

1 **CONGREGATE CARE PROGRAM AMENDMENTS**

2 2021 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Marsha Judkins**

5 Senate Sponsor: Michael K. McKell

7 **LONG TITLE**

8 **General Description:**

9 This bill regulates congregate care programs.

10 **Highlighted Provisions:**

11 This bill:

- 12 ▶ defines terms;
- 13 ▶ requires a congregate care program to maintain certain information for a child
- 14 whose parent or guardian:
 - 15 • does not live in the state; and
 - 16 • contracts with the congregate care program;
- 17 ▶ requires a congregate care program to assist the state in locating and returning a
- 18 child who leaves the program;
- 19 ▶ establishes a penalty for a congregate care program that fails to comply with the
- 20 provisions of this bill; and
- 21 ▶ makes technical and conforming changes.

22 **Money Appropriated in this Bill:**

23 None

24 **Other Special Clauses:**

25 None

26 **Utah Code Sections Affected:**

27 AMENDS:

28 **62A-2-101**, as last amended by Laws of Utah 2019, Chapters 136, 193 and last
29 amended by Coordination Clause, Laws of Utah 2019, Chapter 193

30 62A-2-112, as last amended by Laws of Utah 2018, Chapter 203

31 62A-2-120, as last amended by Laws of Utah 2020, Chapters 176, 225, 250 and last
32 amended by Coordination Clause, Laws of Utah 2020, Chapter 225

33 ENACTS:

34 62A-2-123, Utah Code Annotated 1953



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

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

38 **62A-2-101. Definitions.**

39 As used in this chapter:

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

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

42 (b) that meets the needs of functionally impaired adults through a comprehensive
43 program that provides a variety of health, social, recreational, and related support services in a
44 protective setting.

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

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

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

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

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

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

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

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

57 (C) a board of an organization operating under a contract to provide mental health or

58 substance abuse programs, or services for the local mental health authority or substance abuse
59 authority; or

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

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

63 (i) uses a regionally accredited education program;

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

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

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

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

69 (iv) (A) does not provide the treatment or services described in Subsection [(33)(a)]
70 (37)(a); or

71 (B) provides the treatment or services described in Subsection [(33)(a)] (37)(a) on a
72 limited 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 [(33)(a)] (37)(a) on a limited basis if:

77 (A) the treatment or services described in Subsection [(33)(a)] (37)(a) are provided
78 only as an 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 [(33)(a)] (37)(a); or

82 (II) have a primary purpose of providing the treatment or services described in
83 Subsection [(33)(a)] (37)(a).

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

85 (5) "Child" means [a person] an individual under 18 years [of age] old.

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) "Child-placing agency" means a person that engages in child placing.

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

93 (9) "Congregate care program" means any of the following that provide services to a
94 child:

- 95 (a) an outdoor youth program;
- 96 (b) a residential support program;
- 97 (c) a residential treatment program; or
- 98 (d) a therapeutic school.

99 [~~(9)~~] (10) "Day treatment" means specialized treatment that is provided to:

- 100 (a) a client less than 24 hours a day; and
 - 101 (b) four or more persons who:
 - 102 (i) are unrelated to the owner or provider; and
 - 103 (ii) have emotional, psychological, developmental, physical, or behavioral
- 104 dysfunctions, impairments, or chemical dependencies.

105 [~~(10)~~] (11) "Department" means the Department of Human Services.

106 [~~(11)~~] (12) "Department contractor" means an individual who:

- 107 (a) provides services under a contract with the department; and
 - 108 (b) due to the contract with the department, has or will likely have direct access to a
- 109 child or vulnerable adult.

110 [~~(12)~~] (13) "Direct access" means that an individual has, or likely will have:

- 111 (a) contact with or access to a child or vulnerable adult that provides the individual
- 112 with an opportunity for personal communication or touch; or
- 113 (b) an opportunity to view medical, financial, or other confidential personal identifying

114 information of the child, the child's parents or legal guardians, or the vulnerable adult.

115 ~~[(13)]~~ (14) "Directly supervised" means that an individual is being supervised under
116 the uninterrupted visual and auditory surveillance of another individual who has a current
117 background screening approval issued by the office.

118 ~~[(14)]~~ (15) "Director" means the director of the Office of Licensing.

119 ~~[(15)]~~ (16) "Domestic violence" means the same as that term is defined in Section
120 [77-36-1](#).

121 ~~[(16)]~~ (17) "Domestic violence treatment program" means a nonresidential program
122 designed to provide psychological treatment and educational services to perpetrators and
123 victims of domestic violence.

124 ~~[(17)]~~ (18) "Elder adult" means a person 65 years ~~[of age]~~ old or older.

125 ~~[(18)]~~ (19) "Executive director" means the executive director of the department.

126 ~~[(19)]~~ (20) "Foster home" means a residence that is licensed or certified by the Office
127 of Licensing for the full-time substitute care of a child.

128 ~~[(20)]~~ (21) "Health benefit plan" means the same as that term is defined in Section
129 [31A-1-301](#).

130 ~~[(21)]~~ (22) "Health care provider" means the same as that term is defined in Section
131 [78B-3-403](#).

132 ~~[(22)]~~ (23) "Health insurer" means the same as that term is defined in Section
133 [31A-22-615.5](#).

134 ~~[(23)]~~ (24) (a) "Human services program" means ~~[a]~~:

135 (i) a foster home;

136 (ii) a therapeutic school;

137 (iii) a youth program;

138 (iv) an outdoor youth program;

139 (v) a residential treatment program;

140 (vi) a residential support program;

141 ~~[(iv)]~~ (vii) a resource family home;

142 ~~[(v)]~~ (viii) a recovery residence; or
 143 ~~[(vi)]~~ (ix) a facility or program that provides:
 144 ~~[(A)]~~ secure treatment;
 145 ~~[(B)]~~ inpatient treatment;
 146 ~~[(C)]~~ residential treatment;
 147 ~~[(D)]~~ residential support;
 148 ~~[(E)]~~ (A) adult day care;
 149 ~~[(F)]~~ (B) day treatment;
 150 ~~[(G)]~~ (C) outpatient treatment;
 151 ~~[(H)]~~ (D) domestic violence treatment;
 152 ~~[(I)]~~ (E) child-placing services;
 153 ~~[(J)]~~ (F) social detoxification; or
 154 ~~[(K)]~~ (G) any other human services that are required by contract with the department to
 155 be licensed with the department.

156 (b) "Human services program" does not include:
 157 (i) a boarding school; or
 158 (ii) a residential, vocational and life skills program, as defined in Section [13-53-102](#).

159 ~~[(24)]~~ (25) "Indian child" means the same as that term is defined in 25 U.S.C. Sec.
 160 1903.

161 ~~[(25)]~~ (26) "Indian country" means the same as that term is defined in 18 U.S.C. Sec.
 162 1151.

163 ~~[(26)]~~ (27) "Indian tribe" means the same as that term is defined in 25 U.S.C. Sec.
 164 1903.

165 (28) "Intermediate secure treatment" means 24-hour specialized residential treatment or
 166 care for an individual who:

167 (a) cannot live independently or in a less restrictive environment; and

168 (b) requires, without the individual's consent or control, the use of locked doors to care
 169 for the individual.

170 [~~(27)~~] (29) "Licensee" means an individual or a human services program licensed by
171 the office.

172 [~~(28)~~] (30) "Local government" means a city, town, metro township, or county.

173 [~~(29)~~] (31) "Minor" has the same meaning as "child."

174 [~~(30)~~] (32) "Office" means the Office of Licensing within the Department of Human
175 Services.

176 (33) "Outdoor youth program" means a program that provides:

177 (a) services to a child that has:

178 (i) a chemical dependency; or

179 (ii) a dysfunction or impairment that is emotional, psychological, developmental,
180 physical, or behavioral;

181 (b) a 24-hour outdoor group living environment; and

182 (c) regular therapy, including group, individual, or supportive family therapy.

183 [~~(31)~~] (34) "Outpatient treatment" means individual, family, or group therapy or
184 counseling designed to improve and enhance social or psychological functioning for those
185 whose physical and emotional status allows them to continue functioning in their usual living
186 environment.

187 [~~(32)~~] (35) "Practice group" or "group practice" means two or more health care
188 providers legally organized as a partnership, professional corporation, or similar association,
189 for which:

190 (a) substantially all of the services of the health care providers who are members of the
191 group are provided through the group and are billed in the name of the group and amounts
192 received are treated as receipts of the group; and

193 (b) the overhead expenses of and the income from the practice are distributed in
194 accordance with methods previously determined by members of the group.

195 (36) "Private-placement child" means a child whose parent or guardian enters into a
196 contract with a congregate care program for the child to receive services.

197 [~~(33)~~] (37) (a) "Recovery residence" means a home, residence, or facility that meets at

198 least two of the following requirements:

199 (i) provides a supervised living environment for individuals recovering from a
200 substance use disorder;

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

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

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

207 (v) (A) receives public funding; or

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

209 (b) "Recovery residence" does not mean:

210 (i) a residential treatment program;

211 (ii) residential support program; or

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

213 (A) residents, by their majority vote, establish, implement, and enforce policies

214 governing the living environment, including the manner in which applications for residence are
215 approved and the manner in which residents are expelled;

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

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

220 ~~[(34)]~~ (38) "Regular business hours" means:

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

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

223 ~~[(35)]~~ (39) (a) "Residential support program" means ~~[arranging for or providing]~~ a

224 program that arranges for or provides the necessities of life as a protective service to

225 individuals or families who have a disability or who are experiencing a dislocation or

226 emergency that prevents them from providing these services for themselves or their families.

227 (b) "Residential support program" includes [~~providing~~] a program that provides a
228 supervised living environment for [~~persons~~] individuals with dysfunctions or impairments that
229 are:

- 230 (i) emotional;
- 231 (ii) psychological;
- 232 (iii) developmental; or
- 233 (iv) behavioral.

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

235 (d) "Residential support program" does not include:

- 236 (i) a recovery residence; or
- 237 (ii) residential services that are performed:
 - 238 (A) exclusively under contract with the Division of Services for People with
 - 239 Disabilities; or
 - 240 (B) in a facility that serves fewer than four individuals.

241 [~~(36)~~] (40) (a) "Residential treatment" means a 24-hour group living environment for
242 four or more individuals unrelated to the owner or provider that offers room or board and
243 specialized treatment, behavior modification, rehabilitation, discipline, emotional growth, or
244 habilitation services for persons with emotional, psychological, developmental, or behavioral
245 dysfunctions, impairments, or chemical dependencies.

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

- 247 (i) boarding school;
- 248 (ii) foster home; or
- 249 (iii) recovery residence.

250 [~~(37)~~] (41) "Residential treatment program" means a [~~human services program~~]
251 program or facility that provides:

- 252 (a) residential treatment; or
- 253 (b) intermediate secure treatment.

254 ~~[(38) (a) "Secure treatment" means 24-hour specialized residential treatment or care for~~
255 ~~persons whose current functioning is such that they cannot live independently or in a less~~
256 ~~restrictive environment.]~~

257 ~~[(b) "Secure treatment" differs from residential treatment to the extent that it requires~~
258 ~~intensive supervision, locked doors, and other security measures that are imposed on residents~~
259 ~~with neither their consent nor control.]~~

260 ~~[(39)]~~ (42) "Social detoxification" means short-term residential services for persons
261 who are experiencing or have recently experienced drug or alcohol intoxication, that are
262 provided outside of a health care facility licensed under Title 26, Chapter 21, Health Care
263 Facility Licensing and Inspection Act, and that include:

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

266 (b) specialized rehabilitation to acquire sobriety; and

267 (c) aftercare services.

268 ~~[(40)]~~ (43) "Substance abuse disorder" or "substance use disorder" mean the same as
269 "substance use disorder" is defined in Section [62A-15-1202](#).

270 ~~[(41)]~~ (44) "Substance abuse treatment program" or "substance use disorder treatment
271 program" means a program:

272 (a) designed to provide:

273 (i) specialized drug or alcohol treatment;

274 (ii) rehabilitation; or

275 (iii) habilitation services; and

276 (b) that provides the treatment or services described in Subsection ~~[(41)(a)]~~ (44)(a) to
277 persons with:

278 (i) a diagnosed substance use disorder; or

279 (ii) chemical dependency disorder.

280 ~~[(42)]~~ (45) "Therapeutic school" means a residential group living facility:

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

- 282 (i) the owner of the facility; or
- 283 (ii) the primary service provider of the facility;
- 284 (b) that serves students who have a history of failing to function:
- 285 (i) at home;
- 286 (ii) in a public school; or
- 287 (iii) in a nonresidential private school; and
- 288 (c) that offers:
- 289 (i) room and board; and
- 290 (ii) an academic education integrated with:
- 291 (A) specialized structure and supervision; or
- 292 (B) services or treatment related to:
- 293 (I) a disability;
- 294 (II) emotional development;
- 295 (III) behavioral development;
- 296 (IV) familial development; or
- 297 (V) social development.
- 298 [~~(43)~~] (46) "Unrelated persons" means persons other than parents, legal guardians,
- 299 grandparents, brothers, sisters, uncles, or aunts.
- 300 [~~(44)~~] (47) "Vulnerable adult" means an elder adult or an adult who has a temporary or
- 301 permanent mental or physical impairment that substantially affects the person's ability to:
- 302 (a) provide personal protection;
- 303 (b) provide necessities such as food, shelter, clothing, or mental or other health care;
- 304 (c) obtain services necessary for health, safety, or welfare;
- 305 (d) carry out the activities of daily living;
- 306 (e) manage the adult's own resources; or
- 307 (f) comprehend the nature and consequences of remaining in a situation of abuse,
- 308 neglect, or exploitation.
- 309 [~~(45)~~] (48) (a) "Youth program" means a nonresidential program designed to provide

310 behavioral, substance abuse, or mental health services to minors that:

- 311 (i) serves adjudicated or nonadjudicated youth;
- 312 (ii) charges a fee for its services;
- 313 (iii) may [~~or may not~~] provide host homes or other arrangements for overnight
314 accommodation of the youth;
- 315 (iv) may [~~or may not~~] provide all or part of its services in the outdoors;
- 316 (v) may [~~or may not~~] limit or censor access to parents or guardians; and
- 317 (vi) prohibits or restricts a minor's ability to leave the program at any time of the
318 minor's own free will.

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

321 Section 2. Section **62A-2-112** is amended to read:

322 **62A-2-112. Violations -- Penalties.**

323 (1) As used in this section, "health care provider" means a person licensed to provide
324 health care services under this chapter.

325 (2) The office may deny, place conditions on, suspend, or revoke a human services
326 license, if it finds, related to the human services program:

- 327 (a) that there has been a failure to comply with the rules established under this chapter;
- 328 (b) evidence of aiding, abetting, or permitting the commission of any illegal act; or
- 329 (c) evidence of conduct adverse to the standards required to provide services and
330 promote public trust, including aiding, abetting, or permitting the commission of abuse,
331 neglect, exploitation, harm, mistreatment, or fraud.

332 (3) The office may restrict or prohibit new admissions to a human services program, if
333 it finds:

- 334 (a) that there has been a failure to comply with rules established under this chapter;
- 335 (b) evidence of aiding, abetting, or permitting the commission of any illegal act; or
- 336 (c) evidence of conduct adverse to the standards required to provide services and
337 promote public trust, including aiding, abetting, or permitting the commission of abuse,

338 neglect, exploitation, harm, mistreatment, or fraud.

339 (4) (a) The office may assess a fine of up to \$500 per violation against a health care
340 provider that violates Section 31A-26-313.

341 (b) The office shall waive the fine described in Subsection (4)(a) if:

342 (i) the health care provider demonstrates to the office that the health care provider
343 mitigated and reversed any damage to the insured caused by the health care provider or third
344 party's violation; or

345 (ii) the insured does not pay the full amount due on the bill that is the subject of the
346 violation, including any interest, fees, costs, and expenses, within 120 days after the day on
347 which the health care provider or third party makes a report to a credit bureau or takes an action
348 in violation of Section 31A-26-313.

349 (5) If a congregate care program knowingly fails to comply with the provisions of
350 Section 62A-2-123, the office may impose a penalty on the congregate care program that is less
351 than or equal to the cost of care incurred by the state for a private-placement child described in
352 Subsection 62A-2-123(3).

353 (6) The office shall make rules for calculating the cost of care described in Subsection
354 (5) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

355 Section 3. Section 62A-2-120 is amended to read:

356 **62A-2-120. Background check -- Direct access to children or vulnerable adults.**

357 (1) As used in this section:

358 (a) (i) "Applicant" means:

359 (A) the same as that term is defined in Section 62A-2-101;

360 (B) an individual who is associated with a licensee and has or will likely have direct
361 access to a child or a vulnerable adult;

362 (C) an individual who provides respite care to a foster parent or an adoptive parent on
363 more than one occasion;

364 (D) a department contractor;

365 (E) a guardian submitting an application on behalf of an individual, other than the child

366 or vulnerable adult who is receiving the service, if the individual is 12 years [~~of age~~] old or
367 older and resides in a home, that is licensed or certified by the office, with the child or
368 vulnerable adult who is receiving services; or

369 (F) a guardian submitting an application on behalf of an individual, other than the child
370 or vulnerable adult who is receiving the service, if the individual is 12 years [~~of age~~] old or
371 older and is a person described in Subsection (1)(a)(i)(A), (B), (C), or (D).

372 (ii) "Applicant" does not mean an individual, including an adult, who is in the custody
373 of the Division of Child and Family Services or the Division of Juvenile Justice Services.

374 (b) "Application" means a background screening application to the office.

375 (c) "Bureau" means the Bureau of Criminal Identification within the Department of
376 Public Safety, created in Section [53-10-201](#).

377 (d) "Incidental care" means occasional care, not in excess of five hours per week and
378 never overnight, for a foster child.

379 (e) "Personal identifying information" means:

380 (i) current name, former names, nicknames, and aliases;

381 (ii) date of birth;

382 (iii) physical address and email address;

383 (iv) telephone number;

384 (v) driver license or other government-issued identification;

385 (vi) social security number;

386 (vii) only for applicants who are 18 years of age or older, fingerprints, in a form
387 specified by the office; and

388 (viii) other information specified by the office by rule made in accordance with Title
389 63G, Chapter 3, Utah Administrative Rulemaking Act.

390 (2) (a) Except as provided in Subsection (13), an applicant or a representative shall
391 submit the following to the office:

392 (i) personal identifying information;

393 (ii) a fee established by the office under Section [63J-1-504](#); and

- 394 (iii) a disclosure form, specified by the office, for consent for:
395 (A) an initial background check upon submission of the information described under
396 this Subsection (2)(a);
397 (B) ongoing monitoring of fingerprints and registries until no longer associated with a
398 licensee for 90 days;
399 (C) a background check when the office determines that reasonable cause exists; and
400 (D) retention of personal identifying information, including fingerprints, for
401 monitoring and notification as described in Subsections (3)(d) and (4).
402 (b) In addition to the requirements described in Subsection (2)(a), if an applicant
403 resided outside of the United States and its territories during the five years immediately
404 preceding the day on which the information described in Subsection (2)(a) is submitted to the
405 office, the office may require the applicant to submit documentation establishing whether the
406 applicant was convicted of a crime during the time that the applicant resided outside of the
407 United States or its territories.
408 (3) The office:
409 (a) shall perform the following duties as part of a background check of an applicant:
410 (i) check state and regional criminal background databases for the applicant's criminal
411 history by:
412 (A) submitting personal identifying information to the bureau for a search; or
413 (B) using the applicant's personal identifying information to search state and regional
414 criminal background databases as authorized under Section 53-10-108;
415 (ii) submit the applicant's personal identifying information and fingerprints to the
416 bureau for a criminal history search of applicable national criminal background databases;
417 (iii) search the Department of Human Services, Division of Child and Family Services'
418 Licensing Information System described in Section 62A-4a-1006;
419 (iv) search the Department of Human Services, Division of Aging and Adult Services'
420 vulnerable adult abuse, neglect, or exploitation database described in Section 62A-3-311.1;
421 (v) search the juvenile court records for substantiated findings of severe child abuse or

422 neglect described in Section 78A-6-323; and

423 (vi) search the juvenile court arrest, adjudication, and disposition records, as provided
424 under Section 78A-6-209;

425 (b) shall conduct a background check of an applicant for an initial background check
426 upon submission of the information described under Subsection (2)(a);

427 (c) may conduct all or portions of a background check of an applicant, as provided by
428 rule, made by the office in accordance with Title 63G, Chapter 3, Utah Administrative
429 Rulemaking Act:

430 (i) for an annual renewal; or

431 (ii) when the office determines that reasonable cause exists;

432 (d) may submit an applicant's personal identifying information, including fingerprints,
433 to the bureau for checking, retaining, and monitoring of state and national criminal background
434 databases and for notifying the office of new criminal activity associated with the applicant;

435 (e) shall track the status of an approved applicant under this section to ensure that an
436 approved applicant is not required to duplicate the submission of the applicant's fingerprints if
437 the applicant applies for:

438 (i) more than one license;

439 (ii) direct access to a child or a vulnerable adult in more than one human services
440 program; or

441 (iii) direct access to a child or a vulnerable adult under a contract with the department;

442 (f) shall track the status of each license and each individual with direct access to a child
443 or a vulnerable adult and notify the bureau within 90 days after the day on which the license
444 expires or the individual's direct access to a child or a vulnerable adult ceases;

445 (g) shall adopt measures to strictly limit access to personal identifying information
446 solely to the individuals responsible for processing and entering the applications for
447 background checks and to protect the security of the personal identifying information the office
448 reviews under this Subsection (3);

449 (h) as necessary to comply with the federal requirement to check a state's child abuse

450 and neglect registry regarding any individual working in a congregate care [~~setting that serves~~
451 ~~children~~] program, shall:

452 (i) search the Department of Human Services, Division of Child and Family Services'
453 Licensing Information System described in Section [62A-4a-1006](#); and

454 (ii) require the child abuse and neglect registry be checked in each state where an
455 applicant resided at any time during the five years immediately preceding the day on which the
456 applicant submits the information described in Subsection (2)(a) to the office; and

457 (i) shall make rules, in accordance with Title 63G, Chapter 3, Utah Administrative
458 Rulemaking Act, to implement the provisions of this Subsection (3) relating to background
459 checks.

460 (4) (a) With the personal identifying information the office submits to the bureau under
461 Subsection (3), the bureau shall check against state and regional criminal background databases
462 for the applicant's criminal history.

463 (b) With the personal identifying information and fingerprints the office submits to the
464 bureau under Subsection (3), the bureau shall check against national criminal background
465 databases for the applicant's criminal history.

466 (c) Upon direction from the office, and with the personal identifying information and
467 fingerprints the office submits to the bureau under Subsection (3)(d), the bureau shall:

468 (i) maintain a separate file of the fingerprints for search by future submissions to the
469 local and regional criminal records databases, including latent prints; and

470 (ii) monitor state and regional criminal background databases and identify criminal
471 activity associated with the applicant.

472 (d) The bureau is authorized to submit the fingerprints to the Federal Bureau of
473 Investigation Next Generation Identification System, to be retained in the Federal Bureau of
474 Investigation Next Generation Identification System for the purpose of:

475 (i) being searched by future submissions to the national criminal records databases,
476 including the Federal Bureau of Investigation Next Generation Identification System and latent
477 prints; and

478 (ii) monitoring national criminal background databases and identifying criminal
479 activity associated with the applicant.

480 (e) The Bureau shall notify and release to the office all information of criminal activity
481 associated with the applicant.

482 (f) Upon notice from the office that a license has expired or an individual's direct
483 access to a child or a vulnerable adult has ceased for 90 days, the bureau shall:

484 (i) discard and destroy any retained fingerprints; and

485 (ii) notify the Federal Bureau of Investigation when the license has expired or an
486 individual's direct access to a child or a vulnerable adult has ceased, so that the Federal Bureau
487 of Investigation will discard and destroy the retained fingerprints from the Federal Bureau of
488 Investigation Next Generation Identification System.

489 (5) (a) After conducting the background check described in Subsections (3) and (4), the
490 office shall deny an application to an applicant who, within three years before the day on which
491 the applicant submits information to the office under Subsection (2) for a background check,
492 has been convicted of any of the following, regardless of whether the offense is a felony, a
493 misdemeanor, or an infraction:

494 (i) an offense identified as domestic violence, lewdness, voyeurism, battery, cruelty to
495 animals, or bestiality;

496 (ii) a violation of any pornography law, including sexual exploitation of a minor;

497 (iii) prostitution;

498 (iv) an offense included in:

499 (A) Title 76, Chapter 5, Offenses Against the Person;

500 (B) Section 76-5b-201, Sexual Exploitation of a Minor; or

501 (C) Title 76, Chapter 7, Offenses Against the Family;

502 (v) aggravated arson, as described in Section 76-6-103;

503 (vi) aggravated burglary, as described in Section 76-6-203;

504 (vii) aggravated robbery, as described in Section 76-6-302;

505 (viii) identity fraud crime, as described in Section 76-6-1102; or

506 (ix) a felony or misdemeanor offense committed outside of the state that, if committed
507 in the state, would constitute a violation of an offense described in Subsections (5)(a)(i)
508 through (viii).

509 (b) If the office denies an application to an applicant based on a conviction described in
510 Subsection (5)(a), the applicant is not entitled to a comprehensive review described in
511 Subsection (6).

512 (c) If the applicant will be working in a program serving only adults whose only
513 impairment is a mental health diagnosis, including that of a serious mental health disorder,
514 with or without co-occurring substance use disorder, the denial provisions of Subsection (5)(a)
515 do not apply, and the office shall conduct a comprehensive review as described in Subsection
516 (6).

517 (6) (a) The office shall conduct a comprehensive review of an applicant's background
518 check if the applicant:

519 (i) has an open court case or a conviction for any felony offense, not described in
520 Subsection (5)(a), with a date of conviction that is no more than 10 years before the date on
521 which the applicant submits the application;

522 (ii) has an open court case or a conviction for a misdemeanor offense, not described in
523 Subsection (5)(a), and designated by the office, by rule, in accordance with Title 63G, Chapter
524 3, Utah Administrative Rulemaking Act, if the conviction is within three years before the day
525 on which the applicant submits information to the office under Subsection (2) for a background
526 check;

527 (iii) has a conviction for any offense described in Subsection (5)(a) that occurred more
528 than three years before the day on which the applicant submitted information under Subsection
529 (2)(a);

530 (iv) is currently subject to a plea in abeyance or diversion agreement for any offense
531 described in Subsection (5)(a);

532 (v) has a listing in the Department of Human Services, Division of Child and Family
533 Services' Licensing Information System described in Section [62A-4a-1006](#);

534 (vi) has a listing in the Department of Human Services, Division of Aging and Adult
535 Services' vulnerable adult abuse, neglect, or exploitation database described in Section
536 [62A-3-311.1](#);

537 (vii) has a record in the juvenile court of a substantiated finding of severe child abuse
538 or neglect described in Section [78A-6-323](#);

539 (viii) has a record of an adjudication in juvenile court for an act that, if committed by
540 an adult, would be a felony or misdemeanor, if the applicant is:

541 (A) under 28 years [~~of age~~] old; or

542 (B) 28 years [~~of age~~] old or older and has been convicted of, has pleaded no contest to,
543 or is currently subject to a plea in abeyance or diversion agreement for a felony or a
544 misdemeanor offense described in Subsection (5)(a);

545 (ix) has a pending charge for an offense described in Subsection (5)(a); or

546 (x) is an applicant described in Subsection (5)(c).

547 (b) The comprehensive review described in Subsection (6)(a) shall include an
548 examination of:

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

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

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

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

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

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

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

557 (B) sexual abuse;

558 (C) sexual exploitation; or

559 (D) negligent treatment;

560 (vii) any evidence provided by the applicant of rehabilitation, counseling, psychiatric
561 treatment received, or additional academic or vocational schooling completed;

562 (viii) the applicant's risk of harm to clientele in the program or in the capacity for
563 which the applicant is applying; and

564 (ix) any other pertinent information presented to or publicly available to the committee
565 members.

566 (c) At the conclusion of the comprehensive review described in Subsection (6)(a), the
567 office shall deny an application to an applicant if the office finds that approval would likely
568 create a risk of harm to a child or a vulnerable adult.

569 (d) At the conclusion of the comprehensive review described in Subsection (6)(a), the
570 office may not deny an application to an applicant solely because the applicant was convicted
571 of an offense that occurred 10 or more years before the day on which the applicant submitted
572 the information required under Subsection (2)(a) if:

573 (i) the applicant has not committed another misdemeanor or felony offense after the
574 day on which the conviction occurred; and

575 (ii) the applicant has never been convicted of an offense described in Subsection
576 (14)(c).

577 (e) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
578 office may make rules, consistent with this chapter, to establish procedures for the
579 comprehensive review described in this Subsection (6).

580 (7) Subject to Subsection (10), the office shall approve an application to an applicant
581 who is not denied under Subsection (5), (6), or [~~(13)~~] (14).

582 (8) (a) The office may conditionally approve an application of an applicant, for a
583 maximum of 60 days after the day on which the office sends written notice to the applicant
584 under Subsection (12), without requiring that the applicant be directly supervised, if the office:

585 (i) is awaiting the results of the criminal history search of national criminal background
586 databases; and

587 (ii) would otherwise approve an application of the applicant under Subsection (7).

588 (b) The office may conditionally approve an application of an applicant, for a
589 maximum of one year after the day on which the office sends written notice to the applicant

590 under Subsection (12), without requiring that the applicant be directly supervised if the office:

591 (i) is awaiting the results of an out-of-state registry for providers other than foster and
592 adoptive parents; and

593 (ii) would otherwise approve an application of the applicant under Subsection (7).

594 (c) Upon receiving the results of the criminal history search of a national criminal
595 background database, the office shall approve or deny the application of the applicant in
596 accordance with Subsections (5) through (7).

597 (9) A licensee or department contractor may not permit an individual to have direct
598 access to a child or a vulnerable adult unless, subject to Subsection (10):

599 (a) the individual is associated with the licensee or department contractor and:

600 (i) the individual's application is approved by the office under this section;

601 (ii) the individual's application is conditionally approved by the office under
602 Subsection (8); or

603 (iii) (A) the individual has submitted the background check information described in
604 Subsection (2) to the office;

605 (B) the office has not determined whether to approve the applicant's application; and

606 (C) the individual is directly supervised by an individual who has a current background
607 screening approval issued by the office under this section and is associated with the licensee or
608 department contractor;

609 (b) (i) the individual is associated with the licensee or department contractor;

610 (ii) the individual has a current background screening approval issued by the office
611 under this section;

612 (iii) one of the following circumstances, that the office has not yet reviewed under
613 Subsection (6), applies to the individual:

614 (A) the individual was charged with an offense described in Subsection (5)(a);

615 (B) the individual is listed in the Licensing Information System, described in Section
616 [62A-4a-1006](#);

617 (C) the individual is listed in the vulnerable adult abuse, neglect, or exploitation

618 database, described in Section 62A-3-311.1;

619 (D) the individual has a record in the juvenile court of a substantiated finding of severe
620 child abuse or neglect, described in Section 78A-6-323; or

621 (E) the individual has a record of an adjudication in juvenile court for an act that, if
622 committed by an adult, would be a felony or a misdemeanor as described in Subsection (5)(a)
623 or (6); and

624 (iv) the individual is directly supervised by an individual who:

625 (A) has a current background screening approval issued by the office under this
626 section; and

627 (B) is associated with the licensee or department contractor;

628 (c) the individual:

629 (i) is not associated with the licensee or department contractor; and

630 (ii) is directly supervised by an individual who:

631 (A) has a current background screening approval issued by the office under this
632 section; and

633 (B) is associated with the licensee or department contractor;

634 (d) the individual is the parent or guardian of the child, or the guardian of the
635 vulnerable adult;

636 (e) the individual is approved by the parent or guardian of the child, or the guardian of
637 the vulnerable adult, to have direct access to the child or the vulnerable adult;

638 (f) the individual is only permitted to have direct access to a vulnerable adult who
639 voluntarily invites the individual to visit; or

640 (g) the individual only provides incidental care for a foster child on behalf of a foster
641 parent who has used reasonable and prudent judgment to select the individual to provide the
642 incidental care for the foster child.

643 (10) An individual may not have direct access to a child or a vulnerable adult if the
644 individual is prohibited by court order from having that access.

645 (11) Notwithstanding any other provision of this section, an individual for whom the

646 office denies an application may not have direct access to a child or vulnerable adult unless the
647 office approves a subsequent application by the individual.

648 (12) (a) Within 30 days after the day on which the office receives the background
649 check information for an applicant, the office shall give notice of the clearance status to:

650 (i) the applicant, and the licensee or department contractor, of the office's decision
651 regarding the background check and findings; and

652 (ii) the applicant of any convictions and potentially disqualifying charges and
653 adjudications found in the search.

654 (b) With the notice described in Subsection (12)(a), the office shall also give the
655 applicant the details of any comprehensive review conducted under Subsection (6).

656 (c) If the notice under Subsection (12)(a) states that the applicant's application is
657 denied, the notice shall further advise the applicant that the applicant may, under Subsection
658 [62A-2-111\(2\)](#), request a hearing in the department's Office of Administrative Hearings, to
659 challenge the office's decision.

660 (d) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
661 office shall make rules, consistent with this chapter:

662 (i) defining procedures for the challenge of the office's background check decision
663 described in Subsection (12)(c); and

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

666 (13) An individual or a department contractor who provides services in an adults only
667 substance use disorder program, as defined by rule, is exempt from this section. This
668 exemption does not extend to a program director or a member, as defined by Section
669 [62A-2-108](#), of the program.

670 (14) (a) Except as provided in Subsection (14)(b), in addition to the other requirements
671 of this section, if the background check of an applicant is being conducted for the purpose of
672 giving clearance status to an applicant seeking a position in a congregate care [~~facility~~]
673 program, an applicant for a one-time adoption, an applicant seeking to provide a prospective

674 foster home, or an applicant seeking to provide a prospective adoptive home, the office shall:

675 (i) check the child abuse and neglect registry in each state where each applicant resided
676 in the five years immediately preceding the day on which the applicant applied to be a foster
677 parent or adoptive parent, to determine whether the prospective foster parent or prospective
678 adoptive parent is listed in the registry as having a substantiated or supported finding of child
679 abuse or neglect; and

680 (ii) check the child abuse and neglect registry in each state where each adult living in
681 the home of the applicant described in Subsection (14)(a)(i) resided in the five years
682 immediately preceding the day on which the applicant applied to be a foster parent or adoptive
683 parent, to determine whether the adult is listed in the registry as having a substantiated or
684 supported finding of child abuse or neglect.

685 (b) The requirements described in Subsection (14)(a) do not apply to the extent that:

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

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

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

690 (B) a relative, other than a noncustodial parent, under Section 62A-4a-209, 78A-6-307,
691 or 78A-6-307.5, pending completion of the background check described in Subsection (5).

692 (c) Notwithstanding Subsections (5) through (9), the office shall deny a clearance to an
693 applicant seeking a position in a congregate care [facility] program, an applicant for a one-time
694 adoption, an applicant to become a prospective foster parent, or an applicant to become a
695 prospective adoptive parent if the applicant has been convicted of:

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

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

698 (B) commission of domestic violence in the presence of a child, as described in Section
699 76-5-109.1;

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

701 (D) endangerment of a child or vulnerable adult, as described in Section 76-5-112.5;

- 702 (E) aggravated murder, as described in Section 76-5-202;
- 703 (F) murder, as described in Section 76-5-203;
- 704 (G) manslaughter, as described in Section 76-5-205;
- 705 (H) child abuse homicide, as described in Section 76-5-208;
- 706 (I) homicide by assault, as described in Section 76-5-209;
- 707 (J) kidnapping, as described in Section 76-5-301;
- 708 (K) child kidnapping, as described in Section 76-5-301.1;
- 709 (L) aggravated kidnapping, as described in Section 76-5-302;
- 710 (M) human trafficking of a child, as described in Section 76-5-308.5;
- 711 (N) an offense described in Title 76, Chapter 5, Part 4, Sexual Offenses;
- 712 (O) sexual exploitation of a minor, as described in Section 76-5b-201;
- 713 (P) aggravated arson, as described in Section 76-6-103;
- 714 (Q) aggravated burglary, as described in Section 76-6-203;
- 715 (R) aggravated robbery, as described in Section 76-6-302; or
- 716 (S) domestic violence, as described in Section 77-36-1; or
- 717 (ii) an offense committed outside the state that, if committed in the state, would
- 718 constitute a violation of an offense described in Subsection (14)(c)(i).
- 719 (d) Notwithstanding Subsections (5) through (9), the office shall deny a license or
- 720 license renewal to a prospective foster parent or a prospective adoptive parent if, within the five
- 721 years immediately preceding the day on which the individual's application or license would
- 722 otherwise be approved, the applicant was convicted of a felony involving conduct that
- 723 constitutes a violation of any of the following:
- 724 (i) aggravated assault, as described in Section 76-5-103;
- 725 (ii) aggravated assault by a prisoner, as described in Section 76-5-103.5;
- 726 (iii) mayhem, as described in Section 76-5-105;
- 727 (iv) an offense described in Title 58, Chapter 37, Utah Controlled Substances Act;
- 728 (v) an offense described in Title 58, Chapter 37a, Utah Drug Paraphernalia Act;
- 729 (vi) an offense described in Title 58, Chapter 37b, Imitation Controlled Substances

730 Act;
731 (vii) an offense described in Title 58, Chapter 37c, Utah Controlled Substance
732 Precursor Act; or
733 (viii) an offense described in Title 58, Chapter 37d, Clandestine Drug Lab Act.
734 (e) In addition to the circumstances described in Subsection (6)(a), the office shall
735 conduct the comprehensive review of an applicant's background check pursuant to this section
736 if the registry check described in Subsection (14)(a) indicates that the individual is listed in a
737 child abuse and neglect registry of another state as having a substantiated or supported finding
738 of a severe type of child abuse or neglect as defined in Section [62A-4a-1002](#).

739 Section 4. Section **62A-2-123** is enacted to read:

740 **62A-2-123. Congregate care program requirements.**

741 (1) As used in this section, "disruption plan" means a child specific plan used:

742 (a) when the private-placement child stops receiving services from a congregate care
743 program; and

744 (b) for transporting a private-placement child to a parent or guardian or to another
745 congregate care program.

746 (2) A congregate care program shall keep the following for a private-placement child
747 whose parent or guardian lives outside the state:

748 (a) regularly updated contact information for the parent or guardian that lives outside
749 the state; and

750 (b) a disruption plan.

751 (3) If a private-placement child whose parent or guardian resides outside the state
752 leaves a congregate care program without following the child's disruption plan, the congregate
753 care program shall:

754 (a) notify the parent or guardian, office, and local law enforcement authorities;

755 (b) assist the state in locating the private-placement child; and

756 (c) after the child is located, transport the private-placement child:

757 (i) to a parent or guardian;

- 758 (ii) back to the congregate care program; or
759 (iii) to another congregate care program.
760 (4) This section does not apply to a guardian that is a state or agency.
761 (5) The office shall make rules in accordance with Title 63G, Chapter 3, Utah
762 Administrative Rulemaking Act, describing:
763 (a) additional mandatory provisions for a disruption plan; and
764 (b) how a congregate care program shall notify the office when a private-placement
765 child begins receiving services.