

1 **RESIDENTIAL CHILD CARE REGISTRATION**

2 2000 GENERAL SESSION

3 STATE OF UTAH

4 **Sponsor: Jeff Alexander**

5 AN ACT RELATING TO CHILD CARE LICENSING; CHANGING RESIDENTIAL CHILD
6 CARE CERTIFICATION TO RESIDENTIAL CARE REGISTRATION; ELIMINATING
7 CERTAIN INITIAL AND ANNUAL CHILD CARE INSPECTIONS; AND MAKING
8 TECHNICAL CHANGES.

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

10 AMENDS:

11 **26-39-102**, as last amended by Chapter 77, Laws of Utah 1999

12 **26-39-103**, as last amended by Chapter 77, Laws of Utah 1999

13 **26-39-104**, as last amended by Chapter 77, Laws of Utah 1999

14 **26-39-105.5**, as last amended by Chapter 77, Laws of Utah 1999

15 **26-39-107**, as last amended by Chapter 153, Laws of Utah 1999

16 **26-39-108**, as enacted by Chapter 196, Laws of Utah 1997

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

18 Section 1. Section **26-39-102** is amended to read:

19 **26-39-102. Definitions.**

20 As used in this chapter:

21 (1) "Child" means:

22 (a) a child of a person other than the provider of child care;

23 (b) a child of a licensed or [certified] registered residential child care provider who is
24 under the age of four; and

25 (c) a child of an employee or owner of a licensed child care center who is under the age
26 of four.

27 (2) "Child care" means continuous care and supervision, in lieu of care ordinarily provided

28 by parents in their own home, for less than 24 hours a day, for direct or indirect compensation, of:

29 (a) five or more children under 14 years of age~~[, in lieu of care ordinarily provided by~~
30 parents in their own home, for less than 24 hours a day, for direct or indirect compensation.]; or

31 (b) less than five children if the child care provider receives a state or federal subsidy for
32 one or more children in the provider's care.

33 (3) "Child care program" means a child care facility or program operated by a person
34 pursuant to a license or registration issued in accordance with this chapter.

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

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

37 **26-39-103. Child Care Licensing Advisory Committee.**

38 (1) There is established the Child Care Licensing Advisory Committee to advise the
39 department on rules promulgated by the department pursuant to this chapter. It shall be composed
40 of the following 13 members who shall be appointed by the executive director:

- 41 (a) two child care consumers;
- 42 (b) two licensed residential child care providers;
- 43 (c) one [~~certified~~] registered residential child care provider;
- 44 (d) five representatives of licensed child care center programs;
- 45 (e) one individual with expertise in early childhood development; and
- 46 (f) two health care providers.

47 (2) Appointments shall be for four-year terms, except for those members who have been
48 appointed to complete an unexpired term. Appointments and reappointments may be staggered
49 so that 1/4 of the committee changes each year. The committee shall annually elect a chairman
50 from its membership.

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

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

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

60 **26-39-104. Duties of the department.**

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

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

65 (i) adequate facilities and equipment; and

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

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

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

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

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

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

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

78 (vi) procedures for unannounced, periodic inspections of all licensed providers, inspections
79 resulting from a complaint for licensed or registered providers, complaint resolution, disciplinary
80 actions, and other procedural measures to encourage and assure compliance with statute and rule;
81 and

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

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

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

89 (3) In licensing, registering, and regulating child care programs, the department shall

90 reasonably balance the benefits and burdens of each regulation and, by rule, provide for a range
91 of licensure, depending upon the needs and different levels and types of child care provided.

92 (4) Notwithstanding the definition of "child" in Subsection 26-39-102(1), the department
93 shall count children under the age of 14 toward the minimum square footage requirement for
94 indoor and outdoor areas, including the child of:

- 95 (a) a licensed or registered residential child care provider; or
- 96 (b) an owner or employee of a licensed child care center.

97 Section 4. Section **26-39-105.5** is amended to read:

98 **26-39-105.5. Residential child care registration.**

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

101 (1) Unless Section 26-39-106 applies, registration is required for:

102 (a) a residential child care provider who receives a state or federal subsidy for one or more
103 children in the provider's care; or

104 (b) a residential child care provider of five to eight children.

105 ~~[(b)] (2) The qualifications for [a] Residential Child Care [Certificate] registration are
106 limited to:~~

107 ~~[(i)] (a) the submission of:~~

108 ~~[(A)] (i) an application on a form prepared by the department;~~

109 ~~[(B)] (ii) a [certification] registration and criminal background fee established in
110 accordance with Section 26-1-6, unless the registration portion of the fee is waved upon a
111 determination by the department that it would impose an extreme hardship on the provider; [and]~~

112 ~~[(C)] (iii) identifying information described in Subsection 26-39-107(1) for each adult
113 person who resides in the provider's home:~~

114 ~~[(F)] (A) for processing by the Department of Public Safety to determine whether any such
115 person has been convicted of a crime; and~~

116 ~~[(H)] (B) to screen for a substantiated finding of child abuse or neglect pursuant to Section
117 62A-4a-116; and~~

118 ~~[(i) an initial and annual inspection of the provider's home within 90 days of sending an
119 intent to inspect notice to:]~~

120 ~~[(A) check the immunization record of each child who receives child care in the provider's~~

121 home;]

122 [~~(B) identify serious sanitation, fire, and health hazards to children; and]~~

123 [~~(C) make appropriate recommendations; and]~~

124 [~~(iii) for new providers, completion of:]~~

125 [~~(A) five hours of department-approved training; and]~~

126 [~~(B) a department-approved CPR and first aid course.]~~

127 [~~(c) If a serious sanitation, fire, or health hazard has been found during an inspection~~

128 ~~conducted pursuant to Subsection (1)(b)(ii), the department may, at the option of the residential~~

129 ~~care provider:]~~

130 [~~(i) require corrective action for the serious hazards found and make an unannounced~~

131 ~~follow up inspection to determine compliance; or]~~

132 [~~(ii) inform the parents of each child in the care of the provider of the results of the~~

133 ~~department's inspection and the failure of the provider to take corrective action.]~~

134 (iv) a statement, signed by the residential child care provider, verifying that:

135 (A) the child care program will operate only in the provider's home described in the

136 application and only by the person named in the application;

137 (B) immunization records are kept current for each child who receives child care in the

138 provider's home;

139 (C) the residential child care provider's residence is free of serious sanitation, fire, and

140 health hazards; and

141 (D) the residential child care provider has received five hours of department-approved

142 health and safety training and completed a department-approved CPR and first aid course.

143 [~~(d)] (b) [In addition to an inspection conducted pursuant to Subsection (1)(b)(ii), the] The~~

144 department may inspect the home of a residential care provider [of five to eight children] required

145 to register under Subsection (1)(a) or (b) in response to a complaint of:

146 (i) child abuse or neglect;

147 (ii) serious health hazards in or around the provider's home; or

148 (iii) providing residential child care without the appropriate [certificate or license]

149 registration.

150 (3) In the event that additional adult persons begin residing in the provider's home during

151 the term of the registration, the provider shall supply identifying information and the required fee

152 within 30 days.

153 [~~2~~] (4) Notwithstanding this section:

154 (a) a license under Section 26-39-105 is required of a residential child care provider who
155 cares for nine or more children;

156 (b) a [~~certified~~] registered residential child care provider may not provide care to more than
157 two children under the age of two; and

158 (c) an inspection may be required of a residential child care provider in connection with
159 a federal child care program.

160 [~~3~~] (5) With respect to residential child care, the department may only make and enforce
161 rules necessary to implement this section.

162 Section 5. Section **26-39-107** is amended to read:

163 **26-39-107. Disqualified individuals -- Criminal history checks -- Payment of costs.**

164 (1) (a) Each person requesting a residential [~~certificate~~] registration or to be licensed or
165 to renew a license under this chapter shall submit to the department the name and other identifying
166 information, which shall include fingerprints, of existing, new, and proposed:

167 (i) owners;

168 (ii) directors;

169 (iii) members of the governing body;

170 (iv) employees;

171 (v) providers of care;

172 (vi) volunteers, except parents of children enrolled in the programs; and

173 (vii) all adults residing in a residence where child care is provided.

174 (b) A person seeking renewal of a residential [~~certificate~~] registration or license under this
175 section is not required to submit fingerprints of an individual referred to in Subsections (1)(a)(i)
176 through (vi), if:

177 (i) the individual has resided in Utah for the last five years;

178 (ii) the individual has:

179 (A) previously submitted fingerprints under this section for a national criminal history
180 record check; and

181 (B) resided in Utah continuously since that time; or

182 (iii) as of May 3, 1999, the individual had one of the relationships under Subsection (1)(a)

183 with a child care provider having a residential [certificate] registration or licensed under this
184 section and the individual has resided in Utah continuously since that time.

185 (c) (i) The Utah Division of Criminal Investigation and Technical Services within the
186 Department of Public Safety shall process the information required under Subsection (1)(a) to
187 determine whether the individual has been convicted of any crime.

188 (ii) The Utah Division of Criminal Investigation and Technical Services shall submit
189 fingerprints required under Subsection (1)(a) to the FBI for a national criminal history record
190 check.

191 (iii) The applicant for the license or residential [certificate] registration shall pay the cost
192 of conducting a record check under Subsection (1)(c).

193 (2) An owner, director, member of the governing body, employee, provider of care, or
194 volunteer who has a felony conviction may not provide child care or operate a residential
195 [certificate] registration or licensed child care program.

196 (3) An owner, director, member of the governing body, employee, or other provider of care
197 who has been convicted of a misdemeanor may not provide child care or operate a residential
198 [certificate] registration or licensed child care program, except that:

199 (a) the department may, by rule, exclude specified misdemeanors that do not disqualify
200 an individual under this section; and

201 (b) the executive director may consider and approve individual cases in accordance with
202 criteria established by rule.

203 Section 6. Section **26-39-108** is amended to read:

204 **26-39-108. License violations -- Penalties.**

205 (1) The department may deny or revoke a license or registration and otherwise invoke
206 disciplinary penalties if it finds:

207 (a) evidence of committing or of aiding, abetting, or permitting the commission of any
208 illegal act on the premises of the child care facility;

209 (b) a failure to meet the qualifications for licensure or registration; or

210 (c) conduct adverse to the public health, morals, welfare, and safety of children under its
211 care.

212 (2) The department may also place a department representative as a monitor in a facility,
213 and may assess the cost of that monitoring to the facility, until the licensee has remedied the

214 deficiencies that brought about the department action.

215 (3) The department may impose civil monetary penalties in accordance with Title 63,
216 Chapter 46b, Administrative Procedures Act, if there has been a failure to comply with the
217 provisions of this chapter, or rules promulgated pursuant to this chapter, as follows:

218 (a) if significant problems exist that are likely to lead to the harm of a child, the
219 department may impose a civil penalty of \$50 to \$1,000 per day; and

220 (b) if significant problems exist that result in actual harm to a child, the department may
221 impose a civil penalty of \$1,050 to \$5,000 per day.

Legislative Review Note
as of 2-21-00 3:41 PM

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

Office of Legislative Research and General Counsel