

OFFICE OF LICENSING AMENDMENTS

2021 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Gay Lynn Bennion

Senate Sponsor: _____

LONG TITLE

General Description:

This bill requires the division of licensing to assess a fee for congregate care program licenses.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ requires the office to regularly inspect a congregate care program;
- ▶ requires a congregate care program to pay:
 - a capacity fee; and
 - if the congregate care program does not serve a certain percentage of state clients, a higher capacity fee; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

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



28 **62A-2-118**, as last amended by Laws of Utah 2005, Chapter 188

29 **62A-2-120**, as last amended by Laws of Utah 2020, Chapters 176, 225, 250 and last
30 amended by Coordination Clause, Laws of Utah 2020, Chapter 225

31 ENACTS:

32 **62A-2-123**, Utah Code Annotated 1953



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

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

36 **62A-2-101. Definitions.**

37 As used in this chapter:

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

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

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

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

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

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

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

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

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

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

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

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

58 (ii) a guest or visitor whose access to a child or a vulnerable adult is directly supervised

59 at all times.

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

61 (i) uses a regionally accredited education program;

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

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

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

65 (iii) has the primary purpose of providing the school's students with an education, as

66 defined in Subsection (4)(b)(i); and

67 (iv) (A) does not provide the treatment or services described in Subsection [~~(33)~~]

68 (36)(a); or

69 (B) provides the treatment or services described in Subsection [~~(33)~~] (36)(a) on a

70 limited basis, as described in Subsection (4)(b)(ii).

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

73 (ii) For purposes of Subsection (4)(a)(iv)(B), a private school provides the treatment or
74 services described in Subsection [~~(33)~~] (36)(a) on a limited basis if:

75 (A) the treatment or services described in Subsection [~~(33)~~] (36)(a) are provided only
76 as an incidental service to a student; and

77 (B) the school does not:

78 (I) specifically solicit a student for the purpose of providing the treatment or services
79 described in Subsection [~~(33)~~] (36)(a); or

80 (II) have a primary purpose of providing the treatment or services described in

81 Subsection [~~(33)~~] (36)(a).

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

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

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

86 (a) finding a person to adopt the child;

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

88 (c) foster home placement.

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

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

91 (9) "Congregate care program" means any of the following that provide services to a

92 child:

93 (a) an outdoor youth program;

94 (b) a residential support program;

95 (c) a residential treatment program; or

96 (d) a therapeutic school.

97 [~~9~~] (10) "Day treatment" means specialized treatment that is provided to:

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

99 (b) four or more persons who:

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

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

102 dysfunctions, impairments, or chemical dependencies.

103 [~~10~~] (11) "Department" means the Department of Human Services.

104 [~~11~~] (12) "Department contractor" means an individual who:

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

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

108 [~~12~~] (13) "Direct access" means that an individual has, or likely will have:

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

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

113 [~~13~~] (14) "Directly supervised" means that an individual is being supervised under
114 the uninterrupted visual and auditory surveillance of another individual who has a current
115 background screening approval issued by the office.

116 [~~14~~] (15) "Director" means the director of the Office of Licensing.

117 [~~15~~] (16) "Domestic violence" means the same as that term is defined in Section
118 77-36-1.

119 [~~16~~] (17) "Domestic violence treatment [program]" means a nonresidential program
120 designed to provide psychological treatment and educational services to perpetrators and

121 victims of domestic violence.

122 [~~(17)~~] (18) "Elder adult" means a person 65 years [~~of age~~] old or older.

123 [~~(18)~~] (19) "Executive director" means the executive director of the department.

124 [~~(19)~~] (20) "Foster home" means a residence that is licensed or certified by the Office
125 of Licensing for the full-time substitute care of a child.

126 [~~(20)~~] (21) "Health benefit plan" means the same as that term is defined in Section
127 [31A-1-301](#).

128 [~~(21)~~] (22) "Health care provider" means the same as that term is defined in Section
129 [78B-3-403](#).

130 [~~(22)~~] (23) "Health insurer" means the same as that term is defined in Section
131 [31A-22-615.5](#).

132 [~~(23)~~] (24) (a) "Human services program" means [a]:

133 (i) a foster home;

134 (ii) a therapeutic school;

135 (iii) a youth program;

136 (iv) an outdoor youth program;

137 (v) a residential treatment program;

138 (vi) a residential support program;

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

140 [~~(v)~~] (viii) a recovery residence; or

141 [~~(vi)~~] (ix) a facility or program that provides:

142 [~~(A)~~] secure treatment;

143 [~~(B)~~] inpatient treatment;

144 [~~(C)~~] residential treatment;

145 [~~(D)~~] residential support;

146 [~~(E)~~] (A) adult day care;

147 [~~(F)~~] (B) day treatment;

148 [~~(G)~~] (C) outpatient treatment;

149 [~~(H)~~] (D) domestic violence treatment;

150 [~~(I)~~] (E) child-placing services;

151 [~~(J)~~] (F) social detoxification; or

152 ~~[(K)]~~ (G) any other human services that are required by contract with the department to
153 be licensed with the department.

154 (b) "Human services program" does not include:

155 (i) a boarding school; or

156 (ii) a residential, vocational and life skills program, as defined in Section 13-53-102.

157 ~~[(24)]~~ (25) "Indian child" means the same as that term is defined in 25 U.S.C. Sec.

158 1903.

159 ~~[(25)]~~ (26) "Indian country" means the same as that term is defined in 18 U.S.C. Sec.

160 1151.

161 ~~[(26)]~~ (27) "Indian tribe" means the same as that term is defined in 25 U.S.C. Sec.

162 1903.

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

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

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

168 ~~[(27)]~~ (29) "Licensee" means an individual or a human services program licensed by
169 the office.

170 ~~[(28)]~~ (30) "Local government" means a city, town, metro township, or county.

171 ~~[(29)]~~ (31) "Minor" has the same meaning as "child."

172 ~~[(30)]~~ (32) "Office" means the Office of Licensing within the Department of Human
173 Services.

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

175 (a) services to a child that has:

176 (i) a chemical dependency; or

177 (ii) a dysfunction or impairment that is emotional, psychological, developmental, or
178 behavioral;

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

180 (c) (i) regular therapy, including group, individual, or supportive family therapy; or

181 (ii) informal therapy or similar services, including wilderness therapy, adventure
182 therapy, or outdoor behavioral healthcare.

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 ~~[(33)]~~ (36) (a) "Recovery residence" means a home, residence, or facility that meets at
196 least two of the following requirements:

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

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

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

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

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

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

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

208 (i) a residential treatment program;

209 (ii) residential support; or

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

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

212 governing the living environment, including the manner in which applications for residence are

213 approved and the manner in which residents are expelled;

214 (B) residents equitably share rent and housing-related expenses; and
215 (C) a landlord, owner, or operator does not receive compensation, other than fair
216 market rental income, for establishing, implementing, or enforcing policies governing the
217 living environment.

218 ~~[(34)]~~ (37) "Regular business hours" means:

- 219 (a) the hours during which services of any kind are provided to a client; or
- 220 (b) the hours during which a client is present at the facility of a licensee.

221 ~~[(35)]~~ (38) (a) "Residential support program" means ~~[arranging for or providing]~~ a
222 program that arranges for or provides the necessities of life as a protective service to
223 individuals or families who have a disability or who are experiencing a dislocation or
224 emergency that prevents them from providing these services for themselves or their families.

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

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

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

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

- 234 (i) a recovery residence; or
- 235 (ii) a program that provides residential services that are performed:

236 (A) exclusively under contract with the department and provided to individuals through
237 the Division of Services for People with Disabilities; or
238 (B) in a facility that serves fewer than four individuals.

239 ~~[(36)]~~ (39) (a) "Residential treatment" means a 24-hour group living environment for
240 four or more individuals unrelated to the owner or provider that offers room or board and
241 specialized treatment, behavior modification, rehabilitation, discipline, emotional growth, or
242 habilitation services for persons with emotional, psychological, developmental, or behavioral
243 dysfunctions, impairments, or chemical dependencies.

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

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

248 ~~[(37)]~~ (40) "Residential treatment program" means a ~~[human services program]~~ a
 249 program or facility that provides:

- 250 (a) residential treatment; or
- 251 (b) intermediate secure treatment.

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

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

258 ~~[(39)]~~ (41) "Social detoxification" means short-term residential services for persons
 259 who are experiencing or have recently experienced drug or alcohol intoxication, that are
 260 provided outside of a health care facility licensed under Title 26, Chapter 21, Health Care
 261 Facility Licensing and Inspection Act, and that include:

- 262 (a) room and board for persons who are unrelated to the owner or manager of the
- 263 facility;
- 264 (b) specialized rehabilitation to acquire sobriety; and
- 265 (c) aftercare services.

266 ~~[(40)]~~ (42) "Substance abuse disorder" or "substance use disorder" mean the same as
 267 "substance use disorder" is defined in Section [62A-15-1202](#).

268 ~~[(41)]~~ (43) "Substance abuse treatment program" or "substance use disorder treatment
 269 program" means a program:

- 270 (a) designed to provide:
 - 271 (i) specialized drug or alcohol treatment;
 - 272 (ii) rehabilitation; or
 - 273 (iii) habilitation services; and

274 (b) that provides the treatment or services described in Subsection ~~[(41)]~~ (43)(a) to
 275 persons with:

276 (i) a diagnosed substance use disorder; or

277 (ii) chemical dependency disorder.

278 [~~(42)~~] (44) "Therapeutic school" means a residential group living facility:

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

280 (i) the owner of the facility; or

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

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

283 (i) at home;

284 (ii) in a public school; or

285 (iii) in a nonresidential private school; and

286 (c) that offers:

287 (i) room and board; and

288 (ii) an academic education integrated with:

289 (A) specialized structure and supervision; or

290 (B) services or treatment related to:

291 (I) a disability;

292 (II) emotional development;

293 (III) behavioral development;

294 (IV) familial development; or

295 (V) social development.

296 [~~(43)~~] (45) "Unrelated persons" means persons other than parents, legal guardians,
297 grandparents, brothers, sisters, uncles, or aunts.

298 [~~(44)~~] (46) "Vulnerable adult" means an elder adult or an adult who has a temporary or
299 permanent mental or physical impairment that substantially affects the person's ability to:

300 (a) provide personal protection;

301 (b) provide necessities such as food, shelter, clothing, or mental or other health care;

302 (c) obtain services necessary for health, safety, or welfare;

303 (d) carry out the activities of daily living;

304 (e) manage the adult's own resources; or

305 (f) comprehend the nature and consequences of remaining in a situation of abuse,
306 neglect, or exploitation.

307 [~~(45)~~] (47) (a) "Youth program" means a [~~nonresidential~~] program designed to provide
308 behavioral, substance abuse, or mental health services to minors that:

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

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

319 Section 2. Section **62A-2-118** is amended to read:

320 **62A-2-118. Administrative inspections.**

321 (1) [~~The~~] (a) Subject to Subsection (1)(b), the office may, for the purpose of
322 ascertaining compliance with this chapter, enter and inspect on a routine basis the facility of a
323 licensee.

324 (b) The office shall enter and inspect a congregate care program at least once each
325 calendar quarter.

326 (c) If another government entity conducts an inspection of a congregate care program
327 that is substantially similar to an inspection conducted by the office, the office may conclude
328 the inspection satisfies an inspection described in Subsection (1)(b).

329 (2) Before conducting an inspection under Subsection (1), the office shall, after
330 identifying the person in charge:

- 331 (a) give proper identification;
332 (b) request to see the applicable license;
333 (c) describe the nature and purpose of the inspection; and
334 (d) if necessary, explain the authority of the office to conduct the inspection and the
335 penalty for refusing to permit the inspection as provided in Section [62A-2-116](#).

336 (3) In conducting an inspection under Subsection (1), the office may, after meeting the
337 requirements of Subsection (2):

- 338 (a) inspect the physical facilities;
- 339 (b) inspect and copy records and documents;
- 340 (c) interview officers, employees, clients, family members of clients, and others; and
- 341 (d) observe the licensee in operation.

342 (4) An inspection conducted under Subsection (1) shall be during regular business
343 hours and may be announced or unannounced.

344 (5) The licensee shall make copies of inspection reports available to the public upon
345 request.

346 (6) The provisions of this section apply to on-site inspections and do not restrict the
347 office from contacting family members, neighbors, or other individuals, or from seeking
348 information from other sources to determine compliance with this chapter.

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

350 **62A-2-120. Background check -- Direct access to children or vulnerable adults.**

351 (1) As used in this section:

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

353 (A) the same as that term is defined in Section [62A-2-101](#);

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

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

358 (D) a department contractor;

359 (E) a guardian submitting an application on behalf of an individual, other than the child
360 or vulnerable adult who is receiving the service, if the individual is 12 years ~~[of age]~~ old or
361 older and resides in a home, that is licensed or certified by the office, with the child or
362 vulnerable adult who is receiving services; or

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

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

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

369 (c) "Bureau" means the Bureau of Criminal Identification within the Department of
370 Public Safety, created in Section 53-10-201.

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

373 (e) "Personal identifying information" means:

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

375 (ii) date of birth;

376 (iii) physical address and email address;

377 (iv) telephone number;

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

379 (vi) social security number;

380 (vii) only for applicants who are 18 years [~~of age~~] old or older, fingerprints, in a form
381 specified by the office; and

382 (viii) other information specified by the office by rule made in accordance with Title
383 63G, Chapter 3, Utah Administrative Rulemaking Act.

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

386 (i) personal identifying information;

387 (ii) a fee established by the office under Section 63J-1-504; and

388 (iii) a disclosure form, specified by the office, for consent for:

389 (A) an initial background check upon submission of the information described under
390 this Subsection (2)(a);

391 (B) ongoing monitoring of fingerprints and registries until no longer associated with a
392 licensee for 90 days;

393 (C) a background check when the office determines that reasonable cause exists; and

394 (D) retention of personal identifying information, including fingerprints, for

395 monitoring and notification as described in Subsections (3)(d) and (4).

396 (b) In addition to the requirements described in Subsection (2)(a), if an applicant
397 resided outside of the United States and its territories during the five years immediately
398 preceding the day on which the information described in Subsection (2)(a) is submitted to the
399 office, the office may require the applicant to submit documentation establishing whether the

400 applicant was convicted of a crime during the time that the applicant resided outside of the
401 United States or its territories.

402 (3) The office:

403 (a) shall perform the following duties as part of a background check of an applicant:

404 (i) check state and regional criminal background databases for the applicant's criminal
405 history by:

406 (A) submitting personal identifying information to the bureau for a search; or

407 (B) using the applicant's personal identifying information to search state and regional
408 criminal background databases as authorized under Section 53-10-108;

409 (ii) submit the applicant's personal identifying information and fingerprints to the
410 bureau for a criminal history search of applicable national criminal background databases;

411 (iii) search the Department of Human Services, Division of Child and Family Services'
412 Licensing Information System described in Section 62A-4a-1006;

413 (iv) search the Department of Human Services, Division of Aging and Adult Services'
414 vulnerable adult abuse, neglect, or exploitation database described in Section 62A-3-311.1;

415 (v) search the juvenile court records for substantiated findings of severe child abuse or
416 neglect described in Section 78A-6-323; and

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

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

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

424 (i) for an annual renewal; or

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

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

429 (e) shall track the status of an approved applicant under this section to ensure that an
430 approved applicant is not required to duplicate the submission of the applicant's fingerprints if

431 the applicant applies for:

432 (i) more than one license;

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

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

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

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

443 (h) as necessary to comply with the federal requirement to check a state's child abuse
444 and neglect registry regarding any individual working in a congregate care [~~setting that serves~~
445 ~~children~~] program, shall:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

491 (iii) prostitution;

492 (iv) an offense included in:

493 (A) Title 76, Chapter 5, Offenses Against the Person;
494 (B) Section 76-5b-201, Sexual Exploitation of a Minor; or
495 (C) Title 76, Chapter 7, Offenses Against the Family;
496 (v) aggravated arson, as described in Section 76-6-103;
497 (vi) aggravated burglary, as described in Section 76-6-203;
498 (vii) aggravated robbery, as described in Section 76-6-302;
499 (viii) identity fraud crime, as described in Section 76-6-1102; or
500 (ix) a felony or misdemeanor offense committed outside of the state that, if committed
501 in the state, would constitute a violation of an offense described in Subsections (5)(a)(i)
502 through (viii).

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

506 (c) If the applicant will be working in a program serving only adults whose only
507 impairment is a mental health diagnosis, including that of a serious mental health disorder,
508 with or without co-occurring substance use disorder, the denial provisions of Subsection (5)(a)
509 do not apply, and the office shall conduct a comprehensive review as described in Subsection
510 (6).

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

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

516 (ii) has an open court case or a conviction for a misdemeanor offense, not described in
517 Subsection (5)(a), and designated by the office, by rule, in accordance with Title 63G, Chapter
518 3, Utah Administrative Rulemaking Act, if the conviction is within three years before the day
519 on which the applicant submits information to the office under Subsection (2) for a background
520 check;

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

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

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

528 (vi) has a listing in the Department of Human Services, Division of Aging and Adult
529 Services' vulnerable adult abuse, neglect, or exploitation database described in Section
530 62A-3-311.1;

531 (vii) has a record in the juvenile court of a substantiated finding of severe child abuse
532 or neglect described in Section 78A-6-323;

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

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

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

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

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

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

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

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

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

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

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

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

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

551 (B) sexual abuse;

552 (C) sexual exploitation; or

553 (D) negligent treatment;

554 (vii) any evidence provided by the applicant of rehabilitation, counseling, psychiatric

555 treatment received, or additional academic or vocational schooling completed;

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

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

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

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

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

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

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

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

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

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

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

582 (b) The office may conditionally approve an application of an applicant, for a
583 maximum of one year 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 an out-of-state registry for providers other than foster and

586 adoptive parents; and

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

588 (c) Upon receiving the results of the criminal history search of a national criminal

589 background database, the office shall approve or deny the application of the applicant in

590 accordance with Subsections (5) through (7).

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

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

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

595 (ii) the individual's application is conditionally approved by the office under

596 Subsection (8); or

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

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

600 (C) the individual is directly supervised by an individual who has a current background

601 screening approval issued by the office under this section and is associated with the licensee or

602 department contractor;

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

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

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

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

609 (B) the individual is listed in the Licensing Information System, described in Section

610 [62A-4a-1006](#);

611 (C) the individual is listed in the vulnerable adult abuse, neglect, or exploitation
612 database, described in Section [62A-3-311.1](#);

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

615 (E) the individual has a record of an adjudication in juvenile court for an act that, if
616 committed by an adult, would be a felony or a misdemeanor as described in Subsection (5)(a)

617 or (6); and
618 (iv) the individual is directly supervised by an individual who:
619 (A) has a current background screening approval issued by the office under this
620 section; and
621 (B) is associated with the licensee or department contractor;
622 (c) the individual:
623 (i) is not associated with the licensee or department contractor; and
624 (ii) 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 (d) the individual is the parent or guardian of the child, or the guardian of the
629 vulnerable adult;
630 (e) the individual is approved by the parent or guardian of the child, or the guardian of
631 the vulnerable adult, to have direct access to the child or the vulnerable adult;
632 (f) the individual is only permitted to have direct access to a vulnerable adult who
633 voluntarily invites the individual to visit; or
634 (g) the individual only provides incidental care for a foster child on behalf of a foster
635 parent who has used reasonable and prudent judgment to select the individual to provide the
636 incidental care for the foster child.
637 (10) An individual may not have direct access to a child or a vulnerable adult if the
638 individual is prohibited by court order from having that access.
639 (11) Notwithstanding any other provision of this section, an individual for whom the
640 office denies an application may not have direct access to a child or vulnerable adult unless the
641 office approves a subsequent application by the individual.
642 (12) (a) Within 30 days after the day on which the office receives the background
643 check information for an applicant, the office shall give notice of the clearance status to:
644 (i) the applicant, and the licensee or department contractor, of the office's decision
645 regarding the background check and findings; and
646 (ii) the applicant of any convictions and potentially disqualifying charges and
647 adjudications found in the search.

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

650 (c) If the notice under Subsection (12)(a) states that the applicant's application is
651 denied, the notice shall further advise the applicant that the applicant may, under Subsection
652 [62A-2-111](#)(2), request a hearing in the department's Office of Administrative Hearings, to
653 challenge the office's decision.

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

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

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

660 (13) An individual or a department contractor who provides services in an adults only
661 substance use disorder program, as defined by rule, is exempt from this section. This
662 exemption does not extend to a program director or a member, as defined by Section
663 [62A-2-108](#), of the program.

664 (14) (a) Except as provided in Subsection (14)(b), in addition to the other requirements
665 of this section, if the background check of an applicant is being conducted for the purpose of
666 giving clearance status to an applicant seeking a position in a congregate care [~~facility~~]
667 program, an applicant for a one-time adoption, an applicant seeking to provide a prospective
668 foster home, or an applicant seeking to provide a prospective adoptive home, the office shall:

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

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

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

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

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

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

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

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

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

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

692 (B) commission of domestic violence in the presence of a child, as described in Section
693 76-5-109.1;

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

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

696 (E) aggravated murder, as described in Section 76-5-202;

697 (F) murder, as described in Section 76-5-203;

698 (G) manslaughter, as described in Section 76-5-205;

699 (H) child abuse homicide, as described in Section 76-5-208;

700 (I) homicide by assault, as described in Section 76-5-209;

701 (J) kidnapping, as described in Section 76-5-301;

702 (K) child kidnapping, as described in Section 76-5-301.1;

703 (L) aggravated kidnapping, as described in Section 76-5-302;

704 (M) human trafficking of a child, as described in Section 76-5-308.5;

705 (N) an offense described in Title 76, Chapter 5, Part 4, Sexual Offenses;

706 (O) sexual exploitation of a minor, as described in Section 76-5b-201;

707 (P) aggravated arson, as described in Section 76-6-103;

708 (Q) aggravated burglary, as described in Section 76-6-203;

709 (R) aggravated robbery, as described in Section 76-6-302; or

710 (S) domestic violence, as described in Section 77-36-1; or

711 (ii) an offense committed outside the state that, if committed in the state, would
712 constitute a violation of an offense described in Subsection (14)(c)(i).

713 (d) Notwithstanding Subsections (5) through (9), the office shall deny a license or
714 license renewal to a prospective foster parent or a prospective adoptive parent if, within the five
715 years immediately preceding the day on which the individual's application or license would
716 otherwise be approved, the applicant was convicted of a felony involving conduct that
717 constitutes a violation of any of the following:

718 (i) aggravated assault, as described in Section 76-5-103;

719 (ii) aggravated assault by a prisoner, as described in Section 76-5-103.5;

720 (iii) mayhem, as described in Section 76-5-105;

721 (iv) an offense described in Title 58, Chapter 37, Utah Controlled Substances Act;

722 (v) an offense described in Title 58, Chapter 37a, Utah Drug Paraphernalia Act;

723 (vi) an offense described in Title 58, Chapter 37b, Imitation Controlled Substances
724 Act;

725 (vii) an offense described in Title 58, Chapter 37c, Utah Controlled Substance
726 Precursor Act; or

727 (viii) an offense described in Title 58, Chapter 37d, Clandestine Drug Lab Act.

728 (e) In addition to the circumstances described in Subsection (6)(a), the office shall
729 conduct the comprehensive review of an applicant's background check pursuant to this section
730 if the registry check described in Subsection (14)(a) indicates that the individual is listed in a
731 child abuse and neglect registry of another state as having a substantiated or supported finding
732 of a severe type of child abuse or neglect as defined in Section 62A-4a-1002.

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

734 **62A-2-123. Congregate care program fees.**

735 (1) As used in this section:

736 (a) "Bed capacity" means:

737 (i) a congregate care program's total number of beds; multiplied by

738 (ii) the number of days the congregate care program fills at least one bed during the
739 prior fiscal year.

740 (b) "Per licensed capacity fee" means a fee for each bed a congregate care program

741 licenses with the office.

742 (c) "State bed total" means the total number of beds occupied by a state client for each
743 day a congregate care program fills at least one bed during the prior fiscal year.

744 (d) "State client" means a child in the custody of the state of Utah.

745 (e) "State client use" means the total percentage of:

746 (i) a congregate care program's state bed total; divided by

747 (ii) the congregate care program's bed capacity.

748 (2) (a) In addition to any other fees assessed by the office, a congregate care program
749 shall pay the office a per licensed capacity fee.

750 (b) If a congregate care program's state client use is less than 25%, the congregate care
751 program shall pay a per licensed capacity fee that is at least \$125.

752 (3) On or before July 31, and each subsequent July 31, a congregate care program shall
753 provide the office the congregate care program's:

754 (a) bed capacity for the prior fiscal year, including the totals used to calculate the bed
755 capacity; and

756 (b) state bed total for the prior year.

757 (4) The office may audit a congregate care program to verify the accuracy of the
758 information described in Subsection (3).

759 (5) The office shall establish each fee described in Subsection (2) in accordance with
760 Subsection [63J-1-504](#).