

Representative Stephanie Gricius proposes the following substitute bill:

FOSTER CARE AMENDMENTS

2024 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Stephanie Gricius

Senate Sponsor: Wayne A. Harper

LONG TITLE

General Description:

This bill addresses licensing related to foster care.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ provides that a short-term relief care provider who meets certain requirements is not required to be licensed as a human services program;
- ▶ requires the Office of Licensing and the Division of Child and Family Services (division) within the Department of Health and Human Services to cooperate in taking action on a foster home license when a caseworker from the division identifies a safety concern in the home;
- ▶ amends provisions concerning administrative inspections of foster homes;
- ▶ provides that certain foster home licenses are good for three years, with certain conditions;
- ▶ requires that a foster license include the name of all foster parents in the home;
- ▶ amends the administrative inspection requirements for a licensed foster home; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:



26 None

27 **Other Special Clauses:**

28 None

29 **Utah Code Sections Affected:**

30 AMENDS:

31 **26B-2-101**, as last amended by Laws of Utah 2023, Chapter 305

32 **26B-2-104**, as renumbered and amended by Laws of Utah 2023, Chapter 305

33 **26B-2-105**, as renumbered and amended by Laws of Utah 2023, Chapter 305

34 **26B-2-107**, as renumbered and amended by Laws of Utah 2023, Chapter 305

35 **26B-2-120**, as last amended by Laws of Utah 2023, Chapter 344 and renumbered and
36 amended by Laws of Utah 2023, Chapter 305

37 **80-2-301**, as last amended by Laws of Utah 2023, Chapter 280



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

40 Section 1. Section **26B-2-101** is amended to read:

41 **26B-2-101. Definitions.**

42 As used in this part:

43 (1) "Adoption services" means the same as that term is defined in Section **80-2-801**.

44 (2) "Adult day care" means nonresidential care and supervision:

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

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

49 (3) "Applicant" means a person that applies for an initial license or a license renewal
50 under this part.

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

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

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

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

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

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

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

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

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

66 (5) (a) "Boarding school" means a private school that:

67 (i) uses a regionally accredited education program;

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

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

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

71 (iii) has the primary purpose of providing the school's students with an education, as
72 defined in Subsection (5)(b)(i); and

73 (iv) (A) does not provide the treatment or services described in Subsection (38)(a); or

74 (B) provides the treatment or services described in Subsection (38)(a) on a limited
75 basis, as described in Subsection (5)(b)(ii).

76 (b) (i) For purposes of Subsection (5)(a)(iii), "education" means a course of study for
77 one or more grades from kindergarten through grade 12.

78 (ii) For purposes of Subsection (5)(a)(iv)(B), a private school provides the treatment or
79 services described in Subsection (38)(a) on a limited basis if:

80 (A) the treatment or services described in Subsection (38)(a) are provided only as an
81 incidental service to a student; and

82 (B) the school does not:

83 (I) specifically solicit a student for the purpose of providing the treatment or services
84 described in Subsection (38)(a); or

85 (II) have a primary purpose of providing the treatment or services described in
86 Subsection (38)(a).

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

88 (6) "Child" means an individual under 18 years old.

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

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

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

93 (c) foster home placement.

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

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

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

98 (i) an outdoor youth program;

99 (ii) a residential support program;

100 (iii) a residential treatment program; or

101 (iv) a therapeutic school.

102 (b) "Congregate care program" does not include a human services program that:

103 (i) is licensed to serve adults; and

104 (ii) is approved by the office to service a child for a limited time.

105 (11) "Day treatment" means specialized treatment that is provided to:

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

107 (b) four or more persons who:

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

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

111 (12) "Department contractor" means an individual who:

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

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

115 (13) "Direct access" means that an individual has, or likely will have:

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

118 (b) an opportunity to view medical, financial, or other confidential personal identifying

119 information of the child, the child's parents or legal guardians, or the vulnerable adult.

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

123 (15) "Director" means the director of the office.

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

125 (17) "Domestic violence treatment program" means a nonresidential program designed
126 to provide psychological treatment and educational services to perpetrators and victims of
127 domestic violence.

128 (18) "Elder adult" means a person 65 years old or older.

129 (19) "Foster home" means a residence that is licensed or certified by the office for the
130 full-time substitute care of a child.

131 (20) "Health benefit plan" means the same as that term is defined in Section
132 [31A-22-634](#).

133 (21) "Health care provider" means the same as that term is defined in Section
134 [78B-3-403](#).

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

136 (23) (a) "Human services program" means:

137 (i) a foster home;

138 (ii) a therapeutic school;

139 (iii) a youth program;

140 (iv) an outdoor youth program;

141 (v) a residential treatment program;

142 (vi) a residential support program;

143 (vii) a resource family home;

144 (viii) a recovery residence; or

145 (ix) a facility or program that provides:

146 (A) adult day care;

147 (B) day treatment;

148 (C) outpatient treatment;

149 (D) domestic violence treatment;

- 150 (E) child-placing services;
- 151 (F) social detoxification; or
- 152 (G) any other human services that are required by contract with the department to be
- 153 licensed with the department.
- 154 (b) "Human services program" does not include:
- 155 (i) a boarding school; [~~or~~]
- 156 (ii) a residential, vocational and life skills program, as defined in Section 13-53-102[-];
- 157 or
- 158 (iii) a short-term relief care provider.
- 159 (24) "Indian child" means the same as that term is defined in 25 U.S.C. Sec. 1903.
- 160 (25) "Indian country" means the same as that term is defined in 18 U.S.C. Sec. 1151.
- 161 (26) "Indian tribe" means the same as that term is defined in 25 U.S.C. Sec. 1903.
- 162 (27) "Intermediate secure treatment" means 24-hour specialized residential treatment or
- 163 care for an individual who:
- 164 (a) cannot live independently or in a less restrictive environment; and
- 165 (b) requires, without the individual's consent or control, the use of locked doors to care
- 166 for the individual.
- 167 (28) "Licensee" means an individual or a human services program licensed by the
- 168 office.
- 169 (29) "Local government" means a city, town, metro township, or county.
- 170 (30) "Minor" means child.
- 171 (31) "Office" means the Office of Licensing within the department.
- 172 (32) "Outdoor youth program" means a program that provides:
- 173 (a) services to a child that has:
- 174 (i) a chemical dependency; or
- 175 (ii) a dysfunction or impairment that is emotional, psychological, developmental,
- 176 physical, or behavioral;
- 177 (b) a 24-hour outdoor group living environment; and
- 178 (c) (i) regular therapy, including group, individual, or supportive family therapy; or
- 179 (ii) informal therapy or similar services, including wilderness therapy, adventure
- 180 therapy, or outdoor behavioral healthcare.

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

184 (34) "Practice group" or "group practice" means two or more health care providers
185 legally organized as a partnership, professional corporation, or similar association, for which:

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

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

191 (35) "Private-placement child" means a child whose parent or guardian enters into a
192 contract with a congregate care program for the child to receive services.

193 (36) (a) "Recovery residence" means a home, residence, or facility that meets at least
194 two of the following requirements:

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

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

199 (iii) provides or arranges for residents to receive services related to the resident's
200 recovery from a substance use disorder, either on or off site;

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

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

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

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

206 (i) a residential treatment program;

207 (ii) residential support program; or

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

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

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

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

216 (37) "Regular business hours" means:

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

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

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

223 (b) "Residential support program" includes a program that provides a supervised living
224 environment for individuals with dysfunctions or impairments that are:

225 (i) emotional;

226 (ii) psychological;

227 (iii) developmental; or

228 (iv) behavioral.

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

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

231 (i) a recovery residence; or

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

233 (A) exclusively under contract with the department and provided to individuals through
234 the Division of Services for People with Disabilities; or

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

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

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

242 (i) boarding school;

243 (ii) foster home; or

244 (iii) recovery residence.

245 (40) "Residential treatment program" means a program or facility that provides:

246 (a) residential treatment; or

247 (b) intermediate secure treatment.

248 (41) "Seclusion" means the involuntary confinement of an individual in a room or an

249 area:

250 (a) away from the individual's peers; and

251 (b) in a manner that physically prevents the individual from leaving the room or area.

252 (42) "Short-term relief care provider" means an individual who:

253 (a) provides short-term and temporary relief care to a foster parent:

254 (i) for less than six consecutive nights; and

255 (ii) in the short-term relief care provider's home;

256 (b) is an immediate family member or relative, as those terms are defined in Section

257 80-3-102, of the foster parent;

258 (c) is direct access qualified, as that term is defined in Section 26B-2-120;

259 (d) has been approved to provide short-term relief care by the department;

260 (e) is not reimbursed by the department for the temporary relief care provided; and

261 (f) is not an immediate family member or relative, as those terms are defined in Section

262 80-3-102, of the foster child.

263 [~~42~~] (43) "Social detoxification" means short-term residential services for persons
264 who are experiencing or have recently experienced drug or alcohol intoxication, that are
265 provided outside of a health care facility licensed under Part 2, Health Care Facility Licensing
266 and Inspection, and that include:

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

269 (b) specialized rehabilitation to acquire sobriety; and

270 (c) aftercare services.

271 [~~43~~] (44) "Substance abuse disorder" or "substance use disorder" mean the same as
272 "substance use disorder" is defined in Section 26B-5-501.

273 [~~44~~] (45) "Substance abuse treatment program" or "substance use disorder treatment

274 program" means a program:

275 (a) designed to provide:

276 (i) specialized drug or alcohol treatment;

277 (ii) rehabilitation; or

278 (iii) habilitation services; and

279 (b) that provides the treatment or services described in Subsection [~~(44)~~(a)] (45)(a) to

280 persons with:

281 (i) a diagnosed substance use disorder; or

282 (ii) chemical dependency disorder.

283 [~~(45)~~] (46) "Therapeutic school" means a residential group living facility:

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

285 (i) the owner of the facility; or

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

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

288 (i) at home;

289 (ii) in a public school; or

290 (iii) in a nonresidential private school; and

291 (c) that offers:

292 (i) room and board; and

293 (ii) an academic education integrated with:

294 (A) specialized structure and supervision; or

295 (B) services or treatment related to:

296 (I) a disability;

297 (II) emotional development;

298 (III) behavioral development;

299 (IV) familial development; or

300 (V) social development.

301 [~~(46)~~] (47) "Unrelated persons" means persons other than parents, legal guardians,

302 grandparents, brothers, sisters, uncles, or aunts.

303 [~~(47)~~] (48) "Vulnerable adult" means an elder adult or an adult who has a temporary or

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

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

312 [~~48~~] (49) (a) "Youth program" means a program designed to provide behavioral,
313 substance use, or mental health services to minors that:

- 314 (i) serves adjudicated or nonadjudicated youth;
- 315 (ii) charges a fee for the program's services;
- 316 (iii) may provide host homes or other arrangements for overnight accommodation of
317 the youth;
- 318 (iv) may provide all or part of the program's services in the outdoors;
- 319 (v) may limit or censor access to parents or guardians; and
- 320 (vi) prohibits or restricts a minor's ability to leave the program at any time of the
321 minor's own free will.

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

324 [~~49~~] (50) (a) "Youth transportation company" means any person that transports a
325 child for payment to or from a congregate care program in Utah.

- 326 (b) "Youth transportation company" does not include:
- 327 (i) a relative of the child;
- 328 (ii) a state agency; or
- 329 (iii) a congregate care program's employee who transports the child from the
330 congregate care program that employs the employee and returns the child to the same
331 congregate care program.

332 Section 2. Section **26B-2-104** is amended to read:

333 **26B-2-104. Office responsibilities.**

334 (1) Subject to the requirements of federal and state law, the office shall:

- 335 (a) make rules in accordance with Title 63G, Chapter 3, Utah Administrative

336 Rulemaking Act, to establish:

337 (i) except as provided in Subsection (1)(a)(ii), basic health and safety standards for
338 licensees, that shall be limited to:

339 (A) fire safety;

340 (B) food safety;

341 (C) sanitation;

342 (D) infectious disease control;

343 (E) safety of the:

344 (I) physical facility and grounds; and

345 (II) area and community surrounding the physical facility;

346 (F) transportation safety;

347 (G) emergency preparedness and response;

348 (H) the administration of medical standards and procedures, consistent with the related
349 provisions of this title;

350 (I) staff and client safety and protection;

351 (J) the administration and maintenance of client and service records;

352 (K) staff qualifications and training, including standards for permitting experience to
353 be substituted for education, unless prohibited by law;

354 (L) staff to client ratios;

355 (M) access to firearms; and

356 (N) the prevention of abuse, neglect, exploitation, harm, mistreatment, or fraud;

357 (ii) basic health and safety standards for therapeutic schools, that shall be limited to:

358 (A) fire safety, except that the standards are limited to those required by law or rule
359 under Title 53, Chapter 7, Part 2, Fire Prevention and Fireworks Act;

360 (B) food safety;

361 (C) sanitation;

362 (D) infectious disease control, except that the standards are limited to:

363 (I) those required by law or rule under this title, or Title 26A, Local Health Authorities;

364 and

365 (II) requiring a separate room for clients who are sick;

366 (E) safety of the physical facility and grounds, except that the standards are limited to

367 those required by law or rule under Title 53, Chapter 7, Part 2, Fire Prevention and Fireworks
368 Act;

369 (F) transportation safety;

370 (G) emergency preparedness and response;

371 (H) access to appropriate medical care, including:

372 (I) subject to the requirements of law, designation of a person who is authorized to
373 dispense medication; and

374 (II) storing, tracking, and securing medication;

375 (I) staff and client safety and protection that permits the school to provide for the direct
376 supervision of clients at all times;

377 (J) the administration and maintenance of client and service records;

378 (K) staff qualifications and training, including standards for permitting experience to
379 be substituted for education, unless prohibited by law;

380 (L) staff to client ratios;

381 (M) access to firearms; and

382 (N) the prevention of abuse, neglect, exploitation, harm, mistreatment, or fraud;

383 (iii) procedures and standards for permitting a licensee to:

384 (A) provide in the same facility and under the same conditions as children, residential
385 treatment services to a person 18 years old or older who:

386 (I) begins to reside at the licensee's residential treatment facility before the person's
387 18th birthday;

388 (II) has resided at the licensee's residential treatment facility continuously since the
389 time described in Subsection (1)(a)(iii)(A)(I);

390 (III) has not completed the course of treatment for which the person began residing at
391 the licensee's residential treatment facility; and

392 (IV) voluntarily consents to complete the course of treatment described in Subsection
393 (1)(a)(iii)(A)(III); or

394 (B) (I) provide residential treatment services to a child who is:

395 (Aa) at least 12 years old or, as approved by the office, younger than 12 years old; and

396 (Bb) under the custody of the department, or one of its divisions; and

397 (II) provide, in the same facility as a child described in Subsection (1)(a)(iii)(B)(I),

398 residential treatment services to a person who is:

399 (Aa) at least 18 years old, but younger than 21 years old; and

400 (Bb) under the custody of the department, or one of its divisions;

401 (iv) minimum administration and financial requirements for licensees;

402 (v) guidelines for variances from rules established under this Subsection (1);

403 (vi) ethical standards, as described in Subsection 78B-6-106(3), and minimum

404 responsibilities of a child-placing agency that provides adoption services and that is licensed
405 under this part;

406 (vii) what constitutes an "outpatient treatment program" for purposes of this part;

407 (viii) a procedure requiring a licensee to provide an insurer the licensee's records

408 related to any services or supplies billed to the insurer, and a procedure allowing the licensee
409 and the insurer to contact the Insurance Department to resolve any disputes;

410 (ix) a protocol for the office to investigate and process complaints about licensees;

411 (x) a procedure for a licensee to:

412 (A) report the use of a restraint or seclusion within one business day after the day on
413 which the use of the restraint or seclusion occurs; and

414 (B) report a critical incident within one business day after the day on which the
415 incident occurs;

416 (xi) guidelines for the policies and procedures described in Sections 26B-2-109 and
417 26B-2-123;

418 (xii) a procedure for the office to review and approve the policies and procedures
419 described in Sections 26B-2-109 and 26B-2-123; and

420 (xiii) a requirement that each human services program publicly post information that
421 informs an individual how to submit a complaint about a human services program to the office;

422 (b) enforce rules relating to the office;

423 (c) issue licenses in accordance with this part;

424 (d) if the United States Department of State executes an agreement with the office that
425 designates the office to act as an accrediting entity in accordance with the Inter-country
426 Adoption Act of 2000, Pub. L. No. 106-279, accredit one or more agencies and persons to
427 provide intercountry adoption services pursuant to:

428 (i) the Inter-country Adoption Act of 2000, Pub. L. No. 106-279; and

- 429 (ii) the implementing regulations for the Intercountry Adoption Act of 2000, Pub. L.
430 No. 106-279;
- 431 (e) make rules to implement the provisions of Subsection (1)(d);
- 432 (f) conduct surveys and inspections of licensees and facilities in accordance with
433 Section [26B-2-107](#);
- 434 (g) collect licensure fees;
- 435 (h) notify licensees of the name of a person within the department to contact when
436 filing a complaint;
- 437 (i) investigate complaints regarding any licensee or human services program;
- 438 (j) have access to all records, correspondence, and financial data required to be
439 maintained by a licensee;
- 440 (k) have authority to interview any client, family member of a client, employee, or
441 officer of a licensee;
- 442 (l) have authority to deny, condition, revoke, suspend, or extend any license issued by
443 the department under this part by following the procedures and requirements of Title 63G,
444 Chapter 4, Administrative Procedures Act;
- 445 (m) cooperate with the Division of Child and Family Services to condition, revoke, or
446 suspend the license of a foster home when a child welfare caseworker from the Division of
447 Child and Family Services identifies a safety concern with the foster home;
- 448 ~~(m)~~ (n) electronically post notices of agency action issued to a human services
449 program, with the exception of a foster home, on the office's website, in accordance with Title
450 63G, Chapter 2, Government Records Access and Management Act; and
- 451 ~~(m)~~ (o) upon receiving a local government's request under Section [26B-2-118](#), notify
452 the local government of new human services program license applications, except for foster
453 homes, for human services programs located within the local government's jurisdiction.
- 454 (2) In establishing rules under Subsection (1)(a)(ii)(G), the office shall require a
455 licensee to establish and comply with an emergency response plan that requires clients and staff
456 to:
- 457 (a) immediately report to law enforcement any significant criminal activity, as defined
458 by rule, committed:
- 459 (i) on the premises where the licensee operates its human services program;

- 460 (ii) by or against its clients; or
- 461 (iii) by or against a staff member while the staff member is on duty;
- 462 (b) immediately report to emergency medical services any medical emergency, as
- 463 defined by rule:
 - 464 (i) on the premises where the licensee operates its human services program;
 - 465 (ii) involving its clients; or
 - 466 (iii) involving a staff member while the staff member is on duty; and
 - 467 (c) immediately report other emergencies that occur on the premises where the licensee
 - 468 operates its human services program to the appropriate emergency services agency.

469 Section 3. Section **26B-2-105** is amended to read:

470 **26B-2-105. Licensure requirements -- Expiration -- Renewal.**

471 (1) Except as provided in Section **26B-2-115**, an individual, agency, firm, corporation,

472 association, or governmental unit acting severally or jointly with any other individual, agency,

473 firm, corporation, association, or governmental unit may not establish, conduct, or maintain a

474 human services program in this state without a valid and current license issued by and under

475 the authority of the office as provided by this part and the rules under the authority of this part.

476 (2) (a) For purposes of this Subsection (2), "member" means a person or entity that is

477 associated with another person or entity:

- 478 (i) as a member;
- 479 (ii) as a partner;
- 480 (iii) as a shareholder; or
- 481 (iv) as a person or entity involved in the ownership or management of a human
- 482 services program owned or managed by the other person or entity.

483 (b) A license issued under this part may not be assigned or transferred.

484 (c) An application for a license under this part shall be treated as an application for

485 reinstatement of a revoked license if:

486 (i) (A) the person or entity applying for the license had a license revoked under this

487 part; and

488 (B) the revoked license described in Subsection (2)(c)(i)(A) is not reinstated before the

489 application described in this Subsection (2)(c) is made; or

490 (ii) a member of an entity applying for the license:

491 (A) (I) had a license revoked under this part; and
492 (II) the revoked license described in Subsection (2)(c)(ii)(A)(I) is not reinstated before
493 the application described in this Subsection (2)(c) is made; or
494 (B) (I) was a member of an entity that had a license revoked under this part at any time
495 before the license was revoked; and
496 (II) the revoked license described in Subsection (2)(c)(ii)(B)(I) is not reinstated before
497 the application described in this Subsection (2)(c) is made.
498 (3) A current license shall at all times be posted in the facility where each human
499 services program is operated, in a place that is visible and readily accessible to the public.
500 (4) (a) Except as provided in ~~[Subsection]~~ Subsections (4)(c) and (d), each license
501 issued under this part expires at midnight on the last day of the same month the license was
502 issued, one year following the date of issuance unless the license has been:
503 (i) previously revoked by the office;
504 (ii) voluntarily returned to the office by the licensee; or
505 (iii) extended by the office.
506 (b) A license shall be renewed upon application and payment of the applicable fee,
507 unless the office finds that the licensee:
508 (i) is not in compliance with the:
509 (A) provisions of this part; or
510 (B) rules made under this part;
511 (ii) has engaged in a pattern of noncompliance with the:
512 (A) provisions of this part; or
513 (B) rules made under this part;
514 (iii) has engaged in conduct that is grounds for denying a license under Section
515 [26B-2-112](#); or
516 (iv) has engaged in conduct that poses a substantial risk of harm to any person.
517 (c) The office may issue a renewal license that expires at midnight on the last day of
518 the same month the license was issued, two years following the date of issuance, if:
519 (i) the licensee has maintained a human services license for at least 24 months before
520 the day on which the licensee applies for the renewal; and
521 (ii) the licensee has not violated this part or a rule made under this part.

522 (d) (i) For a foster home that has been licensed for fewer than two years, a foster home
523 license issued on or after May 1, 2023, expires at midnight on the last day of the same month
524 the license was issued, one year following the date of issuance.

525 (ii) For a foster home that has been licensed for two or more years, a foster home
526 license issued on or after May 1, 2023, expires at midnight on the last day of the same month
527 the license was issued, three years following the date of issuance:

528 (A) unless the license is placed on conditions, suspended, or revoked by the office, or
529 voluntarily returned to the office by the licensee; and

530 (B) if the licensee has not violated this part or a rule made under this part.

531 (iii) A foster home licensee shall complete an annual background screening in
532 compliance with the requirements of Section [26B-2-120](#).

533 (5) Any licensee that is in operation at the time rules are made in accordance with this
534 part shall be given a reasonable time for compliance as determined by the rule.

535 (6) (a) A license for a human services program issued under this section shall apply to
536 a specific human services program site.

537 (b) A human services program shall obtain a separate license for each site where the
538 human services program is operated.

539 (c) If there is more than one foster parent in a licensed foster home, the foster home
540 license shall include the names of all foster parents in the home.

541 Section 4. Section **26B-2-107** is amended to read:

542 **26B-2-107. Administrative inspections.**

543 (1) As used in this section:

544 (a) "Foster home" does not include a residence that is licensed or certified for proctor
545 care or care by a professional parent.

546 (b) "Material change" means a significant change in circumstances that may include:

547 (i) a loss or gain of employment;

548 (ii) a change in marital status;

549 (iii) a change of individuals living in the home; or

550 (iv) other changes that may affect a foster child's well-being.

551 ~~[(1)]~~ (2) (a) Subject to ~~[Subsection (1)(b)]~~ Subsections(2)(b) and (3), the office may,
552 for the purpose of ascertaining compliance with this part, enter and inspect on a routine basis

553 the facility of a licensee.

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

556 (ii) At least two of the inspections described in Subsection [~~(1)(b)(i)~~] (2)(b)(i) shall be
557 unannounced.

558 (c) If another government entity conducts an inspection that is substantially similar to
559 an inspection conducted by the office, the office may conclude the inspection satisfies an
560 inspection described in Subsection [~~(1)(b)~~] (2)(b).

561 (3) (a) Except as provided in Subsection (3)(b):

562 (i) for the first two years of a foster home's license, the office shall enter and inspect
563 the facility once each year;

564 (ii) after a foster home has been licensed for two years, the office shall enter and
565 inspect the facility once every three years; and

566 (iii) for a foster home licensed for two or more years as of May 1, 2023, and that was
567 inspected by the office on or after May 1, 2023, the office may not enter and inspect the facility
568 until three years after the date of the last inspection.

569 (b) (i) If a foster home has not had a placement for more than 12 months after the date
570 of the office's last inspection, the office shall enter and inspect the facility within 30 days after
571 the date on which the foster home receives a new placement.

572 (ii) If the license for a foster home is placed on conditions, suspended, or revoked by
573 the office, or voluntarily returned to the office by the licensee, the office may enter and inspect
574 the facility on a routine basis.

575 (iii) If there is a material change to a foster home:

576 (A) the foster parent shall immediately notify the office of the material change; and

577 (B) the office shall inspect the foster home as soon as practicable after receiving notice
578 of or otherwise becoming aware of the material change.

579 (iv) If a health and safety concern is reported to the office, the office may conduct an
580 unannounced inspection of the foster home during regular business hours.

581 (c) Except as provided in Subsection (3)(b)(iv), an inspection of a foster home shall be
582 announced.

583 [~~(2)~~] (4) Before conducting an inspection under [Subsection (1)] Subsection (2) or (3),

584 the office shall, after identifying the person in charge:

- 585 (a) give proper identification;
- 586 (b) request to see the applicable license;
- 587 (c) describe the nature and purpose of the inspection; and
- 588 (d) if necessary, explain the authority of the office to conduct the inspection and the
- 589 penalty for refusing to permit the inspection as provided in Section 26B-2-113.

590 [~~(3)~~] (5) In conducting an inspection under [~~Subsection (1)~~] Subsection (2) or (3), the

591 office may, after meeting the requirements of Subsection [~~(2)~~] (4):

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

596 [~~(4)~~] (6) An inspection conducted under Subsection [~~(1)~~] (2) shall be during regular

597 business hours and may be announced or unannounced.

598 [~~(5)~~] (7) The licensee shall make copies of inspection reports available to the public

599 upon request.

600 [~~(6)~~] (8) The provisions of this section apply to on-site inspections and do not restrict

601 the office from contacting family members, neighbors, or other individuals, or from seeking

602 information from other sources to determine compliance with this part.

603 Section 5. Section 26B-2-120 is amended to read:

604 **26B-2-120. Background check -- Direct access to children or vulnerable adults.**

605 (1) As used in this section:

606 (a) (i) "Applicant" means, notwithstanding Section 26B-2-101:

607 (A) an individual who applies for an initial license or certification or a license or

608 certification renewal under this part;

609 (B) an individual who is associated with a licensee and has or will likely have direct

610 access to a child or a vulnerable adult;

611 (C) an individual who provides respite care to a foster parent or an adoptive parent on

612 more than one occasion;

613 (D) a department contractor;

614 (E) an individual who transports a child for a youth transportation company;

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

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

621 (H) a foster home licensee that submits an application for an annual background
622 screening as required by Subsection 26B-2-105(4)(d)(iii); or

623 (I) a short-term relief care provider.

624 (ii) "Applicant" does not include:

625 (A) an individual who is in the custody of the Division of Child and Family Services or
626 the Division of Juvenile Justice Services; or

627 (B) an individual who applies for employment with, or is employed by, the Department
628 of Health and Human Services.

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

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

632 (d) "Certified peer support specialist" means the same as that term is defined in Section
633 26B-5-610.

634 (e) "Criminal finding" means a record of:

635 (i) an arrest or a warrant for an arrest;

636 (ii) charges for a criminal offense; or

637 (iii) a criminal conviction.

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

640 (g) "Mental health professional" means an individual who:

641 (i) is licensed under Title 58, Chapter 60, Mental Health Professional Practice Act; and

642 (ii) engaged in the practice of mental health therapy.

643 (h) "Non-criminal finding" means a record maintained in:

644 (i) the Division of Child and Family Services' Management Information System
645 described in Section 80-2-1001;

646 (ii) the Division of Child and Family Services' Licensing Information System described
647 in Section 80-2-1002;

648 (iii) the Division of Aging and Adult Services' vulnerable adult abuse, neglect, or
649 exploitation database described in Section 26B-6-210;

650 (iv) the Sex and Kidnap Offender Registry described in Title 77, Chapter 41, Sex and
651 Kidnap Offender Registry, or a national sex offender registry; or

652 (v) a state child abuse or neglect registry.

653 (i) (i) "Peer support specialist" means an individual who:

654 (A) has a disability or a family member with a disability, or is in recovery from a
655 mental illness or a substance use disorder; and

656 (B) uses personal experience to provide support, guidance, or services to promote
657 resiliency and recovery.

658 (ii) "Peer support specialist" includes a certified peer support specialist.

659 (iii) "Peer support specialist" does not include a mental health professional.

660 (j) "Personal identifying information" means:

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

662 (ii) date of birth;

663 (iii) physical address and email address;

664 (iv) telephone number;

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

666 (vi) social security number;

667 (vii) only for applicants who are 18 years old or older, fingerprints, in a form specified
668 by the office; and

669 (viii) other information specified by the office by rule made in accordance with Title
670 63G, Chapter 3, Utah Administrative Rulemaking Act.

671 (k) "Practice of mental health therapy" means the same as that term is defined in
672 Section 58-60-102.

673 (2) Except as provided in Subsection (12), an applicant or a representative shall submit
674 the following to the office:

675 (a) personal identifying information;

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

- 677 (c) a disclosure form, specified by the office, for consent for:
- 678 (i) an initial background check upon submission of the information described in this
- 679 Subsection (2);
- 680 (ii) ongoing monitoring of fingerprints and registries until no longer associated with a
- 681 licensee for 90 days;
- 682 (iii) a background check when the office determines that reasonable cause exists; and
- 683 (iv) retention of personal identifying information, including fingerprints, for
- 684 monitoring and notification as described in Subsections (3)(d) and (4); and
- 685 (d) if an applicant resided outside of the United States and its territories during the five
- 686 years immediately preceding the day on which the information described in Subsections (2)(a)
- 687 through (c) is submitted to the office, documentation establishing whether the applicant was
- 688 convicted of a crime during the time that the applicant resided outside of the United States or
- 689 its territories.
- 690 (3) The office:
- 691 (a) shall perform the following duties as part of a background check of an applicant:
- 692 (i) check state and regional criminal background databases for the applicant's criminal
- 693 history by:
- 694 (A) submitting personal identifying information to the bureau for a search; or
- 695 (B) using the applicant's personal identifying information to search state and regional
- 696 criminal background databases as authorized under Section 53-10-108;
- 697 (ii) submit the applicant's personal identifying information and fingerprints to the
- 698 bureau for a criminal history search of applicable national criminal background databases;
- 699 (iii) search the Division of Child and Family Services' Licensing Information System
- 700 described in Section 80-2-1002;
- 701 (iv) if the applicant is applying to become a prospective foster or adoptive parent,
- 702 search the Division of Child and Family Services' Management Information System described
- 703 in Section 80-2-1001 for:
- 704 (A) the applicant; and
- 705 (B) any adult living in the applicant's home;
- 706 (v) for an applicant described in Subsection (1)(a)(i)(F), search the Division of Child
- 707 and Family Services' Management Information System described in Section 80-2-1001;

708 (vi) search the Division of Aging and Adult Services' vulnerable adult abuse, neglect,
709 or exploitation database described in Section 26B-6-210;

710 (vii) search the juvenile court records for substantiated findings of severe child abuse
711 or neglect described in Section 80-3-404; and

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

714 (b) shall conduct a background check of an applicant for an initial background check
715 upon submission of the information described in Subsection (2);

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

719 (i) for an annual renewal; or

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

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

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

727 (i) more than one license;

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

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

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

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

738 (h) as necessary to comply with the federal requirement to check a state's child abuse

739 and neglect registry regarding any individual working in a congregate care program, shall:

740 (i) search the Division of Child and Family Services' Licensing Information System
741 described in Section 80-2-1002; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

777 (5) (a) Except as provided in Subsection (5)(b), after conducting the background check
778 described in Subsections (3) and (4), the office shall deny an application to an applicant who,
779 within three years before the day on which the applicant submits information to the office
780 under Subsection (2) for a background check, has been convicted of:

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

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

784 (B) a violation of any pornography law, including sexual exploitation of a minor or
785 aggravated sexual exploitation of a minor;

786 (C) sexual solicitation;

787 (D) an offense included in Title 76, Chapter 5, Offenses Against the Individual, Title
788 76, Chapter 5b, Sexual Exploitation Act, Title 76, Chapter 4, Part 4, Enticement of a Minor, or
789 Title 76, Chapter 7, Offenses Against the Family;

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

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

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

793 (H) identity fraud crime, as described in Section 76-6-1102;

794 (I) sexual battery, as described in Section 76-9-702.1; or

795 (J) a violent offense committed in the presence of a child, as described in Section
796 76-3-203.10; or

797 (ii) a felony or misdemeanor offense committed outside of the state that, if committed
798 in the state, would constitute a violation of an offense described in Subsection (5)(a)(i).

799 (b) (i) Subsection (5)(a) does not apply to an applicant who is seeking a position as a
800 peer support provider, a mental health professional, or in a program that serves only adults with

801 a primary mental health diagnosis, with or without a co-occurring substance use disorder.

802 (ii) The office shall conduct a comprehensive review of an applicant described in
803 Subsection (5)(b)(i) in accordance with Subsection (6).

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

806 (a) has a felony or class A misdemeanor conviction for an offense described in
807 Subsection (5) with a date of conviction that is more than three years before the date on which
808 the applicant submits the information described in Subsection (2);

809 (b) has a felony charge or conviction for an offense not described in Subsection (5)
810 with a date of charge or conviction that is no more than 10 years before the date on which the
811 applicant submits the application under Subsection (2) and no criminal findings or
812 non-criminal findings after the date of conviction;

813 (c) has a class B misdemeanor or class C misdemeanor conviction for an offense
814 described in Subsection (5) with a date of conviction that is more than three years after, and no
815 more than 10 years before, the date on which the applicant submits the information described
816 in Subsection (2) and no criminal findings or non-criminal findings after the date of conviction;

817 (d) has a misdemeanor conviction for an offense not described in Subsection (5) with a
818 date of conviction that is no more than three years before the date on which the applicant
819 submits information described in Subsection (2) and no criminal findings or non-criminal
820 findings after the date of conviction;

821 (e) is currently subject to a plea in abeyance or diversion agreement for an offense
822 described in Subsection (5);

823 (f) appears on the Sex and Kidnap Offender Registry described in Title 77, Chapter 41,
824 Sex and Kidnap Offender Registry, or a national sex offender registry;

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

827 (i) under 28 years old; or

828 (ii) 28 years old or older and has been convicted of, has pleaded no contest to, or is
829 currently subject to a plea in abeyance or diversion agreement for a felony or a misdemeanor
830 offense described in Subsection (5);

831 (h) has a pending charge for an offense described in Subsection (5);

832 (i) has a listing in the Division of Child and Family Services' Licensing Information
833 System described in Section 80-2-1002 that occurred no more than 15 years before the date on
834 which the applicant submits the information described in Subsection (2) and no criminal
835 findings or non-criminal findings dated after the date of the listing;

836 (j) has a listing in the Division of Aging and Adult Services' vulnerable adult abuse,
837 neglect, or exploitation database described in Section 26B-6-210 that occurred no more than 15
838 years before the date on which the applicant submits the information described in Subsection
839 (2) and no criminal findings or non-criminal findings dated after the date of the listing;

840 (k) has a substantiated finding of severe child abuse or neglect under Section 80-3-404
841 or 80-3-504 that occurred no more than 15 years before the date on which the applicant submits
842 the information described in Subsection (2) and no criminal findings or non-criminal findings
843 dated after the date of the finding;

844 (l) (i) is seeking a position:

845 (A) as a peer support provider;

846 (B) as a mental health professional; or

847 (C) in a program that serves only adults with a primary mental health diagnosis, with or
848 without a co-occurring substance use disorder; and

849 (ii) within three years before the day on which the applicant submits the information
850 described in Subsection (2):

851 (A) has a felony or misdemeanor charge or conviction;

852 (B) has a listing in the Division of Child and Family Services' Licensing Information
853 System described in Section 80-2-1002;

854 (C) has a listing in the Division of Aging and Adult Services' vulnerable adult abuse,
855 neglect, or exploitation database described in Section 26B-6-210; or

856 (D) has a substantiated finding of severe child abuse or neglect under Section 80-3-404
857 or 80-3-504;

858 (m) (i) (A) is seeking a position in a congregate care program;

859 (B) is seeking to become a prospective foster or adoptive parent; or

860 (C) is an applicant described in Subsection (1)(a)(i)(F); and

861 (ii) (A) has an infraction conviction for conduct that constitutes an offense or violation
862 described in Subsection (5)(a)(i)(A) or (B);

863 (B) has a listing in the Division of Child and Family Services' Licensing Information
864 System described in Section 80-2-1002;

865 (C) has a listing in the Division of Aging and Adult Services' vulnerable adult abuse,
866 neglect, or exploitation database described in Section 26B-6-210;

867 (D) has a substantiated finding of severe child abuse or neglect under Section 80-3-404
868 or 80-3-504; or

869 (E) has a listing on the registry check described in Subsection (13)(a) as having a
870 substantiated or supported finding of a severe type of child abuse or neglect as defined in
871 Section 80-1-102; or

872 (n) is seeking to become a prospective foster or adoptive parent and has, or has an adult
873 living with the applicant who has, a conviction, finding, or listing described in Subsection
874 (6)(m)(ii).

875 (7) (a) The comprehensive review shall include an examination of:

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

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

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

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

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

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

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

884 (B) sexual abuse;

885 (C) sexual exploitation; or

886 (D) negligent treatment;

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

889 (viii) the applicant's risk of harm to clientele in the program or in the capacity for
890 which the applicant is applying.

891 (b) At the conclusion of the comprehensive review, the office shall deny an application
892 to an applicant if the office finds:

893 (i) that approval would likely create a risk of harm to a child or a vulnerable adult; or

894 (ii) an individual is prohibited from having direct access to a child or vulnerable adult
895 by court order.

896 (8) The office shall approve an application to an applicant who is not denied under this
897 section.

898 (9) (a) The office may conditionally approve an application of an applicant, for a
899 maximum of 60 days after the day on which the office sends written notice to the applicant
900 under Subsection (11), without requiring that the applicant be directly supervised, if the office:

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

903 (ii) would otherwise approve an application of the applicant under this section.

904 (b) The office may conditionally approve an application of an applicant, for a
905 maximum of one year after the day on which the office sends written notice to the applicant
906 under Subsection (11), without requiring that the applicant be directly supervised if the office:

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

909 (ii) would otherwise approve an application of the applicant under this section.

910 (c) Upon receiving the results of the criminal history search of a national criminal
911 background database, the office shall approve or deny the application of the applicant in
912 accordance with this section.

913 (10) (a) A licensee or department contractor may not permit an individual to have
914 direct access to a child or a vulnerable adult without being directly supervised unless:

915 (i) the individual is associated with the licensee or department contractor and the
916 department conducts a background screening in accordance with this section;

917 (ii) the individual is the parent or guardian of the child, or the guardian of the
918 vulnerable adult;

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

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

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

925 incidental care for the foster child.

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

929 (11) (a) Within 30 days after the day on which the applicant submits the information
930 described in Subsection (2), the office shall notify the applicant of any potentially disqualifying
931 criminal findings or non-criminal findings.

932 (b) If the notice under Subsection (11)(a) states that the applicant's application is
933 denied, the notice shall further advise the applicant that the applicant may, under Subsection
934 26B-2-111(2), request a hearing in the department's Office of Administrative Hearings, to
935 challenge the office's decision.

936 (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
937 office shall make rules, consistent with this part:

938 (i) defining procedures for the challenge of the office's background check decision
939 described in Subsection (11)(b); and

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

942 (12) (a) An individual or a department contractor who provides services in an adults
943 only substance use disorder program, as defined by rule made in accordance with Title 63G,
944 Chapter 3, Utah Administrative Rulemaking Act, is exempt from this section.

945 (b) The exemption described in Subsection (12)(a) does not extend to a program
946 director or a member, as defined by Section 26B-2-105, of the program.

947 (13) (a) Except as provided in Subsection (13)(b), in addition to the other requirements
948 of this section, if the background check of an applicant is being conducted for the purpose of
949 giving clearance status to an applicant seeking a position in a congregate care program or an
950 applicant seeking to become a prospective foster or adoptive parent, the office shall:

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

955 (ii) check the child abuse and neglect registry in each state where each adult living in

956 the home of the applicant described in Subsection (13)(a)(i) resided in the five years
957 immediately preceding the day on which the applicant applied to be a foster or adoptive parent,
958 to determine whether the adult is listed in the registry as having a substantiated or supported
959 finding of child abuse or neglect.

960 (b) The requirements described in Subsection (13)(a) do not apply to the extent that:

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

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

964 (A) a noncustodial parent under Section 80-2a-301, 80-3-302, or 80-3-303; or

965 (B) a relative, other than a noncustodial parent, under Section 80-2a-301, 80-3-302, or
966 80-3-303, pending completion of the background check described in Subsection (5).

967 (c) Notwithstanding Subsections (5) through (10), the office shall deny a clearance to
968 an applicant seeking a position in a congregate care program or an applicant to become a
969 prospective foster or adoptive parent if the applicant has been convicted of:

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

971 (A) child abuse, as described in Sections 76-5-109, 76-5-109.2, and 76-5-109.3;

972 (B) commission of domestic violence in the presence of a child, as described in Section
973 76-5-114;

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

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

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

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

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

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

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

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

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

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

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

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

986 (O) sexual exploitation of a minor, as described in Title 76, Chapter 5b, Sexual

987 Exploitation Act;

988 (P) aggravated exploitation of a minor, as described in Section 76-5b-201.1;

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

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

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

992 (T) lewdness involving a child, as described in Section 76-9-702.5;

993 (U) incest, as described in Section 76-7-102; or

994 (V) domestic violence, as described in Section 77-36-1; or

995 (ii) an offense committed outside the state that, if committed in the state, would
996 constitute a violation of an offense described in Subsection (13)(c)(i).

997 (d) Notwithstanding Subsections (5) through (10), the office shall deny a license or
998 license renewal to an individual seeking a position in a congregate care program or a
999 prospective foster or adoptive parent if, within the five years immediately preceding the day on
1000 which the individual's application or license would otherwise be approved, the individual was
1001 convicted of a felony involving conduct that constitutes a violation of any of the following:

1002 (i) aggravated assault, as described in Section 76-5-103;

1003 (ii) aggravated assault by a prisoner, as described in Section 76-5-103.5;

1004 (iii) mayhem, as described in Section 76-5-105;

1005 (iv) an offense described in Title 58, Chapter 37, Utah Controlled Substances Act;

1006 (v) an offense described in Title 58, Chapter 37a, Utah Drug Paraphernalia Act;

1007 (vi) an offense described in Title 58, Chapter 37b, Imitation Controlled Substances

1008 Act;

1009 (vii) an offense described in Title 58, Chapter 37c, Utah Controlled Substance

1010 Precursor Act; or

1011 (viii) an offense described in Title 58, Chapter 37d, Clandestine Drug Lab Act.

1012 (e) In addition to the circumstances described in Subsection (6), the office shall
1013 conduct the comprehensive review of an applicant's background check under this section if the
1014 registry check described in Subsection (13)(a) indicates that the individual is listed in a child
1015 abuse and neglect registry of another state as having a substantiated or supported finding of a
1016 severe type of child abuse or neglect as defined in Section 80-1-102.

1017 (14) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,

1018 the office may make rules, consistent with this part, to:

1019 (a) establish procedures for, and information to be examined in, the comprehensive
1020 review described in Subsections (6) and (7); and

1021 (b) determine whether to consider an offense or incident that occurred while an
1022 individual was in the custody of the Division of Child and Family Services or the Division of
1023 Juvenile Justice Services for purposes of approval or denial of an application for a prospective
1024 foster or adoptive parent.

1025 Section 6. Section **80-2-301** is amended to read:

1026 **80-2-301. Division responsibilities.**

1027 (1) The division is the child, youth, and family services authority of the state.

1028 (2) The division shall:

1029 (a) administer services to minors and families, including:

1030 (i) child welfare services;

1031 (ii) domestic violence services; and

1032 (iii) all other responsibilities that the Legislature or the executive director of the
1033 department may assign to the division;

1034 (b) provide the following services:

1035 (i) financial and other assistance to an individual adopting a child with special needs
1036 under Sections [80-2-806](#) through [80-2-809](#), not to exceed the amount the division would
1037 provide for the child as a legal ward of the state;

1038 (ii) non-custodial and in-home services in accordance with Section [80-2-306](#),
1039 including:

1040 (A) services designed to prevent family break-up; and

1041 (B) family preservation services;

1042 (iii) reunification services to families whose children are in substitute care in
1043 accordance with this chapter, Chapter 2a, Removal and Protective Custody of a Child, and
1044 Chapter 3, Abuse, Neglect, and Dependency Proceedings;

1045 (iv) protective supervision of a family, upon court order, in an effort to eliminate abuse
1046 or neglect of a child in that family;

1047 (v) shelter care in accordance with this chapter, Chapter 2a, Removal and Protective
1048 Custody of a Child, and Chapter 3, Abuse, Neglect, and Dependency Proceedings;

- 1049 (vi) domestic violence services, in accordance with the requirements of federal law;
- 1050 (vii) protective services to victims of domestic violence and the victims' children, in
1051 accordance with this chapter, Chapter 2a, Removal and Protective Custody of a Child, and
1052 Chapter 3, Abuse, Neglect, and Dependency Proceedings;
- 1053 (viii) substitute care for dependent, abused, and neglected children;
- 1054 (ix) services for minors who are victims of human trafficking or human smuggling, as
1055 described in Sections [76-5-308](#) through [76-5-310.1](#), or who have engaged in prostitution or
1056 sexual solicitation, as defined in Sections [76-10-1302](#) and [76-10-1313](#); and
- 1057 (x) training for staff and providers involved in the administration and delivery of
1058 services offered by the division in accordance with this chapter and Chapter 2a, Removal and
1059 Protective Custody of a Child;
- 1060 (c) establish standards for all:
- 1061 (i) contract providers of out-of-home care for minors and families;
- 1062 (ii) facilities that provide substitute care for dependent, abused, or neglected children
1063 placed in the custody of the division; and
- 1064 (iii) direct or contract providers of domestic violence services described in Subsection
1065 (2)(b)(vi);
- 1066 (d) have authority to:
- 1067 (i) contract with a private, nonprofit organization to recruit and train foster care
1068 families and child welfare volunteers in accordance with Section [80-2-405](#); [~~and~~]
- 1069 (ii) approve facilities that meet the standards established under Subsection (2)(c) to
1070 provide substitute care for dependent, abused, or neglected children placed in the custody of the
1071 division; and
- 1072 (iii) approve an individual to provide short-term relief care to a foster parent if the
1073 individual:
- 1074 (A) provides the relief care for less than six consecutive nights;
- 1075 (B) provides the relief care in the short-term relief care provider's home;
- 1076 (C) is direct access qualified, as that term is defined in Section [26B-2-120](#); and
- 1077 (D) is an immediate family member or relative, as those terms are defined in Section
1078 [80-3-102](#), of the foster parent;
- 1079 (e) cooperate with the federal government in the administration of child welfare and

- 1080 domestic violence programs and other human service activities assigned by the department;
- 1081 (f) in accordance with Subsection (5)(a), promote and enforce state and federal laws
- 1082 enacted for the protection of abused, neglected, or dependent children, in accordance with this
- 1083 chapter and Chapter 2a, Removal and Protective Custody of a Child, unless administration is
- 1084 expressly vested in another division or department of the state;
- 1085 (g) cooperate with the Workforce Development Division within the Department of
- 1086 Workforce Services in meeting the social and economic needs of an individual who is eligible
- 1087 for public assistance;
- 1088 (h) compile relevant information, statistics, and reports on child and family service
- 1089 matters in the state;
- 1090 (i) prepare and submit to the department, the governor, and the Legislature reports of
- 1091 the operation and administration of the division in accordance with the requirements of
- 1092 Sections [80-2-1102](#) and [80-2-1103](#);
- 1093 (j) within appropriations from the Legislature, provide or contract for a variety of
- 1094 domestic violence services and treatment methods;
- 1095 (k) enter into contracts for programs designed to reduce the occurrence or recurrence of
- 1096 abuse and neglect in accordance with Section [80-2-503](#);
- 1097 (l) seek reimbursement of funds the division expends on behalf of a child in the
- 1098 protective custody, temporary custody, or custody of the division, from the child's parent or
- 1099 guardian in accordance with an order for child support under Section [78A-6-356](#);
- 1100 (m) ensure regular, periodic publication, including electronic publication, regarding the
- 1101 number of children in the custody of the division who:
- 1102 (i) have a permanency goal of adoption; or
- 1103 (ii) have a final plan of termination of parental rights, under Section [80-3-409](#), and
- 1104 promote adoption of the children;
- 1105 (n) subject to Subsections (5) and (7), refer an individual receiving services from the
- 1106 division to the local substance abuse authority or other private or public resource for a
- 1107 court-ordered drug screening test;
- 1108 (o) report before November 30, 2020, and every third year thereafter, to the Social
- 1109 Services Appropriations Subcommittee regarding:
- 1110 (i) the daily reimbursement rate that is provided to licensed foster parents based on

- 1111 level of care;
- 1112 (ii) the amount of money spent on daily reimbursements for licensed foster parents
1113 during the previous fiscal year; and
- 1114 (iii) any recommended changes to the division's budget to support the daily
1115 reimbursement rates described in Subsection (2)(o)(i); ~~and~~
- 1116 (p) when a division child welfare caseworker identifies a safety concern with the foster
1117 home, cooperate with the Office of Licensing and make a recommendation to the Office of
1118 Licensing concerning whether the foster home's license should be placed on conditions,
1119 suspended, or revoked; and
- 1120 ~~(p)~~ (q) perform other duties and functions required by law.
- 1121 (3) (a) The division may provide, directly or through contract, services that include the
1122 following:
- 1123 (i) adoptions;
- 1124 (ii) day-care services;
- 1125 (iii) out-of-home placements for minors;
- 1126 (iv) health-related services;
- 1127 (v) homemaking services;
- 1128 (vi) home management services;
- 1129 (vii) protective services for minors;
- 1130 (viii) transportation services; or
- 1131 (ix) domestic violence services.
- 1132 (b) The division shall monitor services provided directly by the division or through
1133 contract to ensure compliance with applicable law and rules made in accordance with Title
1134 63G, Chapter 3, Utah Administrative Rulemaking Act.
- 1135 (c) (i) Except as provided in Subsection (3)(c)(ii), if the division provides a service
1136 through a private contract, the division shall post the name of the service provider on the
1137 division's website.
- 1138 (ii) Subsection (3)(c)(i) does not apply to a foster parent placement.
- 1139 (4) (a) The division may:
- 1140 (i) receive gifts, grants, devises, and donations;
- 1141 (ii) encourage merchants and service providers to:

- 1142 (A) donate goods or services; or
1143 (B) provide goods or services at a nominal price or below cost;
1144 (iii) distribute goods to applicants or consumers of division services free or for a
1145 nominal charge and tax free; and
1146 (iv) appeal to the public for funds to meet needs of applicants or consumers of division
1147 services that are not otherwise provided by law, including Sub-for-Santa programs, recreational
1148 programs for minors, and requests for household appliances and home repairs.
- 1149 (b) If requested by the donor and subject to state and federal law, the division shall use
1150 a gift, grant, devise, donation, or proceeds from the gift, grant, devise, or donation for the
1151 purpose requested by the donor.
- 1152 (5) (a) In carrying out the requirements of Subsection (2)(f), the division shall:
- 1153 (i) cooperate with the juvenile courts, the Division of Juvenile Justice Services, and
1154 with all public and private licensed child welfare agencies and institutions to develop and
1155 administer a broad range of services and support;
- 1156 (ii) take the initiative in all matters involving the protection of abused or neglected
1157 children, if adequate provisions have not been made or are not likely to be made; and
1158 (iii) make expenditures necessary for the care and protection of the children described
1159 in Subsection (5)(a)(ii), within the division's budget.
- 1160 (b) If an individual is referred to a local substance abuse authority or other private or
1161 public resource for court-ordered drug screening under Subsection (2)(n), the court shall order
1162 the individual to pay all costs of the tests unless:
- 1163 (i) the cost of the drug screening is specifically funded or provided for by other federal
1164 or state programs;
- 1165 (ii) the individual is a participant in a drug court; or
1166 (iii) the court finds that the individual is an indigent individual.
- 1167 (6) Except to the extent provided by rules made in accordance with Title 63G, Chapter
1168 3, Utah Administrative Rulemaking Act, the division is not required to investigate domestic
1169 violence in the presence of a child, as described in Section [76-5-114](#).
- 1170 (7) (a) Except as provided in Subsection (7)(b), the division may not:
- 1171 (i) require a parent who has a child in the custody of the division to pay for some or all
1172 of the cost of any drug testing the parent is required to undergo; or

1173 (ii) refer an individual who is receiving services from the division for drug testing by
1174 means of a hair, fingernail, or saliva test that is administered to detect the presence of drugs.

1175 (b) Notwithstanding Subsection (7)(a)(ii), the division may refer an individual who is
1176 receiving services from the division for drug testing by means of a saliva test if:

1177 (i) the individual consents to drug testing by means of a saliva test; or

1178 (ii) the court, based on a finding that a saliva test is necessary in the circumstances,
1179 orders the individual to complete drug testing by means of a saliva test.

1180 Section 7. **Effective date.**

1181 This bill takes effect on May 1, 2024.