

OFFICE OF LICENSING AMENDMENTS

2016 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Karen Mayne

House Sponsor: Eric K. Hutchings

LONG TITLE

General Description:

This bill modifies the Utah Human Services Code by enacting provisions related to licensing.

Highlighted Provisions:

This bill:

- ▶ permits a local government to request that the Office of Licensing, Department of Human Services, notify the local government of new human services program license applications for human services programs located within the local government's jurisdiction.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

62A-2-101, as last amended by Laws of Utah 2015, Chapters 67 and 255

62A-2-106, as last amended by Laws of Utah 2013, Chapter 442

ENACTS:

62A-2-108.4, Utah Code Annotated 1953

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

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

30 **62A-2-101. Definitions.**

31 As used in this chapter:

32 (1) "Adult day care" means nonresidential care and supervision:

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

34 (b) that meets the needs of functionally impaired adults through a comprehensive

35 program that provides a variety of health, social, recreational, and related support services in a

36 protective setting.

37 (2) "Applicant" means:

38 (a) a person who applies for an initial license or a license renewal under this chapter;

39 (b) an individual who:

40 (i) is associated with the licensee; and

41 (ii) has direct access to a child or a vulnerable adult;

42 (c) an individual who is 12 years of age or older, other than the child or vulnerable

43 adult who is receiving the service, who resides in a residence with the child or vulnerable adult

44 who is receiving services from the person described in Subsection (2)(a) or (b), if the child or

45 vulnerable adult is not receiving services in the child's or vulnerable adult's own residence; or

46 (d) an individual who provides respite care to a foster parent or an adoptive parent on

47 more than one occasion.

48 (3) (a) "Associated with the licensee" means that an individual is:

49 (i) affiliated with a licensee as an owner, director, member of the governing body,

50 employee, agent, provider of care, or volunteer; or

51 (ii) applying to become affiliated with a licensee in a capacity described in Subsection

52 (3)(a)(i).

53 (b) "Associated with the licensee" does not include:

54 (i) service on the following bodies, unless that service includes direct access to a child

55 or a vulnerable adult:

56 (A) a local mental health authority described in Section [17-43-301](#);

57 (B) a local substance abuse authority described in Section [17-43-201](#); or

58 (C) a board of an organization operating under a contract to provide mental health or
59 substance abuse programs, or services for the local mental health authority or substance abuse
60 authority; or

61 (ii) a guest or visitor whose access to a child or a vulnerable adult is directly supervised
62 by the licensee at all times.

63 (4) (a) "Boarding school" means a private school that:

64 (i) uses a regionally accredited education program;

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

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

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

68 (iii) has the primary purpose of providing the school's students with an education, as
69 defined in Subsection (4)(b)(i); and

70 (iv) (A) does not provide the treatment or services described in Subsection (28)(a); or

71 (B) provides the treatment or services described in Subsection (28)(a) on a limited
72 basis, as described in Subsection (4)(b)(ii).

73 (b) (i) For purposes of Subsection (4)(a)(iii), "education" means a course of study for
74 one or more of grades kindergarten through 12th grade.

75 (ii) For purposes of Subsection (4)(a)(iv)(B), a private school provides the treatment or
76 services described in Subsection (28)(a) on a limited basis if:

77 (A) the treatment or services described in Subsection (28)(a) are provided only as an
78 incidental service to a student; and

79 (B) the school does not:

80 (I) specifically solicit a student for the purpose of providing the treatment or services
81 described in Subsection (28)(a); or

82 (II) have a primary purpose of providing the treatment or services described in
83 Subsection (28)(a).

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

85 (5) "Child" means a person under 18 years of age.

86 (6) "Child placing" means receiving, accepting, or providing custody or care for any
87 child, temporarily or permanently, for the purpose of:

- 88 (a) finding a person to adopt the child;
- 89 (b) placing the child in a home for adoption; or
- 90 (c) foster home placement.

91 (7) "Client" means an individual who receives or has received services from a licensee.

92 (8) "Day treatment" means specialized treatment that is provided to:

- 93 (a) a client less than 24 hours a day; and
 - 94 (b) four or more persons who:
 - 95 (i) are unrelated to the owner or provider; and
 - 96 (ii) have emotional, psychological, developmental, physical, or behavioral
- 97 dysfunctions, impairments, or chemical dependencies.

98 (9) "Department" means the Department of Human Services.

99 (10) "Direct access" means that an individual has, or likely will have:

- 100 (a) contact with or access to a child or vulnerable adult that provides the individual
- 101 with an opportunity for personal communication or touch; or
- 102 (b) an opportunity to view medical, financial, or other confidential personal identifying
- 103 information of the child, the child's parents or legal guardians, or the vulnerable adult.

104 (11) "Directly supervised" means that an individual is being supervised under the

105 uninterrupted visual and auditory surveillance of another individual.

106 (12) "Director" means the director of the Office of Licensing.

107 (13) "Domestic violence" means the same as that term is defined in Section [77-36-1](#).

108 (14) "Domestic violence treatment program" means a nonresidential program designed

109 to provide psychological treatment and educational services to perpetrators and victims of

110 domestic violence.

111 (15) "Elder adult" means a person 65 years of age or older.

112 (16) "Executive director" means the executive director of the department.

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

114 (a) (i) fewer than five foster children in the home of a licensed foster parent; or
115 (ii) five or more foster children in the home of a licensed foster parent if there are no
116 foster children or if there is one foster child in the home at the time of the placement of a
117 sibling group; or

118 (b) (i) fewer than four foster children in the home of a certified foster parent; or
119 (ii) four or more foster children in the home of a certified foster parent if there are no
120 foster children or if there is one foster child in the home at the time of the placement of a
121 sibling group.

122 (18) (a) "Human services program" means a:

- 123 (i) foster home;
- 124 (ii) therapeutic school;
- 125 (iii) youth program;
- 126 (iv) resource family home;
- 127 (v) recovery residence; or
- 128 (vi) facility or program that provides:
 - 129 (A) secure treatment;
 - 130 (B) inpatient treatment;
 - 131 (C) residential treatment;
 - 132 (D) residential support;
 - 133 (E) adult day care;
 - 134 (F) day treatment;
 - 135 (G) outpatient treatment;
 - 136 (H) domestic violence treatment;
 - 137 (I) child placing services;
 - 138 (J) social detoxification; or
 - 139 (K) any other human services that are required by contract with the department to be
140 licensed with the department.

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

142 (19) "Licensee" means an individual or a human services program licensed by the
143 office.

144 (20) "Local government" means a [~~(a) city, or (b)~~] city, town, metro township, or
145 county.

146 (21) "Minor" has the same meaning as "child."

147 (22) "Office" means the Office of Licensing within the Department of Human Services.

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

151 (24) "Recovery residence" means a home or facility, other than a residential treatment
152 or residential support program, that meets at least two of the following requirements:

153 (a) provides a supervised living environment for individuals recovering from a
154 substance abuse disorder;

155 (b) requires more than half of the individuals in the residence to be recovering from a
156 substance abuse disorder;

157 (c) provides or arranges for residents to receive services related to their recovery from a
158 substance abuse disorder, either on or off site;

159 (d) holds the home or facility out as being a recovery residence; or

160 (e) (i) receives public funding; or

161 (ii) runs the home or facility as a commercial venture for financial gain.

162 (25) "Regular business hours" means:

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

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

165 (26) (a) "Residential support" means arranging for or providing the necessities of life
166 as a protective service to individuals or families who have a disability or who are experiencing
167 a dislocation or emergency that prevents them from providing these services for themselves or
168 their families.

169 (b) "Residential support" includes providing a supervised living environment for

170 persons with dysfunctions or impairments that are:

171 (i) emotional;

172 (ii) psychological;

173 (iii) developmental; or

174 (iv) behavioral.

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

176 (d) "Residential support" does not include:

177 (i) a recovery residence; or

178 (ii) residential services that are performed:

179 (A) exclusively under contract with the Division of Services for People with

180 Disabilities; or

181 (B) in a facility that serves fewer than four individuals.

182 (27) (a) "Residential treatment" means a 24-hour group living environment for four or
183 more individuals unrelated to the owner or provider that offers room or board and specialized
184 treatment, behavior modification, rehabilitation, discipline, emotional growth, or habilitation
185 services for persons with emotional, psychological, developmental, or behavioral dysfunctions,
186 impairments, or chemical dependencies.

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

188 (i) boarding school;

189 (ii) foster home; or

190 (iii) recovery residence.

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

192 (a) residential treatment; or

193 (b) secure treatment.

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

197 (b) "Secure treatment" differs from residential treatment to the extent that it requires

198 intensive supervision, locked doors, and other security measures that are imposed on residents
199 with neither their consent nor control.

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

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

206 (b) specialized rehabilitation to acquire sobriety; and

207 (c) aftercare services.

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

209 (a) designed to provide:

210 (i) specialized drug or alcohol treatment;

211 (ii) rehabilitation; or

212 (iii) habilitation services; and

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

214 with:

215 (i) a diagnosed substance abuse disorder; or

216 (ii) chemical dependency disorder.

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

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

219 (i) the owner of the facility; or

220 (ii) the primary service provider of the facility;

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

222 (i) at home;

223 (ii) in a public school; or

224 (iii) in a nonresidential private school; and

225 (c) that offers:

- 226 (i) room and board; and
- 227 (ii) an academic education integrated with:
 - 228 (A) specialized structure and supervision; or
 - 229 (B) services or treatment related to:
 - 230 (I) a disability;
 - 231 (II) emotional development;
 - 232 (III) behavioral development;
 - 233 (IV) familial development; or
 - 234 (V) social development.
- 235 (33) "Unrelated persons" means persons other than parents, legal guardians,
- 236 grandparents, brothers, sisters, uncles, or aunts.
- 237 (34) "Vulnerable adult" means an elder adult or an adult who has a temporary or
- 238 permanent mental or physical impairment that substantially affects the person's ability to:
 - 239 (a) provide personal protection;
 - 240 (b) provide necessities such as food, shelter, clothing, or mental or other health care;
 - 241 (c) obtain services necessary for health, safety, or welfare;
 - 242 (d) carry out the activities of daily living;
 - 243 (e) manage the adult's own resources; or
 - 244 (f) comprehend the nature and consequences of remaining in a situation of abuse,
 - 245 neglect, or exploitation.
- 246 (35) (a) "Youth program" means a nonresidential program designed to provide
- 247 behavioral, substance abuse, or mental health services to minors that:
 - 248 (i) serves adjudicated or nonadjudicated youth;
 - 249 (ii) charges a fee for its services;
 - 250 (iii) may or may not provide host homes or other arrangements for overnight
 - 251 accommodation of the youth;
 - 252 (iv) may or may not provide all or part of its services in the outdoors;
 - 253 (v) may or may not limit or censor access to parents or guardians; and

254 (vi) prohibits or restricts a minor's ability to leave the program at any time of the
255 minor's own free will.

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

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

259 **62A-2-106. Office responsibilities.**

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

261 (a) make rules in accordance with Title 63G, Chapter 3, Utah Administrative
262 Rulemaking Act, to establish:

263 (i) except as provided in Subsection (1)(a)(ii), basic health and safety standards for
264 licensees, that shall be limited to:

265 (A) fire safety;

266 (B) food safety;

267 (C) sanitation;

268 (D) infectious disease control;

269 (E) safety of the:

270 (I) physical facility and grounds; and

271 (II) area and community surrounding the physical facility;

272 (F) transportation safety;

273 (G) emergency preparedness and response;

274 (H) the administration of medical standards and procedures, consistent with the related
275 provisions of this title;

276 (I) staff and client safety and protection;

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

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

280 (L) staff to client ratios; and

281 (M) access to firearms;

- 282 (ii) basic health and safety standards for therapeutic schools, that shall be limited to:
- 283 (A) fire safety, except that the standards are limited to those required by law or rule
- 284 under Title 53, Chapter 7, Part 2, Fire Prevention and Fireworks Act;
- 285 (B) food safety;
- 286 (C) sanitation;
- 287 (D) infectious disease control, except that the standards are limited to:
- 288 (I) those required by law or rule under Title 26, Utah Health Code, or Title 26A, Local
- 289 Health Authorities; and
- 290 (II) requiring a separate room for clients who are sick;
- 291 (E) safety of the physical facility and grounds, except that the standards are limited to
- 292 those required by law or rule under Title 53, Chapter 7, Part 2, Fire Prevention and Fireworks
- 293 Act;
- 294 (F) transportation safety;
- 295 (G) emergency preparedness and response;
- 296 (H) access to appropriate medical care, including:
- 297 (I) subject to the requirements of law, designation of a person who is authorized to
- 298 dispense medication; and
- 299 (II) storing, tracking, and securing medication;
- 300 (I) staff and client safety and protection that permits the school to provide for the direct
- 301 supervision of clients at all times;
- 302 (J) the administration and maintenance of client and service records;
- 303 (K) staff qualifications and training, including standards for permitting experience to
- 304 be substituted for education, unless prohibited by law;
- 305 (L) staff to client ratios; and
- 306 (M) access to firearms;
- 307 (iii) procedures and standards for permitting a licensee to:
- 308 (A) provide in the same facility and under the same conditions as children, residential
- 309 treatment services to a person 18 years old or older who:

310 (I) begins to reside at the licensee's residential treatment facility before the person's
311 18th birthday;

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

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

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

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

319 (Aa) 12 years old or older; and

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

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

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

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

325 (iv) minimum administration and financial requirements for licensees;

326 (v) guidelines for variances from rules established under this Subsection (1); and

327 (vi) minimum ethical responsibilities of an adoption agency licensed under this
328 chapter, including prohibiting an adoption agency or its employee from misrepresenting facts
329 or information;

330 (b) enforce rules relating to the office;

331 (c) issue licenses in accordance with this chapter;

332 (d) if the United States Department of State executes an agreement with the office that
333 designates the office to act as an accrediting entity in accordance with the Intercountry
334 Adoption Act of 2000, Pub. L. No. 106-279, accredit one or more agencies and persons to
335 provide intercountry adoption services pursuant to:

336 (i) the Intercountry Adoption Act of 2000, Pub. L. No. 106-279; and

337 (ii) the implementing regulations for the Intercountry Adoption Act of 2000, Pub. L.

338 No. 106-279;

339 (e) make rules to implement the provisions of Subsection (1)(d);

340 (f) conduct surveys and inspections of licensees and facilities in accordance with

341 Section [62A-2-118](#);

342 (g) collect licensure fees;

343 (h) notify licensees of the name of a person within the department to contact when
344 filing a complaint;

345 (i) investigate complaints regarding any licensee or human services program;

346 (j) have access to all records, correspondence, and financial data required to be
347 maintained by a licensee;

348 (k) have authority to interview any client, family member of a client, employee, or
349 officer of a licensee; ~~and~~

350 (l) have authority to deny, condition, revoke, suspend, or extend any license issued by
351 the department under this chapter by following the procedures and requirements of Title 63G,
352 Chapter 4, Administrative Procedures Act[-]; and

353 (m) upon receiving a local government's request under Section [62A-2-108.4](#), notify the
354 local government of new human services program license applications, except for foster
355 homes, for human services programs located within the local government's jurisdiction.

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

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

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

362 (ii) by or against its clients; or

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

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

- 366 (i) on the premises where the licensee operates its human services program;
- 367 (ii) involving its clients; or
- 368 (iii) involving a staff member while the staff member is on duty; and
- 369 (c) immediately report other emergencies that occur on the premises where the licensee
- 370 operates its human services program to the appropriate emergency services agency.

371 Section 3. Section **62A-2-108.4** is enacted to read:

372 **62A-2-108.4. Request by local government.**

373 (1) A local government may request that the office notify the local government of new
374 human services program license applications for human services programs located within the
375 local government's jurisdiction.

376 (2) Subsection (1) does not apply to foster homes.