

**LICENSURE AND REGULATION OF  
PROGRAMS AND FACILITIES**

2005 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Thomas V. Hatch**

House Sponsor: Bradley G. Last

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**LONG TITLE**

**General Description:**

This bill amends the licensing provisions of Title 62A, Chapter 2, Licensure of Programs and Facilities, and related provisions.

**Highlighted Provisions:**

This bill:

- ▶ modifies and enacts defined terms;
- ▶ amends the responsibilities and rulemaking duties of the Office of Licensing;
- ▶ lists grounds for refusing to renew a license;
- ▶ provides requirements for a human services program to obtain approval of educational service and funding plans;
- ▶ imposes requirements for licensing and for making rules regarding the licensing of residential treatment programs;
- ▶ requires applicants for a license to operate a residential treatment program to provide a description of the program and notice of intent to operate a residential treatment program to the governing body of the city or county where the program intends to operate;
- ▶ provides that a local government may request that the office designate a local government employee as a certified local inspector;
- ▶ describes the powers of, and restrictions on, a certified local inspector;
- ▶ describes the responsibilities of a local government relating to a certified local inspector;

- ▶ provides that records received by the Office of Licensing through reports and inspections shall be classified in accordance with the Government Records and Access Management Act;
- ▶ provides that Title 62A, Chapter 2, Licensure of Programs and Facilities, does not apply to boarding schools or certain licensed mental health professionals;
- ▶ provides that the Office of Licensing may place conditions on licenses;
- ▶ lists standards for determining whether to reissue a revoked license;
- ▶ provides that a revoked license may not be reissued until at least one year after final notice of the revocation is served;
- ▶ provides that a license may be suspended for up to one year;
- ▶ provides that full faith and credit be extended to an Indian tribe's licensure of tribal foster homes;
- ▶ permits records to be copied during administrative inspections;
- ▶ provides standards for:
  - conducting and reviewing background checks; and
  - granting persons direct access to children and vulnerable adults;
- ▶ provides that substance abuse treatment programs that provide services to adults only, are not required to submit identifying information to the Office of Licensing for criminal background checks;
- ▶ provides the Department of Human Services with access to records to conduct background checks;
- ▶ provides that the Department of Human Services may inform a local government that a certified local inspector applicant is listed in those records;
- ▶ provides that a person who is a representative of private residential treatment facilities shall be included on the Board of Child and Family Services; and
- ▶ makes technical changes.

**Monies Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

**AMENDS:**

- 62A-2-101**, as last amended by Chapter 22, Laws of Utah 2003
- 62A-2-105**, as last amended by Chapter 119, Laws of Utah 2003
- 62A-2-106**, as last amended by Chapter 119, Laws of Utah 2003
- 62A-2-108**, as last amended by Chapter 358, Laws of Utah 1998
- 62A-2-108.1**, as last amended by Chapter 42, Laws of Utah 1997
- 62A-2-109**, as last amended by Chapter 358, Laws of Utah 1998
- 62A-2-110**, as last amended by Chapter 358, Laws of Utah 1998
- 62A-2-111**, as last amended by Chapter 358, Laws of Utah 1998
- 62A-2-112**, as last amended by Chapter 358, Laws of Utah 1998
- 62A-2-113**, as last amended by Chapter 358, Laws of Utah 1998
- 62A-2-116**, as last amended by Chapter 358, Laws of Utah 1998
- 62A-2-117**, as enacted by Chapter 358, Laws of Utah 1998
- 62A-2-118**, as enacted by Chapter 358, Laws of Utah 1998
- 62A-2-120**, as last amended by Chapter 300, Laws of Utah 2002
- 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-102**, as last amended by Chapter 246, Laws of Utah 2003
- 62A-4a-116.2**, as last amended by Chapter 86, Laws of Utah 2004
- 78-3a-320**, as last amended by Chapter 210, Laws of Utah 2003

**ENACTS:**

- 62A-2-108.2**, Utah Code Annotated 1953
- 62A-2-108.3**, Utah Code Annotated 1953

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

Section 1. Section **62A-2-101** is amended to read:

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

As used in this chapter:

(1) "Adult day care" means [~~continuous~~] nonresidential care and supervision:

(a) for three or more adults for at least four but less than 24 hours a day[;]; and

(b) that meets the needs of functionally impaired adults through a comprehensive program that provides a variety of health, social, recreational, and related support services in a protective setting.

(2) (a) "Boarding school" means a private school that:

(i) uses a regionally accredited education program;

(ii) provides a residence to the school's students:

(A) for the purpose of enabling the school's students to attend classes at the school; and

(B) as an ancillary service to educating the students at the school;

(iii) has the primary purpose of providing the school's students with an education, as defined in Subsection (2)(b)(i); and

(iv) (A) does not provide the treatment or services described in Subsection (27)(a); or

(B) provides the treatment or services described in Subsection (27)(a) on a limited basis, as described in Subsection (2)(b)(ii).

(b) (i) For purposes of Subsection (2)(a)(iii), "education" means a course of study for one or more of grades kindergarten through 12th grade.

(ii) For purposes of Subsection (2)(a)(iv)(B), a private school provides the treatment or services described in Subsection (27)(a) on a limited basis if:

(A) the treatment or services described in Subsection (27)(a) are provided only as an incidental service to a student; and

(B) the school does not:

(I) specifically solicit a student for the purpose of providing the treatment or services described in Subsection (27)(a); or

(II) have a primary purpose of providing the services described in Subsection (27)(a).

(c) "Boarding school" does not include a therapeutic school.

(3) "Certified local inspector" means a person certified by the office, pursuant to Subsection 62A-2-108.3(1), to conduct an inspection described in Subsection 62A-2-108.3(4).

(4) "Certified local inspector applicant" means a person for which designation as a certified local inspector is sought under Section 62A-2-108.3.

~~[(2)]~~ (5) "Child" means a person under 18 years of age.

~~[(3)]~~ (6) "Child placing" means receiving, accepting, or providing custody or care for any child ~~[under 18 years of age]~~, temporarily or permanently, for the purpose of:

- (a) finding a person to adopt the child;
- (b) placing the child ~~[temporarily or permanently]~~ in a home for adoption; or
- (c) foster home placement.

~~[(4)]~~ (7) "Client" means an individual who receives or has received services from a ~~[human services] licensee [under this chapter].~~

~~[(5)]~~ (8) "Day treatment" means specialized treatment ~~[for]~~ that is provided to:

- (a) a client less than 24 hours a day ~~[for]~~; and
- (b) four or more persons who:
  - (i) are unrelated to the owner or provider; and ~~[who]~~
  - (ii) have emotional, psychological, developmental, physical, or behavioral dysfunctions, impairments, or chemical dependencies. ~~[Day treatment is provided in lieu of, or in coordination with, a more restrictive residential or inpatient environment or service.]~~

~~[(6)]~~ (9) "Department" means the Department of Human Services.

~~[(7)]~~ (10) "Direct access" means that an individual has, or likely will have, contact with or access to a child or vulnerable adult that provides the individual with an opportunity for personal communication or touch.

~~[(8)]~~ (11) "Director" means the director of the Office of Licensing.

(12) "Domestic violence" is as defined in Section 77-36-1.

~~[(9)]~~ (13) "Domestic violence treatment program" means a nonresidential program designed to provide psychological treatment and educational services to perpetrators and victims

of domestic violence.

~~[(10)]~~ (14) "Elder adult" means a person 65 years of age or older.

~~[(11)]~~ (15) "Executive director" means the executive director of the department.

(16) "Foster home" means a temporary residential living environment for the care of:

(a) fewer than four foster children in the home of a licensed or certified foster parent; or

(b) four or more children in the home of a licensed or certified foster parent if the

children are siblings.

~~[(12)]~~ (17) (a) "Human services [~~licensee~~ or "~~licensee~~"] program" means a:

(i) foster home;

(ii) therapeutic school;

(iii) youth program[;];

(iv) resource family home[;]; or [a]

(v) facility or program[~~, licensed by the department,~~] that provides [care;];

(A) secure treatment[;];

(B) inpatient treatment[;];

(C) residential treatment[;];

(D) residential support[;];

(E) adult day care[;];

(F) day treatment[;];

(G) outpatient treatment[;];

(H) domestic violence treatment[;];

(I) child placing services[~~, or~~];

(J) social detoxification[;]; or

(K) any other human services that are required by contract with the department to be

licensed with the department.

(b) "Human services program" does not include a boarding school.

(18) "Licensee" means a person or human services program licensed by the office.

~~[(13)]~~ (19) "Licensing board" means the Human Services Licensing Board.

(20) "Local government" means a:

(a) city; or

(b) county.

~~[(14)]~~ (21) "Minor" has the same meaning as "child."

~~[(15)]~~ (22) "Office" means the Office of Licensing within the Department of Human Services.

~~[(16)]~~ (23) "Outpatient treatment" means individual, family, or group therapy or counseling designed to improve and enhance social or psychological functioning for those whose physical and emotional status allows them to continue functioning in their usual living environment.

~~[(17)]~~ (24) (a) "Person associated with the licensee" means a person:

(i) affiliated with a licensee as an owner, director, member of the governing body, employee, agent, provider of care, or volunteer ~~[of a human services licensee]; or [of an applicant]~~

(ii) applying to become affiliated with a licensee in any capacity listed under Subsection (24)(a)(i).

(b) Notwithstanding Subsection ~~[(17)]~~ (24)(a), "person associated with the licensee" does not include an individual serving on ~~[either of]~~ the following bodies unless that individual has direct access to children or vulnerable adults:

(i) a local mental health authority under Section 17-43-301 ~~[or];~~

(ii) a local substance abuse authority under Section 17-43-201; or

~~[(ii)]~~ (iii) a board of an organization operating under a contract to provide [comprehensive]:

(A) mental health or substance abuse programs; or

(B) services for the local mental health authority or substance abuse authority.

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

(25) "Regular business hours" means:

(a) the hours during which services of any kind are provided to a client; or

(b) the hours during which a client is present at the facility of a licensee.

~~[(18)] (26) (a)~~ "Residential support" means arranging for or providing the necessities of life as a protective service to individuals or families who are disabled or who are experiencing a dislocation or emergency ~~[which]~~ that prevents them from providing these services for themselves or their families. ~~[Treatment is not a necessary component of residential support.]~~

(b) "Residential support" includes providing a supervised living environment for persons with:

(i) dysfunctions or impairments that are:

(A) emotional;

(B) psychological;

(C) developmental; or

(D) behavioral; or

(ii) chemical dependencies.

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

(d) "Residential support" does not include residential services that are performed:

(i) exclusively under contract with the Division of Services for People with Disabilities;

and

(ii) in a facility that serves less than four individuals.

~~[(19)] (27) (a)~~ "Residential treatment" means a 24-hour group living environment for four or more individuals unrelated to the owner or provider that offers room or board and specialized treatment, behavior modification, rehabilitation, discipline, emotional growth, or habilitation services for persons with emotional, psychological, developmental, or behavioral dysfunctions, impairments, or chemical dependencies. ~~[In residential treatment, individuals are assisted in acquiring the social and behavioral skills necessary for living independently in the community.]~~

(b) "Residential treatment" does not include a:

(i) boarding school; or



(ii) foster home.

(28) "Residential treatment program" means a human services program that provides:

(a) residential treatment; or

(b) secure treatment.

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

~~[(21)]~~ (29) (a) "Secure treatment" means 24-hour specialized residential treatment or care for persons whose current functioning is such that they cannot live independently or in a less restrictive environment.

(b) "Secure treatment" differs from residential treatment to the extent that it requires intensive supervision, locked doors, and other security measures [which] that are imposed on residents with neither their consent nor control.

~~[(22)]~~ (30) "Social detoxification" means short-term residential services for persons who are [intoxicated] experiencing or have recently experienced drug or alcohol intoxication, that are provided outside of a health care facility licensed under Title 26, Chapter 21, Health Care Facility [Licensure] Licensing and Inspection Act, and that include:

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

(b) specialized rehabilitation to acquire sobriety; and

(c) aftercare services.

(31) "Substance abuse treatment program" means a program:

(a) designed to provide:

(i) specialized drug or alcohol treatment;

(ii) rehabilitation; or

(iii) habilitation services; and

(b) that provides the treatment or services described in Subsection (31)(a) to persons with:

(i) a diagnosed substance abuse disorder; or

(ii) chemical dependency disorder.

(32) "Therapeutic school" means a residential group living facility:

(a) for four or more individuals that are not related to:

(i) the owner of the facility; or

(ii) the primary service provider of the facility;

(b) that serves students who have a history of failing to function:

(i) at home;

(ii) in a public school; or

(iii) in a nonresidential private school; and

(c) that offers:

(i) room and board; and

(ii) an academic education integrated with:

(A) specialized structure and supervision; or

(B) services or treatment related to:

(I) a disability;

(II) emotional development;

(III) behavioral development;

(IV) familial development; or

(V) social development.

~~[(23)]~~ (33) "Unrelated persons" means persons other than parents, legal guardians, grandparents, brothers, sisters, uncles, or aunts.

~~[(24)]~~ (34) "Vulnerable adult" means an elder adult or an adult who has a temporary or permanent mental or physical impairment that substantially affects the person's ability to:

(a) provide personal protection;

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

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

(d) carry out the activities of daily living;

(e) manage the adult's own resources; or

(f) comprehend the nature and consequences of remaining in a situation of abuse,

neglect, or exploitation.

[(25)] (35) (a) "Youth program" means a nonresidential program[;] designed to provide behavioral, substance abuse, or mental health services to minors that:

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

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

Section 2. Section **62A-2-105** is amended to read:

**62A-2-105. Licensing board responsibilities.**

(1) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the licensing board shall review and approve rules regarding:

- (a) approving, denying, suspending, and revoking licenses [~~for human services licensees and facilities~~];
- (b) conditional licenses, variances from department rule, and exclusions;
- (c) the protection of the basic health and safety of clients;
- (d) licensing of all persons and human services [~~licensees~~] programs that are required to be licensed under this chapter; and
- (e) notification to providers and subproviders of rights and responsibilities including who to contact within the department when filing a complaint against a licensee or [facility] human services program, and the responsibility of the department to follow up once contacted.

(2) The licensing board shall:

- (a) define information that shall be submitted to the department with an application for a

license;

(b) review and approve fees, in accordance with Section 63-38-3.2, for licenses issued under this chapter;

(c) represent the community and ~~[the human services]~~ licensees; and

(d) advise the department as requested, concerning enforcement of rules established under this chapter.

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

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

~~[The office shall:]~~

(1) Subject to the requirements of federal and state law, the office shall:

(a) make rules in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, to establish:

~~[(a)]~~ (i) except as provided in Subsection (1)(a)(ii), basic health and safety standards for licensees, [which] that shall be limited to [the following]:

~~[(i)]~~ (A) fire safety;

~~[(ii)]~~ (B) food safety;

~~[(iii)]~~ (C) sanitation;

~~[(iv)]~~ (D) infectious disease control;

~~[(v)]~~ (E) safety of the:

(I) physical [plant;] facility and grounds; and

(II) area and community surrounding the physical facility;

~~[(vi)]~~ (F) transportation safety;

~~[(vii)]~~ (G) emergency preparedness and response;

~~[(viii)]~~ (H) the administration of medical standards and procedures, consistent with the related provisions of this title; ~~[and]~~

~~[(ix)]~~ (I) [consumer] staff and client safety and protection;

(J) the administration and maintenance of client and service records;

(K) staff qualifications and training, including standards for permitting experience to be

substituted for education, unless prohibited by law;

(L) staff to client ratios; and

(M) access to firearms;

(ii) basic health and safety standards for therapeutic schools, that shall be limited to:

(A) fire safety, except that the standards are limited to those required by law or rule

under Title 53, Chapter 7, Part 2, Fire Prevention and Fireworks Act;

(B) food safety;

(C) sanitation;

(D) infectious disease control, except that the standards are limited to:

(I) those required by law or rule under Title 26, Utah Health Code or Title 26A, Local Health Authorities; and

(II) requiring a separate room for clients who are sick;

(E) safety of the physical facility and grounds, except that the standards are limited to those required by law or rule under Title 53, Chapter 7, Part 2, Fire Prevention and Fireworks Act;

(F) transportation safety;

(G) emergency preparedness and response;

(H) access to appropriate medical care, including:

(I) subject to the requirements of law, designation of a person who is authorized to dispense medication; and

(II) storing, tracking, and securing medication;

(I) staff and client safety and protection that permits the school to provide for the direct supervision of clients at all times;

(J) the administration and maintenance of client and service records;

(K) staff qualifications and training, including standards for permitting experience to be substituted for education, unless prohibited by law;

(L) staff to client ratios; and

(M) access to firearms;

(iii) procedures and standards for permitting a licensee to:

(A) provide in the same facility and under the same conditions as children, residential treatment services to a person 18 years old or older who:

(I) begins to reside at the licensee's residential treatment facility before the person's 18th birthday;

(II) has resided at the licensee's residential treatment facility continuously since the time described in Subsection (1)(a)(iii)(A)(I);

(III) has not completed the course of treatment for which the person began residing at the licensee's residential treatment facility; and

(IV) voluntarily consents to complete the course of treatment described in Subsection (1)(a)(iii)(A)(III); or

(B) (I) provide residential treatment services to a child who is:

(Aa) 12 years old or older; and

(Bb) under the custody of the Division of Juvenile Justice Services; and

(II) provide, in the same facility as a child described in Subsection (1)(a)(iii)(B)(I), residential treatment services to a person who is:

(Aa) at least 18 years old, but younger than 21 years old; and

(Bb) under the custody of the Division of Juvenile Justice Services;

~~[(b)]~~ (iv) minimum administration and financial requirements for licensees; and

~~[(c)]~~ (v) guidelines for variances from rules established under this Subsection (1);

~~[(2)]~~ (b) enforce rules~~[(a)]~~ approved by the licensing board;

~~[(b) in effect on January 1, 1998, that apply to a service or program for which a licensee is not under contract with a division listed in Section 62A-1-105 to provide until rules are established pursuant to Subsection (2)(c); and]~~

~~[(c) established after July 1, 1999, by a policymaking board created by Section 62A-1-105 which:]~~

~~[(i) shall be limited to:]~~

~~[(A) the administration and maintenance of client and service records;]~~

~~[(B) staff qualifications; and]~~

~~[(C) staff to client ratios; and]~~

~~[(ii) may only apply to a service or program for which a licensee is not under contract with a division listed in Section 62A-1-105 to provide;]~~

~~[(3)] (c) issue licenses in accordance with this chapter;~~

~~[(4)] (d) conduct surveys and inspections of licensees and facilities in accordance with Section 62A-2-118;~~

~~[(5)] (e) collect licensure fees;~~

~~[(6)] (f) provide necessary administrative support to the licensing board;~~

~~[(7) provide notification to licensee or facility, including providers and subproviders, of]~~

~~(g) notify licensees of the name of a person within the department to contact when filing a complaint;~~

~~[(8)] (h) investigate complaints regarding any licensee or [facility] human services program;~~

~~[(9)] (i) have access to all records, correspondence, and financial data required to be maintained by a licensee [or facility];~~

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

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

(2) In establishing rules under Subsection (1)(a)(ii)(G), the office shall require a licensee to establish and comply with an emergency response plan that requires clients and staff to:

(a) immediately report to law enforcement any significant criminal activity, as defined by rule, committed:

(i) on the premises where the licensee operates its human services program;

(ii) by or against its clients; or

(iii) by or against a staff member while the staff member is on duty;

(b) immediately report to emergency medical services any medical emergency, as defined by rule:

(i) on the premises where the licensee operates its human services program;

(ii) involving its clients; or

(iii) involving a staff member while the staff member is on duty; and

(c) immediately report other emergencies that occur on the premises where the licensee operates its human services program to the appropriate emergency services agency.

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

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

(1) Except as provided in Section 62A-2-110, ~~[no]~~ a person, agency, firm, corporation, association, or governmental unit, acting severally or jointly with any other person, agency, firm, corporation, association, or governmental unit, may not establish, conduct, or maintain a human services program ~~[or facility]~~ in this state without a valid and current license issued by and under the authority of the ~~[department]~~ office as provided by this chapter and the rules of the licensing board.

(2) (a) For purposes of this Subsection (2), "member" means a person or entity that is associated with another person or entity:

(i) as a member;

(ii) as a partner;

(iii) as a shareholder; or

(iv) as a person or entity involved in the ownership or management of a residential treatment program owned or managed by the other person or entity.

~~[(2) No]~~ (b) A license issued under this chapter ~~[is assignable or transferable]~~ may not be assigned or transferred.

(c) An application for a license under this chapter shall be treated as an application for reinstatement of a revoked license if:

(i) (A) the person or entity applying for the license had a license revoked under this chapter; and



(B) the revoked license described in Subsection (2)(c)(i)(A) is not reinstated before the application described in this Subsection (2)(c) is made; or

(ii) (A) a member of an entity applying for the license:

(I) (Aa) had a license revoked under this chapter; and

(Bb) the revoked license described in Subsection (2)(c)(ii)(A)(I)(Aa) is not reinstated before the application described in this Subsection (2)(c) is made; or

(II) (Aa) was a member of an entity that had a license revoked under this chapter at any time before the license was revoked; and

(Bb) the revoked license described in Subsection (2)(c)(ii)(A)(II)(Aa) is not reinstated before the application described in this Subsection (2)(c) is made.

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

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

(i) previously revoked by the office; or

(ii) voluntarily returned to the office by the [~~human services~~] licensee.

(b) A license shall be renewed upon application and payment of the applicable fee, unless the office finds that the licensee [~~or facility has~~]:

(i) is not [complied] in compliance with the:

(A) provisions of this chapter; or

(B) rules made under this chapter[.];

(ii) has engaged in a pattern of noncompliance with the:

(A) provisions of this chapter; or

(B) rules made under this chapter;

(iii) has engaged in conduct that is grounds for denying a license under Section 62A-2-112; or

(iv) has engaged in conduct that poses a substantial risk of harm to any person.

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

(6) (a) A license for a human services program issued under this section shall apply to a specific human services program site.

(b) A human services program shall obtain a separate license for each site where the human services program is operated.

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

**62A-2-108.1. Coordination of human services and educational services -- Licensing of programs -- Procedures.**

(1) For purposes of this section:

(a) "accredited private school" means a private school that is accredited by an accrediting entity recognized by the Utah State Board of Education; and

(b) "education entitled children" means children:

(i) subject to compulsory education under Section 53A-11-101; or

(ii) entitled to educational services under Section 53A-15-301.

~~[(1)] (2) [A]~~ Subject to Subsection (8) or (9), a human services program may not be licensed to serve [children subject to compulsory education under Section 53A-11-101 or entitled to educational services under Section 53A-15-301] education entitled children unless the human services program presents an educational service plan that includes evidence:

(a) satisfactory to:

(i) the ~~[licensing authority]~~ office; and [to]

(ii) (A) the local school board of the school district in which the human services program will be operated; or

(B) the school district superintendent of the school district in which the human services program will be operated; and

(b) that children served by the human services program shall receive appropriate educational services satisfying the requirements of applicable law.

~~[(2)] (3) [If the] Subject to Subsection (8) or (9), if a human services program [is to be permitted to serve any children] serves any education entitled children whose custodial parents or legal guardians reside outside the state, then the program shall also provide an educational funding plan that includes evidence:~~

~~(a) satisfactory [evidence] to:~~

~~(i) the [licensing authority] office; and [to]~~

~~(ii) (A) the local school board of the school district in which the human services program will be operated; or~~

~~(B) the school district superintendent of the school district in which the human services program will be operated; and~~

~~(b) that all costs for educational services to be provided to [those students] the education entitled children, including tuition, and school fees approved by the local school board, shall be borne by the human services program.~~

~~[(3) If the local school board finds the educational service plan and the educational funding plan to be adequate, then the board shall provide the licensing authority with a letter of approval.]~~

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

~~(4) Subject to Subsection (8) or (9), and in accordance with Subsection (2), the human services program shall obtain and provide the office with a letter:~~

~~(a) from the entity referred to in Subsection (2)(a)(ii):~~

~~(i) approving the educational service plan referred to in Subsection (2); or~~

~~(ii) (A) disapproving the educational service plan referred to in Subsection (2); and~~

~~(B) listing the specific requirements the human services program must meet before approval is granted; and~~

~~(b) from the entity referred to in Subsection (3)(a)(ii):~~

(i) approving the educational funding plan, referred to in Subsection (3); or  
(ii) (A) disapproving the educational funding plan, referred to in Subsection (3); and  
(B) listing the specific requirements the human services program must meet before approval is granted.

(5) [Failure] Subject to Subsection (8), failure of a local school board or school district superintendent to respond to a proposed plan within 45 days of receipt of the plan is equivalent to approval of the plan by the local school board[-] or school district superintendent if the human services program provides to the office:

(a) proof that:

(i) the human services program submitted the proposed plan to the local school board or school district superintendent; and

(ii) more than 45 days have passed from the day on which the plan was submitted; and

(b) an affidavit, on a form produced by the office, stating:

(i) the date that the human services program submitted the proposed plan to the local school board or school district superintendent;

(ii) that more than 45 days have passed from the day on which the plan was submitted;  
and

(iii) that the local school board or school district superintendent described in Subsection (5)(b)(i) failed to respond to the proposed plan within 45 days from the day on which the plan was submitted.

(6) If a [human services program] licensee that is licensed to serve an education entitled child fails to comply with its approved educational service plan or educational funding plan, then:

(a) the [licensing authority] office shall give the [program] licensee notice of intent to revoke the [licensure] licensee's license; and[-]

(b) if the [program] licensee continues its noncompliance for more than 30 days after receipt of the notice[-] described in Subsection (6)(a), the office shall revoke the [program's] licensee's license.

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

(8) A human services program that is an accredited private school:

(a) for purposes of Subsection (2):

(i) is only required to submit proof to the office that the accreditation of the private school is current; and

(ii) is not required to submit an educational service plan for approval by an entity described in Subsection (2)(a)(ii);

(b) for purposes of Subsection (3):

(i) is only required to submit proof to the office that all costs for educational services provided to education entitled children will be borne by the human services program; and

(ii) is not required to submit an educational funding plan for approval by an entity described in Subsection (3)(a)(ii); and

(c) is not required to comply with Subsections (4) and (5).

(9) Except for Subsection (7), the provisions of this section do not apply to a human services program that is:

(i) a foster home; and

(ii) required to be licensed by the office.

Section 6. Section **62A-2-108.2** is enacted to read:

**62A-2-108.2. Licensing residential treatment programs -- Notification of local government.**

(1) (a) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the office shall make rules that establish categories of residential treatment licenses based on differences in the types of residential treatment programs.

(b) The categories referred to in Subsection (1)(a) may be based on differences in:

(i) services offered;

(ii) types of clients served;

(iii) risks posed to the community; or

(iv) other factors that make regulatory differences advisable.

(2) Subject to the requirements of federal and state law, and pursuant to the authority granted by Section 62A-2-106, the office shall establish and enforce rules that:

(a) relate generally to all categories of residential treatment program licenses; and

(b) relate to specific categories of residential treatment program licenses on the basis of the regulatory needs, as determined by the office, of residential treatment programs within those specific categories.

(3) Before submitting an application for a license to operate a residential treatment program, the applicant shall serve notice of its intent to operate a residential treatment program on the governing body of:

(a) the city in which the residential treatment program will be located; or

(b) if the residential treatment program will be located in the unincorporated area of a county, the county in which the residential treatment program will be located.

(4) The notice described in Subsection (3) shall include the following information relating to the residential treatment program:

(a) an accurate description of the residential treatment program;

(b) the location where the residential treatment program will be operated;

(c) the services that will be provided by the residential treatment program;

(d) the type of clients that the residential treatment program will serve;

(e) the category of license for which the residential treatment program is applying to the office;

(f) the name, telephone number, and address of a person that may be contacted to make inquiries about the residential treatment program; and

(g) any other information that the office may require by rule.

(5) When submitting an application for a license to operate a residential treatment program, the applicant shall include with the application:

- (a) a copy of the notice described in Subsection (3); and
- (b) proof that the applicant served the notice described in Subsection (3) on the governing body described in Subsection (3).

Section 7. Section **62A-2-108.3** is enacted to read:

**62A-2-108.3. Local government -- Certified local inspector -- Local inspection of a residential treatment facility -- Reporting violations.**

(1) (a) Subject to this Subsection (1) and Subsection (3), the office shall designate, or renew the designation of, a local government employee as a certified local inspector if:

- (i) the governing body of a local government gives the office written notice:
  - (A) of the name of an employee of the local government; and
  - (B) requesting that the office designate the employee described in Subsection (1)(a)(i)(A) as a certified local inspector; and
- (ii) the employee described in Subsection (1)(a)(i) successfully completes the training described in Subsection (1)(b).

(b) Before designating a local government employee as a certified local inspector, the office shall:

- (i) provide training to the local government employee on:
  - (A) this chapter;
  - (B) the rules established under:
    - (I) Subsection (2); and
    - (II) Subsection 62A-2-106(1)(a);
    - (C) the Fourth Amendment to the Constitution of the United States; and
    - (D) other issues relating to conducting the inspections described in Subsection (4); and
  - (ii) conduct a criminal background check of the local government employee pursuant to the same procedures established for a criminal background check of an applicant for an initial license under Section 62A-2-120.

(c) Subject to Subsection (6), the office may not designate a person as a certified local inspector:

(i) unless the office approves the person to have direct access to children or vulnerable adults pursuant to Section 62A-2-120; or

(ii) if the office determines that, based on the conduct of the person, it is not in the public's best interest to designate the person as a certified local inspector.

(d) The office shall provide to a certified local inspector identification that:

(i) identifies the person as a certified local inspector;

(ii) contains a photograph of the certified local inspector;

(iii) states the date on which the certification of the certified local inspector expires; and

(iv) identifies the geographic location where the certified local inspector is authorized to conduct an inspection.

(e) Nothing in this section shall be construed to require a local government to employ a certified local inspector.

(2) The office shall make rules in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, to establish procedures for:

(a) complying with this section; and

(b) the conduct of inspections by a certified local inspector.

(3) For purposes of Subsection (1):

(a) the designation of a person as a certified local inspector shall expire one calendar year from the day on which the designation is made;

(b) the designation of a person as a certified local inspector may not be renewed unless Subsection (1) is complied with, including:

(i) providing a refresher course on the training described in Subsection (1)(b)(i); and

(ii) conducting a new criminal background check pursuant to Subsection (1)(b)(ii); and

(c) the office:

(i) shall revoke a person's designation as a certified local inspector if:

(A) subject to Subsection (6), the person commits an act that is grounds for refusing to designate a person as a certified local inspector;

(B) the person's local government employer requests that the designation described in



this Subsection (3)(c)(i) be revoked; or

(C) the person is no longer employed by a local government, unless:

(I) the person is employed by another local government; and

(II) the governing body of the local government described in Subsection (3)(c)(i)(C)(I),

requests, in writing, that the person's designation as a certified local inspector continue; and

(ii) subject to Subsection (6), may revoke a person's designation as a certified local inspector if the person violates:

(A) this section; or

(B) a rule made by the department that relates to this section.

(4) (a) Subject to Subsection (4)(b), a certified local inspector may inspect a residential treatment facility of a licensee:

(i) if the certified local inspector is an employee of a local government that is a:

(A) (I) city; and

(II) the residential treatment facility is located within the city; or

(B) (I) county; and

(II) the residential treatment facility is located within the unincorporated area of the county;

(ii) only during regular business hours;

(iii) pursuant to:

(A) this section; and

(B) the rules made by the office under this section; and

(iv) to determine whether the residential treatment facility is in compliance with the requirements of:

(A) this chapter; and

(B) the rules made pursuant to this chapter.

(b) Notwithstanding Subsection (4)(a), a certified local inspector, may not:

(i) inspect a residential treatment facility of a licensee:

(A) if the office instructs the certified local inspector to not conduct an inspection; or

(B) except in an emergency, without giving the office prior notice of the inspection; and  
(ii) unless otherwise authorized by law, examine or obtain any record of a residential treatment facility, including a record relating to:

- (A) a client of the residential treatment facility;
- (B) an employee of the residential treatment facility; or
- (C) an incident that occurs at the residential treatment facility.

(c) Within 24 hours, excluding weekends and holidays, of conducting an inspection under this Subsection (4), the inspector shall provide the office with a written report informing the office of the details of the inspection, including any violation by the licensee of:

- (i) this chapter; or
- (ii) the rules made pursuant to this chapter.

(5) (a) A local government employee who is a certified local inspector:

(i) may not take any action pursuant to this section without approval from the certified local inspector's local government employer;

(ii) when taking any action pursuant to this section, shall at all times be considered an employee of the certified local inspector's local government employer; and

(iii) is not an employee of the:

- (A) office; or
- (B) department.

(b) If a certified local inspector acts or fails to act in a way that would otherwise incur any liability to the office or the department, the certified local inspector's local government employer shall indemnify, defend, and hold harmless the office and the department for that liability.

(c) (i) A local government employer of a certified local inspector is primarily responsible for the training of the local government employer's certified local inspector.

(ii) The training described in Subsection (1)(b)(i) that is provided by the office is supplemental to the primary training responsibility of the certified local inspector's local government employer.

(d) The local government employer of a certified local inspector shall be responsible to pay the certified local inspector for all action taken by the certified local inspector under this section, including:

- (i) conducting an inspection;
- (ii) preparing an inspection report for the office; and
- (iii) participating in training.

(6) (a) For purposes of Subsection (1), and Subsections (3)(c)(i)(A) and (3)(c)(ii), if the office determines to not designate or renew the designation of a person as a certified local inspector, the office shall notify the person and the governing body of the local government that employs the person:

- (i) of the determination described in this Subsection (6)(a);
- (ii) of the reasons for the determination described in this Subsection (6)(a); and
- (iii) that the person or the local government, or both, may request a hearing in the department's Office of Administrative Hearings, to challenge the office's decision.

(b) A person for whom a hearing is requested under Subsection (6)(a)(iii) is not a certified local inspector until:

- (i) a final decision is made that the office should designate the person as a certified local inspector; and
- (ii) (A) all appeals of the determination described in Subsection (6)(a) are exhausted; or  
(B) the time for an appeal described in Subsection (6)(b)(ii)(A) has expired.

(7) (a) If the office determines that a residential treatment facility has violated this chapter or the rules made pursuant to this chapter, the office shall provide written notice of the violation to the governing body of:

- (i) the city that the residential treatment facility is located in; or
- (ii) the county that the residential treatment facility is located in, if the residential treatment facility is located in the unincorporated area of the county.

(b) The written notice described in Subsection (7)(a):

- (i) subject to Subsection (7)(b)(ii), shall include:

- (A) the name of the residential treatment facility;
- (B) the location of the residential treatment facility;
- (C) the date and time that the violation occurred; and
- (D) the provision of the statute or rule that is violated; and

(ii) may not include:

- (A) the name of any person connected with the violation; or
- (B) any information prohibited from disclosure by Title 63, Chapter 2, Government

Records Access and Management Act.

(c) A local government may seek additional information relating to a violation described in this Subsection (7) to the extent permitted by Title 63, Chapter 2, Government Records Access and Management Act.

Section 8. Section **62A-2-109** is amended to read:

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

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

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

Section 9. Section **62A-2-110** is amended to read:

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

The provisions of this chapter do not apply to:

- (1) a facility or program owned or operated by an agency of the United States government;
- (2) a facility or program operated by or under an exclusive contract with the Department of Corrections;
- (3) ~~[private]~~ unless required otherwise by a contract with the department, individual or group counseling by a mental health professional licensed ~~[practitioner]~~ under Title 58, Chapter

60, Mental Health Professional Practice Act; [or]

(4) a general acute hospital, small health care facility, specialty hospital, nursing care facility, or other health care facility licensed by the Department of Health under ~~[Section 26-21-2.]~~ Title 26, Chapter 21, Health Care Facility Licensing and Inspection Act; or

(5) a boarding school.

Section 10. Section **62A-2-111** is amended to read:

**62A-2-111. Adjudicative proceedings.**

(1) Whenever the office has reason to believe that a ~~[human services]~~ licensee ~~[or facility]~~ is in violation of this chapter or rules made under this chapter, the office may commence adjudicative proceedings to determine the legal rights of the ~~[human services]~~ licensee ~~[or facility]~~ by serving notice of agency action in accordance with Title 63, Chapter 46b, Administrative Procedures Act.

(2) A ~~[human services]~~ licensee, human services program, or individual may commence adjudicative proceedings, in accordance with Title 63, Chapter 46b, Administrative Procedures Act, regarding all office actions that determine the legal rights, duties, privileges, immunities, or other legal interests of the ~~[human services]~~ licensee, human services program, or persons associated with the licensee, including all office actions to grant, deny, place conditions on, revoke, suspend, withdraw, or amend an authority, right, or license under this chapter.

Section 11. Section **62A-2-112** is amended to read:

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

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

(1) deny, place conditions on, suspend, or revoke a license, if it finds:

(a) that there has been a failure to comply with the rules approved by the board~~[-];~~ or ~~[if it finds]~~

(b) evidence of aiding, abetting, or permitting the commission of any illegal act; or

(2) restrict or prohibit new admissions to a human services program or facility, if it finds:

(a) that there has been a failure to comply with rules approved by the board~~[-];~~ or ~~[if it finds]~~

(b) evidence of aiding, abetting, or permitting the commission of any illegal act in the human services program or facility.

Section 12. Section **62A-2-113** is amended to read:

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

(1) If a license is revoked, the office may not grant a new license ~~[after]~~ unless:

(a) the human services program provides satisfactory evidence ~~[is submitted]~~ to the office~~[-evidencing]~~ that the conditions upon which revocation was based have been corrected; ~~[and]~~

(b) ~~[inspection and]~~ the human services program is inspected by the office and found to be in compliance with all provisions of this chapter and applicable rules[-];

(c) at least one year has passed since the day on which the licensee is served with final notice that the license is revoked; and

(d) the office determines that the interests of the public will not be jeopardized by granting the license.

(2) The office may ~~[only]~~ suspend a license for ~~[a period of time which does not exceed the current expiration date of that license]~~ no longer than one year.

(3) When a license has been suspended, the office may ~~[completely or partially]~~ restore, or restore subject to conditions, the suspended license upon a determination that the:

(a) conditions upon which the suspension was based have been completely or partially corrected; and

(b) interests of the public will not be jeopardized by restoration of the license.

Section 13. Section **62A-2-116** is amended to read:

**62A-2-116. Violation -- Criminal penalties.**

A person who owns, establishes, conducts, maintains, manages, or operates a human services ~~[facility]~~ program in violation of this chapter is guilty of a class A misdemeanor if the violation endangers or harms the health, welfare, or safety of persons participating in that program.

Section 14. Section **62A-2-117** is amended to read:

**62A-2-117. Licensure of tribal foster homes.**

(1) The Indian Child Welfare Act, 25 U.S.C. Secs. 1901-1963, provides that Indian tribes may develop and implement tribal foster home standards.

(2) The office shall [~~license~~] give full faith and credit to an Indian tribe's certification or licensure of tribal foster homes according to standards developed and approved by the Indian tribe, pursuant to the Indian Child Welfare Act, 25 U.S.C. Secs. 1901-1963.

(3) If the Indian tribe has not developed standards, the office shall license tribal foster homes pursuant to this chapter.

Section 15. Section **62A-2-118** is amended to read:

**62A-2-118. Administrative inspections.**

(1) The office may, for the purpose of ascertaining compliance with [~~the provisions of~~] this chapter, enter and inspect on a routine basis the facility of a licensee.

(2) Before conducting an inspection under Subsection (1), the office shall, after identifying the person in charge:

- (a) give proper identification;
- (b) request to see the applicable license;
- (c) describe the nature and purpose of the inspection; and
- (d) if necessary, explain the authority of the office to conduct the inspection and the penalty for refusing to permit the inspection as provided in Section 62A-2-116.

(3) In conducting an inspection under Subsection (1), the office may, after meeting the requirements of Subsection (2):

- (a) inspect the physical facilities;
- (b) inspect and copy records and documents;
- (c) interview officers, employees, clients, family members of clients, and others; and
- (d) observe the licensee in operation.

(4) An inspection conducted under Subsection (1) shall be during regular business hours and may be announced or unannounced.

(5) The [~~human services~~] licensee shall make copies of inspection reports available to the

public upon request.

(6) The provisions of this section apply to on-site inspections and do not restrict the office from contacting family members, neighbors, or other individuals, or from seeking information from other sources to determine compliance with ~~[the provisions of]~~ this chapter.

Section 16. Section **62A-2-120** is amended to read:

**62A-2-120. Criminal background checks -- Direct access to children or vulnerable adults.**

(1) (a) ~~[An]~~ Except as provided in Subsection (7), an applicant for an initial license or a license renewal under this chapter shall submit to the ~~[department]~~ office the names and other identifying information, which may include fingerprints, of all persons associated with the licensee, as defined in Section 62A-2-101, with direct access to children or vulnerable adults. ~~[This information for a given person associated with the licensee shall be submitted before that person is permitted to have direct access to children or vulnerable adults.]~~

(b) The Criminal Investigations and Technical Services Division of the Department of Public Safety, or the office as authorized under Section 53-10-108, shall process ~~[that]~~ the information described in Subsection (1)(a) to determine whether the individual has been convicted of any crime.

(c) If an individual has not continuously lived in Utah for the five years immediately preceding the day on which the information referred to in Subsection (1)(a) is submitted to the office, the individual shall submit fingerprints for a FBI national criminal history record check. The fingerprints shall be submitted to the FBI through the Criminal Investigations and Technical Services Division.

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

(a) (i) the person is found to have no criminal history record; or

~~[(b)-(i)]~~ (ii) (A) the only convictions in the person's criminal history record are~~[-(A)]~~ misdemeanors or infractions not involving any of the offenses described in Subsection (3)~~[-or~~



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

~~[(ii) (B) the date of the last conviction under Subsection (2)[~~(b)(i)~~(a)(ii)(A) is more than five years before the date of the search[-];~~

~~(b) the person is not listed in the statewide database of the Division of Aging and Adult Services created by Section 62A-3-311.1;~~

~~(c) juvenile court records do not show that a court made a substantiated finding, under Section 78-3a-320, that the person committed a severe type of child abuse or neglect;~~

~~(d) the person is not listed in the Licensing Information System of the Division of Child and Family Services created by Section 62A-4a-116.2; and~~

~~(e) the person has not pled guilty or no contest to a pending charge for any:~~

~~(i) felony;~~

~~(ii) misdemeanor listed in Subsection (3); or~~

~~(iii) infraction listed in Subsection (3).~~

~~(3) [The department] Unless at least ten years have passed since the date of conviction, the office may not approve a person to have direct access to children or vulnerable adults in the [licensee program serving children or vulnerable adults if the person has at any time] licensee's human services program if that person has been convicted of an offense, whether a felony, misdemeanor, or infraction, that [was] is:~~

~~(a) identified as a sexual offense, domestic violence, lewdness, assault, or battery;~~

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

~~(c) prostitution;~~

~~(d) [identified] included in:~~

~~(i) Title 76, [Utah Criminal Code, as an offense against the family or an offense against the person; or] Chapter 5, Offenses Against the Person;~~

~~[(e) (ii) [identified in] Title 76, [Utah Criminal Code, as a sexual offense.] Chapter 5a, Sexual Exploitation of Children; or~~

~~(iii) Title 76, Chapter 7, Offenses Against the Family; or~~

~~(e) a conviction in:~~

(i) (A) another state, territory, or district of the United States; or

(B) a federal court of the United States; and

(ii) for an offense that, if committed in the state, would constitute a violation of an offense described in Subsection (3)(d).

(4) (a) If a person for whom identifying information is submitted under Subsection (1) is not approved by the ~~[department]~~ office under Subsection (2) or (3) to have direct access to children or vulnerable adults in the licensee program ~~[serving children or vulnerable adults]~~, the ~~[department]~~ office shall conduct a comprehensive review of criminal and court records and related circumstances if ~~[a person for whom identifying information is submitted under Subsection (1)]~~ the reason the approval is not granted is due solely to one or more of the following:

(i) ~~[has been convicted at any time of]~~ a conviction for:

(A) any felony not listed in Subsection (3);

~~[(ii) has been convicted within five years of the date of the search of:]~~

~~[(A)]~~ (B) any misdemeanor or infraction, not listed in Subsection (3)~~[-or]~~, within five years of the date of the search;

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

~~[(iii) has been convicted at any time of]~~

(C) a protective order or ex parte protective order violation under Section ~~[76-5-18]~~ 76-5-108 or a similar statute in another state~~[-];~~ or

(D) any felony, misdemeanor, or infraction listed in Subsection (3) if at least ten years have passed since the date of conviction;

(ii) a plea of guilty or no contest to a pending:

(A) felony;

(B) misdemeanor not listed in Subsection (3); or

(C) infraction not listed in Subsection (3);

(iii) the person is listed in the statewide database of the Division of Aging and Adult Services created by Section 62A-3-311.1;

(iv) juvenile court records show that a court made a substantiated finding, under Section 78-3a-320, that the person committed a severe type of child abuse or neglect; or

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

(b) The comprehensive review under Subsection (4)(a) shall include an examination of:

(i) the date of the offense or incident;

(ii) the nature and seriousness of the offense or incident;

(iii) the circumstances under which the offense or incident occurred;

(iv) the age of the [~~offender~~] perpetrator when the offense [~~was committed~~] or incident occurred;

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

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

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

(B) sexual abuse;

(C) sexual exploitation; and

(D) negligent treatment;

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

(viii) any other pertinent information.

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

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

(5) (a) For purposes of this Subsection (5), "directly supervised" means that the person being supervised is under the uninterrupted visual and auditory surveillance of the person doing the supervising.

(b) A licensee may not permit any person to have direct access to a child or a vulnerable adult unless, subject to Subsection (5)(c), that person is:

(i) associated with the licensee and:

(A) approved by the office to have direct access to children or vulnerable adults under this section; or

(B) (I) the office has not determined whether to approve that person to have direct access to children or vulnerable adults;

(II) the information described in Subsection (1)(a), relating to that person, is submitted to the department; and

(III) that person is directly supervised by a person associated with the licensee who is approved by the office to have direct access to children or vulnerable adults under this section;

(ii) (A) not associated with the licensee; and

(B) directly supervised by a person associated with the licensee who is approved by the office to have direct access to children or vulnerable adults under this section;

(iii) the parent or guardian of the child or vulnerable adult; or

(iv) a person approved by the parent or guardian of the child or vulnerable adult to have direct access to the child or vulnerable adult.

(c) Notwithstanding Subsection (5)(b), a person may not have direct access to a child or a vulnerable adult if that person is prohibited by court order from having that access.

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

(i) the [department's] office's decision regarding its background screening clearance and findings; and

(ii) a [listing] list of any convictions found in the search.

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

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

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

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

(ii) expediting the process for renewal of a license ~~[pursuant to]~~ under the requirements of this section and other applicable sections.

(7) Notwithstanding Subsection (1)(a), this section does not apply to an applicant for an initial license, or license renewal, to operate a substance abuse treatment program that provides services to adults only.

Section 17. Section **62A-2-121** is amended to read:

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

(1) With respect to ~~[human services licensees]~~ a licensee, or a certified local inspector applicant, 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] the 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 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).

(2) Notwithstanding Subsection (1), 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) 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).

(4) 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 ~~[or has]~~ of the Division of Child and Family Services created by Section 62A-4a-116.2; or

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

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

(1) With respect to ~~[human services licensees]~~ a licensee, 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] the 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 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) 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).

(3) 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.

Section 19. Section **62A-4a-102** is amended to read:

**62A-4a-102. Board of Child and Family Services.**

(1) (a) The Board of Child and Family Services, created in accordance with this section and with Sections 62A-1-105 and 62A-1-107, is responsible for establishing by rule, ~~[pursuant to]~~ under Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the policy of the division in accordance with the requirements of this chapter and Title 78, Chapter 3a, Juvenile Court Act of 1996, regarding abuse, neglect, and dependency proceedings, and domestic violence services. The board is responsible to see that the legislative purposes for the division are carried out.

(b) (i) The governor shall appoint, with the consent of the Senate, ~~[11]~~ 12 members to the Board of Child and Family Services.

(ii) Except as required by Subsection (1)(b)(iii), as terms of current board members expire, the governor shall appoint each new member or reappointed member to a four-year term.

(iii) Notwithstanding the requirements of Subsection (1)(b)(ii), the governor shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of board members are staggered so that approximately half of the board is appointed every two years.

(c) The board shall include:

~~[(c) Two]~~ (i) two members ~~[of the board shall be persons]~~ who are or have been consumers~~[-];~~;

(ii) two members ~~[of the board shall be persons]~~ who are actively involved in children's issues specifically related to abuse and neglect~~[-, one member shall be];~~;

(iii) a licensed foster parent~~[-, one member shall be];~~;

(iv) a recognized expert in the social, developmental, and mental health needs of children~~[-, one member shall be];~~;

(v) a physician licensed to practice medicine in this state who is ~~[also];~~;

(A) a board certified pediatrician; and ~~[who is]~~



(B) an expert in child abuse and neglect~~[, and one member shall be]~~;

(vi) a representative of private residential treatment facilities; and

(vii) an adult relative of a child who is or has been in the foster care system.

(d) [~~Six~~] Seven members of the board are necessary to constitute a quorum at any meeting.

(e) When a vacancy occurs in the membership for any reason, the replacement shall be appointed for the unexpired term.

(2) (a) [~~Members~~] A member shall receive no compensation or benefits for [~~their~~] the member's services, but may receive per diem and expenses incurred in the performance of the member's official duties at the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

(b) [~~Members~~] A member may decline to receive per diem and expenses for [~~their~~] the member's service.

(3) The board shall:

(a) approve fee schedules for programs within the division;

(b) in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, establish, by rule, policies to ensure that private citizens, consumers, foster parents, private contract providers, allied state and local agencies, and others are provided with an opportunity to comment and provide input regarding any new policy or proposed revision of an existing policy; and

(c) provide a mechanism for:

(i) systematic and regular review of existing policy; and [~~for~~]

(ii) consideration of policy changes proposed by the persons and agencies described in Subsection (3)(b).

(4) (a) The board shall establish policies for the determination of eligibility for services offered by the division in accordance with this chapter.

(b) The division may, by rule, establish eligibility standards for consumers.

(5) The board shall adopt and maintain rules and policies regarding placement for

adoption or foster care that are consistent with, and no more restrictive than, applicable statutory provisions.

Section 20. 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:

(i) solely 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

~~[(c)]~~ (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) ~~[(The)]~~ (a) 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 enter the same]; and~~

(ii) enter the 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]:~~

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

~~[(c)]~~ (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) 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]~~ A person, except those authorized by this chapter, may not 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 21. 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.