

HUMAN SERVICES LICENSE EXTENSIONS

2012 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Bradley G. Last

Senate Sponsor: Allen M. Christensen

LONG TITLE

General Description:

This bill amends Title 62A, Chapter 2, Licensure of Programs and Facilities, by permitting a renewal license that lasts 24 months.

Highlighted Provisions:

This bill:

- ▶ authorizes the Office of Licensing to renew a human services license for 24 months

if:

- the licensee has already been licensed by the office for at least 24 months; and
- the licensee has not violated any rules regarding the license;

- ▶ clarifies that criminal background checks on licensees will continue to be conducted annually; and

- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

62A-2-108, as last amended by Laws of Utah 2009, Chapter 75

62A-2-120, as last amended by Laws of Utah 2011, Chapters 320 and 366



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

Section 1. Section **62A-2-108** is amended to read:

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

(1) Except as provided in Section 62A-2-110, 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 in this state without a valid and current license issued by and under the authority of the office as provided by this chapter and the rules under the authority of this chapter.

(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.

(b) A license issued under this chapter 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 member of an entity applying for the license:

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

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

(B) (I) was a member of an entity that had a license revoked under this chapter at any time before the license was revoked; and

(II) the revoked license described in Subsection (2)(c)(ii)(B)(I) is not reinstated before

59 the application described in this Subsection (2)(c) is made.

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

62 (4) (a) ~~Each~~ Except as provided in Subsection (4)(c), each license issued under this
63 chapter expires at midnight 12 months from the date of issuance unless it has been:

- 64 (i) previously revoked by the office; or
- 65 (ii) voluntarily returned to the office by the licensee.

66 (b) A license shall be renewed upon application and payment of the applicable fee,
67 unless the office finds that the licensee:

- 68 (i) is not in compliance with the:
 - 69 (A) provisions of this chapter; or
 - 70 (B) rules made under this chapter;
- 71 (ii) has engaged in a pattern of noncompliance with the:

- 72 (A) provisions of this chapter; or
- 73 (B) rules made under this chapter;

74 (iii) has engaged in conduct that is grounds for denying a license under Section
75 62A-2-112; or

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

77 (c) The office may issue a renewal license that expires at midnight 24 months after the
78 day on which it is issued if:

79 (i) the licensee has maintained a human services license for at least 24 months before
80 the day on which the licensee applies for the renewal; and

81 (ii) the licensee has not violated this chapter or a rule made under this chapter.

82 (5) Any licensee that is in operation at the time rules are made in accordance with this
83 chapter shall be given a reasonable time for compliance as determined by the rule.

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

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

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

89 **62A-2-120. Criminal background checks -- Direct access to children or**

90 **vulnerable adults.**

91 (1) (a) (i) Except as provided in Subsection (7), an applicant for an initial license or a
92 license renewal under this chapter shall submit to the office the names and other identifying
93 information, which may include fingerprints, of all persons associated with the licensee, as
94 defined in Section 62A-2-101, with direct access to children or vulnerable adults.

95 (ii) Except as provided in Subsection (7), a licensee who has been issued a renewal
96 license for a 24-month period under Section 62A-2-108(4)(c) shall submit to the office all the
97 information described in Subsection (1)(a)(i) on an annual basis.

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

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

107 (d) An individual is not required to comply with Subsection (1)(c) if:

108 (i) the individual continuously lived in Utah for the five years immediately preceding
109 the day on which the information described in Subsection (1)(a) is submitted to the office,
110 except for time spent outside of the United States and its territories; and

111 (ii) the background check of the individual is being conducted for a purpose other than
112 a purpose described in Subsection (1)(f).

113 (e) If an applicant described in Subsection (1)(a) spent time outside of the United
114 States and its territories during the five years immediately preceding the day on which the
115 information described in Subsection (1)(a) is submitted to the office, the office shall require the
116 applicant to submit documentation establishing whether the applicant was convicted of a crime
117 during the time that the applicant spent outside of the United States and its territories.

118 (f) Notwithstanding Subsections (1)(a) through (e), and except as provided in
119 Subsection (1)(h), an applicant described in Subsection (1)(a) shall submit fingerprints for an
120 FBI national criminal history records check, through the Criminal Investigations and Technical

121 Services Division, if the background check of the applicant is being conducted for the purpose
122 of:

123 (i) licensing a prospective foster home; or

124 (ii) approving a prospective adoptive placement of a child in state custody.

125 (g) Except as provided in Subsection (1)(h), in addition to the other requirements of
126 this section, if the background check of an applicant described in Subsection (1)(a) is being
127 conducted for the purpose of licensing a prospective foster home or approving a prospective
128 adoptive placement of a child in state custody, the office shall:

129 (i) check the child abuse and neglect registry in each state where each prospective
130 foster parent or prospective adoptive parent resided in the five years immediately preceding the
131 day on which the prospective foster parent or prospective adoptive parent applied to be a foster
132 parent or adoptive parent, to determine whether the prospective foster parent or prospective
133 adoptive parent is listed in the registry as having a substantiated or supported finding of child
134 abuse or neglect; and

135 (ii) check the child abuse and neglect registry in each state where each adult living in
136 the home of the prospective foster parent or prospective adoptive parent described in
137 Subsection (1)(g)(i) resided in the five years immediately preceding the day on which the
138 prospective foster parent or prospective adoptive parent applied to be a foster parent or
139 adoptive parent, to determine whether the adult is listed in the registry as having a substantiated
140 or supported finding of child abuse or neglect.

141 (h) The requirements under Subsections (1)(f) and (g) do not apply to the extent that:

142 (i) federal law or rule permits otherwise; or

143 (ii) the requirements would prohibit the Division of Child and Family Services or a
144 court from placing a child with:

145 (A) a noncustodial parent under Section 62A-4a-209, 78A-6-307, or 78A-6-307.5; or

146 (B) a relative, other than a noncustodial parent, under Section 62A-4a-209, 78A-6-307,
147 or 78A-6-307.5, pending completion of the background check described in Subsections (1)(f)
148 and (g).

149 (i) The office shall make rules, in accordance with Title 63G, Chapter 3, Utah
150 Administrative Rulemaking Act, to implement the provisions of this Subsection (1) relating to
151 background checks.

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

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

156 (ii) (A) the only convictions in the person's criminal history record are misdemeanors
157 or infractions not involving any of the offenses described in Subsection (3); and

158 (B) the date of the last conviction under Subsection (2)(a)(ii)(A) is more than five years
159 before the date of the search;

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

162 (c) juvenile court records do not show that a court made a substantiated finding, under
163 Section 78A-6-323, that the person committed a severe type of child abuse or neglect;

164 (d) the person is not listed in the Licensing Information System of the Division of
165 Child and Family Services created by Section 62A-4a-1006;

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

167 (i) felony;

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

169 (iii) infraction listed in Subsection (3); and

170 (f) for a person described in Subsection (1)(g), the registry check described in
171 Subsection (1)(g) does not indicate that the person is listed in a child abuse and neglect registry
172 of another state as having a substantiated or supported finding of a severe type of child abuse or
173 neglect as defined in Section 62A-4a-1002.

174 (3) Except as provided in Subsection (8), unless at least 10 years have passed since the
175 date of conviction, the office may not approve a person to have direct access to children or
176 vulnerable adults in the licensee's human services program if that person has been convicted of
177 an offense, whether a felony, misdemeanor, or infraction, that is:

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

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

180 (c) prostitution;

181 (d) included in:

182 (i) Title 76, Chapter 5, Offenses Against the Person;

- 183 (ii) Section 76-5b-201, Sexual Exploitation of a Minor; or
- 184 (iii) Title 76, Chapter 7, Offenses Against the Family;
- 185 (e) a violation of Section 76-6-103, aggravated arson;
- 186 (f) a violation of Section 76-6-203, aggravated burglary;
- 187 (g) a violation of Section 76-6-302, aggravated robbery; or
- 188 (h) a conviction for an offense committed outside of the state that, if committed in the
- 189 state, would constitute a violation of an offense described in Subsections (3)(d) through (g).

190 (4) (a) Except as provided in Subsection (8), if a person for whom identifying
191 information is submitted under Subsection (1) is not approved by the office under Subsection
192 (2) or (3) to have direct access to children or vulnerable adults in the licensee program, the
193 office shall conduct a comprehensive review of criminal and court records and related
194 circumstances if the reason the approval is not granted is due solely to one or more of the
195 following:

- 196 (i) a conviction for:
 - 197 (A) any felony not listed in Subsection (3);
 - 198 (B) any misdemeanor or infraction, not listed in Subsection (3), within five years of the
 - 199 date of the search;
 - 200 (C) a protective order or ex parte protective order violation under Section 76-5-108 or
 - 201 a similar statute in another state; or
 - 202 (D) any felony, misdemeanor, or infraction listed in Subsection (3) if at least 10 years
 - 203 have passed since the date of conviction;
- 204 (ii) a plea of guilty or no contest to a pending:
 - 205 (A) felony;
 - 206 (B) misdemeanor listed in Subsection (3); or
 - 207 (C) infraction listed in Subsection (3);
- 208 (iii) the person is listed in the statewide database of the Division of Aging and Adult
- 209 Services created by Section 62A-3-311.1;
- 210 (iv) juvenile court records show that a court made a substantiated finding, under
- 211 Section 78A-6-323, that the person committed a severe type of child abuse or neglect;
- 212 (v) the person is listed in the Licensing Information System of the Division of Child
- 213 and Family Services created by Section 62A-4a-1006; or

214 (vi) the person is listed in a child abuse or neglect registry of another state as having a
215 substantiated or supported finding of a severe type of child abuse or neglect as defined in
216 Section 62A-4a-1002.

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

218 (i) the date of the offense or incident;

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

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

221 (iv) the age of the perpetrator when the offense or incident occurred;

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

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

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

226 (B) sexual abuse;

227 (C) sexual exploitation; and

228 (D) negligent treatment;

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

232 (viii) any other pertinent information.

233 (c) At the conclusion of the comprehensive review under Subsection (4)(a), the office
234 shall approve the person who is the subject of the review to have direct access to children or
235 vulnerable adults, unless it finds that approval will likely create a risk of harm to a child or
236 vulnerable adult.

237 (d) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
238 office may make rules, consistent with this chapter, defining procedures for the comprehensive
239 review described in this Subsection (4).

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

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

245 (i) associated with the licensee and:
246 (A) approved by the office to have direct access to children or vulnerable adults under
247 this section; or
248 (B) (I) the office has not determined whether to approve that person to have direct
249 access to children or vulnerable adults;
250 (II) the information described in Subsection (1)(a), relating to that person, is submitted
251 to the department; and
252 (III) that person is directly supervised by a person associated with the licensee who is
253 approved by the office to have direct access to children or vulnerable adults under this section;
254 (ii) (A) not associated with the licensee; and
255 (B) directly supervised by a person associated with the licensee who is approved by the
256 office to have direct access to children or vulnerable adults under this section;
257 (iii) the parent or guardian of the child or vulnerable adult; or
258 (iv) a person approved by the parent or guardian of the child or vulnerable adult to
259 have direct access to the child or vulnerable adult.
260 (c) Notwithstanding Subsection (5)(b), a person may not have direct access to a child
261 or a vulnerable adult if that person is prohibited by court order from having that access.
262 (6) (a) Within 30 days after receiving the identifying information for a person under
263 Subsection (1), the office shall give written notice to the person and to the licensee or applicant
264 with whom the person is associated of:
265 (i) the office's decision regarding its background screening clearance and findings; and
266 (ii) a list of any convictions found in the search.
267 (b) With the notice described in Subsection (6)(a), the office shall also give to the
268 person the details of any comprehensive review conducted under Subsection (4).
269 (c) If the notice under Subsection (6)(a) states that the person is not approved to have
270 direct access to children or vulnerable adults, the notice shall further advise the persons to
271 whom the notice is given that either the person or the licensee or applicant with whom the
272 person is associated, or both, may, under Subsection 62A-2-111(2), request a hearing in the
273 department's Office of Administrative Hearings, to challenge the office's decision.
274 (d) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
275 office shall make rules, consistent with this chapter:

276 (i) defining procedures for the challenge of its background screening decision
277 described in this Subsection (6); and

278 (ii) expediting the process for renewal of a license under the requirements of this
279 section and other applicable sections.

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

283 (8) (a) Notwithstanding Subsections (2) through (4), the office may not approve or
284 license a person as a prospective foster parent or a prospective adoptive parent if the person has
285 been convicted of:

286 (i) a felony involving conduct that constitutes any of the following:

287 (A) child abuse, as described in Section 76-5-109;

288 (B) commission of domestic violence in the presence of a child, as described in Section
289 76-5-109.1;

290 (C) abuse or neglect of a child with a disability, as described in Section 76-5-110;

291 (D) endangerment of a child, as described in Section 76-5-112.5;

292 (E) aggravated murder, as described in Section 76-5-202;

293 (F) murder, as described in Section 76-5-203;

294 (G) manslaughter, as described in Section 76-5-205;

295 (H) child abuse homicide, as described in Section 76-5-208;

296 (I) homicide by assault, as described in Section 76-5-209;

297 (J) kidnapping, as described in Section 76-5-301;

298 (K) child kidnapping, as described in Section 76-5-301.1;

299 (L) aggravated kidnapping, as described in Section 76-5-302;

300 (M) an offense described in Title 76, Chapter 5, Part 4, Sexual Offenses;

301 (N) an offense described in Section 76-5b-201, Sexual Exploitation of a Minor;

302 (O) aggravated arson, as described in Section 76-6-103;

303 (P) aggravated burglary, as described in Section 76-6-203;

304 (Q) aggravated robbery, as described in Section 76-6-302; or

305 (R) domestic violence, as described in Section 77-36-1; or

306 (ii) an offense committed outside the state that, if committed in the state, would

307 constitute a violation of an offense described in Subsection (8)(a)(i).

308 (b) Notwithstanding Subsections (2) through (4), the office may not approve or license
309 a person as a prospective foster parent or a prospective adoptive parent if, within the five years
310 immediately preceding the day on which the person would otherwise be approved or licensed,
311 the person has been convicted of a felony involving conduct that constitutes any of the
312 following:

- 313 (i) aggravated assault, as described in Section 76-5-103;
- 314 (ii) aggravated assault by a prisoner, as described in Section 76-5-103.5;
- 315 (iii) mayhem, as described in Section 76-5-105;
- 316 (iv) an offense described in Title 58, Chapter 37, Utah Controlled Substances Act;
- 317 (v) an offense described in Title 58, Chapter 37a, Utah Drug Paraphernalia Act;
- 318 (vi) an offense described in Title 58, Chapter 37b, Imitation Controlled Substances
319 Act;
- 320 (vii) an offense described in Title 58, Chapter 37c, Utah Controlled Substance

321 Precursor Act; or

322 (viii) an offense described in Title 58, Chapter 37d, Clandestine Drug Lab Act.

323 (9) If any provision of this section conflicts with a provision of Section 62A-2-120.5,
324 the conflicting provision of Section 62A-2-120.5 shall govern.

Legislative Review Note
as of 11-3-11 10:47 AM

Office of Legislative Research and General Counsel