

**Representative Gay Lynn Bennion** proposes the following substitute bill:

**OFFICE OF LICENSING AMENDMENTS**

2021 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Gay Lynn Bennion**

Senate Sponsor: \_\_\_\_\_

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**LONG TITLE**

**General Description:**

This bill creates additional requirements for the Office of Licensing.

**Highlighted Provisions:**

This bill:

- ▶ defines terms;
- ▶ requires the office to regularly inspect a congregate care program;
- ▶ creates a reporting requirement; 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

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

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



26 amended by Coordination Clause, Laws of Utah 2020, Chapter 225

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

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

30 **62A-2-101. Definitions.**

31 As used in this chapter:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

55 (i) uses a regionally accredited education program;

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

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

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

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

61 (iv) (A) does not provide the treatment or services described in Subsection [~~(33)~~]  
62 (36)(a); or

63 (B) provides the treatment or services described in Subsection [~~(33)~~] (36)(a) on a  
64 limited basis, as described in Subsection (4)(b)(ii).

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

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

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

71 (B) the school does not:

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

74 (II) have a primary purpose of providing the treatment or services described in  
75 Subsection [~~(33)~~] (36)(a).

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

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

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

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

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

82 (c) foster home placement.

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

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

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

87 (a) an outdoor youth program;

88 (b) a residential support program;

89 (c) a residential treatment program; or

90 (d) a therapeutic school.

91 ~~[(9)]~~ (10) "Day treatment" means specialized treatment that is provided to:

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

93 (b) four or more persons who:

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

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

96 dysfunctions, impairments, or chemical dependencies.

97 ~~[(10)]~~ (11) "Department" means the Department of Human Services.

98 ~~[(11)]~~ (12) "Department contractor" means an individual who:

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

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

102 ~~[(12)]~~ (13) "Direct access" means that an individual has, or likely will have:

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

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

107 ~~[(13)]~~ (14) "Directly supervised" means that an individual is being supervised under  
108 the uninterrupted visual and auditory surveillance of another individual who has a current  
109 background screening approval issued by the office.

110 ~~[(14)]~~ (15) "Director" means the director of the Office of Licensing.

111 ~~[(15)]~~ (16) "Domestic violence" means the same as that term is defined in Section  
112 [77-36-1](#).

113 ~~[(16)]~~ (17) "Domestic violence treatment program" means a nonresidential program  
114 designed to provide psychological treatment and educational services to perpetrators and  
115 victims of domestic violence.

116 ~~[(17)]~~ (18) "Elder adult" means a person 65 years ~~[of age]~~ old or older.

117 ~~[(18)]~~ (19) "Executive director" means the executive director of the department.

118 ~~[(19)]~~ (20) "Foster home" means a residence that is licensed or certified by the Office

119 of Licensing for the full-time substitute care of a child.

120 ~~[(20)]~~ (21) "Health benefit plan" means the same as that term is defined in Section  
121 31A-1-301.

122 ~~[(21)]~~ (22) "Health care provider" means the same as that term is defined in Section  
123 78B-3-403.

124 ~~[(22)]~~ (23) "Health insurer" means the same as that term is defined in Section  
125 31A-22-615.5.

126 ~~[(23)]~~ (24) (a) "Human services program" means [a]:

127 (i) a foster home;

128 (ii) a therapeutic school;

129 (iii) a youth program;

130 (iv) an outdoor youth program;

131 (v) a residential treatment program;

132 (vi) a residential support program;

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

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

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

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

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

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

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

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

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

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

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

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

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

146 ~~[(K)]~~ (G) any other human services that are required by contract with the department to

147 be licensed with the department.

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

149 (i) a boarding school; or

150 (ii) a residential, vocational and life skills program, as defined in Section 13-53-102.  
151 [~~24~~] (25) "Indian child" means the same as that term is defined in 25 U.S.C. Sec.  
152 1903.  
153 [~~25~~] (26) "Indian country" means the same as that term is defined in 18 U.S.C. Sec.  
154 1151.  
155 [~~26~~] (27) "Indian tribe" means the same as that term is defined in 25 U.S.C. Sec.  
156 1903.  
157 (28) "Intermediate secure treatment" means 24-hour specialized residential treatment or  
158 care for an individual who:  
159 (a) cannot live independently or in a less restrictive environment; and  
160 (b) requires, without the individual's consent or control, the use of locked doors to care  
161 for the individual.  
162 [~~27~~] (29) "Licensee" means an individual or a human services program licensed by  
163 the office.  
164 [~~28~~] (30) "Local government" means a city, town, metro township, or county.  
165 [~~29~~] (31) "Minor" has the same meaning as "child."  
166 [~~30~~] (32) "Office" means the Office of Licensing within the Department of Human  
167 Services.  
168 (33) "Outdoor youth program" means a program that provides:  
169 (a) services to a child that has:  
170 (i) a chemical dependency; or  
171 (ii) a dysfunction or impairment that is emotional, psychological, developmental, or  
172 behavioral;  
173 (b) a 24-hour outdoor group living environment; and  
174 (c) (i) regular therapy, including group, individual, or supportive family therapy; or  
175 (ii) informal therapy or similar services, including wilderness therapy, adventure  
176 therapy, or outdoor behavioral healthcare.  
177 [~~31~~] (34) "Outpatient treatment" means individual, family, or group therapy or  
178 counseling designed to improve and enhance social or psychological functioning for those  
179 whose physical and emotional status allows them to continue functioning in their usual living  
180 environment.

181           ~~[(32)]~~ (35) "Practice group" or "group practice" means two or more health care  
182 providers legally organized as a partnership, professional corporation, or similar association,  
183 for which:

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

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

189           ~~[(33)]~~ (36) (a) "Recovery residence" means a home, residence, or facility that meets at  
190 least two of the following requirements:

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

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

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

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

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

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

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

202           (i) a residential treatment program;

203           (ii) residential support; or

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

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

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

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

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

212 [~~34~~] (37) "Regular business hours" means:

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

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

215 [~~35~~] (38) (a) "Residential support program" means [~~arranging for or providing~~] a

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

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

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

219 (b) "Residential support program" includes [~~providing~~] a program that provides a

220 supervised living environment for [~~persons~~] individuals with dysfunctions or impairments that

221 are:

222 (i) emotional;

223 (ii) psychological;

224 (iii) developmental; or

225 (iv) behavioral.

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

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

228 (i) a recovery residence; or

229 (ii) a program that provides residential services that are performed:

230 (A) exclusively under contract with the department and provided to individuals through

231 the Division of Services for People with Disabilities; or

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

233 [~~36~~] (39) (a) "Residential treatment" means a 24-hour group living environment for

234 four or more individuals unrelated to the owner or provider that offers room or board and

235 specialized treatment, behavior modification, rehabilitation, discipline, emotional growth, or

236 habilitation services for persons with emotional, psychological, developmental, or behavioral

237 dysfunctions, impairments, or chemical dependencies.

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

239 (i) boarding school;

240 (ii) foster home; or

241 (iii) recovery residence.

242 [~~37~~] (40) "Residential treatment program" means a [~~human services program~~] a



243 program or facility that provides:

- 244 (a) residential treatment; or
- 245 (b) intermediate secure treatment.

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

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

252 [~~(39)~~ (41) "Social detoxification" means short-term residential services for persons  
253 who are experiencing or have recently experienced drug or alcohol intoxication, that are  
254 provided outside of a health care facility licensed under Title 26, Chapter 21, Health Care  
255 Facility Licensing and Inspection Act, and that include:

- 256 (a) room and board for persons who are unrelated to the owner or manager of the  
257 facility;
- 258 (b) specialized rehabilitation to acquire sobriety; and
- 259 (c) aftercare services.

260 [~~(40)~~ (42) "Substance abuse disorder" or "substance use disorder" mean the same as  
261 "substance use disorder" is defined in Section [62A-15-1202](#).

262 [~~(41)~~ (43) "Substance abuse treatment program" or "substance use disorder treatment  
263 program" means a program:

- 264 (a) designed to provide:
  - 265 (i) specialized drug or alcohol treatment;
  - 266 (ii) rehabilitation; or
  - 267 (iii) habilitation services; and
- 268 (b) that provides the treatment or services described in Subsection [~~(41)~~ (43)(a) to  
269 persons with:

- 270 (i) a diagnosed substance use disorder; or
- 271 (ii) chemical dependency disorder.

272 [~~(42)~~ (44) "Therapeutic school" means a residential group living facility:

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

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

- 305 (iii) may [~~or may not~~] provide host homes or other arrangements for overnight
- 306 accommodation of the youth;
- 307 (iv) may [~~or may not~~] provide all or part of its services in the outdoors;
- 308 (v) may [~~or may not~~] limit or censor access to parents or guardians; and
- 309 (vi) prohibits or restricts a minor's ability to leave the program at any time of the
- 310 minor's own free will.

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

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

314 **62A-2-118. Administrative inspections and reports.**

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

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

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

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

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

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

- 332 (a) inspect the physical facilities;
- 333 (b) inspect and copy records and documents;
- 334 (c) interview officers, employees, clients, family members of clients, and others; and
- 335 (d) observe the licensee in operation.

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

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

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

343 (7) Before October 1, 2021, and each third year after 2021, the office shall submit a  
344 written report to the Social Services Appropriations Subcommittee describing the following  
345 information:

346 (a) the number of congregate care programs operating in the state;

347 (b) an average of the actual cost to the office for an inspection described in Subsection  
348 (1)(b);

349 (c) the amount of a fee increase, if any, necessary to cover the office's actual cost for an  
350 inspection described in Subsection (1)(b);

351 (d) the number of inspections described in Subsection (1)(b) that the office conducted;  
352 and

353 (e) the number of inspections described in Subsection (1)(c) another government entity  
354 conducted.

355 (8) Before October 1 of each year, the office shall submit a written report to the Health  
356 and Human Services Interim Committee describing the following information for the prior  
357 fiscal year:

358 (a) the number of congregate care programs operating in the state;

359 (b) the number of critical incidents that occurred in a congregate care program;

360 (c) the number of children that died while residing in a congregate care program;

361 (d) the number of times a child residing in a congregate care program attempted  
362 suicide;

363 (e) the number of administrative actions the office initiated against a congregate care  
364 program, including:

365 (i) a brief description of the underlying violation leading to the action; and

366 (ii) the outcome of the administrative action if known, including any imposed fines or

367 license restrictions;

368 (f) the average number of out-of-state children residing in a congregate care program in  
369 the state;

370 (g) the number of complaints the office receives regarding a congregate care program,  
371 including how many complaints lead to an investigation; and

372 (h) any other information the office determines is relevant for protecting a child  
373 residing in a congregate care program.

374 (9) The office shall make rules in accordance with Title 63G, Chapter 3, Utah  
375 Administrative Rulemaking Act, for obtaining the information described in Subsections (7) and  
376 (8).

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

378 **62A-2-120. Background check -- Direct access to children or vulnerable adults.**

379 (1) As used in this section:

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

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

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

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

386 (D) a department contractor;

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

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

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

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

397 (c) "Bureau" means the Bureau of Criminal Identification within the Department of

398 Public Safety, created in Section [53-10-201](#).

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

401 (e) "Personal identifying information" means:

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

403 (ii) date of birth;

404 (iii) physical address and email address;

405 (iv) telephone number;

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

407 (vi) social security number;

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

410 (viii) other information specified by the office by rule made in accordance with Title  
411 63G, Chapter 3, Utah Administrative Rulemaking Act.

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

414 (i) personal identifying information;

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

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

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

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

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

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

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

424 (b) In addition to the requirements described in Subsection (2)(a), if an applicant  
425 resided outside of the United States and its territories during the five years immediately  
426 preceding the day on which the information described in Subsection (2)(a) is submitted to the  
427 office, the office may require the applicant to submit documentation establishing whether the  
428 applicant was convicted of a crime during the time that the applicant resided outside of the

429 United States or its territories.

430 (3) The office:

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

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

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

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

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

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

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

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

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

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

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

451 Rulemaking Act:

452 (i) for an annual renewal; or

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

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

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

- 460 (i) more than one license;
- 461 (ii) direct access to a child or a vulnerable adult in more than one human services  
462 program; or
- 463 (iii) direct access to a child or a vulnerable adult under a contract with the department;
- 464 (f) shall track the status of each license and each individual with direct access to a child  
465 or a vulnerable adult and notify the bureau within 90 days after the day on which the license  
466 expires or the individual's direct access to a child or a vulnerable adult ceases;
- 467 (g) shall adopt measures to strictly limit access to personal identifying information  
468 solely to the individuals responsible for processing and entering the applications for  
469 background checks and to protect the security of the personal identifying information the office  
470 reviews under this Subsection (3);
- 471 (h) as necessary to comply with the federal requirement to check a state's child abuse  
472 and neglect registry regarding any individual working in a congregate care [~~setting that serves~~  
473 children] program, shall:
- 474 (i) search the Department of Human Services, Division of Child and Family Services'  
475 Licensing Information System described in Section [62A-4a-1006](#); and
- 476 (ii) require the child abuse and neglect registry be checked in each state where an  
477 applicant resided at any time during the five years immediately preceding the day on which the  
478 applicant submits the information described in Subsection (2)(a) to the office; and
- 479 (i) shall make rules, in accordance with Title 63G, Chapter 3, Utah Administrative  
480 Rulemaking Act, to implement the provisions of this Subsection (3) relating to background  
481 checks.
- 482 (4) (a) With the personal identifying information the office submits to the bureau under  
483 Subsection (3), the bureau shall check against state and regional criminal background databases  
484 for the applicant's criminal history.
- 485 (b) With the personal identifying information and fingerprints the office submits to the  
486 bureau under Subsection (3), the bureau shall check against national criminal background  
487 databases for the applicant's criminal history.
- 488 (c) Upon direction from the office, and with the personal identifying information and  
489 fingerprints the office submits to the bureau under Subsection (3)(d), the bureau shall:
- 490 (i) maintain a separate file of the fingerprints for search by future submissions to the



491 local and regional criminal records databases, including latent prints; and

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

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

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

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

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

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

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

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

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

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

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

519 (iii) prostitution;

520 (iv) an offense included in:

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

522 (B) Section 76-5b-201, Sexual Exploitation of a Minor; or  
523 (C) Title 76, Chapter 7, Offenses Against the Family;  
524 (v) aggravated arson, as described in Section 76-6-103;  
525 (vi) aggravated burglary, as described in Section 76-6-203;  
526 (vii) aggravated robbery, as described in Section 76-6-302;  
527 (viii) identity fraud crime, as described in Section 76-6-1102; or  
528 (ix) a felony or misdemeanor offense committed outside of the state that, if committed  
529 in the state, would constitute a violation of an offense described in Subsections (5)(a)(i)  
530 through (viii).

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

534 (c) If the applicant will be working in a program serving only adults whose only  
535 impairment is a mental health diagnosis, including that of a serious mental health disorder,  
536 with or without co-occurring substance use disorder, the denial provisions of Subsection (5)(a)  
537 do not apply, and the office shall conduct a comprehensive review as described in Subsection  
538 (6).

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

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

544 (ii) has an open court case or a conviction for a misdemeanor offense, not described in  
545 Subsection (5)(a), and designated by the office, by rule, in accordance with Title 63G, Chapter  
546 3, Utah Administrative Rulemaking Act, if the conviction is within three years before the day  
547 on which the applicant submits information to the office under Subsection (2) for a background  
548 check;

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

552 (iv) is currently subject to a plea in abeyance or diversion agreement for any offense

553 described in Subsection (5)(a);

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

556 (vi) has a listing in the Department of Human Services, Division of Aging and Adult  
557 Services' vulnerable adult abuse, neglect, or exploitation database described in Section  
558 62A-3-311.1;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

579 (B) sexual abuse;

580 (C) sexual exploitation; or

581 (D) negligent treatment;

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

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

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

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

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

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

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

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

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

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

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

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

610 (b) The office may conditionally approve an application of an applicant, for a  
611 maximum of one year after the day on which the office sends written notice to the applicant  
612 under Subsection (12), without requiring that the applicant be directly supervised if the office:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

637 (B) the individual is listed in the Licensing Information System, described in Section  
638 [62A-4a-1006](#);

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

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

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

- 646 (iv) the individual is directly supervised by an individual who:  
647 (A) has a current background screening approval issued by the office under this  
648 section; and  
649 (B) is associated with the licensee or department contractor;  
650 (c) the individual:  
651 (i) is not associated with the licensee or department contractor; and  
652 (ii) is directly supervised by an individual who:  
653 (A) has a current background screening approval issued by the office under this  
654 section; and  
655 (B) is associated with the licensee or department contractor;  
656 (d) the individual is the parent or guardian of the child, or the guardian of the  
657 vulnerable adult;  
658 (e) the individual is approved by the parent or guardian of the child, or the guardian of  
659 the vulnerable adult, to have direct access to the child or the vulnerable adult;  
660 (f) the individual is only permitted to have direct access to a vulnerable adult who  
661 voluntarily invites the individual to visit; or  
662 (g) the individual only provides incidental care for a foster child on behalf of a foster  
663 parent who has used reasonable and prudent judgment to select the individual to provide the  
664 incidental care for the foster child.  
665 (10) An individual may not have direct access to a child or a vulnerable adult if the  
666 individual is prohibited by court order from having that access.  
667 (11) Notwithstanding any other provision of this section, an individual for whom the  
668 office denies an application may not have direct access to a child or vulnerable adult unless the  
669 office approves a subsequent application by the individual.  
670 (12) (a) Within 30 days after the day on which the office receives the background  
671 check information for an applicant, the office shall give notice of the clearance status to:  
672 (i) the applicant, and the licensee or department contractor, of the office's decision  
673 regarding the background check and findings; and  
674 (ii) the applicant of any convictions and potentially disqualifying charges and  
675 adjudications found in the search.  
676 (b) With the notice described in Subsection (12)(a), the office shall also give the

677 applicant the details of any comprehensive review conducted under Subsection (6).

678 (c) If the notice under Subsection (12)(a) states that the applicant's application is  
679 denied, the notice shall further advise the applicant that the applicant may, under Subsection  
680 62A-2-111(2), request a hearing in the department's Office of Administrative Hearings, to  
681 challenge the office's decision.

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

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

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

688 (13) An individual or a department contractor who provides services in an adults only  
689 substance use disorder program, as defined by rule, is exempt from this section. This  
690 exemption does not extend to a program director or a member, as defined by Section  
691 62A-2-108, of the program.

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

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

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

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

- 708 (i) federal law or rule permits otherwise; or  
709 (ii) the requirements would prohibit the Division of Child and Family Services or a  
710 court from placing a child with:
- 711 (A) a noncustodial parent under Section 62A-4a-209, 78A-6-307, or 78A-6-307.5; or  
712 (B) a relative, other than a noncustodial parent, under Section 62A-4a-209, 78A-6-307,  
713 or 78A-6-307.5, pending completion of the background check described in Subsection (5).
- 714 (c) Notwithstanding Subsections (5) through (9), the office shall deny a clearance to an  
715 applicant seeking a position in a congregate care [facility] program, an applicant for a one-time  
716 adoption, an applicant to become a prospective foster parent, or an applicant to become a  
717 prospective adoptive parent if the applicant has been convicted of:
- 718 (i) a felony involving conduct that constitutes any of the following:
- 719 (A) child abuse, as described in Section 76-5-109;  
720 (B) commission of domestic violence in the presence of a child, as described in Section  
721 76-5-109.1;  
722 (C) abuse or neglect of a child with a disability, as described in Section 76-5-110;  
723 (D) endangerment of a child or vulnerable adult, as described in Section 76-5-112.5;  
724 (E) aggravated murder, as described in Section 76-5-202;  
725 (F) murder, as described in Section 76-5-203;  
726 (G) manslaughter, as described in Section 76-5-205;  
727 (H) child abuse homicide, as described in Section 76-5-208;  
728 (I) homicide by assault, as described in Section 76-5-209;  
729 (J) kidnapping, as described in Section 76-5-301;  
730 (K) child kidnapping, as described in Section 76-5-301.1;  
731 (L) aggravated kidnapping, as described in Section 76-5-302;  
732 (M) human trafficking of a child, as described in Section 76-5-308.5;  
733 (N) an offense described in Title 76, Chapter 5, Part 4, Sexual Offenses;  
734 (O) sexual exploitation of a minor, as described in Section 76-5b-201;  
735 (P) aggravated arson, as described in Section 76-6-103;  
736 (Q) aggravated burglary, as described in Section 76-6-203;  
737 (R) aggravated robbery, as described in Section 76-6-302; or  
738 (S) domestic violence, as described in Section 77-36-1; or



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

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

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

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

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

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

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

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

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

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

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