

**BACKGROUND CHECK OF HEALTH  
CARE PROFESSIONALS**

1998 GENERAL SESSION

STATE OF UTAH

**Sponsor: Michael G. Waddoups**

AN ACT RELATING TO HEALTH; REQUIRING A CRIMINAL BACKGROUND CHECK OF A PERSON ASSOCIATED WITH A HEALTH CARE FACILITY WHO PROVIDES DIRECT CARE TO PATIENTS; PERMITTING ACCESS TO THE CHILD ABUSE DATABASE OR ELDER ABUSE DATABASE WITH RESPECT TO A PERSON ASSOCIATED WITH A HEALTH CARE FACILITY THAT PROVIDES DIRECT CARE TO CHILDREN OR ELDER ADULTS; REQUIRING THE DEPARTMENT OF HEALTH ESTABLISH RULES REGARDING PERMISSIBLE WORK ACTIVITIES FOR THOSE WITH A CRIMINAL CONVICTION OR SUBSTANTIATED FINDING OF CHILD OR ELDER ABUSE OR NEGLECT; EXTENDING IMMUNITY TO THE SUBMISSION OF INFORMATION TO THE DEPARTMENT; AMENDING THE HEALTH CARE ASSISTANT REGISTRATION ACT; PROVIDING AN EFFECTIVE DATE; AND PROVIDING A COORDINATION CLAUSE.

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

AMENDS:

**26-21-6**, as last amended by Chapter 209, Laws of Utah 1997

**58-62-102**, as enacted by Chapter 289, Laws of Utah 1994

**58-62-201**, as enacted by Chapter 289, Laws of Utah 1994

**62A-3-311.1**, as last amended by Chapter 130, Laws of Utah 1996

**62A-4a-412**, as renumbered and amended by Chapter 260, Laws of Utah 1994

ENACTS:

**26-21-9.5**, Utah Code Annotated 1953

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

Section 1. Section **26-21-6** is amended to read:

**26-21-6. Duties of department.**

- (1) The department shall:
  - (a) enforce rules established pursuant to this chapter;
  - (b) authorize an agent of the department to conduct inspections of health-care facilities pursuant to this chapter;
  - (c) collect information authorized by the committee that may be necessary to ensure that adequate health-care facilities are available to the public;
  - (d) collect and credit fees for licenses as free revenue;
  - (e) collect and credit fees for conducting plan reviews as dedicated credits;
  - (f) designate an executive secretary from within the department to assist the committee in carrying out its powers and responsibilities; [and]
  - (g) establish reasonable standards for criminal background checks by public and private entities;
  - (h) recognize those public and private entities which meet the standards established in Subsection (1)(g); and
  - ~~(g)~~ (i) provide necessary administrative and staff support to the committee.

- (2) The department may:
  - (a) exercise all incidental powers necessary to carry out the purposes of this chapter;
  - (b) review architectural plans and specifications of proposed health-care facilities or renovations of health-care facilities to ensure that the plans and specifications conform to rules established by the committee; and
  - (c) make rules as necessary to implement the provisions of this chapter, except as authority is specifically delegated to the committee.

Section 2. Section **26-21-9.5** is enacted to read:

**26-21-9.5. Criminal background check and substantiated findings of abuse or neglect.**

- (1) In addition to the licensing requirements of Sections 26-21-8 and 26-21-9, a covered health care facility, as defined in Subsection (9), at the time of initial application and renewal for licensure shall:
  - (a) submit the name and other identifying information of each person associated with the

facility who:

(i) provides direct care to a patient; and

(ii) has been the subject of a criminal background check within the preceding three-year period by a public or private entity recognized by the department; and

(b) submit the name and other identifying information, which may include fingerprints, of each person associated with the facility who:

(i) provides direct care to a patient; and

(ii) has not been the subject of a criminal background check in accordance with Subsection (1)(a)(ii).

(2) (a) The department shall forward the information received under Subsection (1)(b) to the Utah Division of Criminal Investigation of the Department of Public Safety for processing to determine whether an individual has been convicted of any crime.

(b) If an individual has not lived in Utah for five years, the individual shall submit fingerprints for an FBI national criminal history record check. The fingerprints shall be submitted to the FBI through the Utah Division of Criminal Investigation. The licensee is responsible for the cost of the fingerprinting and national criminal history check.

(3) The department may determine whether:

(a) an individual whose name and other identifying information has been submitted pursuant to Subsection (1) and who provides direct care to children has a substantiated finding of child abuse or neglect by accessing in accordance with Subsection (4) the licensing part of the management information system created in Section 62A-4a-116; or

(b) an individual whose name and other identifying information has been submitted pursuant to Subsection (1) and who provides direct care to disabled or elder adults has a substantiated finding of disabled or elder abuse by accessing in accordance with Subsection (4) the database created in Section 62A-3-311.1.

(4) (a) The department shall:

(i) designate two persons within the department to access the management information system and the database described in Subsection (3); and

(ii) adopt measures to:

(A) protect the security of the management information system and the database; and

(B) strictly limit access to the management information system and the database to those designated under Subsection (4)(a)(i).

(b) Those designated under Subsection (4)(a)(i) shall receive training from the Department of Human Services with respect to:

(i) accessing the management information system and the database;

(ii) maintaining strict security; and

(iii) the criminal provisions in Section 62A-4a-412 for the improper release of information.

(c) Those designated under Subsection (4)(a)(i):

(i) are the only ones in the department with the authority to access the management information system and database; and

(ii) may only access the management information system and the database for the purpose of licensing and in accordance with the provisions of Subsection (3).

(5) The department shall adopt rules defining the circumstances under which a person who has been convicted of a criminal offense or has a substantiated report of child abuse or neglect or disabled or elder abuse or neglect, may provide direct care to a patient in a covered health care facility, taking into account the nature of the criminal offense and its relation to patient care.

(6) The department may, in accordance with Section 26-1-6, assess reasonable fees for a criminal background check processed pursuant to this section.

(7) The department may inform the covered health care facility of the criminal conviction or substantiated finding of child abuse or neglect of an individual associated with the facility.

(8) A covered health care facility is not civilly liable for submitting information to the department as required by Subsection (1).

(9) For purposes of this section, "covered health care facility" only includes:

(a) home health care agencies;

(b) hospices;

(c) nursing care facilities;

- (d) residential health care facilities;
- (e) assisted-living facilities;
- (f) small health care facilities; and
- (g) end stage renal disease facilities.

Section 3. Section **58-62-102** is amended to read:

**58-62-102. Definitions.**

In addition to the definitions in Section 58-1-102, as used in this chapter:

(1) "Board" means the Health Care Assistant Registration Board created in Section 58-62-201.

(2) "Health care assistant" means an individual who:

- (a) engages in the practice of a health care assistant; ~~[and]~~
- (b) is subject to registration under this chapter and is not subject to registration, licensure, or certification under any other chapter of this title~~[-]~~; and

(c) is not subject to a criminal background check by virtue of being employed by:

- (i) the Utah State Hospital or the Utah Developmental Center;
- (ii) a residential treatment or residential support facility as defined in Subsection (4)(b); or
- (iii) a covered health care facility as defined in Section 26-21-9.5.

(3) "Practice as a health care assistant" means providing direct personal assistance or care for compensation to an individual who is ill, injured, infirm, developmentally or physically disabled, mentally disabled, or mentally retarded, and who is in a private residence or regulated facility.

(4) "Regulated facility" means~~[-(a)]~~ a health care facility subject to licensure under Title 26, Chapter 21, Health Care Facility Licensure and Inspection Act~~[-or]~~ and does not include:

(a) the Utah State Hospital or the Utah State Developmental Center;

(b) a residential treatment or residential support facility:

- (i) subject to licensure under Title 62A, Chapter 2, Licensure of Programs and Facilities; and
- (ii) serving people with disabilities, as defined by Department of Human Services rules~~[-]~~;

or

(c) a covered health care facility as defined in Section 26-21-9.5.

(5) "Unlawful conduct" is defined in Section 58-1-501.

(6) "Unprofessional conduct" is defined in Section 58-1-501.

Section 4. Section **58-62-201** is amended to read:

**58-62-201. Board.**

(1) There is created the Health Care Assistant Registration Board consisting of ~~[11]~~ seven individuals:

(a) one individual representing the Department of Health created in Title 26, Chapter 1, Department of Health Organization;

~~[(b) one individual representing the Department of Human Services, created in Title 62A, Chapter 1, Department of Human Services;]~~

~~[(c)]~~ (b) an individual serving in a management capacity in ~~[each of the following facilities]~~ a general acute hospital as defined under Section 26-21-2 and licensed under Title 26, Chapter 21, Health Care Facility Licensure and Inspection Act~~[:];~~

~~[(i) a nursing care facility;]~~

~~[(ii) a home health agency;]~~

~~[(iii) a residential health care facility; and]~~

~~[(iv) a general acute hospital;]~~

~~[(d)]~~ (c) one licensed registered nurse employed in training of health care assistants;

~~[(e)]~~ (d) one registered health care assistant; and

~~[(f)]~~ (e) three members of the general public who have no financial interest in the ownership or operation of a regulated facility.

(2) The board shall be appointed and serve in accordance with Section 58-1-201.

(3) The duties and responsibilities of the board are in accordance with Sections 58-1-202 and 58-1-203.

Section 5. Section **62A-3-311.1** is amended to read:

**62A-3-311.1. Statewide data base -- Restricted use and access.**

(1) The division shall maintain a data base for reports of disabled or elder adult abuse, neglect, emotional or psychological abuse, or exploitation made pursuant to this part.

(2) The data base shall include:

(a) the names and identifying data of the abused, neglected, or exploited adult and the reported abuser;

(b) information regarding whether or not the abuse, emotional or psychological abuse, neglect, or exploitation was substantiated or unsubstantiated; and

(c) any other information that may be helpful in furthering the purposes of this part, as determined by the division, subject to the restrictions of Subsection 62A-3-311(2).

(3) Information obtained from the data base may be used only for:

(a) compiling statistical summaries that do not include names or other identifying data;

(b) granting or denying licenses or other grants of privilege by the department where identification as a possible adult abuser may be relevant to the privilege in question, in accordance with Subsection (4); [and]

(c) investigation and action by the Division of Occupational and Professional Licensing regarding registration of a health care assistant under Title 58, Chapter 62, Health Care Assistant Registration Act[-]; and

(d) licensing purposes by the Bureau of Health Facility Licensure within the Department of Health, as provided for in Section 26-21-9.5, in determining whether a person associated with a covered health care facility who provides direct care to disabled or elder adults has a substantiated finding of disabled or elder abuse.

(4) (a) A license or privilege may not be denied under Subsection (3) solely on the basis of information in the data base.

(b) Before a license or privilege may be denied under Subsection (3), the department shall conduct a review and provide the person making application for the license or privilege with notice and an opportunity to be heard in accordance with Title 63, Chapter 46b, Administrative Procedures Act.

Section 6. Section **62A-4a-412** is amended to read:

**62A-4a-412. Reports and information confidential.**

(1) Except as otherwise provided in this chapter, reports made pursuant to this part, as well

as any other information in the possession of the division obtained as the result of a report is confidential and may only be made available to:

- (a) a police or law enforcement agency investigating a report of known or suspected child abuse or neglect;
- (b) a physician who reasonably believes that a child may be the subject of abuse or neglect;
- (c) an agency that has responsibility or authority to care for, treat, or supervise a child who is the subject of a report;
- (d) any subject of the report, the natural parents of the minor, and the guardian ad litem;
- (e) a court, upon a finding that access to the records may be necessary for the determination of an issue before it;
- (f) an office of the public prosecutor or its deputies; [and]
- (g) the Bureau of Health Facility Licensure within the Department of Health, as provided for in Section 26-21-9.5, for the sole purpose of determining whether a person associated with a covered health care facility and who provides direct care to children has a substantiated finding of child abuse or neglect; and

[(g)] (h) a person engaged in bona fide research, when approved by the director of the division, if the information does not include names and addresses.

(2) The division and law enforcement officials shall ensure the anonymity of the person or persons making the initial report and any others involved in its subsequent investigation.

(3) Any person who wilfully permits, or aides and abets the release of data or information obtained as a result of this part, in the possession of the division or contained in the central register, in violation of this part, is guilty of a class C misdemeanor.

(4) The physician-patient privilege is not a ground for excluding evidence regarding a child's injuries or the cause of those injuries, in any proceeding resulting from a report made in good faith pursuant to this part.

**Section 7. Effective date.**

This act takes effect on July 1, 1998.

**Section 8. Coordination clause.**



(1) If this bill and H.B. 169, Public Safety Amendments, both pass, it is the intent of the Legislature that the references to "Utah Division of Criminal Investigation" in this bill shall be deleted and "Criminal Investigations and Technical Services Division" shall be inserted.

(2) If this bill and H.B. 224, Health Care Registration Act, both pass, it is the intent of the Legislature that the amendments to Section 58-62-102 and Section 58-62-201 in this bill supercede the amendments to those sections in H.B. 224.