

**HEALTH CARE WORKERS - BACKGROUND  
CHECKS**

1999 GENERAL SESSION

STATE OF UTAH

**Sponsor: Michael G. Waddoups**

AN ACT RELATING TO HEALTH; CLARIFYING WHEN A NATIONAL CRIMINAL BACKGROUND CHECK IS REQUIRED FOR AN EMPLOYEE OF A HEALTH CARE FACILITY; CLARIFYING WHEN THE CHILD ABUSE DATABASE FOR LICENSING AND THE ELDER ABUSE DATABASE MAY BE USED TO SCREEN AN EMPLOYEE; INCREASING THE NUMBER OF HEALTH DEPARTMENT WORKERS WHO MAY ACCESS THE DATABASES; REQUIRING A BACKGROUND CHECK AT THE TIME OF HIRE; AND MAKING TECHNICAL AND CONFORMING AMENDMENTS.

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

AMENDS:

**26-21-9.5**, as enacted by Chapter 169, Laws of Utah 1998

**62A-3-311.1**, as last amended by Chapter 169, Laws of Utah 1998

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

Section 1. Section **26-21-9.5** is amended 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)] (10), at the time of initial application for a license and license 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 Criminal Investigations and Technical Services Division 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] had residency in Utah for the last 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 Criminal Investigations and Technical Services Division. The individual or 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 if identification as a possible perpetrator of child abuse or neglect is relevant to the employment activities of that individual; 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 abuse, neglect, or exploitation of a disabled or elder [abuse] adult by accessing in accordance with Subsection (4) the database created in Section 62A-3-311.1 if identification as a possible perpetrator of disabled or elder adult abuse, neglect, or exploitation is relevant to the employment activities of that person.

(4) (a) The department shall:

(i) designate two persons within the department to access the licensing part of the management information system and two persons to access 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) Within ten days of initially hiring an individual, a covered health care facility shall submit the individual's information to the department in accordance with Subsection (1).

~~[(5)] (6)~~ 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 adult abuse ~~[or]~~, neglect, or exploitation may provide direct care to a patient in a covered health care facility, taking into account the nature of the criminal ~~[offense]~~ conviction or substantiated finding and its relation to patient care.

~~[(6)] (7)~~ The department may, in accordance with Section 26-1-6, assess reasonable fees for a criminal background check processed pursuant to this section.

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

~~[(9)]~~ (10) 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)]~~ (d) assisted-living facilities;
- ~~[(f)]~~ (e) small health care facilities; and
- ~~[(g)]~~ (f) end stage renal disease facilities.

Section 2. 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);

(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]~~ Licensing 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 adult abuse, neglect, or exploitation if identification as a possible perpetrator is relevant to the employment activities of that person.

(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 taking the action 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.