

SB0123S01 compared with SB0123

~~{deleted text}~~ shows text that was in SB0123 but was deleted in SB0123S01.

inserted text shows text that was not in SB0123 but was inserted into SB0123S01.

DISCLAIMER: This document is provided to assist you in your comparison of the two bills. Sometimes this automated comparison will NOT be completely accurate. Therefore, you need to read the actual bills. This automatically generated document could contain inaccuracies caused by: limitations of the compare program; bad input data; or other causes.

~~{RESIDENTIAL FACILITIES}~~ Senator Karen Mayne proposes the following substitute bill:

OFFICE OF LICENSING AMENDMENTS

2016 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Karen Mayne

House Sponsor: _____

LONG TITLE

General Description:

This bill modifies ~~{municipal and county regulation of land use and development}~~ the Utah Human Services Code by enacting provisions related to ~~{residential facilities for persons with a disability}~~ licensing.

Highlighted Provisions:

This bill:

- ▶ ~~{enacts provisions permitting a municipality or a county to, by ordinance, require a residential facility for persons with a disability that is licensed or certified by the}~~ permits a local government to request that the Office of Licensing, Department of Human Services ~~{ or by the Department of Health to produce a copy of the license or certification in order to obtain a business license}~~ notify the local government of new human services program license applications for human services

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programs located within the local government's jurisdiction.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

~~{10-9a-520}~~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 ~~{309}~~442

ENACTS:

~~{17-27a-519}~~62A-2-108.4, {as last amended by Laws of} Utah {2013, Chapter
~~309}~~Code Annotated 1953

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

Section 1. Section ~~{10-9a-520}~~62A-2-101 is amended to read:

~~{10-9a-520. Licensing of residences for persons with a disability. — (1) The responsibility to license programs or entities that operate residential facilities for persons with a disability, as well as to require and monitor the provision of adequate services to persons residing in those facilities, shall rest with: — [(1)] (a) for programs or entities licensed or certified by the Department of Human Services, the Department of Human Services as provided in Title 62A, Chapter 5, Services for People with Disabilities; and — [(2)] (b) for programs or entities licensed or certified by the Department of Health, the Department of Health under Title 26, Chapter 21, Health Care Facility Licensing and Inspection Act. — (2) The legislative body of a municipality may by ordinance require a residential facility for persons with a disability that is licensed by the Department of Human Services or by the Department of Health}~~62A-2-101. Definitions.

As used in this chapter:

(1) "Adult day care" means 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

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program that provides a variety of health, social, recreational, and related support services in a protective setting.

(2) "Applicant" means:

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

(b) an individual who:

(i) is associated with the licensee; and

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

(c) an individual who is 12 years of age or older, other than the child or vulnerable adult who is receiving the service, who resides in a residence with the child or vulnerable adult who is receiving services from the person described in Subsection (2)(a) or (b), if the child or vulnerable adult is not receiving services in the child's or vulnerable adult's own residence; or

(d) an individual who provides respite care to a foster parent or an adoptive parent on more than one occasion.

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

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

(ii) applying to become affiliated with a licensee in a capacity described in Subsection (3)(a)(i).

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

(i) service on the following bodies, unless that service includes direct access to a child or a vulnerable adult:

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

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

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

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

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

(i) uses a regionally accredited education program;

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

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(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 (4)(b)(i); and

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

(B) provides the treatment or services described in Subsection (28)(a) on a limited basis, as described in Subsection (4)(b)(ii), to produce a copy of the license or certification in order to obtain a business license. }4)(b)(ii).

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

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

(A) the treatment or services described in Subsection (28)(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 (28)(a); or

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

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

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

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

(a) finding a person to adopt the child;

(b) placing the child in a home for adoption; or

(c) foster home placement.

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

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

(a) a client less than 24 hours a day; and

(b) four or more persons who:

(i) are unrelated to the owner or provider; and

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(ii) have emotional, psychological, developmental, physical, or behavioral dysfunctions, impairments, or chemical dependencies.

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

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

(a) contact with or access to a child or vulnerable adult that provides the individual with an opportunity for personal communication or touch; or

(b) an opportunity to view medical, financial, or other confidential personal identifying information of the child, the child's parents or legal guardians, or the vulnerable adult.

(11) "Directly supervised" means that an individual is being supervised under the uninterrupted visual and auditory surveillance of another individual.

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

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

(14) "Domestic violence treatment program" means a nonresidential program designed to provide psychological treatment and educational services to perpetrators and victims of domestic violence.

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

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

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

(a) (i) fewer than five foster children in the home of a licensed foster parent; or

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

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

(ii) four or more foster children in the home of a certified foster parent if there are no foster children or if there is one foster child in the home at the time of the placement of a sibling group.

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

(i) foster home;

(ii) therapeutic school;

(iii) youth program;

(iv) resource family home;

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(v) recovery residence; or

(vi) facility or program that provides:

(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;

(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.

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

(20) "Local government" means a [:(a) city; or (b)] city, town, metro township, or county.

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

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

(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.

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

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

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

(c) provides or arranges for residents to receive services related to their recovery from a

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substance abuse disorder, either on or off site:

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

(e) (i) receives public funding; or

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

(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.

(26) (a) "Residential support" means arranging for or providing the necessities of life

as a protective service to individuals or families who have a disability or who are experiencing a dislocation or emergency that prevents them from providing these services for themselves or their families.

(b) "Residential support" includes providing a supervised living environment for persons with dysfunctions or impairments that are:

(i) emotional;

(ii) psychological;

(iii) developmental; or

(iv) behavioral.

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

(d) "Residential support" does not include:

(i) a recovery residence; or

(ii) residential services that are performed:

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

Disabilities; or

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

(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.

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

(i) boarding school;

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(ii) foster home; or

(iii) recovery residence.

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

(a) residential treatment; or

(b) secure treatment.

(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 that are imposed on residents with neither their consent nor control.

(30) "Social detoxification" means short-term residential services for persons who are 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 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

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(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.

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

(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.

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

(i) serves adjudicated or nonadjudicated youth;

(ii) charges a fee for its services;

(iii) may or may not provide host homes or other arrangements for overnight

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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 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 ~~{17-27a-519}~~62A-2-106 is amended to read:

~~{17-27a-519. Licensing of residences for persons with a disability. — (1) The responsibility to license programs or entities that operate residential facilities for persons with a disability, as well as to require and monitor the provision of adequate services to persons residing in those facilities, shall rest with: — [(1)] (a) for programs or entities licensed or certified by the Department of Human Services, the Department of Human Services as provided in Title 62A, Chapter 5, Services for People with Disabilities; and — [(2)] (b) for programs or entities licensed or certified by the Department of Health, the Department of Health}~~62A-2-106. Office responsibilities.

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

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

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

(A) fire safety;

(B) food safety;

(C) sanitation;

(D) infectious disease control;

(E) safety of the:

(I) physical facility and grounds; and

(II) area and community surrounding the physical facility;

(F) transportation safety;

(G) emergency preparedness and response;

(H) the administration of medical standards and procedures, consistent with the related

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provisions of this title:

(I) 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, ~~Chapter 21, Health Care Facility Licensing and Inspection Act;~~

~~(2) The legislative body of a municipality may by ordinance require a residential facility for persons with a disability that is licensed or certified by the Department of Human Services or by the Department of Health, as ^{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;

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(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); ~~to produce a copy of the license or certification in order to obtain a business license.~~

~~Legislative Review Note Office of Legislative Research and General Counsel;~~ (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;

(iv) minimum administration and financial requirements for licensees;

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

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

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(b) enforce rules relating to the office;

(c) issue licenses in accordance with this chapter;

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

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

(ii) the implementing regulations for the Intercountry Adoption Act of 2000, Pub. L. No. 106-279;

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

(f) conduct surveys and inspections of licensees and facilities in accordance with Section 62A-2-118;

(g) collect licensure fees;

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

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

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

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

(l) 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 63G, Chapter 4, Administrative Procedures Act[-]; and

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

(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:

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

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

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

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