

1 **HUMAN SERVICES LICENSING AMENDMENTS**

2 2004 GENERAL SESSION

3 STATE OF UTAH

4 **Sponsor: D. Chris Buttars**

5

6 **LONG TITLE**

7 **General Description:**

8 This bill amends provisions relating to the licensure of programs and facilities.

9 **Highlighted Provisions:**

10 This bill:

- 11 ▶ gives the Department of Human Services the authority to accredit agencies and
- 12 persons to provide intercountry adoption services;
- 13 ▶ creates and amends definitions;
- 14 ▶ amends the rulemaking duties of the Office of Licensing;
- 15 ▶ gives the Office of Licensing authority to accredit agencies and persons to provide
- 16 intercountry adoption services;
- 17 ▶ allows the Office of Licensing to grant a new license after one calendar year from
- 18 the date the agency notice or final order of revocation, whichever is later, is given;
- 19 ▶ broadens the length of time that the Office of Licensing may suspend a license; and
- 20 ▶ makes technical changes.

21 **Monies Appropriated in this Bill:**

22 None

23 **Other Special Clauses:**

24 None

25 **Utah Code Sections Affected:**

26 AMENDS:

27 **62A-1-111**, as last amended by Chapter 8, Laws of Utah 2002, Fifth Special Session



- 28 **62A-2-101**, as last amended by Chapter 22, Laws of Utah 2003
- 29 **62A-2-106**, as last amended by Chapter 119, Laws of Utah 2003
- 30 **62A-2-108**, as last amended by Chapter 358, Laws of Utah 1998
- 31 **62A-2-108.1**, as last amended by Chapter 42, Laws of Utah 1997
- 32 **62A-2-109**, as last amended by Chapter 358, Laws of Utah 1998
- 33 **62A-2-110**, as last amended by Chapter 358, Laws of Utah 1998
- 34 **62A-2-112**, as last amended by Chapter 358, Laws of Utah 1998
- 35 **62A-2-113**, as last amended by Chapter 358, Laws of Utah 1998
- 36 **62A-2-117**, as enacted by Chapter 358, Laws of Utah 1998
- 37 **62A-2-118**, as enacted by Chapter 358, Laws of Utah 1998
- 38 **62A-2-120**, as last amended by Chapter 300, Laws of Utah 2002
- 39 **62A-2-121**, as last amended by Chapters 283 and 300, Laws of Utah 2002
- 40 **62A-15-604**, as renumbered and amended by Chapter 8, Laws of Utah 2002, Fifth

41 Special Session



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

44 Section 1. Section **62A-1-111** is amended to read:

45 **62A-1-111. Department authority.**

46 The department may, in addition to all other authority and responsibility granted to it by
47 law:

48 (1) adopt rules, not inconsistent with law, as the department may consider necessary or
49 desirable for providing social services to the people of this state;

50 (2) establish and manage client trust accounts in the department's institutions and
51 community programs, at the request of the client or his legal guardian or representative, or in
52 accordance with federal law;

53 (3) purchase, as authorized or required by law, services that the department is
54 responsible to provide for legally eligible persons;

55 (4) conduct adjudicative proceedings for clients and providers in accordance with the
56 procedures of Title 63, Chapter 46b, Administrative Procedures Act;

57 (5) establish eligibility standards for its programs, not inconsistent with state or federal
58 law or regulations;

59 (6) take necessary steps, including legal action, to recover money or the monetary value
60 of services provided to a recipient who was not eligible;

61 (7) set and collect fees for its services;

62 (8) license agencies, facilities, and programs, except as otherwise allowed, prohibited,
63 or limited by law;

64 (9) accredit agencies and persons to provide intercountry adoption services;

65 [~~(9)~~] (10) acquire, manage, and dispose of any real or personal property needed or
66 owned by the department, not inconsistent with state law;

67 [~~(10)~~] (11) receive gifts, grants, devises, and donations; gifts, grants, devises,
68 donations, or the proceeds thereof, may be credited to the program designated by the donor,
69 and may be used for the purposes requested by the donor, as long as the request conforms to
70 state and federal policy; all donated funds shall be considered private, nonlapsing funds and
71 may be invested under guidelines established by the state treasurer;

72 [~~(11)~~] (12) accept and employ volunteer labor or services; the department is authorized
73 to reimburse volunteers for necessary expenses, when the department considers that
74 reimbursement to be appropriate;

75 [~~(12)~~] (13) carry out the responsibility assigned in the Workforce Services Plan by the
76 State Council on Workforce Services;

77 [~~(13)~~] (14) carry out the responsibility assigned by Section 9-4-802 with respect to
78 coordination of services for the homeless;

79 [~~(14)~~] (15) carry out the responsibility assigned by Section 62A-5a-105 with respect to
80 coordination of services for students with a disability;

81 [~~(15)~~] (16) provide training and educational opportunities for its staff;

82 [~~(16)~~] (17) collect child support payments and any other monies due to the department;

83 [~~(17)~~] (18) apply the provisions of Title 78, Chapter 45, Uniform Civil Liability for
84 Support Act, to parents whose child lives out of the home in a department licensed or certified
85 setting;

86 [~~(18)~~] (19) establish policy and procedures in cases where the department is given
87 custody of a minor by the juvenile court pursuant to Section 78-3a-118; any policy and
88 procedures shall include:

89 (a) designation of interagency teams for each juvenile court district in the state;

90 (b) delineation of assessment criteria and procedures;

91 (c) minimum requirements, and timeframes, for the development and implementation

92 of a collaborative service plan for each minor placed in department custody; and

93 (d) provisions for submittal of the plan and periodic progress reports to the court;

94 [~~(19)~~] (20) carry out the responsibilities assigned to it by statute; and

95 [~~(20)~~] (21) examine and audit the expenditures of any public funds provided to local

96 substance abuse authorities, local mental health authorities, local area agencies on aging, and

97 any person, agency, or organization that contracts with or receives funds from those authorities

98 or agencies. Those local authorities, area agencies, and any person or entity that contracts with

99 or receives funds from those authorities or area agencies, shall provide the department with any

100 information the department considers necessary. The department is further authorized to issue

101 directives resulting from any examination or audit to local authorities, area agencies, and

102 persons or entities that contract with or receive funds from those authorities with regard to any

103 public funds. If the department determines that it is necessary to withhold funds from a local

104 mental health authority or local substance abuse authority based on failure to comply with state

105 or federal law, policy, or contract provisions, it may take steps necessary to ensure continuity of

106 services. For purposes of this Subsection [~~(20)~~] (21) "public funds" means the same as that

107 term is defined in Section 62A-15-102.

108 Section 2. Section **62A-2-101** is amended to read:

109 **62A-2-101. Definitions.**

110 As used in this chapter:

111 (1) "Adult day care" means continuous nonresidential care and supervision for three or

112 more adults for at least four but less than 24 hours a day, that meets the needs of functionally

113 impaired adults through a comprehensive program that provides a variety of health, social,

114 recreational, and related support services in a protective setting.

115 (2) "Boarding school" means a 24-hour group living environment for four or more

116 individuals unrelated to the owner or provider that offers room, board, and educational

117 services, but does not provide treatment, rehabilitation, or habilitation services.

118 (3) "Business hours" means those hours in which any client services are provided.

119 [~~(2)~~] (4) "Child" means a person under 18 years of age.

120 [~~(3)~~] (5) "Child placing" means receiving, accepting, or providing custody or care for

121 any child [~~under 18 years of age~~], temporarily or permanently, for the purpose of:

122 (a) finding a person to adopt the child;

123 (b) placing the child [~~temporarily or permanently~~] in a home for adoption; or

124 (c) foster home placement.

125 [~~(4)~~] (6) "Client" means an individual who receives or has received services from a
126 human services licensee [~~under this chapter~~].

127 [~~(5)~~] (7) "Day treatment" means specialized nonresidential treatment for less than 24
128 hours a day for four or more persons who are unrelated to the owner or provider and who have
129 emotional, psychological, developmental, physical, or behavioral dysfunctions, impairments, or
130 chemical dependencies. [~~Day treatment is provided in lieu of, or in coordination with, a more
131 restrictive residential or inpatient environment or service.~~]

132 [~~(6)~~] (8) "Department" means the Department of Human Services.

133 [~~(7)~~] (9) "Direct access" means that an individual has, or likely will have, contact with
134 or access to a child or vulnerable adult that provides the individual with an opportunity for
135 personal communication or touch.

136 [~~(8)~~] (10) "Director" means the director of the Office of Licensing.

137 (11) "Domestic violence" means the same term as defined in Section 77-36-1.

138 [~~(9)~~] (12) "Domestic violence treatment program" means a nonresidential program
139 designed to provide psychological treatment and educational services to perpetrators and
140 victims of domestic violence.

141 [~~(10)~~] (13) "Elder adult" means a person 65 years of age or older.

142 [~~(11)~~] (14) "Executive director" means the executive director of the department.

143 (15) "Foster home" means temporary residential care of fewer than four foster children
144 in the home of a licensed or certified foster parent.

145 [~~(12)~~] (16) "Human services [~~licensee~~ or "~~licensee~~] facility" means a boarding school,
146 foster home, youth program, resource family home, or a facility or program[~~, licensed by the~~
147 ~~department,~~] that provides [~~care,~~] secure treatment, inpatient treatment, residential treatment,
148 residential support, adult day care, day treatment, outpatient treatment, domestic violence
149 treatment, child placing services, [~~or~~] social detoxification[-], or any other human services
150 program or person when licensing is required by their contract with the department.

151 [~~(13)~~] (17) "Licensing board" means the Human Services Licensing Board.

152 ~~[(14)]~~ (18) "Minor" has the same meaning as "child."

153 ~~[(15)]~~ (19) "Office" means the Office of Licensing within the Department of Human
154 Services.

155 ~~[(16)]~~ (20) "Outpatient treatment" means individual, family, or group therapy or
156 counseling designed to improve and enhance social or psychological functioning for those
157 whose physical and emotional status allows them to continue functioning in their usual living
158 environment.

159 ~~[(17)]~~ (21) (a) "Person associated with the licensee" means an owner, director, member
160 of the governing body, employee, provider of care, ~~or~~ volunteer of a human services licensee
161 or of an applicant to become a licensee, or any other person that human services licensee
162 allows to have unsupervised direct access to children or vulnerable adults.

163 (b) Notwithstanding Subsection ~~[(17)]~~ (21)(a), "person associated with the licensee"
164 does not include an individual serving on either of the following bodies unless that individual
165 has direct access to children or vulnerable adults:

166 (i) a local mental health authority under Section 17-43-301 or a local substance abuse
167 authority under Section 17-43-201; or

168 (ii) a board of an organization operating under a contract to provide ~~comprehensive~~
169 mental health or substance abuse programs or services for the local mental health authority or
170 substance abuse authority.

171 (c) A "person associated with the licensee" does not include a guest or visitor whose
172 access to children or vulnerable adults is directly supervised by the licensee at all times.

173 ~~[(18)]~~ (22) (a) "Residential support" means arranging for or providing the necessities of
174 life as a protective service to individuals or families who are disabled or who are experiencing
175 a dislocation or emergency which prevents them from providing these services for themselves
176 or their families. ~~[Treatment is not a necessary component of residential support.]~~

177 (b) "Residential support" includes providing a supervised living environment for
178 persons with emotional, psychological, developmental, or behavioral dysfunctions,
179 impairments, or chemical dependencies who do not need a more restrictive setting.

180 (c) Treatment is not a necessary component of residential support.

181 ~~[(19)]~~ (23) "Residential treatment" means a 24-hour group living environment for four
182 or more individuals unrelated to the owner or provider that offers room or board and

183 specialized treatment, behavior modification, rehabilitation, discipline or emotional growth or
184 habilitation services for persons with emotional, psychological, developmental, or behavioral
185 dysfunctions, impairments, or chemical dependencies. [~~In residential treatment, individuals are~~
186 ~~assisted in acquiring the social and behavioral skills necessary for living independently in the~~
187 ~~community.~~]

188 [~~(20)~~] (24) "Resource family home" means a home licensed to provide services to a
189 child in the custody of the state [~~and includes a foster care home and a legal risk home~~].

190 [~~(21)~~] (25) "Secure treatment" means 24-hour specialized residential treatment or care
191 for persons whose current functioning is such that they cannot live independently or in a less
192 restrictive environment. Secure treatment differs from residential treatment to the extent that it
193 requires intensive supervision, locked doors, and other security measures which are imposed on
194 residents with neither their consent nor control.

195 [~~(22)~~] (26) "Social detoxification" means short-term residential services for persons
196 who are [~~intoxicated~~] experiencing or have recently experienced drug or alcohol intoxication,
197 that are provided outside of a health care facility licensed under Title 26, Chapter 21, Health
198 Care Facility [~~Licensure~~] Licensing and Inspection Act, and that include:

199 (a) room and board for persons who are unrelated to the owner or manager of the
200 facility;

201 (b) specialized rehabilitation to acquire sobriety; and

202 (c) aftercare services.

203 (27) "Substance abuse treatment program" means a program designed to provide
204 specialized drug or alcohol treatment, rehabilitation, or habilitation services for persons with a
205 diagnosed substance abuse or chemical dependency disorder.

206 [~~(23)~~] (28) "Unrelated persons" means persons other than parents, legal guardians,
207 grandparents, brothers, sisters, uncles, or aunts.

208 [~~(24)~~] (29) "Vulnerable adult" means an elder adult or an adult who has a temporary or
209 permanent mental or physical impairment that substantially affects the person's ability to:

210 (a) provide personal protection;

211 (b) provide necessities such as food, shelter, clothing, or mental or other health care;

212 (c) obtain services necessary for health, safety, or welfare;

213 (d) carry out the activities of daily living;

- 214 (e) manage the adult's own resources; or
- 215 (f) comprehend the nature and consequences of remaining in a situation of abuse,
- 216 neglect, or exploitation.

217 ~~[(25)]~~ (30) (a) "Youth program" means a ~~[nonresidential]~~ program~~[-]~~ designed to
 218 provide behavioral, substance abuse or mental health services to minors that:

- 219 (i) serves ~~[either]~~ adjudicated or nonadjudicated youth;
- 220 (ii) charges a fee for its services;
- 221 (iii) may ~~[or may not]~~ provide host homes or other arrangements for overnight
 222 accommodation of the youth;
- 223 (iv) may ~~[or may not]~~ provide all or part of its services in the outdoors;
- 224 (v) may ~~[or may not]~~ limit or censor access to parents or guardians; and
- 225 (vi) prohibits or restricts a minor's ability to leave the program at any time of his own
 226 free will.

227 (b) "Youth program" does not include recreational programs ~~[such as]~~ including Boy
 228 Scouts, Girl Scouts, and 4-H~~[-, and other such organizations]~~.

229 Section 3. Section **62A-2-106** is amended to read:

230 **62A-2-106. Office responsibilities.**

231 The office shall:

- 232 (1) make rules to establish:
- 233 (a) basic health and safety standards for licensees, ~~[which shall be limited to]~~ including
 234 the following:
 - 235 (i) fire safety;
 - 236 (ii) food safety;
 - 237 (iii) sanitation;
 - 238 (iv) infectious disease control;
 - 239 (v) safety of the physical ~~[plant]~~ facility;
 - 240 (vi) transportation safety;
 - 241 (vii) emergency preparedness;
 - 242 (viii) the administration of medical standards and procedures, consistent with the
 243 related provisions of this title; ~~[and]~~
 - 244 (ix) ~~[consumer]~~ client safety and protection;

245 (x) the administration and maintenance of client and service records;
 246 (xi) staff qualifications;
 247 (xii) staff to client ratios; and
 248 (xiii) segregation of children from adults;
 249 (b) minimum administration and financial requirements for licensees; and
 250 (c) guidelines for variances from rules established under this Subsection (1);
 251 (2) enforce rules~~[:(a)]~~ approved by the licensing board;
 252 ~~[(b) in effect on January 1, 1998, that apply to a service or program for which a~~
 253 ~~licensee is not under contract with a division listed in Section 62A-1-105 to provide until rules~~
 254 ~~are established pursuant to Subsection (2)(c); and]~~
 255 ~~[(c) established after July 1, 1999, by a policymaking board created by Section~~
 256 ~~62A-1-105 which:]~~
 257 ~~[(i) shall be limited to:]~~
 258 ~~[(A) the administration and maintenance of client and service records;]~~
 259 ~~[(B) staff qualifications; and]~~
 260 ~~[(C) staff to client ratios; and]~~
 261 ~~[(ii) may only apply to a service or program for which a licensee is not under contract~~
 262 ~~with a division listed in Section 62A-1-105 to provide;]~~
 263 (3) issue licenses in accordance with this chapter;
 264 (4) accredit agencies and persons to provide intercountry adoption services in
 265 accordance with the Hague Convention on Intercountry Adoptions and the Intercountry
 266 Adoption Act of 2002;
 267 ~~[(4)]~~ (5) conduct surveys and inspections of licensees and facilities in accordance with
 268 Section 62A-2-118;
 269 ~~[(5)]~~ (6) collect licensure fees;
 270 ~~[(6)]~~ (7) provide necessary administrative support to the licensing board;
 271 ~~[(7)]~~ (8) provide notification to ~~licensee or facility, including providers and~~
 272 ~~subproviders,]~~ licensees of a person within the department to contact when filing a complaint;
 273 ~~[(8)]~~ (9) investigate complaints regarding any licensee ~~[or facility];~~
 274 ~~[(9)]~~ (10) have access to all records, correspondence, and financial data required to be
 275 maintained by a licensee ~~[or facility];~~

276 ~~[(10)]~~ (11) have authority to interview any client, family member of a client, employee,
277 or officer of a human services licensee ~~[or facility]~~; and

278 ~~[(11)]~~ (12) have authority to condition, revoke, suspend, or extend any license issued
279 by the department under this chapter by following the procedures and requirements of Title 63,
280 Chapter 46b, Administrative Procedures Act.

281 Section 4. Section **62A-2-108** is amended to read:

282 **62A-2-108. Licensure requirements -- Expiration -- Renewal.**

283 (1) Except as provided in Section 62A-2-110, no person, agency, firm, corporation,
284 association, or governmental unit, acting severally or jointly with any other person, agency,
285 firm, corporation, association, or governmental unit, may establish, conduct, or maintain a
286 human services program or facility in this state without a valid and current license issued by
287 and under the authority of the ~~[department]~~ office as provided by this chapter and the rules of
288 the licensing board.

289 (2) No license issued under this chapter is assignable or transferable.

290 (3) A current license shall at all times be posted in each human services program ~~[or~~
291 ~~facility,]~~ in a place that is visible and readily accessible to the public.

292 (4) (a) Each license issued under this chapter expires at midnight 12 months from the
293 date of issuance unless it has been:

294 (i) previously revoked by the office; or

295 (ii) voluntarily returned to the office by the human services licensee.

296 (b) A license shall be renewed upon application and payment of the applicable fee,
297 unless the office finds that the licensee or facility has not complied with the provisions of or
298 rules made under this chapter.

299 (5) Any licensee or facility which is in operation at the time rules are made in
300 accordance with this chapter shall be given a reasonable time for compliance as determined by
301 the rule.

302 Section 5. Section **62A-2-108.1** is amended to read:

303 **62A-2-108.1. Coordination of human services and educational services --**

304 **Licensing of programs -- Procedures.**

305 (1) A human services program may not be licensed to serve children subject to
306 compulsory education under Section 53A-11-101 or entitled to educational services under

307 Section 53A-15-301 unless the program presents evidence satisfactory to the [~~licensing~~
308 ~~authority~~] office and to the local school board or the school district superintendent of the
309 school district in which the program will be operated that children served by the program shall
310 receive appropriate educational services satisfying the requirements of applicable law.

311 (2) If the human services program [~~is to be permitted to serve~~] serves any children
312 whose custodial parents or legal guardians reside outside the state, then the program shall also
313 provide satisfactory evidence to the [~~licensing authority~~] office and to the school district in
314 which the program will be operated that all costs for educational services to be provided to
315 those students, including tuition and school fees approved by the local school board, shall be
316 borne by the program.

317 (3) If the local school board finds the educational service plan and the educational
318 funding plan to be adequate, then the [~~board~~] human services program shall obtain and provide
319 the [~~licensing authority~~] office with a letter of approval from the local school board or the
320 school district superintendent.

321 (4) If the local school board finds the educational service plan and the educational
322 funding plan to be inadequate, then the [~~board~~] human services program shall obtain and
323 provide the [~~licensing authority~~] office with a letter of disapproval from the local school board,
324 together with the specific requirements the human services program must meet before licensure
325 is granted.

326 (5) Failure of a local school board to respond to a proposed plan within 45 days of
327 receipt is equivalent to approval of the plan by the board.

328 (6) If a human services program fails to comply with its approved educational service
329 plan or educational funding plan, then the [~~licensing authority~~] office shall give the program
330 notice of intent to revoke the [~~licensure~~] program's license and, if the program continues its
331 noncompliance for more than 30 days after receipt of notice, shall revoke the program's license.

332 (7) If a child whose custodial parent or legal guardian resides within the state is
333 provided with educational services by a school district other than the school district in which
334 the custodial parent or legal guardian resides, then the funding provisions of Section
335 53A-2-210 apply.

336 Section 6. Section **62A-2-109** is amended to read:

337 **62A-2-109. License application -- Classification of information.**

338 (1) An application for a license under this chapter shall be made to the office and shall
339 contain information that the board determines is necessary in accordance with [~~established~~]
340 approved rules.

341 (2) Information received by the office through reports and inspections shall be
342 classified [~~as public~~] in accordance with Title 63, Chapter 2, Government Records Access and
343 Management Act.

344 Section 7. Section **62A-2-110** is amended to read:

345 **62A-2-110. Exclusions from chapter.**

346 The provisions of this chapter do not apply to:

347 (1) a facility or program owned or operated by an agency of the United States
348 government;

349 (2) a facility or program operated by or under an exclusive contract with the
350 Department of Corrections;

351 (3) [~~private~~] individual or group counseling by a mental health professional licensed
352 [~~practitioner~~] under Title 58, Chapter 60, Mental Health Professional Practice Act, except when
353 required by their contract with the department; or

354 (4) a general acute hospital, small health care facility, specialty hospital, nursing care
355 facility, or other health care facility licensed by the Department of Health under Section
356 26-21-2.

357 Section 8. Section **62A-2-112** is amended to read:

358 **62A-2-112. Violations -- Penalties.**

359 If the office finds that a violation has occurred under Section 62A-2-111, it may:

360 (1) deny, condition, suspend, or revoke a license, if it finds that there has been a failure
361 to comply with the rules approved by the board, or if it finds evidence of aiding, abetting, or
362 permitting the commission of any illegal act; or

363 (2) restrict or prohibit new admissions to a human services program or facility, if it
364 finds that there has been a failure to comply with rules approved by the board, or if it finds
365 evidence of aiding, abetting, or permitting the commission of any illegal act in the human
366 services facility.

367 Section 9. Section **62A-2-113** is amended to read:

368 **62A-2-113. License revocation -- Suspension.**

- 369 (1) If a license is revoked, the office may grant a new license after:
370 (a) satisfactory evidence is submitted to the office, evidencing that the conditions upon
371 which revocation was based have been corrected; ~~[and]~~
372 (b) inspection and compliance with all provisions of this chapter and applicable
373 rules[-];
374 (c) one calendar year from the date of the notice of agency action or the final order of
375 revocation, whichever is later; and
376 (d) it determines that the interest of the public will not be jeopardized by granting the
377 license.
378 (2) The office may ~~[only]~~ suspend a license for ~~[a period of time which does not~~
379 ~~exceed the current expiration date of that license]~~ no longer than one year.
380 (3) When a license has been suspended, the office may completely or partially restore
381 the suspended license upon a determination that the:
382 (a) conditions upon which the suspension was based have been completely or partially
383 corrected; and
384 (b) interests of the public will not be jeopardized by restoration of the license.
385 Section 10. Section **62A-2-117** is amended to read:
386 **62A-2-117. Licensure of tribal foster homes.**
387 (1) The Indian Child Welfare Act, 25 U.S.C. Secs. 1901-1963, provides that tribes may
388 develop and implement tribal foster home standards.
389 (2) The office shall ~~[license]~~ give full faith and credit to an Indian tribe's certificate or
390 licensure of tribal foster homes according to standards developed and approved by the tribe,
391 pursuant to the Indian Child Welfare Act, 25 U.S.C. Secs. 1901-1963.
392 (3) If the tribe has not developed standards, the office shall license tribal foster homes
393 pursuant to this chapter.
394 Section 11. Section **62A-2-118** is amended to read:
395 **62A-2-118. Administrative inspections.**
396 (1) The office may, for the purpose of ascertaining compliance with the provisions of
397 this chapter, enter and inspect on a routine basis the facility of a licensee.
398 (2) Before conducting an inspection under Subsection (1), the office shall, after
399 identifying the person in charge:

- 400 (a) give proper identification;
- 401 (b) request to see the applicable license;
- 402 (c) describe the nature and purpose of the inspection; and
- 403 (d) if necessary, explain the authority of the office to conduct the inspection and the
- 404 penalty for refusing to permit the inspection as provided in Section 62A-2-116.
- 405 (3) In conducting an inspection under Subsection (1), the office may, after meeting the
- 406 requirements of Subsection (2):
- 407 (a) inspect the physical facilities;
- 408 (b) inspect and copy records and documents;
- 409 (c) interview officers, employees, clients, family members of clients, and others; and
- 410 (d) observe the licensee in operation.
- 411 (4) An inspection conducted under Subsection (1) shall be during regular business
- 412 hours and may be announced or unannounced.
- 413 (5) The human services licensee shall make copies of inspection reports available to
- 414 the public upon request.
- 415 (6) The provisions of this section apply to on-site inspections and do not restrict the
- 416 office from contacting family members, neighbors, or other individuals, or from seeking
- 417 information from other sources to determine compliance with the provisions of this chapter.
- 418 Section 12. Section **62A-2-120** is amended to read:
- 419 **62A-2-120. Criminal background checks.**
- 420 (1) (a) An applicant for an initial license or a license renewal under this chapter, except
- 421 for a substance abuse treatment program providing service to adults only, shall submit to the
- 422 department the names and other identifying information, which may include fingerprints, of all
- 423 persons associated with the licensee, as defined in Section 62A-2-101, with direct access to
- 424 children or vulnerable adults. This information for a given person associated with the licensee
- 425 shall be submitted before that person is permitted to have unsupervised direct access to
- 426 children or vulnerable adults.
- 427 (b) The Criminal Investigations and Technical Services Division of the Department of
- 428 Public Safety shall process that information to determine whether the individual has been
- 429 convicted of any crime.
- 430 (c) If an individual has not continuously lived in Utah for the five years immediately

431 proceeding the date of application, the individual shall submit fingerprints for a FBI national
432 criminal history record check. The fingerprints shall be submitted to the FBI through the
433 Criminal Investigations and Technical Services Division.

434 (2) The department shall approve a person for whom identifying information is
435 submitted under Subsection (1) to have unsupervised direct access in the licensee program
436 serving children or vulnerable adults if:

437 (a) the person is found to have no criminal history record; [~~or~~]

438 (b) (i) the only convictions in the person's criminal history record are:

439 (A) misdemeanors not involving any of the offenses described in Subsection (3); or

440 (B) infractions not involving any of the offenses described in Subsection (3); and

441 (ii) the date of the last conviction under Subsection (2)(b)(i) is more than five years
442 before the date of the search[-]; and

443 (c) the person is not listed in the:

444 (i) Licensing Information System of the Division of Child and Family Services created
445 by Section 62A-4a-116.2;

446 (ii) juvenile court records under Subsection 78-3a-320(6); or

447 (iii) the Management Information System created by Section 62A-4a-116.

448 (3) The department [~~may~~] shall not approve a person to have direct access in the
449 licensee program serving children or vulnerable adults if the person has [~~at any time~~] been
450 convicted of an offense, whether a felony, misdemeanor, or infraction within ten years of the
451 date of the search, that was:

452 (a) identified as domestic violence, lewdness, assault, or battery;

453 (b) a violation of any pornography law, including sexual exploitation of a minor;

454 (c) prostitution;

455 (d) identified in Title 76, Utah Criminal Code, as an offense against the family or an
456 offense against the person; or

457 (e) identified in Title 76, Utah Criminal Code, as a sexual offense.

458 (4) The department may not approve a person to have direct access in the licensee
459 program serving children or vulnerable adults if a substantiated finding of a severe type of
460 child abuse or neglect has been made under Section 78-3a-320 or a substantiated finding of
461 abuse, neglect, or exploitation has been made under Section 62A-4a-116.1.

462 [~~(4)~~] (5) (a) If a person for whom identifying information is submitted under
463 Subsection (1) is not approved by the department under Subsection (2), (3), or (4) to have
464 direct access in the licensee program serving children or vulnerable adults, the department shall
465 conduct a comprehensive review of criminal and court records and related circumstances if a
466 person for whom identifying information is submitted under Subsection (1):

467 (i) has pled no contest or guilty or has been convicted at any time of any felony not
468 listed in Subsection (3);

469 (ii) has [~~been~~] pled no contest or guilty or has been convicted within five years of the
470 date of the search of:

471 (A) any misdemeanor not listed in Subsection (3); or

472 (B) any infraction not listed in Subsection (3); [~~or~~]

473 (iii) has been convicted at any time of a protective order or ex parte protective order
474 violation under Section [~~76-5-18~~] 76-5-108 or a similar statute in another state[-];

475 (iv) has been convicted of any felony, misdemeanor, or infraction listed in Subsection
476 (3); or

477 (v) has pled no contest or guilty to any felony or misdemeanor listed in Subsection (3).

478 (b) The comprehensive review under Subsection [~~(4)~~] (5)(a) shall include an
479 examination of:

480 (i) the date of the offense;

481 (ii) the nature and seriousness of the offense;

482 (iii) the circumstances under which the offense occurred;

483 (iv) the age of the offender when the offense was committed;

484 (v) whether the offense was an isolated or repeated incident;

485 (vi) whether the offense directly relates to abuse of a child or vulnerable adult,

486 including:

487 (A) actual or threatened, nonaccidental physical or mental harm;

488 (B) sexual abuse;

489 (C) sexual exploitation; and

490 (D) negligent treatment;

491 (vii) any evidence provided by the person of rehabilitation, counseling, or psychiatric
492 treatment received, or additional academic or vocational schooling completed, by the person;

493 and

494 (viii) any other pertinent information.

495 (c) At the conclusion of the comprehensive review under this Subsection [~~(4)~~] (5), the
496 department shall either approve or not approve the person who is the subject of the review to
497 have direct access to children or vulnerable adults, based upon the determination of the
498 department and the Human Services Licensing Board of whether or not granting approval
499 would likely create a risk of harm to a child or vulnerable adult.

500 (d) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
501 department may make rules, consistent with this chapter, defining procedures for the
502 comprehensive review described in this Subsection [~~(4)~~] (5).

503 [~~(5)~~] (6) (a) Within 30 days after receiving the identifying information for a person
504 under Subsection (1), the department shall give written notice to the person and to the human
505 services licensee or applicant with whom the person is associated of:

506 (i) the department's decision regarding its background screening clearance and
507 findings; and

508 (ii) a listing of any convictions found in the search.

509 (b) With the notice described in Subsection [~~(5)~~] (6)(a), the department shall also give
510 to the person the details of any comprehensive review conducted under Subsection [~~(4)~~] (5).

511 (c) If the notice under Subsection [~~(5)~~] (6)(a) states that the person is not approved to
512 have direct access to children or vulnerable adults, the notice shall further advise the persons to
513 whom the notice is given that either the person or the human services licensee or applicant with
514 whom the person is associated, or both, may, pursuant to Subsection 62A-2-111(2), request a
515 hearing in the department's Office of Administrative Hearings, to challenge the department's
516 decision.

517 (d) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
518 department shall make rules, consistent with this chapter:

519 (i) defining procedures for the challenge of its background screening decision
520 described in this Subsection [~~(5)~~] (6); and

521 (ii) expediting the process for renewal of a license pursuant to the requirements of this
522 section and other applicable sections.

523 Section 13. Section **62A-2-121** is amended to read:

524 **62A-2-121. Access to abuse and neglect information for licensing purposes.**

525 (1) With respect to human services licensees, the department may access only the
526 Licensing Information System of the Division of Child and Family Services created by Section
527 62A-4a-116.2 and juvenile court records under Subsection 78-3a-320[~~(4)~~](6), for the purpose
528 of:

529 (a) determining whether a person associated with a licensee, with direct access to
530 children, is listed in the Licensing Information System or has a substantiated finding by a
531 juvenile court of a severe type of child abuse or neglect under Subsections 78-3a-320(1) and
532 (2); and

533 (b) informing a licensee that a person associated with the licensee is listed in the
534 Licensing Information System or has a substantiated finding by a juvenile court of a severe type
535 of child abuse or neglect under Subsections 78-3a-320(1) and (2).

536 (2) After receiving identifying information for a person under Subsection
537 62A-2-120(1), the department shall process the information for the purposes described in
538 Subsection (1).

539 (3) The department shall adopt rules under Title 63, Chapter 46a, Utah Administrative
540 Rulemaking Act, consistent with this chapter, defining the circumstances under which a person
541 who has direct access to children and who is listed in the Licensing Information System or has
542 a substantiated finding by a court of a severe type of child abuse or neglect under Subsections
543 78-3a-320(1) and (2) may provide services to children.

544 Section 14. Section **62A-15-604** is amended to read:

545 **62A-15-604. Receipt of gift -- Transfer of persons from other institutions.**

546 (1) The division may take and hold by gift, devise, or bequest real and personal
547 property required for the use of the state hospital. With the approval of the governor it may
548 convert that property which is not suitable for its use into money or property that is suitable for
549 that use.

550 (2) The state hospital is authorized to receive from any other institution within the
551 department any person committed to that institution, when a careful evaluation of the treatment
552 needs of the person and of the treatment programs available at the state hospital indicates that
553 the transfer would be in the interest of that person.

554 (3) (a) Notwithstanding the provisions of Subsection 62A-1-111[~~(10)~~](11), the state

555 hospital is authorized to receive gifts, grants, devises, and donations and shall deposit them into
556 an interest-bearing restricted special revenue fund. The state treasurer may invest the fund and
557 all interest is to remain with the fund.

558 (b) Those gifts, grants, devises, donations, and the proceeds thereof shall be used by
559 the superintendent or his designee for the use and benefit of patients at the state hospital.

Legislative Review Note

as of 1-12-04 4:43 PM

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

Office of Legislative Research and General Counsel

State Impact

Provisions of this legislation can be handled within existing budgets.

Individual and Business Impact

Changes in licensing procedures could have some minor fiscal impact on licensees, both positive and negative.

Office of the Legislative Fiscal Analyst