

Senator Michael G. Waddoups proposes to substitute the following bill:

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 WITH RESPECT TO A PERSON ASSOCIATED WITH A HEALTH CARE FACILITY THAT PROVIDES DIRECT CARE TO CHILDREN; REQUIRING THE DEPARTMENT OF HEALTH ESTABLISH RULES REGARDING PERMISSIBLE WORK ACTIVITIES FOR THOSE WITH A CRIMINAL CONVICTION OR SUBSTANTIATED FINDING OF CHILD ABUSE OR NEGLECT; EXTENDING IMMUNITY TO THE SUBMISSION OF INFORMATION TO THE DEPARTMENT; REPEALING THE HEALTH CARE ASSISTANT REGISTRATION ACT; AND PROVIDING AN EFFECTIVE DATE.

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

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

ENACTS:

26-21-9.5, Utah Code Annotated 1953

REPEALS:

58-62-101, as enacted by Chapter 289, Laws of Utah 1994

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

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

- 1 **58-62-301**, as enacted by Chapter 289, Laws of Utah 1994
- 2 **58-62-302**, as enacted by Chapter 289, Laws of Utah 1994
- 3 **58-62-303**, as enacted by Chapter 289, Laws of Utah 1994
- 4 **58-62-304**, as last amended by Chapter 196, Laws of Utah 1997
- 5 **58-62-305**, as enacted by Chapter 289, Laws of Utah 1994
- 6 **58-62-401**, as enacted by Chapter 289, Laws of Utah 1994
- 7 **58-62-501**, as enacted by Chapter 289, Laws of Utah 1994
- 8 **58-62-601**, as enacted by Chapter 289, Laws of Utah 1994
- 9 **58-62-602**, as enacted by Chapter 289, Laws of Utah 1994
- 10 **58-62-603**, as enacted by Chapter 289, Laws of Utah 1994

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

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

13 **26-21-6. Duties of department.**

14 (1) The department shall:

15 (a) enforce rules established pursuant to this chapter;

16 (b) authorize an agent of the department to conduct inspections of health-care facilities
17 pursuant to this chapter;

18 (c) collect information authorized by the committee that may be necessary to ensure that
19 adequate health-care facilities are available to the public;

20 (d) collect and credit fees for licenses as free revenue;

21 (e) collect and credit fees for conducting plan reviews as dedicated credits;

22 (f) designate an executive secretary from within the department to assist the committee in
23 carrying out its powers and responsibilities; [and]

24 (g) establish reasonable standards for criminal background checks by public and private
25 entities;

26 (h) recognize those public and private entities which meet the standards established in

27 Subsection (1)(g); and

28 [~~(g)~~] (i) provide necessary administrative and staff support to the committee.

29 (2) The department may:

30 (a) exercise all incidental powers necessary to carry out the purposes of this chapter;

31 (b) review architectural plans and specifications of proposed health-care facilities or

1 renovations of health-care facilities to ensure that the plans and specifications conform to rules
2 established by the committee; and

3 (c) make rules as necessary to implement the provisions of this chapter, except as authority
4 is specifically delegated to the committee.

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

6 **26-21-9.5. Criminal background check and substantiated findings of abuse or neglect.**

7 (1) In addition to the licensing requirements of Sections 26-21-8 and 26-21-9, a covered
8 health care facility, as defined in Subsection (8), at the time of initial application and renewal for
9 licensure shall:

10 (a) submit the name and other identifying information of each person associated with the
11 facility who:

12 (i) provides direct care to a patient; and

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

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

17 (i) provides direct care to a patient; and

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

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

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

27 (3) The department may determine whether an individual whose name and other
28 identifying information has been submitted pursuant to Subsection (1) and who provides direct
29 care to children has a substantiated finding of child abuse or neglect by accessing the licensing part
30 of the management information system created in Section 62A-4a-116.

31 (4) The department shall adopt rules defining the circumstances under which a person who

1 has been convicted of a criminal offense or has a substantiated report of child abuse or neglect,
2 may provide direct care to a patient in a covered health care facility, taking into account the nature
3 of the criminal offense and its relation to patient care.

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

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

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

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

11 (a) home health care agencies;

12 (b) hospices;

13 (c) nursing care facilities;

14 (d) residential health care facilities;

15 (e) assisted-living facilities;

16 (f) small health care facilities; and

17 (g) end stage renal disease facilities.

18 Section 3. Section **62A-4a-412** is amended to read:

19 **62A-4a-412. Reports and information confidential.**

20 (1) Except as otherwise provided in this chapter, reports made pursuant to this part, as well
21 as any other information in the possession of the division obtained as the result of a report is
22 confidential and may only be made available to:

23 (a) a police or law enforcement agency investigating a report of known or suspected child
24 abuse or neglect;

25 (b) a physician who reasonably believes that a child may be the subject of abuse or
26 neglect;

27 (c) an agency that has responsibility or authority to care for, treat, or supervise a child who
28 is the subject of a report;

29 (d) any subject of the report, the natural parents of the minor, and the guardian ad litem;

30 (e) a court, upon a finding that access to the records may be necessary for the
31 determination of an issue before it;

1 (f) an office of the public prosecutor or its deputies; [and]

2 (g) the Bureau of Health Facility Licensure within the Department of Health, as provided
3 for in Section 26-21-9.5, for the sole purpose of determining whether a person associated with a
4 covered health care facility and who provides direct care to children has a substantiated finding
5 of child abuse or neglect; and

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

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

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

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

16 Section 4. **Repealer.**

17 This act repeals:

18 Section **58-62-101, Title.**

19 Section **58-62-102, Definitions.**

20 Section **58-62-201, Board.**

21 Section **58-62-301, Registration -- Classifications -- Temporary employment prior to**
22 **registration.**

23 Section **58-62-302, Registration qualifications.**

24 Section **58-62-303, Term of registration -- Expiration -- Renewal.**

25 Section **58-62-304, Exemptions from registration.**

26 Section **58-62-305, Registrant title.**

27 Section **58-62-401, Denial of registration -- Disciplinary proceedings.**

28 Section **58-62-501, Unlawful conduct -- Penalty.**

29 Section **58-62-601, Registry.**

30 Section **58-62-602, Notice of dismissal -- Division action.**

31 Section **58-62-603, Immunity from liability for reporting.**

- 1 Section 5. **Effective date.**
- 2 This act takes effect on July 1, 1998.