

SB0089S01 compared with SB0089

~~{deleted text}~~ shows text that was in SB0089 but was deleted in SB0089S01.

Inserted text shows text that was not in SB0089 but was inserted into SB0089S01.

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Senator Luz Escamilla proposes the following substitute bill:

ADOPTION AGENCY AMENDMENTS

2017 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Luz Escamilla

House Sponsor: _____

LONG TITLE

General Description:

This bill enacts and amends provisions relating to child-placing agencies.

Highlighted Provisions:

This bill:

- ▶ establishes ethical standards for a child-placing agency;
- ▶ requires the Utah Department of Human Services, Office of Licensing, to establish certain rules creating minimum ethical responsibilities;
- ▶ ~~{enacts a definition}~~ defines "child-placing agency"; and
- ▶ makes conforming amendments.

Money Appropriated in this Bill:

None

Other Special Clauses:

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None

Utah Code Sections Affected:

AMENDS:

59-10-1005, as last amended by Laws of Utah 2016, Chapter 375

62A-2-101, as last amended by Laws of Utah 2016, Chapters 122, 211, and 342

62A-2-106, as last amended by Laws of Utah 2016, Chapters 211 and 342

62A-2-108.5, as enacted by Laws of Utah 2008, Chapter 314

62A-4a-205.6, as last amended by Laws of Utah 2015, Chapter 322

62A-4a-601, as last amended by Laws of Utah 2006, Chapter 281

62A-4a-602, as last amended by Laws of Utah 2008, Chapter 3

62A-4a-605, as renumbered and amended by Laws of Utah 1994, Chapter 260

62A-4a-606, as last amended by Laws of Utah 2007, Chapter 81

62A-4a-607, as last amended by Laws of Utah 2015, Chapter 322

78B-6-106, as renumbered and amended by Laws of Utah 2008, Chapter 3

78B-6-110.1, as enacted by Laws of Utah 2012, Chapter 340

78B-6-124, as last amended by Laws of Utah 2008, Chapter 137 and renumbered and amended by Laws of Utah 2008, Chapter 3

78B-6-134, as last amended by Laws of Utah 2013, Chapter 458

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

Section 1. Section **59-10-1005** is amended to read:

59-10-1005. Tax credit for at-home parent.

(1) As used in this section:

(a) "At-home parent" means a parent:

(i) who provides full-time care at the parent's residence for one or more of the parent's own qualifying children;

(ii) who claims the qualifying child as a dependent on the parent's individual income tax return for the taxable year for which the parent claims the credit; and

(iii) if the sum of the following amounts are \$3,000 or less for the taxable year for which the parent claims the credit:

(A) the total wages, tips, and other compensation listed on all of the parent's federal

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Forms W-2; and

(B) the gross income listed on the parent's federal Form 1040 Schedule C, Profit or Loss From Business.

(b) "Parent" means an individual who:

(i) is the biological mother or father of a qualifying child;

(ii) is the stepfather or stepmother of a qualifying child;

(iii) (A) legally adopts a qualifying child; or

(B) has a qualifying child placed in the individual's home:

(I) by a [~~child-placing~~] child-placing agency, as defined in Section [~~62A-4a-601~~]

62A-2-101; and

(II) for the purpose of legally adopting the child;

(iv) is a foster parent of a qualifying child; or

(v) is a legal guardian of a qualifying child.

(c) "Qualifying child" means a child who is no more than 12 months of age on the last day of the taxable year for which the tax credit is claimed.

(2) For a taxable year beginning on or after January 1, 2000, a claimant may claim on the claimant's individual income tax return a nonrefundable tax credit of \$100 for each qualifying child if:

(a) the claimant or another claimant filing a joint individual income tax return with the claimant is an at-home parent; and

(b) the adjusted gross income of all of the claimants filing the individual income tax return is less than or equal to \$50,000.

(3) A claimant may not carry forward or carry back a tax credit authorized by this section.

(4) (a) In accordance with any rules prescribed by the commission under Subsection (4)(b), the Division of Finance shall transfer at least annually from the General Fund into the Education Fund the aggregate amount of all tax credits claimed under this section.

(b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may make rules for making a transfer from the General Fund into the Education Fund as required by Subsection (4)(a).

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

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

(2) "Applicant" means a person who applies for an initial license or a license renewal under this chapter.

(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, department contractor, 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 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:

(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

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(iv) (A) does not provide the treatment or services described in Subsection ~~[(28)]~~ (29)(a); or

(B) provides the treatment or services described in Subsection ~~[(28)]~~ (29)(a) on a limited basis, as described in Subsection (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)]~~ (29)(a) on a limited basis if:

(A) the treatment or services described in Subsection ~~[(28)]~~ (29)(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)]~~ (29)(a); or

(II) have a primary purpose of providing the treatment or services described in Subsection ~~[(28)]~~ (29)(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]~~ a 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) "Child-placing agency" means a person ~~for a group children's home~~ that engages in child placing.

~~[(7)]~~ (8) "Client" means an individual who receives or has received services from a licensee.

~~[(8)]~~ (9) "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

(ii) have emotional, psychological, developmental, physical, or behavioral

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dysfunctions, impairments, or chemical dependencies.

~~[(9)]~~ (10) "Department" means the Department of Human Services.

~~[(10)]~~ (11) "Department contractor" means an individual who:

(a) provides services under a contract with the department; and

(b) due to the contract with the department, has or will likely have direct access to a child or vulnerable adult.

~~[(11)]~~ (12) "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.

~~[(12)]~~ (13) "Directly supervised" means that an individual is being supervised under the uninterrupted visual and auditory surveillance of another individual who has a current background screening approval issued by the office.

~~[(13)]~~ (14) "Director" means the director of the Office of Licensing.

~~[(14)]~~ (15) "Domestic violence" means the same as that term is defined in Section 77-36-1.

~~[(15)]~~ (16) "Domestic violence treatment program" means a nonresidential program designed to provide psychological treatment and educational services to perpetrators and victims of domestic violence.

~~[(16)]~~ (17) "Elder adult" means a person 65 years of age or older.

~~[(17)]~~ (18) "Executive director" means the executive director of the department.

~~[(18)]~~ (19) "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

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sibling group.

~~[(19)]~~ (20) (a) "Human services program" means a:

- (i) foster home;
- (ii) therapeutic school;
- (iii) youth program;
- (iv) resource family home;
- (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]~~ 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.

~~[(20)]~~ (21) "Licensee" means an individual or a human services program licensed by the office.

~~[(21)]~~ (22) "Local government" means a city, town, metro township, or county.

~~[(22)]~~ (23) "Minor" has the same meaning as "child."

~~[(23)]~~ (24) "Office" means the Office of Licensing within the Department of Human Services.

~~[(24)]~~ (25) "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.

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~~[(25)]~~ (26) (a) "Recovery residence" means a home, residence, or facility that meets at least two of the following requirements:

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

(ii) provides a living environment in which more than half of the individuals in the residence are recovering from a substance abuse disorder;

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

(iv) is held out as a living environment in which individuals recovering from substance abuse disorders live together to encourage continued sobriety; or

(v) (A) receives public funding; or

(B) is run as a business venture, either for-profit or not-for-profit.

(b) "Recovery residence" does not mean:

(i) a residential treatment program;

(ii) residential support; or

(iii) a home, residence, or facility, in which:

(A) residents, by their majority vote, establish, implement, and enforce policies governing the living environment, including the manner in which applications for residence are approved and the manner in which residents are expelled;

(B) residents equitably share rent and housing-related expenses; and

(C) a landlord, owner, or operator does not receive compensation, other than fair market rental income, for establishing, implementing, or enforcing policies governing the living environment.

~~[(26)]~~ (27) "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.

~~[(27)]~~ (28) (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

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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.

~~[(28)]~~ (29) (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;
- (ii) foster home; or
- (iii) recovery residence.

~~[(29)]~~ (30) "Residential treatment program" means a human services program that provides:

- (a) residential treatment; or
- (b) secure treatment.

~~[(30)]~~ (31) (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.

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~~[(31)]~~ (32) "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.

~~[(32)]~~ (33) "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 ~~[(32)]~~ (33)(a) to persons with:

(i) a diagnosed substance abuse disorder; or

(ii) chemical dependency disorder.

~~[(33)]~~ (34) "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;

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- (II) emotional development;
- (III) behavioral development;
- (IV) familial development; or
- (V) social development.

~~[(34)]~~ (35) "Unrelated persons" means persons other than parents, legal guardians, grandparents, brothers, sisters, uncles, or aunts.

~~[(35)]~~ (36) "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.

~~[(36)]~~ (37) (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 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 3. Section **62A-2-106** is amended to read:

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

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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 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;

(M) access to firearms; and

(N) the prevention of abuse, neglect, exploitation, harm, mistreatment, or fraud;

(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

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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;

(M) access to firearms; and

(N) the prevention of abuse, neglect, exploitation, harm, mistreatment, or fraud;

(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 Department of Human Services, or one of its divisions;

and

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(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 Department of Human Services, or one of its divisions;

(iv) minimum administration and financial requirements for licensees;

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

(vi) ~~minimum ethical responsibilities of { } an adoption~~ ethical standards, as described in Subsection 78B-6-106(3), and minimum responsibilities of a child-placing agency that provides adoption services and that is licensed under this chapter~~[-including prohibiting an adoption agency or its employee from misrepresenting facts or information];~~

(vii) what constitutes an "outpatient treatment program" for purposes of this chapter;

(viii) a procedure requiring a licensee to provide an insurer the licensee's records related to any services or supplies billed to the insurer, and a procedure allowing the licensee and the insurer to contact the Insurance Department to resolve any disputes;

(ix) a protocol for the office to investigate and process complaints about licensees; and

(x) a procedure for licensees to report incidents;

(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;

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- (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;
 - (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;
 - (m) electronically post notices of agency action issued to a human services program, with the exception of a foster home, on the office's website, in accordance with Title 63G, Chapter 2, Government Records Access and Management Act; and
 - (n) 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:
 - (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.
- ~~{ (3) In establishing rules under Subsection (1)(a)(vi), the office shall prohibit a child-placing agency or the child-placing agency's employees from:~~

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- ~~_____ (a) misrepresenting facts or information;~~
- ~~_____ (b) requesting or requiring a prospective adoptive parent to grant, as a condition of or in connection with entering into an agreement with a child-placing agency, a release of either the prospective adoptive parent's claims or the adoptive child's claims against the child-placing agency regarding any of the following:~~
 - ~~_____ (i) criminal misconduct;~~
 - ~~_____ (ii) ethical violations;~~
 - ~~_____ (iii) bad faith;~~
 - ~~_____ (iv) intentional torts;~~
 - ~~_____ (v) fraud or negligent misrepresentation;~~
 - ~~_____ (vi) care of the child;~~
 - ~~_____ (vii) future misconduct;~~
 - ~~_____ (viii) breach of contract; or~~
 - ~~_____ (ix) negligence;~~
- ~~_____ (c) requesting or requiring an adoptive parent to indemnify or hold harmless a parent;~~
~~or~~
- ~~_____ (d) requesting or requiring an adoptive parent to indemnify or hold harmless the child-placing agency;~~

‡ Section 4. Section **62A-2-108.5** is amended to read:

62A-2-108.5. Notification requirement for child-placing agencies that provide foster home services -- Rulemaking authority.

(1) The office shall require a [~~child-placing~~] child-placing agency that provides foster home services to notify a foster parent that if the foster parent signs as the responsible adult for a foster child to receive a driver license under Section 53-3-211:

(a) the foster parent is jointly and severally liable with the minor for civil compensatory damages caused by the minor when operating a motor vehicle upon a highway as provided under Subsections 53-3-211(2) and (4); and

(b) the foster parent may file with the Driver License Division a verified written request that the learner permit or driver license be canceled in accordance with Section 53-3-211 if the foster child no longer resides with the foster parent.

(2) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the

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office may make rules establishing the procedures for a [~~child placing~~] child-placing agency to provide the notification required under this section.

Section 5. Section **62A-4a-205.6** is amended to read:

62A-4a-205.6. Adoptive placement time frame -- Contracting with agencies.

(1) With regard to a child who has a primary permanency plan of adoption or for whom a final plan for pursuing termination of parental rights has been approved in accordance with Section 78A-6-314, the division shall make intensive efforts to place the child in an adoptive home within 30 days of the earlier of:

- (a) approval of the final plan; or
- (b) establishment of the primary permanency plan.

(2) If within the time periods described in Subsection (1) the division is unable to locate a suitable adoptive home, it shall contract with licensed [~~child placing~~] child-placing agencies to search for an appropriate adoptive home for the child, and to place the child for adoption. The division shall comply with the requirements of Section 62A-4a-607 and contract with a variety of child placing agencies licensed under Title 62A, Chapter 4a, Part 6, Child Placing. In accordance with federal law, the division shall develop plans for the effective use of cross-jurisdictional resources to facilitate timely adoptive or permanent placements for waiting children.

(3) The division shall ensure that children who are adopted and were previously in its custody, continue to receive the medical and mental health coverage that they are entitled to under state and federal law.

(4) The division may not consider a prospective adoptive parent's willingness or unwillingness to enter a postadoption contact agreement under Section 78B-6-146 as a condition of placing a child with the prospective adoptive parent.

Section 6. Section **62A-4a-601** is amended to read:

62A-4a-601. Definitions.

For purposes of this part:

~~[(1) "Child placing" means:]~~

~~[(a) receiving, accepting, or providing custody or care for a child, temporarily or permanently, for the purpose of finding a person to adopt the child; or]~~

~~[(b) placing a child, temporarily or permanently, in a home for adoption or substitute~~

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care.]

~~[(2) "Child placing agency" means an individual, agency, firm, corporation, association, or group children's home that engages in child placing.]~~

(1) "Child placing" means the same as that term is defined in Section 62A-2-101.

(2) "Child-placing agency" means the same as that term is defined in Section 62A-2-101.

Section 7. Section **62A-4a-602** is amended to read:

62A-4a-602. Licensure requirements -- Prohibited acts.

(1) No person ~~[, agency, firm, corporation, association, or group children's home]~~ may engage in child placing, or solicit money or other assistance for child placing, without a valid license issued by the Office of Licensing, in accordance with Chapter 2, Licensure of Programs and Facilities. When a ~~[child placing]~~ child-placing agency's license is suspended or revoked in accordance with that chapter, the care, control, or custody of any child who has been in the care, control, or custody of that agency shall be transferred to the division.

(2) (a) An attorney, physician, or other person may assist a parent in identifying or locating a person interested in adopting the parent's child, or in identifying or locating a child to be adopted. However, no payment, charge, fee, reimbursement of expense, or exchange of value of any kind, or promise or agreement to make the same, may be made for that assistance.

(b) An attorney, physician, or other person may not:

(i) issue or cause to be issued to any person a card, sign, or device indicating that he is available to provide that assistance;

(ii) cause, permit, or allow any sign or marking indicating that he is available to provide that assistance, on or in any building or structure;

(iii) announce or cause, permit, or allow an announcement indicating that he is available to provide that assistance, to appear in any newspaper, magazine, directory, or on radio or television; or

(iv) advertise by any other means that he is available to provide that assistance.

(3) Nothing in this part precludes payment of fees for medical, legal, or other lawful services rendered in connection with the care of a mother, delivery and care of a child, or lawful adoption proceedings; and no provision of this part abrogates the right of procedures for independent adoption as provided by law.

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(4) In accordance with federal law, only agents or employees of the division and of licensed child placing agencies may certify to the United States Immigration and Naturalization Service that a family meets the division's preadoption requirements.

(5) (a) Beginning May 1, 2000, neither a licensed [~~child-placing~~] child-placing agency nor any attorney practicing in this state may place a child for adoption, either temporarily or permanently, with any individual or individuals that would not be qualified for adoptive placement pursuant to the provisions of Sections 78B-6-117, 78B-6-102, and 78B-6-137.

(b) Beginning May 1, 2000, the division, as a licensed [~~child-placing~~] child-placing agency, may not place a child in foster care with any individual or individuals that would not be qualified for adoptive placement pursuant to the provisions of Sections 78B-6-117, 78B-6-102, and 78B-6-137. However, nothing in this Subsection (5)(b) limits the placement of a child in foster care with the child's biological or adoptive parent.

(c) Beginning May 1, 2000, with regard to children who are in the custody of the state, the division shall establish a policy providing that priority for foster care and adoptive placement shall be provided to families in which both a man and a woman are legally married under the laws of this state. However, nothing in this Subsection (5)(c) limits the placement of a child with the child's biological or adoptive parent.

Section 8. Section **62A-4a-605** is amended to read:

62A-4a-605. Establishing proof of authority.

A [~~child-placing~~] child-placing agency is not required to present its license, issued under Chapter 2, Licensure of Programs and Facilities, or its certificate of incorporation, or proof of its authority to consent to adoption, as proof of its authority in any proceeding in which it is an interested party, unless the court or a party to the proceeding requests that the agency or its representative establish proof of authority.

Section 9. Section **62A-4a-606** is amended to read:

62A-4a-606. ~~{Child-placing}~~ Child-placing agency responsibility for educational services -- Payment of costs.

(1) A [~~child-placing~~] child-placing agency shall ensure that the requirements of Subsections 53A-11-101.5(2) and 53A-11-101.7(1) are met through the provision of appropriate educational services for all children served in the state by the agency.

(2) If the educational services are to be provided through a public school, and:

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(a) the custodial parent or legal guardian resides outside the state, then the child placing agency shall pay all educational costs required under Sections 53A-2-205 and 53A-12-102; or

(b) the custodial parent or legal guardian resides within the state, then the child placing agency shall pay all educational costs required under Section 53A-12-102.

(3) Children in the custody or under the care of a Utah state agency are exempt from the payment of fees required under Subsection (2).

(4) A public school shall admit any child living within its school boundaries who is under the supervision of a child placing agency upon payment by the agency of the tuition and fees required under Subsection (2).

Section 10. Section **62A-4a-607** is amended to read:

62A-4a-607. Promotion of adoption -- Agency notice to potential adoptive parents.

(1) (a) The division and all [~~child-placing~~] child-placing agencies licensed under this part shall promote adoption when that is a possible and appropriate alternative for a child. Specifically, in accordance with Section 62A-4a-205.6, the division shall actively promote the adoption of all children in its custody who have a final plan for termination of parental rights pursuant to Section 78A-6-314 or a primary permanency plan of adoption.

(b) Beginning May 1, 2000, the division may not place a child for adoption, either temporarily or permanently, with any individual or individuals who do not qualify for adoptive placement pursuant to the requirements of Sections 78B-6-117, 78B-6-102, and 78B-6-137.

(2) The division shall obtain or conduct research of prior adoptive families to determine what families may do to be successful with their adoptive children and shall make this research available to potential adoptive parents.

(3) (a) A [~~child-placing~~] child-placing agency licensed under this part shall inform each potential adoptive parent with whom it is working that:

(i) children in the custody of the state are available for adoption;

(ii) Medicaid coverage for medical, dental, and mental health services may be available for these children;

(iii) tax benefits, including the tax credit provided for in Section 59-10-1104, and financial assistance may be available to defray the costs of adopting these children;

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(iv) training and ongoing support may be available to the adoptive parents of these children; and

(v) information about individual children may be obtained by contacting the division's offices or its Internet site as explained by the [~~child-placing~~] child-placing agency.

(b) A [~~child-placing~~] child-placing agency shall:

(i) provide the notice required by Subsection (3)(a) at the earliest possible opportunity; and

(ii) simultaneously distribute a copy of the pamphlet prepared by the division in accordance with Subsection (3)(d).

(c) As a condition of licensure, the [~~child-placing~~] child-placing agency shall certify to the Office of Licensing at the time of license renewal that it has complied with the provisions of this section.

(d) Before July 1, 2000, the division shall:

(i) prepare a pamphlet that explains the information that is required by Subsection (3)(a); and

(ii) regularly distribute copies of the pamphlet described in Subsection (3)(d)(i) to [~~child-placing~~] child-placing agencies.

(e) The division shall respond to any inquiry made as a result of the notice provided in Subsection (3)(a).

Section 11. Section 78B-6-106 is amended to read:

78B-6-106. Responsibility ~~of each party~~ for own actions -- Fraud or misrepresentation.

(1) Each parent of a child conceived or born outside of marriage is responsible for his or her own actions and is not excused from strict compliance with the provisions of this chapter based upon any action, statement, or omission of the other parent or third parties.

(2) Any person injured by fraudulent representations or actions in connection with an adoption is entitled to pursue civil or criminal penalties in accordance with existing law. A fraudulent representation is not a defense to strict compliance with the requirements of this chapter~~[-]~~ and is not a basis for dismissal of a petition for adoption, vacation of an adoption decree, or an automatic grant of custody to the offended party. Custody determinations shall be based on the best [~~interest~~] interests of the child, in accordance with the provisions of Section

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78B-6-133.

- (3) A child-placing agency and the employees of a child-placing agency may not:
- (a) employ any device, scheme, or artifice to defraud;
 - (b) engage in any act, practice, or course of business that operates or would operate as a fraud or deceit upon any person;
 - (c) materially and intentionally misrepresent facts or information; or
 - (d) request or require a prospective adoptive parent to grant, as a condition of or in connection with entering into an agreement with a child-placing agency, a release of either the prospective adoptive parent's claims or the adoptive child's claims against the child-placing agency regarding any of the following:
 - (i) criminal misconduct;
 - (ii) ethical violations, as established by the Office of Licensing's administrative rules;
 - (iii) bad faith;
 - (iv) intentional torts;
 - (v) fraud;
 - (vi) care of the child, as described in Subsection 78B-6-134(3);
 - (vii) future misconduct that may arise before the adoption is finalized;
 - (viii) breach of contract; or
 - (ix) gross negligence.
- (4) Subsection (3) does not prohibit a release of claims against a child-placing agency or a child-placing agency's employees for liability arising from the acts or the failure to act of a third party.

Section ~~{11}~~12. Section **78B-6-110.1** is amended to read:

78B-6-110.1. Prebirth notice to presumed father of intent to place a child for adoption.

- (1) As used in this section, "birth father" means:
 - (a) a potential biological father; or
 - (b) an unmarried biological father.
- (2) Before the birth of a child, the following individuals may notify a birth father of the child that the mother of the child is considering an adoptive placement for the child:
 - (a) the child's mother;

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- (b) a licensed [~~child-placing~~] child-placing agency;
- (c) an attorney representing a prospective adoptive parent of the child; or
- (d) an attorney representing the mother of the child.

(3) Providing a birth father with notice under Subsection (2) does not obligate the mother of the child to proceed with an adoptive placement of the child.

(4) The notice described in Subsection (2) shall include the name, address, and telephone number of the person providing the notice, and shall include the following information:

- (a) the mother's intent to place the child for adoption;
- (b) that the mother has named the person receiving this notice as a potential birth father of her child;
- (c) the requirements to contest the adoption, including taking the following steps within 30 days after the day on which the notice is served:
 - (i) initiating proceedings to establish or assert paternity in a district court of Utah within 30 days after the day on which notice is served, including filing an affidavit stating:
 - (A) that the birth father is fully able and willing to have full custody of the child;
 - (B) the birth father's plans to care for the child; and
 - (C) that the birth father agrees to pay for child support and expenses incurred in connection with the pregnancy and birth; and
 - (ii) filing a notice of commencement of paternity proceedings with the state registrar of vital statistics within the Utah Department of Health;
- (d) the consequences for failure to comply with Subsection (4)(c), including that:
 - (i) the birth father's ability to assert the right, if any, to consent or refuse to consent to the adoption is irrevocably lost;
 - (ii) the birth father will lose the ability to assert the right to contest any future adoption of the child; and
 - (iii) the birth father will lose the right, if any, to notice of any adoption proceedings related to the child;
- (e) that the birth father may consent to the adoption, if any, within 30 days after the day on which the notice is received, and that his consent is irrevocable; and
- (f) that no communication between the mother of the child and the birth father changes

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the rights and responsibilities of the birth father described in the notice.

(5) If the recipient of the notice described in Subsection (2) does not fully and strictly comply with the requirements of Subsection (4)(c) within 30 days after the day on which he receives the notice, he will lose:

(a) the ability to assert the right to consent or refuse to consent to an adoption of the child described in the notice;

(b) the ability to assert the right to contest any future adoption of the child described in the notice; and

(c) the right to notice of any adoption proceedings relating to the child described in the notice.

(6) If an individual described in Subsection (2) chooses to notify a birth father under this section, the notice shall be served on a birth father in a manner consistent with the Utah Rules of Civil Procedure or by certified mail.

Section ~~{12}~~13. Section **78B-6-124** is amended to read:

78B-6-124. Persons who may take consents and relinquishments.

(1) A consent or relinquishment by a birth mother or an adoptee shall be signed before:

(a) a judge of any court that has jurisdiction over adoption proceedings;

(b) subject to Subsection (6), a person appointed by the judge described in Subsection (1)(a) to take consents or relinquishments; or

(c) subject to Subsection (6), a person who is authorized by a child-placing agency to take consents or relinquishments, if the consent or relinquishment grants legal custody of the child to a child-placing agency or an extra-jurisdictional child-placing agency.

(2) If the consent or relinquishment of a birth mother or adoptee is taken out of state it shall be signed before:

(a) subject to Subsection (6), a person who is authorized by a child-placing agency to take consents or relinquishments, if the consent or relinquishment grants legal custody of the child to a child-placing agency or an extra-jurisdictional child-placing agency;

(b) subject to Subsection (6), a person authorized or appointed to take consents or relinquishments by a court of this state that has jurisdiction over adoption proceedings;

(c) a court that has jurisdiction over adoption proceedings in the state where the consent or relinquishment is taken; or

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(d) a person authorized, under the laws of the state where the consent or relinquishment is taken, to take consents or relinquishments of a birth mother or adoptee.

(3) The consent or relinquishment of any other person or agency as required by Section 78B-6-120 may be signed before a Notary Public or any person authorized to take a consent or relinquishment under Subsection (1) or (2).

(4) A person, authorized by Subsection (1) or (2) to take consents or relinquishments, shall certify to the best of his information and belief that the person executing the consent or relinquishment has read and understands the consent or relinquishment and has signed it freely and voluntarily.

(5) A person executing a consent or relinquishment is entitled to receive a copy of the consent or relinquishment.

(6) A signature described in Subsection (1)(b), (1)(c), (2)(a), or (2)(b), shall be:

(a) notarized; or

(b) witnessed by two individuals who are not members of the birth mother's or the ~~signatory's~~ adoptee's immediate family.

(7) ~~{A}~~ Except as provided in Subsection 62A-4a-602(1), a transfer of relinquishment from one child-placing agency to another child-placing agency shall be signed before a Notary Public.

Section ~~{13}~~ 14. Section **78B-6-134** is amended to read:

78B-6-134. Custody pending final decree.

(1) (a) A licensed [~~child-placing adoption~~] child-placing agency, or a petitioner if the petition for adoption is filed before a child's birth, may seek an order establishing that the agency or petitioner shall have temporary custody of the child from the time of birth.

(b) The court shall grant an order for temporary custody under Subsection (1)(a) upon determining that:

(i) the birth mother or both birth parents consent to the order;

(ii) the agency or petitioner is willing and able to take custody of the child; and

(iii) an order will be in the best interest of the child.

(c) The court shall vacate an order if, prior to the child's birth, the birth mother or birth parents withdraw their consent.

(2) Except as otherwise provided by the court, once a petitioner has received the

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adoptee into his home and a petition for adoption has been filed, the petitioner is entitled to the custody and control of the adoptee and is responsible for the care, maintenance, and support of the adoptee, including any necessary medical or surgical treatment, pending further order of the court.

(3) Once a child has been placed with, relinquished to, or ordered into the custody of a child-placing agency for purposes of adoption, the agency shall have custody and control of the child and is responsible for his care, maintenance, and support. The agency may delegate the responsibility for care, maintenance, and support, including any necessary medical or surgical treatment, to the petitioner once the petitioner has received the child into his home. However, until the final decree of adoption is entered by the court, the agency has the right to the custody and control of the child.

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Legislative Review Note

Office of Legislative Research and General Counsel