

**PROVISION OF SERVICES FOR PEOPLE
WITH DISABILITIES**

2005 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Rebecca D. Lockhart

Senate Sponsor: Sheldon L. Killpack

LONG TITLE

General Description:

This bill amends the Human Services Code and the Judicial Code to provide for a criminal background check of a direct service worker whose services are paid for with public funds. This bill modifies the responsibilities and authority of the Division of Services for People with Disabilities.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ provides the Department of Human Services with access to records to determine whether a direct service worker is listed in the:
 - Licensing Information System of the Division of Child and Family Services;
 - juvenile court records as having a substantiated finding of severe child abuse or neglect; or
 - statewide database of the Division of Aging and Adult Services as having a substantiated finding of abuse, neglect, or exploitation of a vulnerable adult;
- ▶ provides that the Department of Human Services may inform a direct service worker, or the direct service worker's employer, of the status of a direct service worker in the records described above;
- ▶ amends the responsibilities and authority of the Division of Services for People with Disabilities;
- ▶ grants rulemaking authority to the Division of Services for People with Disabilities;

- ▶ subject to certain exceptions, prohibits the Division of Services for People with Disabilities from disbursing public funds to pay for the services of a direct service worker, unless the direct service worker successfully completes a background check;
- ▶ requires the Office of Licensing in the Department of Human Services to conduct a background check of a direct service worker before the Division of Services for People with Disabilities may disburse public funds to pay for the services of the direct service worker; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a coordination clause.

Utah Code Sections Affected:

AMENDS:

- 62A-2-121**, as last amended by Chapter 86, Laws of Utah 2004
- 62A-2-122**, as enacted by Chapter 300, Laws of Utah 2002
- 62A-4a-116.2**, as last amended by Chapter 86, Laws of Utah 2004
- 62A-5-101**, as last amended by Chapter 332, Laws of Utah 1996
- 62A-5-103**, as last amended by Chapter 332, Laws of Utah 1996
- 63A-9-808.1**, as enacted by Chapter 342, Laws of Utah 2004
- 78-3a-320**, as last amended by Chapter 210, Laws of Utah 2003

ENACTS:

- 62A-5-103.5**, Utah Code Annotated 1953

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

Section 1. Section **62A-2-121** is amended to read:

62A-2-121. Access to abuse and neglect information.

(1) For purposes of this section, "direct service worker" is as defined in Section

62A-5-101.

~~[(1)]~~ (2) With respect to a human services ~~[licensees]~~ licensee, or a direct service worker, the department may access only the Licensing Information System of the Division of Child and Family Services created by Section 62A-4a-116.2 and juvenile court records under Subsection 78-3a-320~~[(4)]~~ (6), for the purpose of:

(a) (i) determining whether a person associated with a licensee, with direct access to children~~[-]~~:

(A) is listed in the Licensing Information System; or

(B) has a substantiated finding by a juvenile court of a severe type of child abuse or neglect under Subsections 78-3a-320(1) and (2); and

~~[(b)]~~ (ii) informing a licensee that a person associated with the licensee:

(A) is listed in the Licensing Information System; or

(B) has a substantiated finding by a juvenile court of a severe type of child abuse or neglect under Subsections 78-3a-320(1) and (2)~~[-]; or~~

(b) (i) determining whether a direct service worker:

(A) is listed in the Licensing Information System; or

(B) has a substantiated finding by a juvenile court of a severe type of child abuse or neglect under Subsections 78-3a-320(1) and (2); and

(ii) informing a direct service worker or the direct service worker's employer that the direct service worker:

(A) is listed in the Licensing Information System; or

(B) has a substantiated finding by a juvenile court of a severe type of child abuse or neglect under Subsections 78-3a-320(1) and (2).

~~[(2)]~~ (3) Notwithstanding Subsection ~~[(1)]~~ (2), the department may access the Division of Child and Family Service's Management Information System under Section 62A-4a-116 for the purpose of licensing and monitoring foster parents.

~~[(3)]~~ (4) After receiving identifying information for a person under Subsection 62A-2-120(1), the department shall process the information for the purposes described in

Subsection ~~(1)~~ (2).

~~(4)~~ (5) The department shall adopt rules under Title 63, Chapter 46a, Utah Administrative Rulemaking Act, consistent with this chapter, defining the circumstances under which a person ~~who has~~ may have direct access or provide services to children ~~and who~~ when:

(a) the person is listed in the Licensing Information System of the Division of Child and Family Services created by Section 62A-4a-116.2; or ~~has~~

(b) juvenile court records show that a court made a substantiated finding ~~by a court of~~ under Section 78-3a-320, that the person committed a severe type of child abuse or neglect ~~[under Subsections 78-3a-320(1) and (2) may provide services to children].~~

Section 2. Section **62A-2-122** is amended to read:

62A-2-122. Access to vulnerable adult abuse and neglect information.

(1) For purposes of this section "direct service worker" is as defined in Section 62A-5-101.

~~(1)~~ (2) With respect to a human services ~~licensee~~ licensee or a direct service worker, the department may access the data base created by Section 62A-3-311.1 for the purpose of:

(a) (i) determining whether a person associated with a licensee, with direct access to vulnerable adults, has a substantiated finding of:

- (A) abuse[;];
- (B) neglect[;]; or
- (C) exploitation; and

~~(b)~~ (ii) informing a licensee that a person associated with the licensee has a substantiated finding of:

- (A) abuse[;];
- (B) neglect[;]; or
- (C) exploitation[;]; or

(b) (i) determining whether a direct service worker has a substantiated finding of:

- (A) abuse;

(B) neglect; or

(C) exploitation; and

(ii) informing a direct service worker or the direct service worker's employer that the direct service worker has a substantiated finding of:

(A) abuse;

(B) neglect; or

(C) exploitation.

~~[(2)]~~ (3) After receiving identifying information for a person under Subsection 62A-2-120(1), the department shall process the information for the purposes described in Subsection ~~[(1)]~~ (2).

~~[(3)]~~ (4) The department shall adopt rules under Title 63, Chapter 46a, Utah Administrative Rulemaking Act, consistent with this chapter and consistent with Section 62A-3-311.1, defining the circumstances under which a person ~~[who has]~~ may have direct access or provide services to vulnerable adults ~~[and who has a substantiated finding of abuse, neglect, or exploitation may provide services to vulnerable adults]~~ when the person is listed in the statewide database of the Division of Aging and Adult Services created by Section 62A-3-311.1 as having a substantiated finding of abuse, neglect, or exploitation.

Section 3. Section **62A-4a-116.2** is amended to read:

62A-4a-116.2. Licensing Information System -- Contents -- Juvenile court finding -- Protected record -- Access -- Criminal penalty.

(1) (a) The division shall maintain a sub-part of the Management Information System established pursuant to Section 62A-4a-116, to be known as the Licensing Information System, to be used ~~[solely]~~:

(i) for licensing purposes[-]; or

(ii) as otherwise specifically provided for by law.

(b) The Licensing Information System shall include only the following information:

~~[(a)]~~ (i) the information described in Subsections 62A-4a-116.1(1)(a) and (6)(b);

~~[(b)]~~ (ii) consented-to supported findings by alleged perpetrators under Subsection

62A-4a-116.1(6)(a)(iii); and

~~[(e)]~~ (iii) the information in the licensing part of the division's Management Information System as of May 6, 2002.

(2) Notwithstanding Subsection (1), the department's access to information in the Management Information System for the licensure and monitoring of foster parents is governed by Sections 62A-4a-116 and 62A-2-121.

(3) (a) ~~[The]~~ Subject to Subsection (3)(b), upon receipt of a finding from the juvenile court under Section 78-3a-320, the division shall:

(i) promptly amend the Licensing Information System~~[-upon receipt of a finding from the juvenile court under Section 78-3a-320;];~~ and ~~[shall]~~

(ii) enter the ~~[same]~~ information in the Management Information System. ~~[However]~~

(b) Notwithstanding Subsection (3)(a), if a finding of unsubstantiated or without merit is appealed, the supported finding shall not be amended until the appeal is concluded.

(4) (a) Information contained in the Licensing Information System is classified as a protected record under Title 63, Chapter 2, Government Records Access and Management Act.

(b) Notwithstanding the disclosure provisions of Title 63, Chapter 2, Government Records Access and Management Act, the information contained in the Licensing Information System may only be used or disclosed as specifically provided in this chapter and Section 62A-2-121 ~~[and]~~.

(c) The information described in Subsection (4)(b) is accessible only to:

~~[(a)]~~ (i) the Office of Licensing within the department~~[-];~~

(A) for licensing purposes ~~[only];~~ or

(B) as otherwise specifically provided for by law;

~~[(b)]~~ (ii) the division~~[-for the following purposes]~~ to:

~~[(i)]~~ (A) ~~[to]~~ screen a person at the request of the Office of the Guardian Ad Litem Director~~[-];~~

(I) at the time that person seeks a paid or voluntary position with the Office of the Guardian Ad Litem Director; and

(II) each year ~~[thereafter that]~~ after the person described in Subsection (4)(c)(ii)(A)(I) remains with that office; and

~~[(i)]~~ (B) ~~[to]~~ respond to a request for information from a person whose name is listed in the Licensing Information System;

~~[(e)]~~ (iii) two persons designated by and within the Department of Health, only for the following purposes:

~~[(i)]~~ (A) licensing a child care program or provider; or

~~[(ii)]~~ (B) determining whether a person associated with a covered health care facility, as defined by the Department of Health by rule, who provides direct care to a child, has a supported finding of severe child abuse or neglect; and

~~[(d)]~~ (iv) the department, as specifically provided in this chapter.

(5) The two persons designated by the Department of Health under Subsection (4)(c)(iii) shall adopt measures to:

(a) protect the security of the Licensing Information System; and

(b) strictly limit access to the Licensing Information System to those persons designated by statute.

(6) All persons designated by statute as having access to information contained in the Licensing Information System shall receive training from the department with respect to:

(a) accessing the Licensing Information System;

(b) maintaining strict security; and

(c) the criminal provisions of Sections 62A-4a-412 and 63-2-801 pertaining to the improper release of information.

(7) (a) No person, except those authorized by this chapter, may request another person to obtain or release any other information in the Licensing Information System to screen for potential perpetrators of child abuse or neglect.

(b) A person who requests information knowing that it is a violation of this Subsection (7) to do so is subject to the criminal penalty described in Sections 62A-4a-412 and 63-2-801.

Section 4. Section **62A-5-101** is amended to read:

62A-5-101. Definitions.

As used in this chapter:

~~[(8)]~~ (1) "Approved provider" means a person ~~[who has been]~~:

(a) approved by the division to provide home-based services; and

(b) who has agreed to be compensated by voucher under Part 4, Home-Based Services.

~~[(1)]~~ (2) "Board" means the Board of Services for People with Disabilities established in accordance with Section 62A-1-105.

~~[(2)]~~ (3) "Developmental center" means the Utah State Developmental Center, established in accordance with Part 2 of this chapter.

(4) "Direct service worker" means a person who provides services to a person with a disability:

(a) when the services are rendered in:

(i) the physical presence of the person with a disability; or

(ii) a location where the person rendering the services has access to the physical presence of the person with a disability; and

(b) under:

(i) a contract with the division; or

(ii) a grant agreement with the division.

~~[(3)]~~ (5) "Director" means the director of the Division of Services for People with Disabilities.

~~[(4)]~~ (6) (a) "Disability" means a severe, chronic disability that:

(i) is attributable to a mental or physical impairment or a combination of mental and physical impairments;

(ii) is likely to continue indefinitely;

(iii) results in a substantial functional limitation in three or more of the following areas of major life activity:

(A) self-care;

(B) receptive and expressive language;

- (C) learning;
- (D) mobility;
- (E) self-direction;
- (F) capacity for independent living; or
- (G) economic self-sufficiency; and

(iv) requires a combination or sequence of special interdisciplinary or generic care, treatment, or other services that may continue throughout life and must be individually planned and coordinated.

(b) For purposes of this chapter mental illness alone does not constitute a "disability."

~~[(5)]~~ (7) "Division" means the Division of Services for People with Disabilities.

(8) "Eligibility" means qualification, based on criteria established by the division in accordance with Subsection 62A-5-102(3), to receive services that are administered by the division.

(9) "Endorsed program" means a facility or program that:

(a) is operated:

(i) by the division; or

(ii) under contract with the division; or

(b) provides services to a person committed to the division under Part 3, Admission to Mental Retardation Facility.

~~[(6)]~~ (10) "Mental retardation" means a significant, subaverage general intellectual functioning, existing concurrently with deficits in adaptive behavior, and manifested during the developmental period as defined in the current edition of the Diagnostic and Statistical Manual of Mental Disorders, published by the American Psychiatric Association.

~~[(7)]~~ (11) "Mental retardation facility" means a residential facility for persons with mental retardation, that receives state or federal funds under Title XIX of the federal Social Security Act, for the purpose of serving the population of mentally retarded persons in this state.

(12) "Public funds" means state or federal funds that are disbursed by the division.

~~[(9)]~~ (13) "Voucher" means a document that:

- (a) is issued by the division to a person with a disability or to his parent or guardian;
- (b) describes the services and supports that may be received with the voucher;
- (c) lists approved providers;
- (d) may be used by a person with a disability or his parent or guardian to purchase services and supports from an approved provider;
- (e) includes a maximum dollar value;
- (f) states the period of time within which the voucher must be used by the person with a disability or his parent or guardian to purchase services and supports; and
- (g) is redeemable by an approved provider for payment by the division up to the dollar value of the voucher.

Section 5. Section **62A-5-103** is amended to read:

62A-5-103. Responsibility and authority of division.

~~[The division has the authority and responsibility to:]~~

(1) For purposes of this section "administer" means to:

~~[(+)]~~ (a) plan[;];

(b) develop[; and];

(c) manage;

(d) monitor; and

(e) conduct certification reviews.

(2) The division has the authority and responsibility to:

(a) administer an array of services and supports for persons with disabilities and their families throughout the state~~[- Those services and supports may include, but are not limited to:];~~

~~[(a) residential services and supports;]~~

~~[(b) day training services and supports, including work activity, sheltered employment, and supported employment;]~~

~~[(c) personal attendant care;]~~

~~[(d) apartment follow-along;]~~

~~[(e) supervised apartment living;]~~

~~[(f) respite care;]~~

~~[(g) specialized foster care;]~~

~~[(h) community skills training;]~~

~~[(i) transportation;]~~

~~[(j) assessment;]~~

~~[(k) family support;]~~

~~[(l) service coordination services, except as limited by Part 4; and]~~

~~[(m) home-based services, provided in accordance with Part 4;]~~

(b) make rules in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, that establish eligibility criteria for the services and supports described in Subsection (2)(a);

(c) consistent with Section 62A-5-206, supervise the programs and facilities of the Developmental Center;

~~[(2)] (d) in order to enhance the quality of life for a person with a disability, establish either directly, or by contract with private, nonprofit organizations, programs of:~~

~~(i) outreach[;];~~

~~(ii) information and referral[;];~~

~~(iii) prevention[;];~~

~~(iv) technical assistance[;]; and~~

~~(v) public awareness[, in an effort to enhance the quality of life for persons with disabilities in this state];~~

~~[(3)] (e) supervise the programs and facilities operated by, or under contract with, the division;~~

~~[(4)-(a)] (f) cooperate with other state, governmental, and private agencies that provide services to [persons with disabilities] a person with a disability;~~

~~[(b)] (g) subject to Subsection (3), ensure that [the] a person with a disability is not deprived of that person's constitutionally protected [liberty interests of persons with disabilities are not deprived] rights without due process procedures designed to minimize the risk of error~~

when ~~[those persons are]~~ a person with a disability is admitted to any structured residential mental retardation facility, including:

(i) the developmental center; and

~~(ii) facilities within the community [such as intermediate care facilities for the mentally retarded. Those services shall include initial and periodic reviews to determine the constitutional appropriateness of the placement. The constitutional due process review process required by this subsection, with regard to intermediate care facilities for the mentally retarded, does not necessitate commitment to the division];~~

~~[(5) contract for services and supports for persons with disabilities;]~~

~~[(6) (h) determine whether to approve [and] providers;~~

(i) monitor and sanction approved providers, as specified in the providers' contract;

~~[(7) (j) [act as a fiscal agent to] subject to Section 62A-5-103.5, receive and disburse public funds;~~

(k) review financial actions of a provider who is a representative payee appointed by the Social Security Administration;

~~[(8) (l) establish standards and rules for the administration and operation of programs [operated] conducted by, or under contract with, the division;~~

~~[(9) (m) approve and monitor division programs to insure compliance with the board's [policies] rules and standards;~~

~~[(10) (n) establish standards and rules necessary to fulfill the division's responsibilities under Parts 2 and 3 of this chapter with regard to mental retardation facilities;~~

~~[(11) (o) [establish] assess and collect [fair and] equitable fees for a person who receives services provided [by the division, and account for those funds] under this chapter;~~

(p) maintain records of, and account for, the funds described in Subsection (2)(o);

(q) establish and apply rules to determine whether to approve, deny, or defer the division's services to a person who is:

(i) applying to receive the services; or

(ii) currently receiving the services;

~~[(12)]~~ (r) in accordance with state law, establish rules:

(i) relating to a mental retardation facility that is an endorsed program; and

(ii) governing the admission, transfer, and discharge of [persons with disabilities to mental retardation facilities, in accordance with state law, with regard to facilities and programs operated by or under contract with the division, and with regard to facilities and programs that serve persons committed to the division under Part 3] a person with a disability;

~~[(13)]~~ (s) manage funds for a person residing in a facility operated by the division[;]:

(i) upon request of a parent or guardian[;] of the person; or

(ii) under administrative or court order; and

~~[(14)]~~ (t) fulfill the responsibilities described in Chapter 5a, Coordinating Council for Persons with Disabilities.

(3) The due process procedures described in Subsection (2)(g):

(a) shall include initial and periodic reviews to determine the constitutional appropriateness of the placement; and

(b) with regard to facilities in the community, do not require commitment to the division.

Section 6. Section **62A-5-103.5** is enacted to read:

62A-5-103.5. Disbursal of public funds -- Background check of a direct service worker.

(1) For purposes of this section:

(a) "directly supervised" means that the person being supervised is under the uninterrupted visual and auditory surveillance of the person doing the supervising; and

(b) "office" is as defined in Section 62A-2-101.

(2) Subject to Subsection (4), public funds may not be disbursed to pay a direct service worker for personal services rendered to a person, unless:

(a) the direct service worker is approved by the office to have direct access and provide services to children or vulnerable adults pursuant to Section 62A-2-120;

(b) (i) during the time that the direct service worker renders the services described in this Subsection (2), the direct service worker who renders the services is directly supervised by a

direct service worker who is approved by the office to have direct access and provide services to children or vulnerable adults pursuant to Section 62A-2-120;

(ii) the direct service worker who renders the services described in this Subsection (2) has submitted the information required for a background check pursuant to Section 62A-2-120; and

(iii) the office has not determined whether to approve the direct service worker described in Subsection (2)(b)(ii) to have direct access and provide services to children or vulnerable adults; or

(c) the direct service worker:

(i) (A) is a direct ancestor or descendent of the person to whom the services are rendered, but is not the person's parent;

(B) is the aunt, uncle, or sibling of the person to whom the services are rendered; or

(C) (I) has submitted the information required for a background check pursuant to Section 62A-2-120; and

(II) the office has not determined whether to approve the direct service worker to have direct access and provide services to children or vulnerable adults; and

(ii) is not listed in:

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

(B) the statewide database of the Division of Aging and Adult Services created by Section 62A-3-311.1 as having a substantiated finding of abuse, neglect, or exploitation; or

(C) juvenile court records as having a substantiated finding under Section 78-3a-320 that the direct service worker committed a severe type of child abuse or neglect.

(3) For purposes of Subsection (2), the office shall conduct a background check of a direct service worker:

(a) except as provided in Subsection (2)(b) or (c), before public funds are disbursed to pay the direct service worker for the personal services described in Subsection (2); and

(b) using the same procedures established for a background check of an applicant for an

initial license under Section 62A-2-120.

(4) The background check and the approval determination described in this section shall be conducted for a direct service worker on an annual basis.

Section 7. Section **63A-9-808.1** is amended to read:

63A-9-808.1. Transfer of information technology equipment for persons with a disability.

(1) As used in this section, "[~~persons~~] person with a disability" means [~~persons~~] a person who [~~meet~~] meets the criteria in Subsections 62A-5-101[~~(4)~~](6)(a)(i) and (ii).

(2) The division may transfer information technology equipment, or authorize the transfer of technology equipment by an agency, to a nonprofit entity for distribution to and use by [~~persons~~] a person with a disability.

(3) Interagency transfers and sales of surplus property to state and local agencies within the 30-day period under Section 63A-9-808 shall have priority over transfers under Subsection (2).

(4) The division shall annually report to the Division of Services for People With Disabilities the:

- (a) names of the nonprofit entities receiving transfers under Subsection (2); and [~~the~~]
- (b) types and amounts of equipment received.

Section 8. Section **78-3a-320** is amended to read:

78-3a-320. Additional finding at adjudication hearing -- Petition -- Court records.

(1) Upon the filing with the court of a petition under Section 78-3a-305 by the Division of Child and Family Services or any interested person informing the court, among other things, that the division has made a supported finding of one or more of the severe types of child abuse or neglect described in Subsection 62A-4a-116.1(2), the court shall:

- (a) make a finding of substantiated, unsubstantiated, or without merit;
 - (b) include the finding described in Subsection (1)(a) in a written order; and
 - (c) deliver a certified copy of the order described in Subsection (1)(b) to the division.
- (2) The judicial finding under Subsection (1) shall be made:

(a) as part of ~~[or]~~ the adjudication hearing;

~~(b)~~ at the conclusion of the adjudication hearing; or

~~[(b)]~~ ~~(c)~~ as part of a court order entered pursuant to a written stipulation of the parties.

(3) ~~(a)~~ Any person described in Subsection 62A-4a-116.6(1) may at any time file with the court a petition for removal of the person's name from the Licensing Information System.

~~(b)~~ At the conclusion of the hearing on the petition, the court shall:

~~[(a)]~~ ~~(i)~~ make a finding of substantiated, unsubstantiated, or without merit;

~~[(b)]~~ ~~(ii)~~ include the finding described in Subsection (1)(a) in a written order; and

~~[(c)]~~ ~~(iii)~~ deliver a certified copy of the order described in Subsection (1)(b) to the division.

(4) A proceeding for adjudication of a supported finding of a nonsevere type of abuse or neglect under this section may be joined in the juvenile court with an adjudication of a severe type of abuse or neglect.

(5) If a person whose name appears on the Licensing Information system prior to May 6, 2002 files a petition during the time that an alleged perpetrator's application for clearance to work with children or vulnerable adults is pending, the court shall hear the matter and enter a final decision no later than 60 days after the filing of the petition.

(6) For the purposes of licensing under Sections 26-21-9.5, 26-39-105.5, 62A-1-118, and for the purposes described in Section 62A-2-121:

(a) the court shall make available records of its findings under Subsections (1) and (2) for licensing purposes, only to those with statutory authority to access also the Licensing Information System created under Section 62A-4a-116.2; and

(b) any appellate court shall make available court records of appeals from juvenile court decisions under Subsections (1), (2), (3), and (4) for licensing purposes, only to those with statutory authority to access also the Licensing Information System.

Section 9. Coordinating H.B. 79 with H.B. 64.

If this H.B. 79 and H.B. 64, Provisions of Services for People with Disabilities, both pass, it is the intent of the Legislature that the Office of Legislative Research and General Counsel

shall prepare the Utah Code database for publication as follows:

(1) combine the amendments made by this bill and H.B. 64 to Section 62A-2-121 so that Section 62A-2-121 reads as follows:

"62A-2-121. Access to abuse and neglect information.

(1) For purposes of this section:

(a) "direct service worker" is as defined in Section 62A-5-101; and

(b) "personal care attendant" is as defined in Section 62A-3-101.

[~~(1)~~] (2) With respect to a human services [~~licensees~~] licensee, a direct service worker, or a personal care attendant, the department may access only the Licensing Information System of the Division of Child and Family Services created by Section 62A-4a-116.2 and juvenile court records under Subsection 78-3a-320[~~(4)~~](6), for the purpose of:

(a) (i) determining whether a person associated with a licensee, with direct access to children[;]:

(A) is listed in the Licensing Information System; or

(B) has a substantiated finding by a juvenile court of a severe type of child abuse or neglect under Subsections 78-3a-320(1) and (2); and

[~~(b)~~] (ii) informing a licensee that a person associated with the licensee;

(A) is listed in the Licensing Information System; or

(B) has a substantiated finding by a juvenile court of a severe type of child abuse or neglect under Subsections 78-3a-320(1) and (2)[;];

(b) (i) determining whether a direct service worker:

(A) is listed in the Licensing Information System; or

(B) has a substantiated finding by a juvenile court of a severe type of child abuse or neglect under Subsections 78-3a-320(1) and (2); and

(ii) informing a direct service worker or the direct service worker's employer that the direct service worker:

(A) is listed in the Licensing Information System; or

(B) has a substantiated finding by a juvenile court of a severe type of child abuse or

neglect under Subsections 78-3a-320(1) and (2); or

(c) (i) determining whether a personal care attendant:

(A) is listed in the Licensing Information System; or

(B) has a substantiated finding by a juvenile court of a severe type of child abuse or

neglect under Subsections 78-3a-320(1) and (2); and

(ii) informing a person described in Subsections 62A-3-101(9)(a)(i) through (iv) that a personal care attendant:

(A) is listed in the Licensing Information System; or

(B) has a substantiated finding by a juvenile court of a severe type of child abuse or

neglect under Subsections 78-3a-320(1) and (2).

~~[(2)]~~ (3) Notwithstanding Subsection ~~[(1)]~~ (2), the department may access the Division of Child and Family Service's Management Information System under Section 62A-4a-116 for the purpose of licensing and monitoring foster parents.

~~[(3)]~~ (4) After receiving identifying information for a person under Subsection 62A-2-120(1), the department shall process the information for the purposes described in Subsection ~~[(1)]~~ (2).

~~[(4)]~~ (5) The department shall adopt rules under Title 63, Chapter 46a, Utah Administrative Rulemaking Act, consistent with this chapter, defining the circumstances under which a person ~~[who has]~~ may have direct access or provide services to children ~~[and who]~~ when:

(a) the person is listed in the Licensing Information System of the Division of Child and Family Services created by Section 62A-4a-116.2; or [has]

(b) juvenile court records show that a court made a substantiated finding [by a court of] under Section 78-3a-320, that the person committed a severe type of child abuse or neglect [under Subsections 78-3a-320(1) and (2) may provide services to children]."; and

(2) combine the amendments made by this bill and H.B. 64 to Section 62A-2-122 so that Section 62A-2-122 reads as follows:

"62A-2-122. Access to vulnerable adult abuse and neglect information.

(1) For purposes of this section:

(a) "direct service worker" is as defined in Section 62A-5-101; and

(b) "personal care attendant" is as defined in Section 62A-3-101.

~~[(+)]~~ (2) With respect to a human services [licensees] licensee, a direct service worker, or a personal care attendant, the department may access the data base created by Section 62A-3-311.1 for the purpose of:

(a) (i) determining whether a person associated with a licensee, with direct access to vulnerable adults, has a substantiated finding of:

(A) abuse[;];

(B) neglect[;]; or

(C) exploitation; and

~~[(b)]~~ (ii) informing a licensee that a person associated with the licensee has a substantiated finding of:

(A) abuse[;];

(B) neglect[;]; or

(C) exploitation[;];

(b) (i) determining whether a direct service worker has a substantiated finding of:

(A) abuse;

(B) neglect; or

(C) exploitation; and

(ii) informing a direct service worker or the direct service worker's employer that the direct service worker has a substantiated finding of:

(A) abuse;

(B) neglect; or

(C) exploitation; or

(c) (i) determining whether a personal care attendant has a substantiated finding of:

(A) abuse;

(B) neglect; or

(C) exploitation; and

(ii) informing a person described in Subsections 62A-3-101(9)(a)(i) through (iv) that a personal care attendant has a substantiated finding of:

(A) abuse;

(B) neglect; or

(C) exploitation.

~~[(2)]~~ (3) After receiving identifying information for a person under Subsection 62A-2-120(1), the department shall process the information for the purposes described in Subsection ~~[(+)]~~ (2).

~~[(3)]~~ (4) The department shall adopt rules under Title 63, Chapter 46a, Utah Administrative Rulemaking Act, consistent with this chapter and consistent with Section 62A-3-311.1, defining the circumstances under which a person ~~[who has]~~ may have direct access or provide services to vulnerable adults ~~[and who has a substantiated finding of abuse, neglect, or exploitation may provide services to vulnerable adults]~~ when the person is listed in the statewide database of the Division of Aging and Adult Services created by Section 62A-3-311.1 as having a substantiated finding of abuse, neglect, or exploitation."

Section 10. **Coordinating H.B. 79 with S.B. 107.**

If this H.B. 79 and S.B. 107, Licensure and Regulation of Programs and Facilities, both pass, it is the intent of the Legislature that the Office of Legislative Research and General Counsel shall prepare the Utah Code database for publication as follows:

(1) combine the amendments made by this bill and S.B. 107 to Section 62A-2-121 so that Section 62A-2-121 reads as follows:

"62A-2-121. Access to abuse and neglect information.

(1) For purposes of this section "direct service worker" is as defined in Section 62A-5-101.

~~[(+)]~~ (2) With respect to ~~[human services licensees]~~ a licensee, a certified local inspector applicant, or a direct service worker, the department may access only the Licensing Information System of the Division of Child and Family Services created by Section 62A-4a-116.2 and

juvenile court records under Subsection 78-3a-320[~~(4)~~] (6), for the purpose of:

(a) (i) determining whether a person associated with a licensee, with direct access to children[~~;~~]:

(A) is listed in the Licensing Information System; or

(B) has a substantiated finding by a juvenile court of a severe type of child abuse or neglect under Subsections 78-3a-320(1) and (2); and

~~(b)~~ (ii) informing a licensee that a person associated with the licensee:

(A) is listed in the Licensing Information System; or

(B) has a substantiated finding by a juvenile court of a severe type of child abuse or neglect under Subsections 78-3a-320(1) and (2)[~~;~~];

(b) (i) determining whether a certified local inspector applicant:

(A) is listed in the Licensing Information System; or

(B) has a substantiated finding by a juvenile court of a severe type of child abuse or neglect under Subsections 78-3a-320(1) and (2); and

(ii) informing a local government that a certified local inspector applicant:

(A) is listed in the Licensing Information System; or

(B) has a substantiated finding by a juvenile court of a severe type of child abuse or neglect under Subsections 78-3a-320(1) and (2);

(c) (i) determining whether a direct service worker:

(A) is listed in the Licensing Information System; or

(B) has a substantiated finding by a juvenile court of a severe type of child abuse or neglect under Subsections 78-3a-320(1) and (2); and

(ii) informing a direct service worker or the direct service worker's employer that the direct service worker:

(A) is listed in the Licensing Information System; or

(B) has a substantiated finding by a juvenile court of a severe type of child abuse or neglect under Subsections 78-3a-320(1) and (2).

~~(2)~~ (3) Notwithstanding Subsection [~~(1)~~] (2), the department may access the Division of

Child and Family Service's Management Information System under Section 62A-4a-116 for the purpose of licensing and monitoring foster parents.

~~[(3)]~~ (4) After receiving identifying information for a person under Subsection 62A-2-120(1), the department shall process the information for the purposes described in Subsection ~~[(4)]~~ (2).

~~[(4)]~~ (5) The department shall adopt rules under Title 63, Chapter 46a, Utah Administrative Rulemaking Act, consistent with this chapter, defining the circumstances under which a person ~~[who has]~~ may have direct access or provide services to children ~~[and who]~~ when:

(a) the person is listed in the Licensing Information System of the Division of Child and Family Services created by Section 62A-4a-116.2; or [has]

(b) juvenile court records show that a court made a substantiated finding [by a court of] under Section 78-3a-320, that the person committed a severe type of child abuse or neglect [under Subsections 78-3a-320(1) and (2) may provide services to children]."; and

(2) combine the amendments made by this bill and S.B. 107 to Section 62A-2-122 so that Section 62A-2-122 reads as follows:

"62A-2-122. Access to vulnerable adult abuse and neglect information.

(1) For purposes of this section "direct service worker" is as defined in Section 62A-5-101.

~~[(4)]~~ (2) With respect to ~~[human services licensees]~~ a licensee, a direct service worker, or a certified local inspector applicant, the department may access the data base created by Section 62A-3-311.1 for the purpose of:

(a) (i) determining whether a person associated with a licensee, with direct access to vulnerable adults, has a substantiated finding of:

- (A) abuse[;];
- (B) neglect[;]; or
- (C) exploitation; and

~~[(b)]~~ (ii) informing a licensee that a person associated with the licensee has a

substantiated finding of:

- (A) abuse[;];
- (B) neglect[;]; or
- (C) exploitation[;];

(b) (i) determining whether a direct service worker has a substantiated finding of:

- (A) abuse;
- (B) neglect; or
- (C) exploitation; and

(ii) informing a direct service worker or the direct service worker's employer that the

direct service worker has a substantiated finding of:

- (A) abuse;
- (B) neglect; or
- (C) exploitation; or

(c) (i) determining whether a certified local inspector applicant has a substantiated

finding of:

- (A) abuse;
- (B) neglect; or
- (C) exploitation; and

(ii) informing a local government that a certified local inspector applicant has a

substantiated finding of:

- (A) abuse;
- (B) neglect; or
- (C) exploitation.

~~[(2)]~~ (3) After receiving identifying information for a person under Subsection 62A-2-120(1), the department shall process the information for the purposes described in Subsection ~~[(1)]~~ (2).

~~[(3)]~~ (4) The department shall adopt rules under Title 63, Chapter 46a, Utah Administrative Rulemaking Act, consistent with this chapter and consistent with Section

62A-3-311.1, defining the circumstances under which a person [~~who has~~] may have direct access or provide services to vulnerable adults [~~and who has a substantiated finding of abuse, neglect, or exploitation may provide services to vulnerable adults~~] when the person is listed in the statewide database of the Division of Aging and Adult Services created by Section 62A-3-311.1 as having a substantiated finding of abuse, neglect, or exploitation."