

Representative J. Brent Haymond proposes to substitute the following bill:

DEPARTMENT OF HUMAN SERVICES OFFICE
OF LICENSING REVISIONS

1998 GENERAL SESSION

STATE OF UTAH

Sponsor: J. Brent Haymond

AN ACT RELATING TO HUMAN SERVICES; PERMITTING THE DEPARTMENT TO
SCREEN CERTAIN EMPLOYEES AND VOLUNTEERS FOR SUBSTANTIATED
FINDINGS OF ABUSE OR NEGLECT; DEFINING TERMS; CHANGING THE HUMAN
SERVICES LICENSING COMMITTEE TO A BOARD; AUTHORIZING THE OFFICE OF
LICENSING TO ADOPT LICENSING RULES RELATED TO BASIC HEALTH AND
SAFETY STANDARDS; PERMITTING THE OFFICE TO EXTEND A LICENSE AS AN
INCENTIVE FOR COMPLIANCE WITH LICENSING RULES; AUTHORIZING THE
OFFICE TO LICENSE TRIBAL FOSTER HOMES; CLARIFYING THE AUTHORITY OF
THE OFFICE TO CONDUCT INSPECTIONS AND TO ADOPT THE INSPECTION
REPORTS OF OTHER ENTITIES; AND REQUIRING A BACKGROUND CHECK OF
CARE GIVERS; PERMITTING THE OFFICE TO SCREEN CARE GIVERS FOR
SUBSTANTIATED FINDINGS OF ABUSE OR NEGLECT.

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

AMENDS:

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

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

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

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

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

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

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- 1 **62A-2-108**, as last amended by Chapter 172, Laws of Utah 1991
- 2 **62A-2-109**, as last amended by Chapter 12, Laws of Utah 1994
- 3 **62A-2-110**, as last amended by Chapter 172, Laws of Utah 1991
- 4 **62A-2-111**, as last amended by Chapter 172, Laws of Utah 1991
- 5 **62A-2-112**, as last amended by Chapter 172, Laws of Utah 1991
- 6 **62A-2-113**, as last amended by Chapter 172, Laws of Utah 1991
- 7 **62A-2-115**, as last amended by Chapter 172, Laws of Utah 1991
- 8 **62A-2-116**, as last amended by Chapter 172, Laws of Utah 1991
- 9 **62A-4a-413**, as last amended by Chapters 196 and 329, Laws of Utah 1997

10 ENACTS:

- 11 **62A-1-118**, Utah Code Annotated 1953
- 12 **62A-2-117**, Utah Code Annotated 1953
- 13 **62A-2-118**, Utah Code Annotated 1953
- 14 **62A-2-119**, Utah Code Annotated 1953
- 15 **62A-2-120**, Utah Code Annotated 1953
- 16 **62A-2-121**, Utah Code Annotated 1953

17 REPEALS AND REENACTS:

- 18 **62A-2-114**, as last amended by Chapter 108, Laws of Utah 1997

19 REPEALS:

- 20 **62A-2-106.1**, as enacted by Chapter 172, Laws of Utah 1991
- 21 **62A-2-107**, as last amended by Chapters 5 and 172, Laws of Utah 1991
- 22 **62A-4a-604**, as last amended by Chapter 195, Laws of Utah 1997

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

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

25 **62A-1-118. Access to abuse and neglect information to screen employees and**
26 **volunteers.**

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

1 identification as a possible perpetrator of abuse or neglect is directly relevant to the employment
2 or volunteer activities of that person.

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

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

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

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

11 **62A-2-101. Definitions.**

12 As used in this chapter:

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

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

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

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

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

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

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

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

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

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

30 [~~(4) "Comprehensive substance abuse treatment" means a community program operated~~
31 ~~by or under contract with a local substance abuse authority that provides at least the following~~

1 services:]

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

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

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

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

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

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

9 [~~(5)~~ (4) "Day treatment" means specialized treatment for less than 24 hours a day for four
10 or more persons who are unrelated to the owner or provider and who have emotional,
11 psychological, developmental, physical, or behavioral dysfunctions, impairments, or chemical
12 dependencies. Day treatment is provided in lieu of, or in coordination with, a more restrictive
13 residential or inpatient environment or service.

14 [~~(6)~~ (5) "Department" means the Department of Human Services.

15 [~~(7)~~ (6) "Director" means the director of the Office of Licensing.

16 [~~(8)~~ (7) "Domestic violence treatment program" means a nonresidential program designed
17 to provide psychological treatment and educational services to perpetrators and victims of
18 domestic violence.

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

21 [~~(10)~~ (8) "Executive director" means the executive director of the Department of Human
22 Services.

23 [~~(11)~~ (9) "Human services [~~program~~ licensee or "licensee" means a youth program,
24 resource family home, or a facility or program that provides care, secure treatment, inpatient
25 treatment, residential treatment, residential support, adult day care, day treatment, outpatient
26 treatment, [~~comprehensive mental health treatment, comprehensive substance abuse treatment,~~]
27 domestic violence treatment, child placing services, or [~~driving under the influence-educational~~
28 services] social detoxification.

29 [~~(12)~~ "Inpatient treatment" means a 24-hour hospital-based, live-in treatment service for
30 persons with emotional, psychological, developmental, or behavioral dysfunctions, impairments,
31 or chemical dependencies, whose current functioning is such that they cannot live independently

1 or in a less restrictive environment. ~~Inpatient treatment services may include, but are not limited~~
2 ~~to, assessment, examinations, diagnosis, individual, group, and family counseling, skills training,~~
3 ~~medication, or detoxification. Inpatient treatment services are provided by or under the direction~~
4 ~~and supervision of a physician licensed to practice medicine in this state.]~~

5 [(13)] (10) "Licensing [committee] board" means the Human Services Licensing
6 [Committee] Board.

7 [(14)] (11) "Office" means the Office of Licensing within the Department of Human
8 Services.

9 [(15)] (12) "Outpatient treatment" means individual, family, or group therapy or
10 counseling designed to improve and enhance social or psychological functioning for those whose
11 physical and emotional status allows them to continue functioning in their usual living
12 environment.

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

15 [(16)] (14) "Residential support" means arranging for or providing the necessities of life
16 as a protective service to individuals or families who are disabled or who are experiencing a
17 dislocation or emergency which prevents them from providing these services for themselves or
18 their families. Treatment is not a necessary component of residential support.

19 [(17)] (15) "Residential treatment" means a 24-hour group living environment for four or
20 more individuals unrelated to the owner or provider that offers room or board and specialized
21 treatment, rehabilitation, or habilitation services for persons with emotional, psychological,
22 developmental, or behavioral dysfunctions, impairments, or chemical dependencies. In residential
23 treatment, individuals are assisted in acquiring the social and behavioral skills necessary for living
24 independently in the community.

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

27 [(18)] (17) "Secure treatment" means 24-hour specialized residential treatment or care for
28 persons whose current functioning is such that they cannot live independently or in a less
29 restrictive environment. Secure treatment differs from residential treatment to the extent that it
30 requires intensive supervision, locked doors, and other security measures which are imposed on
31 residents with neither their consent nor control.

1 [(19)] (18) "Social detoxification" means short-term residential services for persons who
2 are intoxicated, that are provided outside of a health care facility licensed under Title 26, Chapter
3 21, Health Care Facility Licensure and Inspection Act, and that include:

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

7 [(20)] (19) "Unrelated persons" means persons other than parents, legal guardians,
8 grandparents, brothers, sisters, uncles, or aunts.

9 [(21)] (20) "Youth program" means a nonresidential program designed to provide
10 behavioral, substance abuse, or mental health services to minors that:

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

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

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

22 **62A-2-102. Purpose of licensure.**

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

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

28 **62A-2-103. Office of Licensing -- Appointment -- Qualifications of director.**

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

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

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

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

5 **62A-2-104. Human Services Licensing Board -- Composition -- Meetings -- Expenses.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6 **62A-2-105. Licensing board responsibilities.**

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

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

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

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

14 (d) licensing of all human services [~~programs~~] licensees that are required to be licensed
15 under this chapter.

16 (2) The licensing [~~committee~~] board shall:

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

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

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

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

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

25 **62A-2-106. Office responsibilities.**

26 The office shall:

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

28 (a) life safety;

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

30 (c) physical plant and equipment;

31 (d) minimum administration and financial requirements for licensees;

1 (e) administration and maintenance of client and service records as established by the
2 policymaking boards created by Section 62A-1-105;

3 (f) staff qualifications as established by the policymaking boards created by Section
4 62A-1-105;

5 (g) staff to client ratios as established by the policymaking boards created by Section
6 62A-1-105;

7 (h) administration of medical standards and procedures, consistent with related provisions
8 of this title;

9 (i) food services;

10 (j) client rights;

11 (k) guidelines for variances from department rules established under this Subsection (1);

12 and

13 (l) with regard to licensees providing services to clients who are not in the custody of a
14 division listed in Section 62A-1-105, the licensee's competence to provide the services offered.

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 [(4)] (5) collect licensure fees;

20 [(5)] (6) provide necessary administrative support to the licensing [committee] board;

21 [(6)] (7) investigate complaints regarding any [~~human services program~~] licensee or
22 facility;

23 [(7)] (8) have access to all records, correspondence, and financial data required to be
24 maintained by a [~~human services program~~] licensee or facility;

25 [(8)] (9) have authority to interview any client, family member of a client, employee, or
26 officer of a human services [~~program~~] licensee or facility; and

27 [(9)] (10) have authority to revoke, suspend, or extend any license issued by the
28 department under this chapter by following the procedures and requirements of Title 63, Chapter
29 46b, Administrative Procedures Act.

30 Section 8. Section **62A-2-108** is amended to read:

31 **62A-2-108. Licensure requirements -- Expiration -- Renewal.**

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

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

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

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

- 12 (i) previously revoked by the office [~~or~~];
- 13 (ii) voluntarily returned to the office by the human services [~~program~~] licensee; or
- 14 (iii) extended for up to an additional 12 months pursuant to Section 62A-2-114.

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

18 (5) Any [~~human services program~~] licensee or facility which is in operation at the time
19 rules are made in accordance with this chapter shall be given a reasonable time for compliance as
20 determined by the [~~licensing committee~~] rule.

21 Section 9. Section **62A-2-109** is amended to read:

22 **62A-2-109. License application -- Classification of information.**

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

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

29 Section 10. Section **62A-2-110** is amended to read:

30 **62A-2-110. Exclusions from chapter.**

31 The provisions of this chapter do not apply to:

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

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

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

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

7 Section 11. Section **62A-2-111** is amended to read:

8 **62A-2-111. Adjudicative proceedings.**

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

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

19 Section 12. Section **62A-2-112** is amended to read:

20 **62A-2-112. Violations -- Penalties.**

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

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

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

29 Section 13. Section **62A-2-113** is amended to read:

30 **62A-2-113. License revocation -- Suspension.**

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

1 after:

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

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

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

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

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

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

12 Section 14. Section **62A-2-114** is repealed and reenacted to read:

13 **62A-2-114. Compliance incentives.**

14 The office shall, in accordance with rule, provide incentives to a licensee that consistently
15 meets licensing standards. These rewards may include:

16 (1) reducing fees; or

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

18 Section 15. Section **62A-2-115** is amended to read:

19 **62A-2-115. Injunctive relief and other legal procedures.**

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

26 Section 16. Section **62A-2-116** is amended to read:

27 **62A-2-116. Violation -- Criminal penalties.**

28 A person who owns, establishes, conducts, maintains, manages, or operates a human
29 services [~~program or~~] facility in violation of this chapter [~~or rules made by the committee~~] is guilty
30 of a class A misdemeanor if the violation endangers or harms the health, welfare, or safety of
31 persons participating in that program.

1 Section 17. Section **62A-2-117** is enacted to read:

2 **62A-2-117. Licensure of Tribal Foster Homes.**

3 (1) The Indian Child Welfare Act, 25 U.S.C. Secs. 1901-1963, provides that tribes may
4 develop and implement tribal foster home standards.

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

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

9 Section 18. Section **62A-2-118** is enacted to read:

10 **62A-2-118. Administrative inspections.**

11 (1) The office may, for the purpose of ascertaining compliance with the provisions of this
12 chapter, enter and inspect on routine basis the facility of a licensee.

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

15 (a) give proper identification;

16 (b) request to see the applicable license;

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

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

20 (3) In conducting an inspection under Subsection (1), the office may, after meeting the
21 requirements of Subsection (2):

22 (a) inspect the physical facilities;

23 (b) inspect records and documents;

24 (c) interview officers, employees, clients, family members of clients, and others; and

25 (d) observe the licensee in operation.

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

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

30 (6) The provisions of this section apply to on-site inspections and do not restrict the office
31 from contacting family members, neighbors, or other individuals, or from seeking information

1 from other sources to determine compliance with the provisions of this chapter.

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

3 **62A-2-119. Adoption of inspections, examinations, and studies.**

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

7 Section 20. Section **62A-2-120** is enacted to read:

8 **62A-2-120. Criminal background checks.**

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

13 (b) The Utah Division of Criminal Investigation of the Department of Public Safety shall
14 process that information to determine whether the individual has been convicted of any crime.

15 (c) If an individual has not lived in Utah for five years, the individual shall submit
16 fingerprints for a FBI national criminal history record check. The fingerprints shall be submitted
17 to the FBI through the Utah Division of Criminal Investigation.

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

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

25 Section 21. Section **62A-2-121** is enacted to read:

26 **62A-2-121. Access to abuse and neglect information for licensing purposes.**

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

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

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

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

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

9 (3) The office shall adopt rules defining the circumstances under which a person who has
10 a substantiated finding of child abuse or neglect may provide child-placing services, foster care,
11 youth programs, substitute care, or institutionalized care for children in a facility licenced by the
12 department.

13 Section 22. Section **62A-4a-413** is amended to read:

14 **62A-4a-413. Agencies and individuals providing services to children -- Felony or**
15 **misdemeanor conviction.**

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

21 (i) owners;

22 (ii) directors;

23 (iii) members of the governing body;

24 (iv) employees;

25 (v) providers of care; and

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

27 (b) The [~~Law Enforcement and Technical Services~~] Utah Division of Criminal
28 Investigation of the Department of Public Safety shall process that information to determine
29 whether the individual has been convicted of any crime.

30 (c) If an individual has not lived in Utah for five years, the individual shall submit
31 fingerprints for a FBI national criminal history record check. The fingerprints shall be submitted

1 to the FBI through the Utah Division of Criminal Investigation.

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

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

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

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

19 Section 23. **Repealer.**

20 This act repeals:

21 Section **62A-2-106.1, Review of standards by policy board -- Resolution of differences.**

22 Section **62A-2-107, Coordination with Department of Health -- Joint inspection of**
23 **facilities.**

24 Section **62A-4a-604, Rulemaking authority.**