

**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 and includes nursing home facilities;
- ▶ requires fingerprint background checks for certain individuals who will have direct access to patients in certain health care facilities;
- ▶ requires certain facilities to report certain incidents of abuse, neglect, or exploitation to the Department of Health and Human Services (department) 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;
- ▶ prohibits inmates convicted of a violent felony from receiving certain training while incarcerated; and



26           ▶ makes technical and conforming changes.

27 **Money Appropriated in this Bill:**

28           None

29 **Other Special Clauses:**

30           This bill provides a special effective date.

31 **Utah Code Sections Affected:**

32 AMENDS:

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

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

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

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

37 139, 249, 295, 310, and 465 and repealed and reenacted by Laws of Utah 2023,

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

39 329

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

41 ENACTS:

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



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

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

46           **26B-2-236. Monitoring device -- Installation, notice, and consent -- Admission**  
47 **and discharge -- Liability.**

48           (1) As used in this section:

49           (a) "Facility" means an assisted living facility or a nursing care facility.

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

52           ~~(b)~~ (c) (i) "Monitoring device" means:

53           (A) a video surveillance camera; or

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

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

56           (A) a device that is specifically intended to intercept wire, electronic, or oral

57 communication without notice to or the consent of a party to the communication; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

87 (c) A facility shall prohibit all employees of a facility from deactivating, repositioning,

88 or otherwise interfering with the operation of a monitoring device in an individual's room.

89 ~~[(c) An assisted living facility may require the resident or the resident's legal~~  
90 ~~representative to place a sign near the entrance of the resident's room that states that the room~~  
91 ~~contains a monitoring device.]~~

92 (5) Upon the request of a resident or the resident's legal representative, a facility may  
93 not inform the employees of the facility of the presence of the monitoring device in the  
94 individual's room.

95 ~~[(5)]~~ (6) Notwithstanding any other provision of this part, an individual may not, under  
96 this part, operate a monitoring device in ~~[an assisted living]~~ a facility without a court order:

- 97 (a) in secret; or
- 98 (b) with an intent to intercept a wire, electronic, or oral communication without notice  
99 to or the consent of a party to the communication.

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

101 **26B-2-238. Definitions for Sections 26B-2-238 through 26B-2-241.**

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

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

105 (2) "Covered body" means a covered provider, covered contractor, or covered  
106 employer.

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

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

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

- 111 (i) an aged individual, as defined by department rule; or
- 112 (ii) a disabled individual, as defined by department rule;
- 113 (b) is not a covered provider; and
- 114 (c) is not a licensed health care facility within the state.

115 (5) "Covered individual":

116 (a) means an individual:

- 117 (i) whom a covered body engages; and
- 118 (ii) who may have direct patient access;

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

- 150 (a) by employment;
- 151 (b) by contract;
- 152 (c) as a volunteer; or
- 153 (d) by other arrangement.

154 (9) "Long-term care hospital":

155 (a) means a hospital that is certified to provide long-term care services under the  
156 provisions of 42 U.S.C. Sec. 1395tt; and

157 (b) does not include a critical access hospital, designated under 42 U.S.C. Sec.  
158 1395i-4(c)(2).

159 (10) "Patient" means an individual who receives health care services from one of the  
160 following covered providers:

- 161 (a) an end stage renal disease facility;
- 162 (b) a long-term care hospital;
- 163 (c) a hospice;
- 164 (d) a home health agency; or
- 165 (e) a personal care agency.

166 (11) "Personal care agency" means a health care facility defined by department rule.

167 (12) "Rap back system" means a system that enables authorized entities to receive  
168 ongoing status notifications of any criminal history reported on individuals who are registered  
169 in the system.

170 [~~(12)~~] (13) "Resident" means an individual who receives health care services from one  
171 of the following covered providers:

- 172 (a) a nursing care facility;
- 173 (b) a small health care facility;
- 174 (c) an assisted living facility; or
- 175 (d) a hospice that provides living quarters as part of its services.

176 [~~(13)~~] (14) "Residential setting" means a place provided by a covered provider:

- 177 (a) for residents to live as part of the services provided by the covered provider; and
- 178 (b) where an individual who is not a resident also lives.

179 [~~(14)~~] (15) "Volunteer" means an individual, as defined by department rule, who  
180 provides services without pay or other compensation.

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

182 **26B-2-240. Department authorized to grant, deny, or revoke clearance --**

183 **Department may limit direct patient access -- Clearance.**

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

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

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

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

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

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

195 (d) The department shall:

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

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

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

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

208 (b) juvenile court arrest, adjudication, and disposition records, as allowed under  
209 Section 78A-6-209;

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

211 (d) the Division of Child and Family Services Licensing Information System described

212 in Section 80-2-1002;

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

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

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

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

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

221 (4) The department shall adopt rules that:

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

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

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

228 (A) warrants for arrest;

229 (B) arrests;

230 (C) convictions, including pleas in abeyance;

231 (D) pending diversion agreements;

232 (E) adjudications by a juvenile court under Section 80-6-701 if the individual is over  
233 28 years old and has been convicted, has pleaded no contest, or is subject to a plea in abeyance  
234 or diversion agreement for a felony or misdemeanor, or the individual is under 28 years old;  
235 and

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

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

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

240 (ii) fingerprints.

241 (5) For purposes of Subsection (4)(a), the department shall classify a crime committed  
242 in another state according to the closest matching crime under Utah law, regardless of how the



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

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

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

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

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

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

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

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

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

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

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

267 **26B-2-243. Data collection and reporting requirements concerning incidents of**  
268 **abuse, neglect, or exploitation.**

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

272 (a) to the department; and

273 (b) to the Division of Child and Family Services or Adult Protective Services, if

274 appropriate, or a law enforcement agency with jurisdiction over the covered provider in which  
275 the alleged incident occurred.

276 (2) The department shall collect and compile all reported incidents described in  
277 Subsection (1) and annually on or before June 30 report the data to the Health and Human  
278 Services Interim Committee.

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

280 **63I-2-226 (Effective 07/01/24). Repeal dates: Titles 26A through 26B.**

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

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

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

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

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

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

288 (7) In relation to the Air Ambulance Committee, on July 1, 2024, Subsection  
289 **26B-2-231(1)(a)** is amended to read:

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

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

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

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

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

298 [~~8~~] (9) Section **26B-3-142** is repealed July 1, 2024.

299 [~~9~~] (10) Subsection **26B-3-215(5)**, related to reporting on coverage for in vitro  
300 fertilization and genetic testing, is repealed July 1, 2030.

301 [~~10~~] (11) Section **26B-4-702**, related to the Utah Health Care Workforce Financial  
302 Assistance Program, is repealed July 1, 2027.

303 [~~11~~] (12) Section **26B-5-117**, related to early childhood mental health support grant  
304 programs, is repealed January 2, 2025.

305            [~~(12)~~] (13) Subsection 26B-7-117(3), related to reports to the Legislature on syringe  
306 exchange and education, is repealed January 1, 2027.

307            [~~(13)~~] (14) Section 26B-7-120, relating to sickle cell disease, is repealed on July 1,  
308 2025.

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

310            **64-13-48. Educational and career-readiness programs.**

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

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

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

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

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

324            (ii) appropriate disciplinary sanction.

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

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

331            (b) The department shall facilitate the transfer of information related to the inmate's  
332 educational process upon the inmate's release, including the inmate's post-release contact  
333 information and the records described in Subsection (5)(a), to:

334            (i) the inmate; or

335            (ii) an entity that the inmate has authorized to receive the inmate's records or

336 post-release contact information, including an institution:

337 (A) from which the inmate received educational instruction while the inmate was  
338 incarcerated; or

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

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

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

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

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

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

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

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

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

358 (f) the department's:

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

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

363 (7) The department may not offer training for an inmate to become a certified nursing  
364 assistant certified by the Department of Health and Human Services if the inmate has been  
365 convicted of a violent felony as that term is defined in Section [76-3-203.5](#).

366 [~~7~~](8) The department may make rules in accordance with Section [64-13-10](#) and

367 Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to carry out the provisions of this  
368 section.

369 Section 7. **Effective date.**

370 This bill takes effect on July 1, 2024.