

**CHILD CARE AMENDMENTS**

2022 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Susan Pulsipher**

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

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**LONG TITLE****Committee Note:**

The Economic Development and Workforce Services Interim Committee recommended this bill.

Legislative Vote: 9 voting for 0 voting against 7 absent

**General Description:**

This bill modifies provisions related to child care.

**Highlighted Provisions:**

This bill:

- ▶ clarifies the Department of Health's authority over municipalities and counties to regulate child care programs operated by licensed or certified child care providers;
- ▶ allows a community reinvestment agency to use the agency's housing allocation to pay for the expansion of child care facilities within the agency's boundaries;
- ▶ requires the Department of Health to make rules allowing licensed and certified child care providers to provide after school care for additional children;
- ▶ requires the Department of Health to make rules establishing criteria for the certification of residential child care providers;
- ▶ removes provisions limiting the number of children under two years old that a certified residential child care provider may care for;
- ▶ requires the Office of Child Care to provide grants to child care providers that provide child care on behalf of employers, using COVID-19 relief funds;



- requires the Office of Child Care to report information about the office's expenditure of COVID-19 relief funds on an annual basis;
- requires a proposal for a housing and transportation reinvestment zone to promote the objective of increasing access to child care; and
- makes technical changes.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

## AMENDS:

**17C-1-412**, as last amended by Laws of Utah 2020, Chapter 241

**26-39-301**, as last amended by Laws of Utah 2018, Chapter 58

**26-39-402**, as last amended by Laws of Utah 2018, Chapter 415

**63I-2-235**, as last amended by Laws of Utah 2021, Chapter 318

**63N-3-603**, as last amended by Laws of Utah 2021, First Special Session, Chapter 3

## ENACTS:

**10-8-84.6**, Utah Code Annotated 1953

**17-50-339**, Utah Code Annotated 1953

**35A-3-212**, Utah Code Annotated 1953

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

Section 1. Section **10-8-84.6** is enacted to read:

**10-8-84.6. Prohibition on regulation of child care programs.**

(1) (a) As used in this section, "child care program" means a child care facility or program operated by a person who holds a license or certificate from the Department of Health in accordance with Title 26, Chapter 39, Utah Child Care Licensing Act.

(b) "Child care program" does not include a child care facility or program operated by an organization that provides care pursuant to a written agreement with a municipality that provides oversight for the facility or program, as described in Subsection **26-39-403(2)(e)**.

(2) A municipality may not enact or enforce an ordinance that:

- 59        (a) imposes licensing or certification requirements for a child care program; or  
60        (b) governs the manner in which child care is provided under a child care program.

61        Section 2. Section **17-50-339** is enacted to read:

62        **17-50-339. Prohibition on regulation of child care programs.**

63        (1) (a) As used in this section, "child care program" means a child care facility or  
64        program operated by a person who holds a license or certificate from the Department of Health  
65        in accordance with Title 26, Chapter 39, Utah Child Care Licensing Act.

66        (b) "Child care program" does not include a child care facility or program operated by  
67        an organization that provides care pursuant to a written agreement with a county that provides  
68        oversight for the facility or program, as described in Subsection [26-39-403\(2\)\(e\)](#).

69        (2) A county may not enact or enforce an ordinance that:

70        (a) imposes licensing or certification requirements for a child care program; or

71        (b) governs the manner in which care is provided under a child care program.

72        Section 3. Section **17C-1-412** is amended to read:

73        **17C-1-412. Use of housing allocation -- Separate accounting required -- Issuance**  
74        **of bonds for housing -- Action to compel agency to provide housing allocation.**

75        (1) (a) An agency shall use the agency's housing allocation to:

76        (i) pay part or all of the cost of land or construction of income targeted housing within  
77        the boundary of the agency, if practicable in a mixed income development or area;

78        (ii) pay part or all of the cost of rehabilitation of income targeted housing within the  
79        boundary of the agency;

80        (iii) lend, grant, or contribute money to a person, public entity, housing authority,  
81        private entity or business, or nonprofit corporation for income targeted housing within the  
82        boundary of the agency;

83        (iv) plan or otherwise promote income targeted housing within the boundary of the  
84        agency;

85        (v) pay part or all of the cost of land or installation, construction, or rehabilitation of  
86        any building, facility, structure, or other housing improvement, including infrastructure  
87        improvements, related to housing located in a project area where a board has determined that a  
88        development impediment exists;

89        (vi) replace housing units lost as a result of the project area development;

(vii) make payments on or establish a reserve fund for bonds:

(A) issued by the agency, the community, or the housing authority that provides income targeted housing within the community; and

(B) all or part of the proceeds of which are used within the community for the purposes stated in Subsection (1)(a)(i), (ii), (iii), (iv), (v), or (vi);

(viii) if the community's fair share ratio at the time of the first adoption of the project area budget is at least 1.1 to 1.0, make payments on bonds:

(A) that were previously issued by the agency, the community, or the housing authority that provides income targeted housing within the community; and

(B) all or part of the proceeds of which were used within the community for the purposes stated in Subsection (1)(a)(i), (ii), (iii), (iv), (v), or (vi);

(ix) relocate mobile home park residents displaced by project area development;

(x) subject to Subsection (7), transfer funds to a community that created the agency; or

(xi) pay for or make a contribution toward the acquisition, construction, or rehabilitation of housing that:

(A) is located in the same county as the agency;

(B) is owned in whole or in part by, or is dedicated to supporting, a public nonprofit college or university; and

(C) only students of the relevant college or university, including the students' immediate families, occupy.

(b) As an alternative to the requirements of Subsection (1)(a), an agency may pay all or any portion of the agency's housing allocation to:

(i) the community for use as described in Subsection (1)(a);

(ii) a housing authority that provides income targeted housing within the community for use in providing income targeted housing within the community;

(iii) a housing authority established by the county in which the agency is located for providing:

(A) income targeted housing within the county;

(B) permanent housing, permanent supportive housing, or a transitional facility, as defined in Section 35A-5-302, within the county; or

(C) homeless assistance within the county;

(iv) the Olene Walker Housing Loan Fund, established under Title 35A, Chapter 8, Part 5, Olene Walker Housing Loan Fund, for use in providing income targeted housing within the community; ~~or~~

(v) pay for or make a contribution toward the acquisition, construction, or rehabilitation of income targeted housing that is outside of the community if the housing is located along or near a major transit investment corridor that services the community and the related project has been approved by the community in which the housing is or will be located~~[-]; or~~

(vi) pay for or make a contribution toward the expansion of child care facilities within the boundary of the agency.

(2) (a) An agency may combine all or any portion of the agency's housing allocation with all or any portion of one or more additional agency's housing allocations if the agencies execute an interlocal agreement in accordance with Title 11, Chapter 13, Interlocal Cooperation Act.

(b) An agency that has entered into an interlocal agreement as described in Subsection (2)(a), meets the requirements of Subsection (1)(a) or (1)(b) if the use of the housing allocation meets the requirements for at least one agency that is a party to the interlocal agreement.

(3) The agency shall create a housing fund and separately account for the agency's housing allocation, together with all interest earned by the housing allocation and all payments or repayments for loans, advances, or grants from the housing allocation.

(4) An agency may:

(a) issue bonds to finance a housing-related project under this section, including the payment of principal and interest upon advances for surveys and plans or preliminary loans; and

(b) issue refunding bonds for the payment or retirement of bonds under Subsection (4)(a) previously issued by the agency.

(5) (a) Except as provided in Subsection (5)(b), an agency shall allocate money to the housing fund each year in which the agency receives sufficient tax increment to make a housing allocation required by the project area budget.

(b) Subsection (5)(a) does not apply in a year in which tax increment is insufficient.

(6) (a) Except as provided in Subsection (5)(b), if an agency fails to provide a housing

allocation in accordance with the project area budget and the housing plan adopted under Subsection 17C-2-204(2), the loan fund board may bring legal action to compel the agency to provide the housing allocation.

(b) In an action under Subsection (6)(a), the court:

(i) shall award the loan fund board reasonable attorney fees, unless the court finds that the action was frivolous; and

(ii) may not award the agency the agency's attorney fees, unless the court finds that the action was frivolous.

(7) For the purpose of offsetting the community's annual local contribution to the Homeless Shelter Cities Mitigation Restricted Account, the total amount an agency transfers in a calendar year to a community under Subsections (1)(a)(x), 17C-1-409(1)(a)(v), and 17C-1-411(1)(d) may not exceed the community's annual local contribution as defined in Section 35A-8-606.

Section 4. Section 26-39-301 is amended to read:

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

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

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

(i) adequate facilities and equipment; and

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

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

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

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

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

(iv) changes of ownership or name, changes in licensure status, and changes in

operational status;

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

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

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

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

(3) The department shall make rules that allow a licensed or certified provider to provide, without obtaining a waiver or variance from the department, after school care for a number of qualifying children in addition to the maximum number of qualifying children the provider would otherwise be permitted to care for.

~~[(3)]~~ (4) Rules made under this chapter by the department, or the licensing committee with the concurrence of the department, shall be made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

~~[(4)]~~ (5) (a) The licensing committee and the department may not regulate educational curricula, academic methods, or the educational philosophy or approach of the provider.

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

~~[(5)]~~ (6) In licensing and regulating child care programs, the licensing committee and the department shall reasonably balance the benefits and burdens of each regulation and, by rule, provide for a range of licensure, depending upon the needs and different levels and types of child care provided.

~~[(6)]~~ (7) Notwithstanding the definition of "qualifying child" in Section 26-39-102, the licensing committee and the department shall count children through age 12 and children with disabilities through age 18 toward the minimum square footage requirement for indoor and outdoor areas, including the child of:

(a) a licensed residential child care provider; or

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

~~[(7)]~~ (8) Notwithstanding Subsection (1)(a)(i), the licensing committee and the

department may not exclude floor space used for furniture, fixtures, or equipment from the minimum square footage requirement for indoor and outdoor areas if the furniture, fixture, or equipment is used:

- (a) by qualifying children;
- (b) for the care of qualifying children; or
- (c) to store classroom materials.

~~[(8)]~~ (9) (a) A child care center constructed prior to January 1, 2004, and licensed and operated as a child care center continuously since January 1, 2004, is exempt from the licensing committee's and the department's group size restrictions, if the child to caregiver ratios are maintained, and adequate square footage is maintained for specific classrooms.

(b) An exemption granted under Subsection ~~[(7)]~~ (9)(a) is transferrable to subsequent licensed operators at the center if a licensed child care center is continuously maintained at the center.

~~[(9)]~~ (10) The licensing committee, with the concurrence of the department, shall develop, by rule, a five-year phased-in compliance schedule for playground equipment safety standards.

~~[(10)]~~ (11) The department shall set and collect licensing and other fees in accordance with Section 26-1-6.

~~[(11) Nothing in this chapter may be interpreted to grant a municipality or county the authority to license or certify a child care program.]~~

(12) Except as provided in Subsection 26-39-403(2)(e), a municipality or county may not:

- (a) impose licensing or certification requirements for a child care program; or
- (b) regulate the manner in which care is provided under a child care program.

Section 5. Section 26-39-402 is amended to read:

**26-39-402. Residential Child Care Certificate.**

(1) (a) Subject to Subsection (1)(b), the department shall make rules, consistent with this chapter, establishing criteria for the certification of residential child care providers, including rules establishing:

(i) the number of qualifying children that a residential child care provider may care for without obtaining a Residential Child Care Certificate from the department; and



245           (ii) the number of qualifying children for which a residential child care provider, in  
246 order to provide care to the qualifying children, is required to obtain a Residential Child Care  
247 Certificate from the department.

248           ~~[(1)-A]~~ (b) Before the day on which the rules described in Subsection (1)(a) take  
249 effect, a residential child care provider of five to eight qualifying children shall obtain a  
250 Residential Child Care Certificate from the department, unless Section 26-39-403 applies.

251           (2) The minimum qualifications for a Residential Child Care Certificate are:

252           (a) the submission of:

253           (i) an application in the form prescribed by the department;

254           (ii) a certification and criminal background fee established in accordance with Section  
255 26-1-6; and

256           (iii) in accordance with Section 26-39-404, identifying information for each adult  
257 person and each juvenile age 12 through 17 years of age who resides in the provider's home:

258           (A) for processing by the Department of Public Safety to determine whether any such  
259 person has been convicted of a crime;

260           (B) to screen for a substantiated finding of child abuse or neglect by a juvenile court;  
261 and

262           (C) to discover whether the person is listed in the Licensing Information System  
263 described in Section 62A-4a-1006;

264           (b) an initial and annual inspection of the provider's home within 90 days of sending an  
265 intent to inspect notice to:

266           (i) check the immunization record, as defined in Section 53G-9-301, of each qualifying  
267 child who receives child care in the provider's home;

268           (ii) identify serious sanitation, fire, and health hazards to qualifying children; and

269           (iii) make appropriate recommendations; and

270           (c) annual training consisting of 10 hours of department-approved training as specified  
271 by the department by administrative rule, including a current department-approved CPR and  
272 first aid course.

273           (3) If a serious sanitation, fire, or health hazard has been found during an inspection  
274 conducted pursuant to Subsection (2)(b), the department shall require corrective action for the  
275 serious hazards found and make an unannounced follow up inspection to determine

276 compliance.

277 (4) In addition to an inspection conducted pursuant to Subsection (2)(b), the  
278 department may inspect the home of a certified residential care provider [~~of five to eight~~  
279 ~~qualifying children~~] in response to a complaint of:

280 (a) child abuse or neglect;

281 (b) serious health hazards in or around the provider's home; or

282 (c) providing residential child care without the appropriate certificate or license.

283 [~~(5) Notwithstanding this section:~~

284 [~~(a) a license under Section 26-39-401 is required of a residential child care provider~~  
285 ~~who cares for nine or more qualifying children;~~

286 [~~(b) a certified residential child care provider may not provide care to more than two~~  
287 ~~qualifying children under the age of two; and]~~

288 [~~(c) an inspection may be required of a residential child care provider in connection~~  
289 ~~with a federal child care program.]~~

290 (5) (a) Except as provided in Subsection (5)(b), a license under Section 26-39-401 is  
291 required of a residential child care provider who cares for more than eight qualifying children.

292 (b) A certified residential child care provider may provide after school care to more  
293 than eight qualifying children without obtaining a license under Section 26-39-401, subject to  
294 rules made by the department under Subsection 26-39-301(3).

295 (6) With respect to residential child care, the department may only make and enforce  
296 rules necessary to implement this section.

297 Section 6. Section **35A-3-212** is enacted to read:

298 **35A-3-212. Use of COVID-19 relief funds -- Grants to child care providers --**  
299 **Reporting requirements.**

300 (1) As used in this section:

301 (a) "COVID-19 relief funds" means federal funds provided to the office under:

302 (i) the American Rescue Plan Act, Pub. L. No. 117-2;

303 (ii) the Coronavirus Aid, Relief, and Economic Security Act, Pub. L. No. 116-136; or

304 (iii) the Coronavirus Response and Relief Supplemental Appropriations Act, Pub. L.  
305 No. 116-260.

306 (b) (i) "Employer" means:

(A) a public employer;  
(B) a private employer; or  
(C) a cooperative organized for the purpose of providing child care for members' employees.

(ii) "Employer" includes a local education agency, as defined in Section [53E-1-102](#).

(c) "Qualifying child care" means child care provided for an employer's employees, either on-site or off-site of the employer's place of business.

(2) (a) Subject to availability of funds and requirements under applicable federal law, the office shall use COVID-19 relief funds to provide grants to eligible child care providers to assist in paying start-up costs associated with the provision of qualifying child care.

(b) To be eligible for a grant under this Subsection (2), a child care provider shall enter into a contract with an employer to provide qualifying child care on behalf of the employer.

(c) The office shall make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to establish criteria and procedures for applying for and awarding grants under this Subsection (2).

(3) In fiscal years 2022 through 2024, the office shall submit to the department, for inclusion in the department's annual written report described in Section [35A-1-109](#), an annual report that provides:

(a) a complete accounting of the COVID-19 relief funds expended by the office during the previous fiscal year;

(b) a description of the services, projects, and programs funded by the office with COVID-19 relief funds during the previous fiscal year, including the amount of COVID-19 relief funds allocated to each service, project, or program; and

(c) information regarding the outcomes and effectiveness of the services, projects, and programs funded by the office with COVID-19 relief funds during the previous fiscal year.

Section 7. Section **63I-2-235** is amended to read:

**63I-2-235. Repeal dates -- Title 35A.**

(1) Section [35A-1-104.6](#) is repealed June 30, 2022.

(2) Section [35A-3-212](#) is repealed June 30, 2025.

Section 8. Section **63N-3-603** is amended to read:

**63N-3-603. Applicability, requirements, and limitations on a housing and transit**

338 **reinvestment zone.**

339 (1) A housing and transit reinvestment zone proposal created under this part shall  
340 promote the following objectives:

- 341 (a) higher utilization of public transit;  
342 (b) increasing availability of housing, including affordable housing;  
343 (c) conservation of water resources through efficient land use;  
344 (d) improving air quality by reducing fuel consumption and motor vehicle trips;  
345 (e) encouraging transformative mixed-use development and investment in  
346 transportation and public transit infrastructure in strategic areas;  
347 (f) strategic land use and municipal planning in major transit investment corridors as  
348 described in Subsection 10-9a-403(2); ~~and~~  
349 (g) increasing access to employment and educational opportunities~~[-]; and~~  
350 (h) increasing access to child care.

351 (2) In order to accomplish the objectives described in Subsection (1), a municipality or  
352 public transit county that initiates the process to create a housing and transit reinvestment zone  
353 as described in this part shall ensure that the proposal for a housing and transit reinvestment  
354 zone includes:

- 355 (a) except as provided in Subsection (3), at least 10% of the proposed housing units  
356 within the housing and transit reinvestment zone are affordable housing units;  
357 (b) a dedication of at least 51% of the developable area within the housing and transit  
358 reinvestment zone to residential development with an average of 50 multi-family dwelling  
359 units per acre or greater; and  
360 (c) mixed-use development.

361 (3) A municipality or public transit county that, at the time the housing and transit  
362 reinvestment zone proposal is approved by the housing and transit reinvestment zone  
363 committee, meets the affordable housing guidelines of the United States Department of  
364 Housing and Urban Development at 60% area median income is exempt from the requirement  
365 described in Subsection (2)(a).

366 (4) A municipality or public transit county may only propose a housing and transit  
367 reinvestment zone that:

- 368 (a) subject to Subsection (5):

- 369 (i) (A) for a municipality, does not exceed a 1/3 mile radius of a commuter rail station;  
370 or  
371 (B) for a public transit county, does not exceed a 1/3 mile radius of a public transit  
372 hub; and  
373 (ii) has a total area of no more than 125 noncontiguous square acres;  
374 (b) subject to Section 63N-3-607, proposes the capture of a maximum of 80% of each  
375 taxing entity's tax increment above the base year for a term of no more than 25 consecutive  
376 years on each parcel within a 45-year period not to exceed the tax increment amount approved  
377 in the housing and transit reinvestment zone proposal; and  
378 (c) the commencement of collection of tax increment, for all or a portion of the  
379 housing and transit reinvestment zone, will be triggered by providing notice as described in  
380 Subsection (6).  
381 (5) If a parcel is bisected by the 1/3 mile radius, the full parcel may be included as part  
382 of the housing and transit reinvestment zone area and will not count against the limitations  
383 described in Subsection (4)(a).  
384 (6) The notice of commencement of collection of tax increment required in Subsection  
385 (4)(c) shall be sent by mail or electronically to:  
386 (a) the tax commission;  
387 (b) the State Board of Education;  
388 (c) the state auditor;  
389 (d) the auditor of the county in which the housing and transit reinvestment zone is  
390 located;  
391 (e) each taxing entity affected by the collection of tax increment from the housing and  
392 transit reinvestment zone; and  
393 (f) the Governor's Office of Economic Opportunity.