

HB0325S01 compared with HB0325

~~{deleted text}~~ shows text that was in HB0325 but was deleted in HB0325S01.

inserted text shows text that was not in HB0325 but was inserted into HB0325S01.

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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: _____

LONG TITLE

General Description:

This bill ~~{requires the division of licensing to assess a fee for congregate care program licenses}~~ creates additional requirements for the Office of Licensing.

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}~~ creates a reporting requirement; and

- ▶ makes technical changes.

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

~~ENACTS:~~

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

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

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

62A-2-101. Definitions.

As used in this chapter:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) uses a regionally accredited education program;

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

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

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

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

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

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

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

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

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

(B) the school does not:

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

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

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

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

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

(a) finding a person to adopt the child;

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

(c) foster home placement.

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

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

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

(a) an outdoor youth program;

(b) a residential support program;

(c) a residential treatment program; or

(d) a therapeutic school.

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

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

(b) four or more persons who:

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

(ii) have emotional, psychological, developmental, physical, or behavioral dysfunctions, impairments, or chemical dependencies.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) a foster home;

(ii) a therapeutic school;

(iii) a youth program;

(iv) an outdoor youth program;

(v) a residential treatment program;

(vi) a residential support program;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) a boarding school; or

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

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

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

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

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

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

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

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

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

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

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

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

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(a) services to a child that has:

(i) a chemical dependency; or

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

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

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

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

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

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

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

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

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

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

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

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

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

(v) (A) receives public funding; or

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

(b) "Recovery residence" does not mean:

- (i) a residential treatment program;
- (ii) residential support; or
- (iii) a home, residence, or facility, in which:

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

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

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

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

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

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

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

- (i) emotional;
 - (ii) psychological;
 - (iii) developmental; or
 - (iv) behavioral.
- (c) Treatment is not a necessary component of a residential support program.
- (d) "Residential support program" does not include:
- (i) a recovery residence; or
 - (ii) a program that provides residential services that are performed:

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

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the Division of Services for People with Disabilities; or

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

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

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

(i) boarding school;

(ii) foster home; or

(iii) recovery residence.

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

(a) residential treatment; or

(b) intermediate secure treatment.

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

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

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

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

(b) specialized rehabilitation to acquire sobriety; and

(c) aftercare services.

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

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

- (a) designed to provide:
 - (i) specialized drug or alcohol treatment;
 - (ii) rehabilitation; or
 - (iii) habilitation services; and
- (b) that provides the treatment or services described in Subsection ~~[(41)]~~ (43)(a) to

persons with:

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

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

- (a) for four or more individuals that are not related to:
 - (i) the owner of the facility; or
 - (ii) the primary service provider of the facility;
- (b) that serves students who have a history of failing to function:
 - (i) at home;
 - (ii) in a public school; or
 - (iii) in a nonresidential private school; and
- (c) that offers:
 - (i) room and board; and
 - (ii) an academic education integrated with:
 - (A) specialized structure and supervision; or
 - (B) services or treatment related to:
 - (I) a disability;
 - (II) emotional development;
 - (III) behavioral development;
 - (IV) familial development; or
 - (V) social development.

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

~~[(44)]~~ (46) "Vulnerable adult" means an elder adult or an adult who has a temporary or

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permanent mental or physical impairment that substantially affects the person's ability to:

- (a) provide personal protection;
- (b) provide necessities such as food, shelter, clothing, or mental or other health care;
- (c) obtain services necessary for health, safety, or welfare;
- (d) carry out the activities of daily living;
- (e) manage the adult's own resources; or
- (f) comprehend the nature and consequences of remaining in a situation of abuse,

neglect, or exploitation.

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

- (i) serves adjudicated or nonadjudicated youth;
- (ii) charges a fee for its services;
- (iii) may ~~[or may not]~~ provide host homes or other arrangements for overnight

accommodation of the youth;

- (iv) may ~~[or may not]~~ provide all or part of its services in the outdoors;
- (v) may ~~[or may not]~~ limit or censor access to parents or guardians; and
- (vi) prohibits or restricts a minor's ability to leave the program at any time of the

minor's own free will.

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

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

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

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

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

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

(2) Before conducting an inspection under Subsection (1), the office shall, after

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identifying the person in charge:

- (a) give proper identification;
- (b) request to see the applicable license;
- (c) describe the nature and purpose of the inspection; and
- (d) if necessary, explain the authority of the office to conduct the inspection and the

penalty for refusing to permit the inspection as provided in Section 62A-2-116.

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

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

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

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

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

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

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

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

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

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

and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) As used in this section:

(a) (i) "Applicant" means:

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

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

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

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(D) a department contractor;

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

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

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

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

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

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

(e) "Personal identifying information" means:

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

(ii) date of birth;

(iii) physical address and email address;

(iv) telephone number;

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

(vi) social security number;

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

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

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

(i) personal identifying information;

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

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

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

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

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

(D) retention of personal identifying information, including fingerprints, for monitoring and notification as described in Subsections (3)(d) and (4).

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

(3) The office:

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

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

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

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

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

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

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

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

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

(b) shall conduct a background check of an applicant for an initial background check

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upon submission of the information described under Subsection (2)(a);

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

(i) for an annual renewal; or

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

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

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

(i) more than one license;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) discard and destroy any retained fingerprints; and

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

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Investigation Next Generation Identification System.

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

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

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

(iii) prostitution;

(iv) an offense included in:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) the date of the offense or incident;

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- (ii) the nature and seriousness of the offense or incident;
 - (iii) the circumstances under which the offense or incident occurred;
 - (iv) the age of the perpetrator when the offense or incident occurred;
 - (v) whether the offense or incident was an isolated or repeated incident;
 - (vi) whether the offense or incident directly relates to abuse of a child or vulnerable adult, including:
 - (A) actual or threatened, nonaccidental physical, mental, or financial harm;
 - (B) sexual abuse;
 - (C) sexual exploitation; or
 - (D) negligent treatment;
 - (vii) any evidence provided by the applicant of rehabilitation, counseling, psychiatric treatment received, or additional academic or vocational schooling completed;
 - (viii) the applicant's risk of harm to clientele in the program or in the capacity for which the applicant is applying; and
 - (ix) any other pertinent information presented to or publicly available to the committee members.
- (c) At the conclusion of the comprehensive review described in Subsection (6)(a), the office shall deny an application to an applicant if the office finds that approval would likely create a risk of harm to a child or a vulnerable adult.
- (d) At the conclusion of the comprehensive review described in Subsection (6)(a), the office may not deny an application to an applicant solely because the applicant was convicted of an offense that occurred 10 or more years before the day on which the applicant submitted the information required under Subsection (2)(a) if:
- (i) the applicant has not committed another misdemeanor or felony offense after the day on which the conviction occurred; and
 - (ii) the applicant has never been convicted of an offense described in Subsection (14)(c).
- (e) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the office may make rules, consistent with this chapter, to establish procedures for the comprehensive review described in this Subsection (6).
- (7) Subject to Subsection (10), the office shall approve an application to an applicant

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who is not denied under Subsection (5), (6), or [~~(13)~~] (14).

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

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

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

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

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

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

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

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

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

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

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

Subsection (8); or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) the individual:

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

(ii) is directly supervised by an individual who:

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

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

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

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

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

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

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

(11) Notwithstanding any other provision of this section, an individual for whom the office denies an application may not have direct access to a child or vulnerable adult unless the office approves a subsequent application by the individual.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) federal law or rule permits otherwise; or

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

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

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

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

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

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

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

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

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

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

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

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

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- (H) child abuse homicide, as described in Section 76-5-208;
- (I) homicide by assault, as described in Section 76-5-209;
- (J) kidnapping, as described in Section 76-5-301;
- (K) child kidnapping, as described in Section 76-5-301.1;
- (L) aggravated kidnapping, as described in Section 76-5-302;
- (M) human trafficking of a child, as described in Section 76-5-308.5;
- (N) an offense described in Title 76, Chapter 5, Part 4, Sexual Offenses;
- (O) sexual exploitation of a minor, as described in Section 76-5b-201;
- (P) aggravated arson, as described in Section 76-6-103;
- (Q) aggravated burglary, as described in Section 76-6-203;
- (R) aggravated robbery, as described in Section 76-6-302; or
- (S) domestic violence, as described in Section 77-36-1; or
- (ii) an offense committed outside the state that, if committed in the state, would constitute a violation of an offense described in Subsection (14)(c)(i).

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

- (i) aggravated assault, as described in Section 76-5-103;
- (ii) aggravated assault by a prisoner, as described in Section 76-5-103.5;
- (iii) mayhem, as described in Section 76-5-105;
- (iv) an offense described in Title 58, Chapter 37, Utah Controlled Substances Act;
- (v) an offense described in Title 58, Chapter 37a, Utah Drug Paraphernalia Act;
- (vi) an offense described in Title 58, Chapter 37b, Imitation Controlled Substances Act;
- (vii) an offense described in Title 58, Chapter 37c, Utah Controlled Substance Precursor Act; or
- (viii) an offense described in Title 58, Chapter 37d, Clandestine Drug Lab Act.

(e) In addition to the circumstances described in Subsection (6)(a), the office shall conduct the comprehensive review of an applicant's background check pursuant to this section

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if the registry check described in Subsection (14)(a) indicates that the individual is listed in a child abuse and neglect registry of another state as having a substantiated or supported finding of a severe type of child abuse or neglect as defined in Section 62A-4a-1002.

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

~~62A-2-123. Congregate care program fees:~~

~~(1) As used in this section:~~

~~(a) "Bed capacity" means:~~

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

~~(ii) the number of days the congregate care program fills at least one bed during the prior fiscal year;~~

~~(b) "Per licensed capacity fee" means a fee for each bed a congregate care program licenses with the office;~~

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

~~(d) "State client" means a child in the custody of the state of Utah;~~

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

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

~~(ii) the congregate care program's bed capacity;~~

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

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

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

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

~~(b) state bed total for the prior year;~~

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

~~(5) The office shall establish each fee described in Subsection (2) in accordance with Subsection 63J-1-504;~~

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