

CHILD CARE LICENSING AMENDMENTS

2018 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Karen Kwan

Senate Sponsor: Lincoln Fillmore

LONG TITLE

General Description:

This bill amends provisions related to child care licensing.

Highlighted Provisions:

This bill:

- ▶ modifies the department's licensing authority related to child care; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

26-10-10, as enacted by Laws of Utah 2013, Chapter 45

26-39-301, as last amended by Laws of Utah 2016, Chapter 74

26-39-404, as last amended by Laws of Utah 2017, Chapter 366

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

Section 1. Section **26-10-10** is amended to read:

26-10-10. Cytomegalovirus (CMV) public education and testing.

(1) As used in this section "CMV" means cytomegalovirus.



28 (2) The department shall establish and conduct a public education program to inform
29 pregnant women and women who may become pregnant regarding:

30 (a) the incidence of CMV;

31 (b) the transmission of CMV to pregnant women and women who may become
32 pregnant;

33 (c) birth defects caused by congenital CMV;

34 (d) methods of diagnosing congenital CMV; and

35 (e) available preventative measures.

36 (3) The department shall provide the information described in Subsection (2) to:

37 (a) child care programs licensed under Title 26, Chapter 39, Utah Child Care Licensing
38 Act, and their employees;

39 (b) a person described in Subsection [26-39-403\(1\)\(c\)](#) [~~(f), (g), (h), (j), or (k)~~] and
40 Subsections [26-39-403\(2\)\(a\), \(b\), \(c\), \(e\), and \(f\)](#);

41 (c) a person serving as a school nurse under Section [53A-11-204](#);

42 (d) a person offering health education in a school district;

43 (e) health care providers offering care to pregnant women and infants; and

44 (f) religious, ecclesiastical, or denominational organizations offering children's
45 programs as a part of worship services.

46 (4) If a newborn infant fails the newborn hearing screening test(s) under Subsection
47 [26-10-6\(1\)](#), a medical practitioner shall:

48 (a) test the newborn infant for CMV before the newborn is 21 days of age, unless a
49 parent of the newborn infant objects; and

50 (b) provide to the parents of the newborn infant information regarding:

51 (i) birth defects caused by congenital CMV; and

52 (ii) available methods of treatment.

53 (5) The department shall provide to the family and the medical practitioner, if known,
54 information regarding the testing requirements under Subsection (4) when providing results
55 indicating that an infant has failed the newborn hearing screening test(s) under Subsection
56 [26-10-6\(1\)](#).

57 (6) The department may make rules in accordance with Title 63G, Chapter 3, Utah
58 Administrative Rulemaking Act, as necessary to administer the provisions of this section.

59 Section 2. Section **26-39-301** is amended to read:

60 **26-39-301. Duties of the department -- Enforcement of chapter -- Licensing**
61 **committee requirements.**

62 (1) With regard to [~~residential~~] child care licensed or certified under this chapter, the
63 department may:

64 (a) make and enforce rules to implement this chapter and, as necessary to protect
65 qualifying children's common needs for a safe and healthy environment, to provide for:

66 (i) adequate facilities and equipment; and

67 (ii) competent caregivers, considering the age of the children and the type of program
68 offered by the licensee;

69 (b) make and enforce rules necessary to carry out the purposes of this chapter, in the
70 following areas:

71 (i) requirements for applications, the application process, and compliance with other
72 applicable statutes and rules;

73 (ii) documentation and policies and procedures that providers shall have in place in
74 order to be licensed, in accordance with Subsection (1)(a);

75 (iii) categories, classifications, and duration of initial and ongoing licenses;

76 (iv) changes of ownership or name, changes in licensure status, and changes in
77 operational status;

78 (v) license expiration and renewal, contents, and posting requirements;

79 (vi) procedures for inspections, complaint resolution, disciplinary actions, and other
80 procedural measures to encourage and assure compliance with statute and rule; and

81 (vii) guidelines necessary to assure consistency and appropriateness in the regulation
82 and discipline of licensees; and

83 (c) set and collect licensing and other fees in accordance with Section [26-1-6](#).

84 (2) The department shall enforce the rules established by the licensing committee, with
85 the concurrence of the department, for center based child care.

86 (3) Rules made under this chapter by the department, or the licensing committee with
87 the concurrence of the department, shall be made in accordance with Title 63G, Chapter 3,
88 Utah Administrative Rulemaking Act.

89 (4) (a) The licensing committee and the department may not regulate educational

90 curricula, academic methods, or the educational philosophy or approach of the provider.

91 (b) The licensing committee and the department shall allow for a broad range of
92 educational training and academic background in certification or qualification of child day care
93 directors.

94 (5) In licensing and regulating child care programs, the licensing committee and the
95 department shall reasonably balance the benefits and burdens of each regulation and, by rule,
96 provide for a range of licensure, depending upon the needs and different levels and types of
97 child care provided.

98 (6) Notwithstanding the definition of "qualifying child" in Section [26-39-102](#), the
99 licensing committee and the department shall count children through age 12 and children with
100 disabilities through age 18 toward the minimum square footage requirement for indoor and
101 outdoor areas, including the child of:

102 (a) a licensed residential child care provider; or

103 (b) an owner or employee of a licensed child care center.

104 (7) Notwithstanding Subsection (1)(a)(i), the licensing committee and the department
105 may not exclude floor space used for furniture, fixtures, or equipment from the minimum
106 square footage requirement for indoor and outdoor areas if the furniture, fixture, or equipment
107 is used:

108 (a) by qualifying children;

109 (b) for the care of qualifying children; or

110 (c) to store classroom materials.

111 (8) (a) A child care center constructed prior to January 1, 2004, and licensed and
112 operated as a child care center continuously since January 1, 2004, is exempt from the licensing
113 committee's and the department's group size restrictions, if the child to caregiver ratios are
114 maintained, and adequate square footage is maintained for specific classrooms.

115 (b) An exemption granted under Subsection (7)(a) is transferrable to subsequent
116 licensed operators at the center if a licensed child care center is continuously maintained at the
117 center.

118 (9) The licensing committee, with the concurrence of the department, shall develop, by
119 rule, a five-year phased-in compliance schedule for playground equipment safety standards.

120 (10) Nothing in this chapter may be interpreted to grant a municipality or county the

121 authority to license or certify a child care program.

122 Section 3. Section ~~26-39-404~~ is amended to read:

123 **26-39-404. Disqualified individuals -- Criminal history checks -- Payment of**
 124 **costs.**

125 (1) (a) Each exempt provider and each person requesting a residential certificate or to
 126 be licensed or to renew a license under this chapter shall submit to the department the name
 127 and other identifying information, which shall include fingerprints, of existing, new, and
 128 proposed:

129 (i) owners;

130 (ii) directors;

131 (iii) members of the governing body;

132 (iv) employees;

133 (v) providers of care;

134 (vi) volunteers, except parents of children enrolled in the programs; and

135 (vii) all adults residing in a residence where child care is provided.

136 ~~[(b) A person seeking renewal of a residential certificate or license under this section is~~
 137 ~~not required to submit fingerprints of an individual referred to in Subsections (1)(a)(i) through~~
 138 ~~(vi), if:]~~

139 ~~[(i) the individual has resided in Utah for the last five years and applied for a certificate~~
 140 ~~or license before July 1, 2013;]~~

141 ~~[(ii) the individual has:]~~

142 ~~[(A) previously submitted fingerprints under this section for a national criminal history~~
 143 ~~record check; and]~~

144 ~~[(B) resided in Utah continuously since that time; or]~~

145 ~~[(iii) as of May 3, 1999, the individual had one of the relationships under Subsection~~
 146 ~~(1)(a) with a child care provider having a residential certificate or licensed under this section~~
 147 ~~and the individual has resided in Utah continuously since that time.]~~

148 ~~[(c)]~~ (b) (i) The Utah Division of Criminal Investigation and Technical Services within
 149 the Department of Public Safety shall process the information required under Subsection (1)(a)
 150 to determine whether the individual has been convicted of any crime.

151 (ii) The Utah Division of Criminal Investigation and Technical Services shall submit

152 fingerprints required under Subsection (1)(a) to the FBI for a national criminal history record
153 check.

154 (iii) A person required to submit information to the department under Subsection (1)
155 shall pay the cost of conducting the record check described in this Subsection (1)~~(c)~~(b).

156 (2) (a) Each person requesting a residential certificate or to be licensed or to renew a
157 license under this chapter shall submit to the department the name and other identifying
158 information of any person age 12 through 17 who resides in the residence where the child care
159 is provided. The identifying information required for a person age 12 through 17 does not
160 include fingerprints.

161 (b) The department shall access the juvenile court records to determine whether a
162 person described in Subsection (1) or (2)(a) has been adjudicated in juvenile court of
163 committing an act which if committed by an adult would be a felony or misdemeanor if:

164 (i) the person described in Subsection (1) is under the age of 28; or

165 (ii) the person described in Subsection (1) is:

166 (A) over the age of 28; and

167 (B) has been convicted, has pleaded no contest, or is currently subject to a plea in
168 abeyance or diversion agreement for a felony or misdemeanor.

169 (3) Except as provided in Subsections (4) and (5), a licensee under this chapter or an
170 exempt provider may not permit a person who has been convicted, has pleaded no contest, or is
171 currently subject to a plea in abeyance or diversion agreement for any felony or misdemeanor,
172 or if the provisions of Subsection (2)(b) apply, who has been adjudicated in juvenile court of
173 committing an act which if committed by an adult would be a felony or a misdemeanor, to:

174 (a) provide child care;

175 (b) provide volunteer services for a child care program or an exempt provider;

176 (c) reside at the premises where child care is provided; or

177 (d) function as an owner, director, or member of the governing body of a child care
178 program or an exempt provider.

179 (4) (a) The department may, by rule, exempt the following from the restrictions of
180 Subsection (3):

181 (i) specific misdemeanors; and

182 (ii) specific acts adjudicated in juvenile court, which if committed by an adult would be

183 misdemeanors.

184 (b) In accordance with criteria established by rule, the executive director may consider
185 and exempt individual cases [~~involving misdemeanors,~~] not otherwise exempt under
186 Subsection (4)(a) from the restrictions of Subsection (3).

187 (5) The restrictions of Subsection (3) do not apply to the following:

188 (a) a conviction or plea of no contest to any nonviolent drug offense that occurred on a
189 date 10 years or more before the date of the criminal history check described in this section; or

190 (b) if the provisions of Subsection (2)(b) apply, any nonviolent drug offense
191 adjudicated in juvenile court on a date 10 years or more before the date of the criminal history
192 check described in this section.

Legislative Review Note
Office of Legislative Research and General Counsel