

CHILD CARE LICENSING AMENDMENTS

1999 GENERAL SESSION

STATE OF UTAH

Sponsor: Leonard M. Blackham

AN ACT RELATING TO HEALTH; AMENDING THE MAKE UP OF THE CHILD CARE ADVISORY COMMITTEE; CLARIFYING WHEN A PROVIDER'S CHILDREN ARE COUNTED FOR LICENSING AND CERTIFICATE PURPOSES; PROHIBITING A CHILD CARE PROVIDER FROM TAKING CARE OF MORE THAN TWO CHILDREN UNDER THE AGE OF TWO; AND MAKING TECHNICAL AND CONFORMING AMENDMENTS.

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

AMENDS:

26-39-102, as last amended by Chapter 158, Laws of Utah 1998

26-39-103, as last amended by Chapter 143, Laws of Utah 1998

26-39-104, as last amended by Chapters 143 and 158, Laws of Utah 1998

26-39-105, as last amended by Chapter 158, Laws of Utah 1998

26-39-105.5, as enacted by Chapter 158, Laws of Utah 1998

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~~;

(a) a child of a person other than the provider of child care[-]; and

(b) a provider's child who is under the age of four.

(2) "Child care" means continuous care and supervision of 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.

(3) "Child care program" means a child care facility or program operated by a person

28 pursuant to a license issued in accordance with this chapter.

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

30 Section 2. Section **26-39-103** is amended to read:

31 **26-39-103. Child Care Licensing Advisory Committee.**

32 (1) There is established the Child Care Licensing Advisory Committee to advise the
33 department on rules promulgated by the department pursuant to this chapter. It shall be composed
34 of ~~[nine]~~ the following 12 members who shall be appointed by the executive director~~[-Two~~
35 ~~members shall represent consumers of child care programs licensed pursuant to this chapter, four~~
36 ~~members shall be providers licensed pursuant to this chapter at least two of whom shall be facility~~
37 ~~owner-operators, two members shall be health care providers, and one member shall be an~~
38 ~~individual with expertise in early childhood development.];~~

39 (a) two child care consumers;

40 (b) two residential child care providers;

41 (c) two for-profit licensed programs;

42 (d) two nonprofit licensed programs;

43 (e) two on-site licensed programs; and

44 (f) two health care providers, at least one of whom shall have expertise in early childhood
45 development.

46 (2) ~~[Of the initial members of the Child Care Licensing Advisory Committee, the~~
47 ~~executive director shall appoint three to four-year terms, three to three-year terms, and three to~~
48 ~~two-year terms. Thereafter, appointments]~~ Appointments shall be for four-year terms, except for
49 those members who have been appointed to complete an unexpired term. Appointments and
50 reappointments may be staggered so that 1/4 of the committee changes each year. The committee
51 shall annually elect a chairman from its membership.

52 (3) The advisory committee shall meet at least quarterly, or more frequently as determined
53 by the executive director, the chairman, or three or more members of the committee. Five
54 members constitute a quorum and a vote of the majority of the members present constitutes an
55 action of the committee.

56 (4) Advisory committee members shall be reimbursed for their actual and necessary
57 expenses incurred in the performance of their duties as established by the director of the Division
58 of Finance, pursuant to Section 63A-3-107. Advisory committee members may decline

59 reimbursement.

60 Section 3. Section **26-39-104** is amended to read:

61 **26-39-104. Duties of the department.**

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

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

66 (i) adequate facilities and equipment; and

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

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

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

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

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

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

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

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

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

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

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

88 (3) In licensing and regulating child care programs, the department shall reasonably
89 balance the benefits and burdens of each regulation and, by rule, provide for a range of licensure,

90 depending upon the needs and different levels and types of child care provided. [The department
91 shall prepare language for the 1999 General Session of the Legislature to codify as much licensing
92 regulation implemented pursuant to this subsection as the department determines to be
93 practicable.]

94 Section 4. Section **26-39-105** is amended to read:

95 **26-39-105. Licensure requirements -- Expiration -- Renewal.**

96 (1) Except as provided in Sections 26-39-105.5 and 26-39-106, a person shall be licensed
97 in accordance with this chapter if he:

98 (a) provides or offers child care; or

99 (b) provides care to five or more children and requests to be licensed.

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

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

104 Section 5. Section **26-39-105.5** is amended to read:

105 **26-39-105.5. Residential child care certificate.**

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

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

109 (i) the submission of:

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

111 (B) a certification and criminal background fee established in accordance with Section
112 26-1-6; and

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

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

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

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

121 (C) make appropriate recommendations; and
122 (iii) for new providers, completion of:
123 (A) five hours of department-approved training; and
124 (B) a department-approved CPR and first aid course.
125 (c) If a serious sanitation, fire, or health hazard has been found during an inspection
126 conducted pursuant to Subsection (1)(b)(ii), the department may, at the option of the residential
127 care provider:
128 (i) require corrective action for the serious hazards found and make an unannounced
129 follow up inspection to determine compliance; or
130 (ii) inform the parents of each child in the care of the provider of the results of the
131 department's inspection and the failure of the provider to take corrective action.
132 (d) In addition to an inspection conducted pursuant to Subsection (1)(b)(ii), the department
133 may inspect the home of a residential care provider of five to eight children in response to a
134 complaint of:
135 (i) child abuse or neglect;
136 (ii) serious health hazards in or around the provider's home; or
137 (iii) providing residential child care without the appropriate certificate or license.
138 (2) Notwithstanding this section:
139 (a) a license under Section 26-39-105 is required of a residential child care provider who
140 cares for nine or more children;
141 ~~[(b) a Residential Care Certificate under Subsection (1) is required of a residential care~~
142 ~~provider who provides care for four or more children, based on the sum of:]~~
143 ~~[(i) children under two years of age; and]~~
144 ~~[(ii) the provider's own children under four years of age; and]~~
145 (b) a residential child care provider may not provide care to more than two children under
146 the age of two; and
147 (c) an inspection may be required of a residential child care provider in connection with
148 a federal child care program.
149 (3) With respect to residential child care, the department may only make and enforce rules
150 necessary to implement this section.

Legislative Review Note

as of 2-2-99 10:07 AM

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel