

Representative Karianne Lisonbee proposes the following substitute bill:

VULNERABLE POPULATION AMENDMENTS

2024 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Karianne Lisonbee

Senate Sponsor: Wayne A. Harper

LONG TITLE

General Description:

This bill concerns protections for vulnerable populations.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ modifies provisions relating to a monitoring device in the room of a resident of an assisted living facility and includes ~~Š→~~ **[nursing-home] certain other** ~~←Š~~ facilities;
- ▶ requires fingerprint background checks for certain individuals who will have direct access to patients in certain health care facilities;
- ▶ requires certain facilities to report certain incidents of abuse, neglect, or exploitation to the Department of Health and Human Services (department), the Division of Child and Family Services, Adult Protective Services, or a law enforcement agency;
- ▶ requires, with an automatic repeal provision, the department to collect and compile all reported incidents of abuse, neglect, or exploitation at certain facilities and annually report the information to the Health and Human Services Interim Committee;
- ▶ prohibits inmates from receiving certain training while incarcerated; and
- ▶ makes technical and conforming changes.

4th Sub. H.B. 495



26 **Money Appropriated in this Bill:**

27 None

28 **Other Special Clauses:**

29 This bill provides a special effective date.

30 This bill provides a coordination clause.

31 **Utah Code Sections Affected:**

32 AMENDS:

33 **26B-2-236**, as renumbered and amended by Laws of Utah 2023, Chapter 305

34 **26B-2-238**, as renumbered and amended by Laws of Utah 2023, Chapter 305

35 **26B-2-240**, as renumbered and amended by Laws of Utah 2023, Chapter 305

36 **63I-2-226 (Effective 07/01/24)**, as last amended by Laws of Utah 2023, Chapters 33,

37 139, 249, 295, 310, and 465 and repealed and reenacted by Laws of Utah 2023,

38 Chapter 329 and last amended by Coordination Clause, Laws of Utah 2023, Chapter

39 329

40 **64-13-48**, as enacted by Laws of Utah 2022, Chapter 144

41 ENACTS:

42 **26B-2-243**, Utah Code Annotated 1953

43 **Utah Code Sections Affected By Coordination Clause:**

44 **26B-2-240**, as renumbered and amended by Laws of Utah 2023, Chapter 305



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

47 Section 1. Section **26B-2-236** is amended to read:

48 **26B-2-236. Monitoring device -- Installation, notice, and consent -- Admission**
49 **and discharge -- Liability.**

50 (1) As used in this section:

51 (a) "Facility" means ~~§~~ :

51a ~~(i)~~ ~~←~~ ~~§~~ an assisted living facility ~~§~~ ; ~~←~~ ~~§~~ or

51b ~~§~~ (ii) a secure memory care unit inside of:

51c ~~(A)~~ ~~←~~ ~~§~~ a nursing care facility ~~§~~ ~~[]~~ ; **or**

51d **(B) any other medical or mental health facility.** ~~←~~ ~~§~~

52 (b) "Legal representative" means an individual who is legally authorized to make
53 health care decisions on behalf of another individual.

54 ~~[(b)]~~ (c) (i) "Monitoring device" means:

55 (A) a video surveillance camera; or

56 (B) a microphone or other device that captures audio.

57 (ii) "Monitoring device" does not include:

58 (A) a device that is specifically intended to intercept wire, electronic, or oral
59 communication without notice to or the consent of a party to the communication; or

60 (B) a device that is connected to the Internet or that is set up to transmit data via an
61 electronic communication.

62 [~~(c)~~] (d) "Resident" means an individual who receives health care from a facility.

63 [~~(d)~~] (e) "Room" means a resident's private or shared primary living space.

64 [~~(e)~~] (f) "Roommate" means an individual sharing a room with a resident.

65 (2) A resident or the resident's legal representative may operate or install a monitoring
66 device in the resident's room if the resident and the resident's legal representative, if any, unless
67 the resident is incapable of informed consent:

68 (a) notifies the resident's [~~assisted living~~] facility in writing that the resident or the
69 resident's legal representative, if any:

70 (i) intends to operate or install a monitoring device in the resident's room; and

71 (ii) consents to a waiver agreement, if required by [~~an assisted living~~] a facility;

72 (b) obtains written consent from each of the resident's roommates, and their legal
73 representative, if any, that specifically states the hours when each roommate consents to the
74 resident or the resident's legal representative operating the monitoring device; and

75 (c) assumes all responsibility for any cost related to installing or operating the
76 monitoring device.

77 (3) [~~An assisted living~~] A facility shall not be civilly or criminally liable to:

78 (a) a resident or resident's roommate for the operation of a monitoring device
79 consistent with this part; and

80 (b) any person other than the resident or resident's roommate for any claims related to
81 the use or operation of a monitoring device consistent with this part, unless the claim is caused
82 by the acts or omissions of an employee or agent of the [~~assisted living~~] facility.

83 (4) (a) [~~An assisted living~~] A facility may not deny an individual admission to the
84 facility for the sole reason that the individual or the individual's legal representative requests to
85 install or operate a monitoring device in the individual's room.

86 (b) [~~An assisted living~~] A facility may not discharge a resident for the sole reason that
87 the resident or the resident's legal representative requests to install or operate a monitoring

88 device in the individual's room.

89 (c) A facility shall prohibit all employees of a facility from deactivating, repositioning,
 90 or otherwise interfering with the operation of a monitoring device in an individual's room.

91 ~~§~~ → [H] ← ~~§~~ ~~§~~ → [(e)] (d) ← ~~§~~ ~~§~~ → [An assisted living] A ← ~~§~~ facility may require the resident
 91a or the resident's legal
 92 representative to place a sign near the entrance of the resident's room that states that the room
 93 contains a monitoring device. ~~§~~ → [H] ← ~~§~~

94 ~~§~~ → [(5) Upon the request of a resident or the resident's legal representative, a facility may
 95 not inform the employees of the facility of the presence of the monitoring device in the
 96 individual's room.

97 ~~§~~ → [(5)+(6)] (5) ← ~~§~~ Notwithstanding any other provision of this part, an individual may not,
 97a under
 98 this part, operate a monitoring device in [an assisted living] a facility without a court order:

99 (a) in secret; or

100 (b) with an intent to intercept a wire, electronic, or oral communication without notice
 101 to or the consent of a party to the communication.

102 Section 2. Section **26B-2-238** is amended to read:

103 **26B-2-238. Definitions for Sections 26B-2-238 through 26B-2-241.**

104 As used in this section and Sections 26B-2-239, 26B-2-240, and 26B-2-241:

105 (1) "Clearance" means approval by the department under Section 26B-2-239 for an
 106 individual to have direct patient access.

107 (2) "Covered body" means a covered provider, covered contractor, or covered
 108 employer.

109 (3) "Covered contractor" means a person that supplies covered individuals, by contract,
 110 to a covered employer or covered provider.

111 (4) "Covered employer" means an individual who:

112 (a) engages a covered individual to provide services in a private residence to:

113 (i) an aged individual, as defined by department rule; or

114 (ii) a disabled individual, as defined by department rule;

115 (b) is not a covered provider; and

116 (c) is not a licensed health care facility within the state.

117 (5) "Covered individual":

118 (a) means an individual:

- 119 (i) whom a covered body engages; and
- 120 (ii) who may have direct patient access;
- 121 (b) includes:
 - 122 (i) a nursing assistant, as defined by department rule;
 - 123 (ii) a personal care aide, as defined by department rule;
 - 124 (iii) an individual licensed to engage in the practice of nursing under Title 58, Chapter
 - 125 31b, Nurse Practice Act;
 - 126 (iv) a provider of medical, therapeutic, or social services, including a provider of
 - 127 laboratory and radiology services;
 - 128 (v) an executive;
 - 129 (vi) administrative staff, including a manager or other administrator;
 - 130 (vii) dietary and food service staff;
 - 131 (viii) housekeeping and maintenance staff; and
 - 132 (ix) any other individual, as defined by department rule, who has direct patient access;
 - 133 and
 - 134 (c) does not include a student, as defined by department rule, directly supervised by a
 - 135 member of the staff of the covered body or the student's instructor.
 - 136 (6) "Covered provider" means:
 - 137 (a) an end stage renal disease facility;
 - 138 (b) a long-term care hospital;
 - 139 (c) a nursing care facility;
 - 140 (d) a small health care facility;
 - 141 (e) an assisted living facility;
 - 142 (f) a hospice;
 - 143 (g) a home health agency; or
 - 144 (h) a personal care agency.
 - 145 (7) "Direct patient access" means for an individual to be in a position where the
 - 146 individual could, in relation to a patient or resident of the covered body who engages the
 - 147 individual:
 - 148 (a) cause physical or mental harm;
 - 149 (b) commit theft; or

- 150 (c) view medical or financial records.
- 151 (8) "Engage" means to obtain one's services:
- 152 (a) by employment;
- 153 (b) by contract;
- 154 (c) as a volunteer; or
- 155 (d) by other arrangement.
- 156 (9) "Long-term care hospital":
- 157 (a) means a hospital that is certified to provide long-term care services under the
- 158 provisions of 42 U.S.C. Sec. 1395tt; and
- 159 (b) does not include a critical access hospital, designated under 42 U.S.C. Sec.
- 160 1395i-4(c)(2).
- 161 (10) "Patient" means an individual who receives health care services from one of the
- 162 following covered providers:
- 163 (a) an end stage renal disease facility;
- 164 (b) a long-term care hospital;
- 165 (c) a hospice;
- 166 (d) a home health agency; or
- 167 (e) a personal care agency.
- 168 (11) "Personal care agency" means a health care facility defined by department rule.
- 169 (12) "Rap back system" means a system that enables authorized entities to receive
- 170 ongoing status notifications of any criminal history reported on individuals who are registered
- 171 in the system.
- 172 [~~(12)~~] (13) "Resident" means an individual who receives health care services from one
- 173 of the following covered providers:
- 174 (a) a nursing care facility;
- 175 (b) a small health care facility;
- 176 (c) an assisted living facility; or
- 177 (d) a hospice that provides living quarters as part of its services.
- 178 [~~(13)~~] (14) "Residential setting" means a place provided by a covered provider:
- 179 (a) for residents to live as part of the services provided by the covered provider; and
- 180 (b) where an individual who is not a resident also lives.

181 [~~(14)~~] (15) "Volunteer" means an individual, as defined by department rule, who
182 provides services without pay or other compensation.

183 *The following section is affected by a coordination clause at the end of this bill.*

184 Section 3. Section **26B-2-240** is amended to read:

185 **26B-2-240. Department authorized to grant, deny, or revoke clearance --**
186 **Department may limit direct patient access -- Clearance.**

187 (1) The definitions in Section **26B-2-238** apply to this section.

188 (2) (a) As provided in this section, the department may grant, deny, or revoke clearance
189 for an individual, including a covered individual.

190 (b) The department may limit the circumstances under which a covered individual
191 granted clearance may have direct patient access, based on the relationship factors under
192 Subsection (4) and other mitigating factors related to patient and resident protection.

193 (c) The department shall determine whether to grant clearance for each applicant for
194 whom it receives:

195 (i) the personal identification information specified by the department under
196 Subsection (4)(b); and

197 (ii) any fees established by the department under Subsection (9).

198 (d) The department shall:

199 (i) establish a procedure for obtaining and evaluating relevant information concerning
200 covered individuals, including fingerprinting the applicant and submitting the prints to the
201 Criminal Investigations and Technical Services Division of the Department of Public Safety for
202 checking against applicable state, regional, and national criminal records files[-]; and

203 (ii) require that a finding of clearance include a fingerprint-based criminal history
204 background check in the databases described under Subsection (3)(a), including the inclusion
205 of the individual's fingerprints in a rap back system.

206 (3) The department may review the following sources to determine whether an
207 individual should be granted or retain clearance, which may include:

208 (a) Department of Public Safety arrest, conviction, and disposition records described in
209 Title 53, Chapter 10, Criminal Investigations and Technical Services Act, including
210 information in state, regional, and national records files;

211 (b) juvenile court arrest, adjudication, and disposition records, as allowed under

212 Section 78A-6-209;

213 (c) federal criminal background databases available to the state;

214 (d) the Division of Child and Family Services Licensing Information System described
215 in Section 80-2-1002;

216 (e) child abuse or neglect findings described in Section 80-3-404;

217 (f) the Division of Aging and Adult Services vulnerable adult abuse, neglect, or
218 exploitation database described in Section 26B-6-210;

219 (g) registries of nurse aids described in 42 C.F.R. Sec. 483.156;

220 (h) licensing and certification records of individuals licensed or certified by the
221 Division of Professional Licensing under Title 58, Occupations and Professions; and

222 (i) the List of Excluded Individuals and Entities database maintained by the United
223 States Department of Health and Human Services' Office of Inspector General.

224 (4) The department shall adopt rules that:

225 (a) specify the criteria the department will use to determine whether an individual is
226 granted or retains clearance:

227 (i) based on an initial evaluation and ongoing review of information under Subsection
228 (3); and

229 (ii) including consideration of the relationship the following may have to patient and
230 resident protection:

231 (A) warrants for arrest;

232 (B) arrests;

233 (C) convictions, including pleas in abeyance;

234 (D) pending diversion agreements;

235 (E) adjudications by a juvenile court under Section 80-6-701 if the individual is over
236 28 years old and has been convicted, has pleaded no contest, or is subject to a plea in abeyance
237 or diversion agreement for a felony or misdemeanor, or the individual is under 28 years old;
238 and

239 (F) any other findings under Subsection (3); and

240 (b) specify the personal identification information that must be submitted by an
241 individual or covered body with an application for clearance, including:

242 (i) the applicant's Social Security number; and

243 (ii) fingerprints.

244 (5) For purposes of Subsection (4)(a), the department shall classify a crime committed
245 in another state according to the closest matching crime under Utah law, regardless of how the
246 crime is classified in the state where the crime was committed.

247 (6) The Department of Public Safety, the Administrative Office of the Courts, the
248 Division of Professional Licensing, and any other state agency or political subdivision of the
249 state:

250 (a) shall allow the department to review the information the department may review
251 under Subsection (3); and

252 (b) except for the Department of Public Safety, may not charge the department for
253 access to the information.

254 (7) The department shall adopt measures to protect the security of the information it
255 reviews under Subsection (3) and strictly limit access to the information to department
256 employees responsible for processing an application for clearance.

257 (8) The department may disclose personal identification information specified under
258 Subsection (4)(b) to other divisions and offices within the department to verify that the subject
259 of the information is not identified as a perpetrator or offender in the information sources
260 described in Subsections (3)(d) through (f).

261 (9) The department may establish fees, in accordance with Section 63J-1-504, for an
262 application for clearance, which may include:

263 (a) the cost of obtaining and reviewing information under Subsection (3);

264 (b) a portion of the cost of creating and maintaining the Direct Access Clearance
265 System database under Section 26B-2-241; and

266 (c) other department costs related to the processing of the application and the ongoing
267 review of information pursuant to Subsection (4)(a) to determine whether clearance should be
268 retained.

269 Section 4. Section 26B-2-243 is enacted to read:

270 **26B-2-243. Data collection and reporting requirements concerning incidents of**
271 **abuse, neglect, or exploitation.**

272 (1) As used in this section, "facility" means ~~an assisted living facility or a nursing care~~
273 ~~facility~~ **the same as that term is defined in Section 26B-2-236** .

274 (2) In addition to the requirements in Section 26B-6-205 or 80-2-602, the department
275 shall require a facility to report any incident of abuse, neglect, or exploitation of a resident:

276 (a) to the department; and

277 (b) to the Division of Child and Family Services or Adult Protective Services, if
278 appropriate, or a law enforcement agency with jurisdiction over the covered provider in which
279 the alleged incident occurred.

280 (3) The department shall collect and compile all reported incidents described in
281 Subsection (2)(a) and annually on or before June 30 report the data to the Health and Human
282 Services Interim Committee.

283 Section 5. Section **63I-2-226 (Effective 07/01/24)** is amended to read:

284 **63I-2-226 (Effective 07/01/24). Repeal dates: Titles 26A through 26B.**

285 (1) Section 26B-1-241 is repealed July 1, 2024.

286 (2) Section 26B-1-302 is repealed on July 1, 2024.

287 (3) Section 26B-1-313 is repealed on July 1, 2024.

288 (4) Section 26B-1-314 is repealed on July 1, 2024.

289 (5) Section 26B-1-321 is repealed on July 1, 2024.

290 (6) Section 26B-1-419, which creates the Utah Health Care Workforce Financial
291 Assistance Program Advisory Committee, is repealed July 1, 2027.

292 (7) In relation to the Air Ambulance Committee, on July 1, 2024, Subsection
293 26B-2-231(1)(a) is amended to read:

294 "(a) provide the patient or the patient's representative with the following information
295 before contacting an air medical transport provider:

296 (i) which health insurers in the state the air medical transport provider contracts with;

297 (ii) if sufficient data is available, the average charge for air medical transport services
298 for a patient who is uninsured or out of network; and

299 (iii) whether the air medical transport provider balance bills a patient for any charge not
300 paid by the patient's health insurer; and".

301 (8) Section 26B-2-243 is repealed July 1, 2027.

302 [~~8~~] (9) Section 26B-3-142 is repealed July 1, 2024.

303 [~~9~~] (10) Subsection 26B-3-215(5), related to reporting on coverage for in vitro
304 fertilization and genetic testing, is repealed July 1, 2030.

305 ~~[(10)]~~ (11) Section 26B-4-702, related to the Utah Health Care Workforce Financial
306 Assistance Program, is repealed July 1, 2027.

307 ~~[(11)]~~ (12) Section 26B-5-117, related to early childhood mental health support grant
308 programs, is repealed January 2, 2025.

309 ~~[(12)]~~ (13) Subsection 26B-7-117(3), related to reports to the Legislature on syringe
310 exchange and education, is repealed January 1, 2027.

311 ~~[(13)]~~ (14) Section 26B-7-120, relating to sickle cell disease, is repealed on July 1,
312 2025.

313 Section 6. Section 64-13-48 is amended to read:

314 **64-13-48. Educational and career-readiness programs.**

315 (1) The department shall, in accordance with Subsection 64-13-6(1)(c), ensure that
316 appropriate evidence-based and evidence-informed educational or career-readiness programs
317 are made available to an inmate as soon as practicable after the creation of the inmate's case
318 action plan.

319 (2) The department shall provide incarcerated women with substantially equivalent
320 educational and career-readiness opportunities as incarcerated men.

321 (3) Before an inmate begins an educational or career-readiness program, the
322 department shall provide reasonable access to resources necessary for an inmate to apply for
323 grants or other available financial aid that may be available to pay for the inmate's program.

324 (4) (a) The department shall consider an inmate's current participation in an
325 educational or career-readiness program when the department makes a decision with regard to
326 an inmate's:

327 (i) transfer to another area or facility; or

328 (ii) appropriate disciplinary sanction.

329 (b) When possible, the department shall use best efforts to allow an inmate to continue
330 the inmate's participation in an educational or career-readiness program while the facility is
331 under lockdown, quarantine, or a similar status.

332 (5) (a) The department shall maintain records on an inmate's educational progress,
333 including completed life skills, certifications, and credit- and non-credit-bearing courses, made
334 while the inmate is incarcerated.

335 (b) The department shall facilitate the transfer of information related to the inmate's

336 educational process upon the inmate's release, including the inmate's post-release contact
337 information and the records described in Subsection (5)(a), to:

338 (i) the inmate; or

339 (ii) an entity that the inmate has authorized to receive the inmate's records or
340 post-release contact information, including an institution:

341 (A) from which the inmate received educational instruction while the inmate was
342 incarcerated; or

343 (B) at which the inmate plans to continue the inmate's post-incarceration education.

344 (6) Beginning May 1, 2023, the department shall provide an annual report to the
345 Higher Education Appropriations Subcommittee regarding educational and career-readiness
346 programs for inmates, which shall include:

347 (a) the number of inmates who are participating in an educational or career-readiness
348 program, including an accredited postsecondary education program;

349 (b) the percentage of inmates who are participating in an educational or
350 career-readiness program as compared to the total inmate population;

351 (c) inmate program completion and graduation data, including the number of
352 completions and graduations in each educational or career-readiness program;

353 (d) the potential effect of educational or career-readiness programs on recidivism, as
354 determined by a comparison of:

355 (i) the total number of inmates who return to incarceration after a previous
356 incarceration; and

357 (ii) the number of inmates who return to incarceration after a previous incarceration
358 who participated in or completed an educational or career-readiness program;

359 (e) the number of inmates who were transferred to a different facility while currently
360 participating in an educational or career-readiness program, including the number of inmates
361 who were unable to continue a program after a transfer to a different facility; and

362 (f) the department's:

363 (i) recommendation for resources that may increase inmates' access to and participation
364 in an educational or career-readiness program; and

365 (ii) estimate of how many additional inmates would participate in an educational or
366 career-readiness program if the resources were provided.

367 (7) The department may not offer training for an inmate to become a certified nursing
368 assistant certified by the Department of Health and Human Services.

369 ~~[(7)]~~ (8) The department may make rules in accordance with Section 64-13-10 and
370 Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to carry out the provisions of this
371 section.

372 Section 7. **Effective date.**

373 This bill takes effect on July 1, 2024.

374 Section 8. **Coordinating H.B. 495 with S.B. 46.**

375 If H.B. 495, Vulnerable Population Amendments, and S.B. 46, Health and Human
376 Services Amendments, both pass and become law, the Legislature intends that, on July 1, 2024,
377 Subsection 26B-2-240(2)(d) be amended to read:

378 "(d) The department shall:

379 (i) establish a procedure for obtaining and evaluating relevant information concerning
380 covered individuals, including fingerprinting the applicant and submitting the prints to the
381 Criminal Investigations and Technical Services Division of the Department of Public Safety for
382 checking against applicable state, regional, and national criminal records files[-]; and

383 (ii) require that a certification for direct patient access include a fingerprint-based
384 criminal history background check in the databases described under Subsection (3)(a),
385 including the inclusion of the individual's fingerprints in a rap back system."