

Representative Karianne Lisonbee proposes the following substitute bill:

VULNERABLE POPULATION AMENDMENTS

2024 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Karianne Lisonbee

Senate Sponsor: _____

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;
- ▶ 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) and to the Division of Child and Family 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; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:



26 None

27 **Other Special Clauses:**

28 This bill provides a special effective date.

29 **Utah Code Sections Affected:**

30 AMENDS:

31 **26B-2-236**, as renumbered and amended by Laws of Utah 2023, Chapter 305

32 **26B-2-238**, as renumbered and amended by Laws of Utah 2023, Chapter 305

33 **26B-2-240**, as renumbered and amended by Laws of Utah 2023, Chapter 305

34 **63I-2-226 (Effective 07/01/24)**, as last amended by Laws of Utah 2023, Chapters 33,

35 139, 249, 295, 310, and 465 and repealed and reenacted by Laws of Utah 2023,

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

37 329

38 ENACTS:

39 **26B-2-243**, Utah Code Annotated 1953



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

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

43 **26B-2-236. Monitoring device -- Installation, notice, and consent -- Admission**
44 **and discharge -- Liability.**

45 (1) As used in this section:

46 (a) "Legal representative" means an individual who is legally authorized to make health
47 care decisions on behalf of another individual.

48 (b) (i) "Monitoring device" means:

49 (A) a video surveillance camera; or

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

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

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

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

56 (c) "Resident" means an individual who receives health care from a facility.

57 (d) "Room" means a resident's private or shared primary living space.

58 (e) "Roommate" means an individual sharing a room with a resident.

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

62 (a) notifies the resident's assisted living facility in writing that the resident or the
63 resident's legal representative, if any:

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

65 (ii) consents to a waiver agreement, if required by an assisted living facility;

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

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

71 (3) An assisted living facility shall not be civilly or criminally liable to:

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

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

77 (4) (a) An assisted living facility may not deny an individual admission to the facility
78 for the sole reason that the individual or the individual's legal representative requests to install
79 or operate a monitoring device in the individual's room.

80 (b) An assisted living facility may not discharge a resident for the sole reason that the
81 resident or the resident's legal representative requests to install or operate a monitoring device
82 in the individual's room.

83 (c) An assisted living facility shall prohibit all employees of an assisted living facility
84 from deactivating, repositioning, or otherwise interfering with the operation of a monitoring
85 device in an individual's room.

86 ~~[(c) An assisted living facility may require the resident or the resident's legal~~
87 ~~representative to place a sign near the entrance of the resident's room that states that the room~~

88 ~~contains a monitoring device.]~~

89 (5) Upon the request of a resident or the resident's legal representative, an assisted
90 living facility may not inform the employees of the assisted living facility of the presence of the
91 monitoring device in the individual's room.

92 [~~5~~] (6) Notwithstanding any other provision of this part, an individual may not, under
93 this part, operate a monitoring device in an assisted living facility without a court order:

94 (a) in secret; or

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

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

98 **26B-2-238. Definitions for Sections 26B-2-238 through 26B-2-241.**

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

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

102 (2) "Covered body" means a covered provider, covered contractor, or covered
103 employer.

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

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

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

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

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

110 (b) is not a covered provider; and

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

112 (5) "Covered individual":

113 (a) means an individual:

114 (i) whom a covered body engages; and

115 (ii) who may have direct patient access;

116 (b) includes:

117 (i) a nursing assistant, as defined by department rule;

118 (ii) a personal care aide, as defined by department rule;

119 (iii) an individual licensed to engage in the practice of nursing under Title 58, Chapter
120 31b, Nurse Practice Act;

121 (iv) a provider of medical, therapeutic, or social services, including a provider of
122 laboratory and radiology services;

123 (v) an executive;

124 (vi) administrative staff, including a manager or other administrator;

125 (vii) dietary and food service staff;

126 (viii) housekeeping and maintenance staff; and

127 (ix) any other individual, as defined by department rule, who has direct patient access;

128 and

129 (c) does not include a student, as defined by department rule, directly supervised by a
130 member of the staff of the covered body or the student's instructor.

131 (6) "Covered provider" means:

132 (a) an end stage renal disease facility;

133 (b) a long-term care hospital;

134 (c) a nursing care facility;

135 (d) a small health care facility;

136 (e) an assisted living facility;

137 (f) a hospice;

138 (g) a home health agency; or

139 (h) a personal care agency.

140 (7) "Direct patient access" means for an individual to be in a position where the
141 individual could, in relation to a patient or resident of the covered body who engages the
142 individual:

143 (a) cause physical or mental harm;

144 (b) commit theft; or

145 (c) view medical or financial records.

146 (8) "Engage" means to obtain one's services:

147 (a) by employment;

148 (b) by contract;

149 (c) as a volunteer; or

- 150 (d) by other arrangement.
- 151 (9) "Long-term care hospital":
- 152 (a) means a hospital that is certified to provide long-term care services under the
- 153 provisions of 42 U.S.C. Sec. 1395tt; and
- 154 (b) does not include a critical access hospital, designated under 42 U.S.C. Sec.
- 155 1395i-4(c)(2).
- 156 (10) "Patient" means an individual who receives health care services from one of the
- 157 following covered providers:
- 158 (a) an end stage renal disease facility;
- 159 (b) a long-term care hospital;
- 160 (c) a hospice;
- 161 (d) a home health agency; or
- 162 (e) a personal care agency.
- 163 (11) "Personal care agency" means a health care facility defined by department rule.
- 164 (12) "Rap back system" means a system that enables authorized entities to receive
- 165 ongoing status notifications of any criminal history reported on individuals who are registered
- 166 in the system.
- 167 [~~(12)~~] (13) "Resident" means an individual who receives health care services from one
- 168 of the following covered providers:
- 169 (a) a nursing care facility;
- 170 (b) a small health care facility;
- 171 (c) an assisted living facility; or
- 172 (d) a hospice that provides living quarters as part of its services.
- 173 [~~(13)~~] (14) "Residential setting" means a place provided by a covered provider:
- 174 (a) for residents to live as part of the services provided by the covered provider; and
- 175 (b) where an individual who is not a resident also lives.
- 176 [~~(14)~~] (15) "Volunteer" means an individual, as defined by department rule, who
- 177 provides services without pay or other compensation.
- 178 Section 3. Section **26B-2-240** is amended to read:
- 179 **26B-2-240. Department authorized to grant, deny, or revoke clearance --**
- 180 **Department may limit direct patient access -- Clearance.**

- 181 (1) The definitions in Section 26B-2-238 apply to this section.
- 182 (2) (a) As provided in this section, the department may grant, deny, or revoke clearance
183 for an individual, including a covered individual.
- 184 (b) The department may limit the circumstances under which a covered individual
185 granted clearance may have direct patient access, based on the relationship factors under
186 Subsection (4) and other mitigating factors related to patient and resident protection.
- 187 (c) The department shall determine whether to grant clearance for each applicant for
188 whom it receives:
- 189 (i) the personal identification information specified by the department under
190 Subsection (4)(b); and
- 191 (ii) any fees established by the department under Subsection (9).
- 192 (d) The department shall:
- 193 (i) establish a procedure for obtaining and evaluating relevant information concerning
194 covered individuals, including fingerprinting the applicant and submitting the prints to the
195 Criminal Investigations and Technical Services Division of the Department of Public Safety for
196 checking against applicable state, regional, and national criminal records files[-]; and
197 (ii) require that a finding of clearance include a fingerprint-based criminal history
198 background check in the databases described under Subsection (3)(a), including the inclusion
199 of the individual's fingerprints in a rap back system.
- 200 (3) The department may review the following sources to determine whether an
201 individual should be granted or retain clearance, which may include:
- 202 (a) Department of Public Safety arrest, conviction, and disposition records described in
203 Title 53, Chapter 10, Criminal Investigations and Technical Services Act, including
204 information in state, regional, and national records files;
- 205 (b) juvenile court arrest, adjudication, and disposition records, as allowed under
206 Section 78A-6-209;
- 207 (c) federal criminal background databases available to the state;
- 208 (d) the Division of Child and Family Services Licensing Information System described
209 in Section 80-2-1002;
- 210 (e) child abuse or neglect findings described in Section 80-3-404;
- 211 (f) the Division of Aging and Adult Services vulnerable adult abuse, neglect, or

212 exploitation database described in Section 26B-6-210;

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

214 (h) licensing and certification records of individuals licensed or certified by the

215 Division of Professional Licensing under Title 58, Occupations and Professions; and

216 (i) the List of Excluded Individuals and Entities database maintained by the United

217 States Department of Health and Human Services' Office of Inspector General.

218 (4) The department shall adopt rules that:

219 (a) specify the criteria the department will use to determine whether an individual is

220 granted or retains clearance:

221 (i) based on an initial evaluation and ongoing review of information under Subsection

222 (3); and

223 (ii) including consideration of the relationship the following may have to patient and

224 resident protection:

225 (A) warrants for arrest;

226 (B) arrests;

227 (C) convictions, including pleas in abeyance;

228 (D) pending diversion agreements;

229 (E) adjudications by a juvenile court under Section 80-6-701 if the individual is over

230 28 years old and has been convicted, has pleaded no contest, or is subject to a plea in abeyance

231 or diversion agreement for a felony or misdemeanor, or the individual is under 28 years old;

232 and

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

234 (b) specify the personal identification information that must be submitted by an

235 individual or covered body with an application for clearance, including:

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

237 (ii) fingerprints.

238 (5) For purposes of Subsection (4)(a), the department shall classify a crime committed

239 in another state according to the closest matching crime under Utah law, regardless of how the

240 crime is classified in the state where the crime was committed.

241 (6) The Department of Public Safety, the Administrative Office of the Courts, the

242 Division of Professional Licensing, and any other state agency or political subdivision of the

243 state:

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

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

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

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

255 (9) The department may establish fees, in accordance with Section [63J-1-504](#), for an
256 application for clearance, which may include:

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

258 (b) a portion of the cost of creating and maintaining the Direct Access Clearance
259 System database under Section [26B-2-241](#); and

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

263 Section 4. Section [26B-2-243](#) is enacted to read:

264 **[26B-2-243](#). Data collection and reporting requirements concerning incidents of
265 abuse, neglect, or exploitation.**

266 (1) In addition to the requirements in Section [26B-6-205](#) or [80-2-602](#), the department
267 shall require a covered provider to report any incident of abuse, neglect, or exploitation of a
268 resident by a covered individual:

269 (a) to the department; and

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

272 (2) The department shall collect and compile all reported incidents described in
273 Subsection (1) and annually on or before June 30 report the data to the Health and Human

274 Services Interim Committee.

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

276 **63I-2-226 (Effective 07/01/24). Repeal dates: Titles 26A through 26B.**

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

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

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

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

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

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

284 (7) In relation to the Air Ambulance Committee, on July 1, 2024, Subsection
285 **26B-2-231(1)(a)** is amended to read:

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

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

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

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

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

294 [~~(8)~~] (9) Section **26B-3-142** is repealed July 1, 2024.

295 [~~(9)~~] (10) Subsection **26B-3-215(5)**, related to reporting on coverage for in vitro
296 fertilization and genetic testing, is repealed July 1, 2030.

297 [~~(10)~~] (11) Section **26B-4-702**, related to the Utah Health Care Workforce Financial
298 Assistance Program, is repealed July 1, 2027.

299 [~~(11)~~] (12) Section **26B-5-117**, related to early childhood mental health support grant
300 programs, is repealed January 2, 2025.

301 [~~(12)~~] (13) Subsection **26B-7-117(3)**, related to reports to the Legislature on syringe
302 exchange and education, is repealed January 1, 2027.

303 [~~(13)~~] (14) Section **26B-7-120**, relating to sickle cell disease, is repealed on July 1,
304 2025.

305 Section 6. **Effective date.**

306 This bill takes effect on July 1, 2024.