

CHILD ABUSE DATABASE AMENDMENTS

1998 GENERAL SESSION

STATE OF UTAH

Sponsor: Craig A. Peterson

AN ACT RELATING TO HUMAN SERVICES; PERMITTING SUBSTANTIATED FINDINGS OF CHILD ABUSE AND NEGLECT BE PUT INTO A DATABASE TO SCREEN POTENTIAL HUMAN SERVICES, HEALTH, AND CHILD CARE PROVIDERS; AND PROVIDING NOTICE AND AN OPPORTUNITY TO CHALLENGE A FINDING OF SUBSTANTIATION.

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

AMENDS:

62A-4a-116, as last amended by Chapter 318, Laws of Utah 1996

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

ENACTS:

62A-4a-116.5, Utah Code Annotated 1953

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

Section 1. Section **62A-4a-116** is amended to read:

62A-4a-116. Management information system -- Requirements.

(1) The division shall develop and implement a management information system that meets the requirements of this section and the requirements of federal law and regulation.

(2) With regard to all child welfare cases, [that] the management information system shall:

(a) provide each caseworker with a complete history of each child in his caseload, including:

(i) all past action taken by the division with regard to that child and his siblings, the complete case history and all reports and information in the control or keeping of the division regarding that child and his siblings;

(ii) the number of times the child has been in foster care;

(iii) the cumulative period of time the child has been in foster care;

(iv) all reports of abuse or neglect received by the division with regard to that child's

parent or parents, including documentation regarding whether each report was substantiated or unsubstantiated;

(v) the number of times the child's parent or parents have failed any treatment plan; and

(vi) the number of different caseworkers who have been assigned to that child in the past;

(b) contain all key elements of each family's current treatment plan, including the dates and number of times the plan has been administratively or judicially reviewed, the number of times the parent or parents have failed that treatment plan, and the exact length of time that treatment plan has been in effect; and

(c) alert caseworkers regarding deadlines for completion of and compliance with treatment plans.

(3) With regard to all child protective services cases, [that] the management information system shall [also], in addition to the information required in Subsection (2), monitor compliance with the policy of the division, the laws of this state, and federal law and regulation.

(4) (a) The division shall develop and maintain a part of the information management system for licensing purposes, which shall be:

(i) limited to:

(A) substantiated findings of abuse or neglect since January 1, 1994, after notice and an opportunity to challenge has been provided under Section 62A-4a-116.5;

(B) substantiated findings of child abuse or neglect for which a notice has been sent under Section 62A-4a-116.5 by July 1, 1998, and found by an administrative hearing officer before December 1, 1998, to have occurred between January 1, 1988, and January 1, 1994, except that if a person applies for licensure or an adoption before June 30, 1999, and that person has not previously been given notice under Section 62A-4a-116.5, the department may determine whether a substantiated finding exists between January 1, 1988, and January 1, 1994, and if so, provide notice and an opportunity to challenge under Section 62A-4a-116.5 before the license or adoption may be approved;

(C) an adjudication of child abuse or neglect by a court of competent jurisdiction; and

(D) any criminal conviction or guilty plea related to neglect, physical abuse, or sexual abuse

of any person; and

(ii) accessible by:

(A) the Office of Licensing for licensing purposes only; and

(B) subject to the provisions of Subsection (4)(c), the Bureau of Health Facility Licensure within the Department of Health only for the purpose of licensing a child care program or provider, or for determining whether a person associated with a covered health care facility, as defined by the Department of Health by rule, who provides direct care to a child has a substantiated finding of child abuse or neglect.

(b) For the purpose of Subsection (4)(a), "substantiated":

(i) means a finding, at the completion of an investigation, that there is a reasonable basis to conclude that one or more of the following types of abuse or neglect has occurred:

(A) physical abuse;

(B) sexual abuse;

(C) sexual exploitation;

(D) abandonment;

(E) medical neglect resulting in death, disability, or serious illness; or

(F) chronic or severe neglect; and

(ii) does not include the use of reasonable and necessary physical restraint or force by an educator in accordance with Subsection 53A-11-802(2) or Section 76-2-401.

(c) (i) The Department of Health shall:

(A) designate two persons within the Department of Health to access the licensing part of the management information system; and

(B) adopt measures to:

(I) protect the security of the licensing part of the management information system; and

(II) strictly limit access to the licensing part of the management information system to those designated under Subsection (4)(c)(i)(A).

(ii) Those designated under Subsection (4)(c)(i)(A) shall receive training from the department with respect to:

(A) accessing the licensing part of the management information system;

(B) maintaining strict security; and

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

(iii) Those designated under Subsection (4)(c)(i)(A):

(A) are the only ones in the Department of Health with the authority to access the licensing part of the management information system; and

(B) may only access the licensing part of the management information system in accordance with the provisions of Subsection (4)(a)(ii).

~~[(4)]~~ (5) All information contained in the management information system shall be available to the department[, so that divisions may share common databases] upon the approval of the executive director, on a need-to-know basis.

(6) The information contained in the management information system shall be encrypted.

Section 2. Section **62A-4a-116.5** is enacted to read:

62A-4a-116.5. Opportunity to appeal a substantiated finding of child abuse or neglect.

(1) If the division makes a substantiated finding of abuse or neglect pursuant to Subsection 62A-4a-116(4)(b), the division shall send notice of agency action regarding the division's finding to the person found to have committed the abuse or neglect.

(2) The notice shall state:

(a) the facts that support the finding of substantiation;

(b) that the person may be disqualified from adopting a child or working for or being licensed by:

(i) the department;

(ii) a human services licensee;

(iii) a child care provider or program; and

(iv) a covered health care facility;

(c) that the person has the right to request:

(i) a copy of the substantiated report; and

(ii) an opportunity to challenge the finding and its inclusion on the licensing part of the

management information system described in Subsection 62A-4a-116(4), except as provided in Subsection (5)(b); and

(d) that failure to request an opportunity to challenge the finding within 30 days of the notice being received will result in an unappealable finding of substantiation, unless the person can show good cause for why compliance within the 30-day requirement was virtually impossible or unreasonably burdensome.

(3) (a) A person may make a request to challenge a substantiated finding within 30 days of:

(i) a notice being received under Subsection (2);

(ii) a finding by a court of competent jurisdiction based on the same underlying facts that:

(A) child abuse or neglect, as described in Subsection 62A-4a-116(4)(b), did not occur; or

(B) the person was not responsible for the child abuse or neglect that did occur;

(iii) the dismissal of criminal charges or a verdict of not guilty based on the same underlying facts.

(b) The 30-day requirement of Subsection (3)(a) shall be extended for good cause shown that compliance was virtually impossible or unreasonably burdensome.

(c) The division may approve or deny a request made under Subsection (3)(a).

(d) If the division denies the request or fails to act within 30 days after receiving a request submitted under Subsection (3)(a), the Office of Administrative Hearings shall hold an adjudicative proceeding pursuant to Title 63, Chapter 46b, Administrative Procedures Act.

(4) (a) In an adjudicative proceeding held pursuant to Subsection (3)(d), the division shall prove by a preponderance of the evidence that there is a reasonable basis to conclude that:

(i) child abuse or neglect, as described in Subsection 62A-4a-116(4)(b), occurred; and

(ii) the person was substantially responsible for the abuse or neglect that occurred.

(b) The administrative hearing officer may make a determination of substantiation based solely on the statement of the child.

(5) (a) A person may not make a request to challenge a substantiated finding under Subsection (3)(a), if, at anytime, a court of competent jurisdiction has made a determination based on the same underlying facts that:

(i) child abuse or neglect, as described in Subsection 62A-4a-116(4)(b), occurred; and

(ii) the person was substantially responsible for the abuse or neglect that occurred.

(b) An adjudicative proceeding held pursuant to Subsection (4) may be stayed during the time a judicial action is pending.

(6) Nothing in this section may affect the inclusion or exclusion of a report or finding of child abuse or neglect from or access by the division, its caseworkers, and child protective services workers to that part of the management information system used for purposes of child welfare cases and child protective services as described in Subsections 62A-4a-116(2) and (3).

(7) By December 31, 1998, the division shall provide notice to each person with a substantiated finding of abuse or neglect since January 1, 1994.

Section 3. 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 for the purpose of determining whether a person associated with a child care provider has a substantiated finding of child abuse or neglect on the licensing part of the management information system created in Section 62A-4a-116; 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.