

UTAH CHILD CARE LICENSING ACT REVISIONS

1998 GENERAL SESSION

STATE OF UTAH

Sponsor: Leonard M. Blackham

AN ACT RELATING TO HEALTH; REQUIRING RESIDENTIAL CHILD CARE PROVIDERS TO OBTAIN A CERTIFICATE IF CARE IS PROVIDED TO FIVE TO EIGHT CHILDREN OR A LICENSE IF CARE IS PROVIDED TO NINE OR MORE CHILDREN.

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

AMENDS:

**26-39-102**, as enacted by Chapter 127, Laws of Utah 1997

**26-39-104**, as enacted by Chapters 127 and 196, Laws of Utah 1997

**26-39-105**, as enacted by Chapter 196, Laws of Utah 1997

**26-39-106**, as enacted by Chapters 127 and 196, Laws of Utah 1997

ENACTS:

**26-39-105.5**, Utah Code Annotated 1953

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

Section 1. Section **26-39-102** is amended to read:

**26-39-102. Definitions.**

As used in this chapter:

(1) "Child" means the child of a person other than the provider of child care.

[~~(1)~~] (2) "Child care" means continuous care and supervision of [four] five or more children under 14 years of age, in lieu of care ordinarily provided by parents in their own home, for less than 24 hours a day, for direct or indirect compensation.

[~~(2)~~] (3) "Child care program" means a child care facility or program operated by a person pursuant to a license issued in accordance with this chapter.

(4) "Residential child care" means child care provided in the home of a provider.

Section 2. Section **26-39-104** is amended to read:

**26-39-104. Duties of the department.**

(1) With regard to child care programs licensed pursuant to this chapter, the department

may:

(a) make and enforce rules to implement the provisions of this chapter and, as necessary to protect children's common needs for a safe and healthy environment, to provide for:

(i) adequate facilities and equipment; and

(ii) competent caregivers considering the age of the children and the type of program offered by the licensee;

(b) make and enforce rules necessary to carry out the purposes of this chapter, in the following areas:

(i) requirements for applications, the application process, and compliance with other applicable statutes and rules;

(ii) documentation and policies and procedures that providers shall have in place in order to be licensed, in accordance with Subsection (1)(a);

(iii) categories, classifications, and duration of initial and ongoing licenses;

(iv) changes of ownership or name, changes in licensure status, and changes in operational status;

(v) license expiration and renewal, contents, and posting requirements;

(vi) procedures for inspections, complaint resolution, disciplinary actions, and other procedural measures to encourage and assure compliance with statute and rule; and

(vii) guidelines necessary to assure consistency and appropriateness in the regulation and discipline of licensees; and

(c) set and collect licensing and other fees in accordance with Section 26-1-6.

(2) The department may not regulate educational curricula, academic methods, or the educational philosophy or approach of the provider. The department shall allow for a broad range of educational training and academic background in certification or qualification of child day care directors.

(3) In licensing and regulating child care programs, the department shall reasonably balance the benefits and burdens of each regulation and, by rule, provide for a range of licensure, depending upon the needs and different levels and types of child care provided. The department shall prepare

language for the 1998 General Session of the Legislature to codify as much licensing regulation implemented pursuant to this subsection as the department determines to be practicable.

Section 3. Section **26-39-105** is amended to read:

**26-39-105. Licensure requirements -- Expiration -- Renewal.**

(1) [~~Unless otherwise exempted under this chapter~~] Except as provided in Sections 26-39-105.5 and 26-39-106, a person shall be licensed in accordance with this chapter if he:

(a) provides or offers child care; or

(b) provides care to children and requests to be licensed.

(2) The department may issue licenses for a period not exceeding 24 months to child care providers who meet the requirements of this chapter and the department's rules governing child care programs.

(3) A license issued under this chapter is not assignable or transferable.

Section 4. Section **26-39-105.5** is enacted to read:

**26-39-105.5. Residential child care certificate.**

(1) (a) A residential child care provider of five to eight children shall obtain a Residential Child Care Certificate from the department unless Section 26-39-106 applies.

(b) The qualifications for a Residential Child Care Certificate are limited to:

(i) the submission of:

(A) an application on a form prepared by the department;

(B) a certification and criminal background fee established in accordance with Section 26-1-6; and

(C) identifying information described in Subsection 26-39-107(1) for each adult person who resides in the provider's home for processing by the Department of Public Safety to determine whether any such person has been convicted of a crime;

(ii) an initial and annual inspection of the provider's home within 90 days of sending an intent to inspect notice to:

(A) check the immunization record of each child who receives child care in the provider's home;

(B) identify serious sanitation, fire, and health hazards to children; and

(C) make appropriate recommendations; and

(iii) for new providers, completion of:

(A) five hours of department-approved training; and

(B) a department-approved CPR and first aid course.

(c) If a serious sanitation, fire, or health hazard has been found during an inspection conducted pursuant to Subsection (1)(b)(ii), the department may, at the option of the residential care provider:

(i) require corrective action for the serious hazards found and make an unannounced follow up inspection to determine compliance; or

(ii) inform the parents of each child in the care of the provider of the results of the department's inspection and the failure of the provider to take corrective action.

(d) In addition to an inspection conducted pursuant to Subsection (1)(b)(ii), the department may inspect the home of a residential care provider of five to eight children in response to a complaint of:

(i) child abuse or neglect;

(ii) serious health hazards in or around the provider's home; or

(iii) providing residential child care without the appropriate certificate or license.

(2) Notwithstanding this section:

(a) a license under Section 26-39-105 is required of a residential child care provider who cares for nine or more children;

(b) a Residential Care Certificate under Subsection (1) is required of a residential care provider who provides care for four or more children, based on the sum of:

(i) children under two years of age; and

(ii) the provider's own children under four years of age; and

(c) an inspection may be required of a residential child care provider in connection with a federal child care program.

(3) With respect to residential child care, the department may only make and enforce rules

necessary to implement this section.

Section 5. Section **26-39-106** is amended to read:

**26-39-106. Exclusions from chapter.**

The provisions and requirements of this chapter do not apply to:

- (1) a facility or program owned or operated by an agency of the United States government;
- (2) group counseling provided by a mental health therapist, as defined in Section 58-60-102, who is licensed to practice in this state;
- (3) a health care facility licensed pursuant to Title 26, Chapter 21, Health Care Facility Licensure and Inspection Act;
- (4) care provided to children by or in the homes of parents, legal guardians, grandparents, brothers, sisters, uncles, or aunts;
- (5) care provided to children, in the home of the provider, for less than four hours a day or on a sporadic basis, unless that child care directly affects or is related to a business licensed in this state; or
- (6) care provided as part of a course of study at or a program administered by an educational institution that is regulated by the boards of education of this state, a private education institution that provides education in lieu of that provided by the public education system, or by a parochial education institution.