints will be submitted to the FBI through the Utah Bureau of
6 Criminal Identification. The individual is responsible for the cost of the fingerprinting and
7 national criminal history record check.

8 (2) A person associated with the licensee who has a felony conviction may not provide
9 child-placing services, foster care, youth programs, substitute care, or institutionalized care for
10 children in facilities or programs licensed by the department.

11 (3) The department shall adopt rules defining the circumstances under which a person who
12 has been convicted of a misdemeanor may provide child-placing services, foster care, youth
13 programs, substitute care, or institutionalized care for children in a facility or program licensed by
14 the department.

15 Section 22. Section **62A-2-121** is enacted to read:

16 **62A-2-121. Access to abuse and neglect information for licensing purposes.**

17 (1) With respect to human services licensees, the department may access only the Division
18 of Child and Family Service's management information system created by Section 62A-4a-116 for
19 the purpose of:

20 (a) determining whether a person associated with a licensee, who provides care described
21 in Subsection (2), has a substantiated report of abuse or neglect; and

22 (b) informing a licensee, who provides care described in Subsection (2), that a person
23 associated with the licensee has a substantiated report of abuse or neglect.

24 (2) (a) A licensee or individual applying for or renewing a license to provide child-placing
25 services, youth programs, substitute care, foster care, or institutionalized care to children shall
26 submit to the department the name and other identifying information of a person associated with
27 the licensee.

28 (b) The office shall process the information to determine whether the licensee or a person
29 associated with a licensee has a substantiated report of child abuse or neglect.

30 (3) The office shall adopt rules defining the circumstances under which a person who has
31 a substantiated report of child abuse or neglect may provide child-placing services, foster care,

1 youth programs, substitute care, or institutionalized care for children in a facility licenced by the
2 department.

3 Section 23. Section **62A-2-122** is enacted to read:

4 **62A-2-122. Human Services Licensee Training Restricted Account.**

5 (1) There is created within the General Fund a restricted account known as the Human
6 Services Licensee Training Account.

7 (2) The monies received by the department under this section shall be deposited into the
8 account.

9 (3) Monies in the account shall be appropriated for the training of human services
10 licensees.

11 Section 26. Section **62A-4a-413** is amended to read:

12 **62A-4a-413. Agencies and individuals providing services to children -- Felony or**
13 **misdemeanor conviction.**

14 (1) (a) As of July 1, 1990, each public or private agency or individual licensed by the
15 department to provide child placing services, youth programs, substitute, foster, or institutionalized
16 care to children shall, in order to obtain or renew a license under Section 62A-2-108, submit to the
17 department the name and other identifying information, which may include fingerprints, of new
18 and proposed:

19 (i) owners;

20 (ii) directors;

21 (iii) members of the governing body;

22 (iv) employees;

23 (v) providers of care; and

24 (vi) volunteers, except parents of children enrolled in the programs.

25 (b) The Law Enforcement and Technical Services Division of the Department of Public
26 Safety shall process that information to determine whether the individual has been convicted of
27 any crime.

28 (c) At the discretion of the department, if an individual has not lived in Utah for the time
29 specified by rule, or if there is a justifiable reason to believe that the individual may have a
30 criminal record in another state, the individual shall submit fingerprints for a FBI national criminal
31 history record check. The fingerprints will be submitted to the FBI through the Utah Bureau of

1 Criminal Identification. The individual is responsible for the cost of the fingerprinting and
2 national criminal history record check.

3 [(c)] (d) As of July 1, 1997, persons described in Subsection (1)(a) may also be subject to
4 a complete Federal Bureau of Investigation criminal background check through the national
5 criminal history system (NCIC) if they provide out-of-home care for children, in accordance with
6 Section 78-3a-307.1. If an FBI fingerprint background check is required pursuant to Section
7 78-3a-307.1, the provider may be provisionally licensed.

8 (2) An owner, director, member of the governing body, employee, provider of care, or
9 volunteer who has a felony conviction may not provide child placing services, foster care, youth
10 programs, substitute care, or institutionalized care for children in facilities or programs licensed
11 by the department.

12 [~~(3) With regard to an owner, director, member of the governing body, employee, or~~
13 ~~provider of care who has a misdemeanor conviction, the executive director has discretion to~~
14 ~~determine whether or not that person may provide any child placing, foster care, youth programs,~~
15 ~~substitute care, or institutionalized care for children in a facility or program licensed by the~~
16 ~~department.]~~

17 (3) The Office shall adopt rules defining the circumstances under which an owner,
18 director, member of the governing body, employee, provider of care, or volunteer who has been
19 convicted of a misdemeanor may provide services described in Subsection (1)(a).

20 Section 27. Section **62A-4a-601** is amended to read:

21 **62A-4a-601. Definitions.**

22 For purposes of this part:

23 (1) "Child" means a person under 18 years of age.

24 (2) "Child placing" means:

25 (a) receiving, accepting, or providing custody or care for a child, temporarily or
26 permanently, for the purpose of finding a person to adopt the child; or

27 (b) placing a child, temporarily or permanently, in a home for adoption or substitute care.

28 (3) "Child placing agency" means an individual, agency, firm, corporation, association,
29 or group children's home that engages in child placing, but does not include the department or
30 divisions within the department.

31 Section 28. **Repealer.**

- 1 This act repeals:
- 2 Section **62A-2-106.1, Review of standards by policy board -- Resolution of differences.**

Legislative Review Note
as of 1-26-98 5:45 PM

A limited legal review of this bill raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel