

SB0229S02 compared with SB0229S01

~~{deleted text}~~ shows text that was in SB0229S01 but was deleted in SB0229S02.

inserted text shows text that was not in SB0229S01 but was inserted into SB0229S02.

DISCLAIMER: This document is provided to assist you in your comparison of the two bills. Sometimes this automated comparison will NOT be completely accurate. Therefore, you need to read the actual bills. This automatically generated document could contain inaccuracies caused by: limitations of the compare program; bad input data; or other causes.

Senator ~~{Michael K}~~Curtis S. ~~{McKell}~~Bramble proposes the following substitute bill:

HEALTH AND HUMAN SERVICES LICENSING{

}AMENDMENTS

2024 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: { }Curtis S. Bramble

House Sponsor: { }_____

LONG TITLE

General Description:

This bill consolidates and amends provisions relating to the { }licenses, certificates, and certifications issued by the Department of Health and Human Services.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ amends provisions relating to the use of emergency safety intervention in licensed congregate care programs;
- ▶ consolidates into a single part and amends provisions concerning licenses, certificates, and certifications issued by the Department of Health and Human

SB0229S02 compared with SB0229S01

Services, including provisions addressing:

- revocation, suspension, sanctions, and penalties;
 - adjudicative proceedings;
 - access restrictions and injunctive relief;
 - criminal penalties; and
 - investigations, records, and enforcement; and
- makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

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

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

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

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

26B-2-123, as renumbered and amended by Laws of Utah 2023, Chapter 305

26B-2-222, as renumbered and amended by Laws of Utah 2023, Chapter 305

26B-4-502, as renumbered and amended by Laws of Utah 2023, Chapter 307

63G-2-305, as last amended by Laws of Utah 2023, Chapters 1, 16, 205, and 329

76-7-314, as last amended by Laws of Utah 2023, Chapters 301, 330

80-2-909, as last amended by Laws of Utah 2023, Chapter 330

ENACTS:

26B-2-701, Utah Code Annotated 1953

26B-2-702, Utah Code Annotated 1953

26B-2-703, Utah Code Annotated 1953

RENUMBERS AND AMENDS:

26B-2-704, (Renumbered from 26B-2-209, as renumbered and amended by Laws of Utah 2023, Chapter 305)

SB0229S02 compared with SB0229S01

26B-2-705, (Renumbered from 26B-2-214, as renumbered and amended by Laws of Utah 2023, Chapter 305)

26B-2-706, (Renumbered from 26B-2-114, as renumbered and amended by Laws of Utah 2023, Chapter 305)

26B-2-707, (Renumbered from 26B-2-113, as renumbered and amended by Laws of Utah 2023, Chapter 305)

26B-2-708, (Renumbered from 26B-2-133, as renumbered and amended by Laws of Utah 2023, Chapter 305)

26B-2-709, (Renumbered from 26B-2-408, as renumbered and amended by Laws of Utah 2023, Chapter 305)

REPEALS:

26B-2-110, as renumbered and amended by Laws of Utah 2023, Chapter 305

26B-2-111, as renumbered and amended by Laws of Utah 2023, Chapter 305

26B-2-112, as renumbered and amended by Laws of Utah 2023, Chapter 305

26B-2-208, as last amended by Laws of Utah 2023, Chapter 301 and renumbered and amended by Laws of Utah 2023, Chapter 305

26B-2-210, as renumbered and amended by Laws of Utah 2023, Chapter 305

26B-2-211, as renumbered and amended by Laws of Utah 2023, Chapter 305

26B-2-215, as renumbered and amended by Laws of Utah 2023, Chapter 305

26B-2-216, as renumbered and amended by Laws of Utah 2023, Chapter 305

26B-2-409, as renumbered and amended by Laws of Utah 2023, Chapter 305

26B-2-410, as renumbered and amended by Laws of Utah 2023, Chapter 305

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

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

26B-2-101. Definitions.

As used in this part:

- (1) "Adoption services" means the same as that term is defined in Section 80-2-801.
- (2) "Adult day care" means nonresidential care and supervision:
 - (a) for three or more adults for at least four but less than 24 hours a day; and
 - (b) that meets the needs of functionally impaired adults through a comprehensive

SB0229S02 compared with SB0229S01

program that provides a variety of health, social, recreational, and related support services in a protective setting.

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

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

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

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

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

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

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

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

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

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

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

(i) uses a regionally accredited education program;

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

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

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

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

(iv) (A) does not provide the treatment or services described in Subsection ~~[(38)(a)]~~ (39)(a); or

(B) provides the treatment or services described in Subsection ~~[(38)(a)]~~ (39)(a) on a limited basis, as described in Subsection (5)(b)(ii).

(b) (i) For purposes of Subsection (5)(a)(iii), "education" means a course of study for

SB0229S02 compared with SB0229S01

one or more grades from kindergarten through grade 12.

(ii) For purposes of Subsection (5)(a)(iv)(B), a private school provides the treatment or services described in Subsection ~~[(38)(a)]~~ [(39)(a)] on a limited basis if:

(A) the treatment or services described in Subsection ~~[(38)(a)]~~ [(39)(a)] are provided only as an incidental service to a student; and

(B) the school does not:

(I) specifically solicit a student for the purpose of providing the treatment or services described in Subsection ~~[(38)(a)]~~ [(39)(a)]; or

(II) have a primary purpose of providing the treatment or services described in Subsection ~~[(38)(a)]~~ [(39)(a)].

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

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

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

(a) finding a person to adopt the child;

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

(c) foster home placement.

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

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

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

(i) an outdoor youth program;

(ii) a residential support program;

(iii) a residential treatment program; or

(iv) a therapeutic school.

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

(i) is licensed to serve adults; and

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

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

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

(b) four or more persons who:

SB0229S02 compared with SB0229S01

- (i) are unrelated to the owner or provider; and
 - (ii) have emotional, psychological, developmental, physical, or behavioral dysfunctions, impairments, or chemical dependencies.
- (12) "Department contractor" means an individual who:
- (a) provides services under a contract with the department; and
 - (b) due to the contract with the department, has or will likely have direct access to a child or vulnerable adult.
- (13) "Direct access" means that an individual has, or likely will have:
- (a) contact with or access to a child or vulnerable adult that provides the individual with an opportunity for personal communication or touch; or
 - (b) an opportunity to view medical, financial, or other confidential personal identifying information of the child, the child's parents or legal guardians, or the vulnerable adult.
- (14) "Directly supervised" means that an individual is being supervised under the uninterrupted visual and auditory surveillance of another individual who has a current background screening approval issued by the office.
- (15) "Director" means the director of the office.
- (16) "Domestic violence" means the same as that term is defined in Section 77-36-1.
- (17) "Domestic violence treatment program" means a nonresidential program designed to provide psychological treatment and educational services to perpetrators and victims of domestic violence.
- (18) "Elder adult" means a person 65 years old or older.
- (19) "Emergency safety intervention" means a tactic used to protect staff or a client from being physically injured, utilized by an appropriately trained direct care staff and only performed in accordance with a nationally or regionally recognized curriculum in the least restrictive manner to restore staff or client safety.
- ~~[(19)]~~ (20) "Foster home" means a residence that is licensed or certified by the office for the full-time substitute care of a child.
- ~~[(20)]~~ (21) "Health benefit plan" means the same as that term is defined in Section 31A-22-634.
- ~~[(21)]~~ (22) "Health care provider" means the same as that term is defined in Section 78B-3-403.

SB0229S02 compared with SB0229S01

~~[(22)]~~1(23) "Health insurer" means the same as that term is defined in Section 31A-22-615.5.

~~[(23)]~~1(24) (a) "Human services program" means:

- (i) a foster home;
- (ii) a therapeutic school;
- (iii) a youth program;
- (iv) an outdoor youth program;
- (v) a residential treatment program;
- (vi) a residential support program;
- (vii) a resource family home;
- (viii) a recovery residence; or
- (ix) a facility or program that provides:
 - (A) adult day care;
 - (B) day treatment;
 - (C) outpatient treatment;
 - (D) domestic violence treatment;
 - (E) child-placing services;
 - (F) social detoxification; or
 - (G) any other human services that are required by contract with the department to be

licensed with the department.

(b) "Human services program" does not include:

- (i) a boarding school; or
- (ii) a residential, vocational and life skills program, as defined in Section 13-53-102.

~~[(24)]~~1(25) "Indian child" means the same as that term is defined in 25 U.S.C. Sec. 1903.

~~[(25)]~~1(26) "Indian country" means the same as that term is defined in 18 U.S.C. Sec. 1151.

~~[(26)]~~1(27) "Indian tribe" means the same as that term is defined in 25 U.S.C. Sec. 1903.

~~[(27)]~~1(28) "Intermediate secure treatment" means 24-hour specialized residential treatment or care for an individual who:

SB0229S02 compared with SB0229S01

- (a) cannot live independently or in a less restrictive environment; and
- (b) requires, without the individual's consent or control, the use of locked doors to care for the individual.

~~[(28)]~~ [(29)] "Licensee" means an individual or a human services program licensed by the office.

~~[(29)]~~ [(30)] "Local government" means a city, town, metro township, or county.

~~[(30)]~~ [(31)] "Minor" means child.

~~[(31)]~~ [(32)] "Office" means the Office of Licensing within the department.

~~[(32)]~~ [(33)] "Outdoor youth program" means a program that provides:

- (a) services to a child that has:
 - (i) a chemical dependency; or
 - (ii) a dysfunction or impairment that is emotional, psychological, developmental, physical, or behavioral;
- (b) a 24-hour outdoor group living environment; and
- (c) (i) regular therapy, including group, individual, or supportive family therapy; or
- (ii) informal therapy or similar services, including wilderness therapy, adventure therapy, or outdoor behavioral healthcare.

~~[(33)]~~ [(34)] "Outpatient treatment" means individual, family, or group therapy or counseling designed to improve and enhance social or psychological functioning for those whose physical and emotional status allows them to continue functioning in their usual living environment.

~~[(34)]~~ [(35)] "Practice group" or "group practice" means two or more health care providers legally organized as a partnership, professional corporation, or similar association, for which:

- (a) substantially all of the services of the health care providers who are members of the group are provided through the group and are billed in the name of the group and amounts received are treated as receipts of the group; and
- (b) the overhead expenses of and the income from the practice are distributed in accordance with methods previously determined by members of the group.

~~[(35)]~~ [(36)] "Private-placement child" means a child whose parent or guardian enters into a contract with a congregate care program for the child to receive services.

SB0229S02 compared with SB0229S01

~~[(36)]~~[(37)] (a) "Recovery residence" means a home, residence, or facility that meets at least two of the following requirements:

- (i) provides a supervised living environment for individuals recovering from a substance use disorder;
- (ii) provides a living environment in which more than half of the individuals in the residence are recovering from a substance use disorder;
- (iii) provides or arranges for residents to receive services related to the resident's recovery from a substance use disorder, either on or off site;
- (iv) is held out as a living environment in which individuals recovering from substance abuse disorders live together to encourage continued sobriety; or

(v) (A) receives public funding; or

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

(b) "Recovery residence" does not mean:

(i) a residential treatment program;

(ii) residential support program; or

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

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

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

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

~~[(37)]~~[(38)] "Regular business hours" means:

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

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

~~[(38)]~~[(39)] (a) "Residential support program" means a program that arranges for or provides the necessities of life as a protective service to individuals or families who have a disability or who are experiencing a dislocation or emergency that prevents them from providing these services for themselves or their families.

(b) "Residential support program" includes a program that provides a supervised living

SB0229S02 compared with SB0229S01

environment for individuals with dysfunctions or impairments that are:

- (i) emotional;
 - (ii) psychological;
 - (iii) developmental; or
 - (iv) behavioral.
- (c) Treatment is not a necessary component of a residential support program.
- (d) "Residential support program" does not include:
- (i) a recovery residence; or
 - (ii) a program that provides residential services that are performed:
 - (A) exclusively under contract with the department and provided to individuals through the Division of Services for People with Disabilities; or
 - (B) in a facility that serves fewer than four individuals.

~~[(39)]~~ [(40)] (a) "Residential treatment" means a 24-hour group living environment for four or more individuals unrelated to the owner or provider that offers room or board and specialized treatment, behavior modification, rehabilitation, discipline, emotional growth, or habilitation services for persons with emotional, psychological, developmental, or behavioral dysfunctions, impairments, or chemical dependencies.

- (b) "Residential treatment" does not include a:
- (i) boarding school;
 - (ii) foster home; or
 - (iii) recovery residence.

~~[(40)]~~ [(41)] "Residential treatment program" means a program or facility that provides:

- (a) residential treatment; or
- (b) intermediate secure treatment.

~~[(41)]~~ [(42)] "Seclusion" means the involuntary confinement of an individual in a room or an area:

- (a) away from the individual's peers; and
- (b) in a manner that physically prevents the individual from leaving the room or area.

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

SB0229S02 compared with SB0229S01

and Inspection, and that include:

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

(b) specialized rehabilitation to acquire sobriety; and

(c) aftercare services.

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

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

(a) designed to provide:

(i) specialized drug or alcohol treatment;

(ii) rehabilitation; or

(iii) habilitation services; and

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

(i) a diagnosed substance use disorder; or

(ii) chemical dependency disorder.

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

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

(i) the owner of the facility; or

(ii) the primary service provider of the facility;

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

(i) at home;

(ii) in a public school; or

(iii) in a nonresidential private school; and

(c) that offers:

(i) room and board; and

(ii) an academic education integrated with:

(A) specialized structure and supervision; or

(B) services or treatment related to:

(I) a disability;

SB0229S02 compared with SB0229S01

- (II) emotional development;
- (III) behavioral development;
- (IV) familial development; or
- (V) social development.

~~[(46)]~~ [(47)] "Unrelated persons" means persons other than parents, legal guardians, grandparents, brothers, sisters, uncles, or aunts.

~~[(47)]~~ [(48)] "Vulnerable adult" means an elder adult or an adult who has a temporary or permanent mental or physical impairment that substantially affects the person's ability to:

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

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

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

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

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

- (b) "Youth transportation company" does not include:
 - (i) a relative of the child;

SB0229S02 compared with SB0229S01

(ii) a state agency; or

(iii) a congregate care program's employee who transports the child from the congregate care program that employs the employee and returns the child to the same congregate care program.

Section ~~11~~2. Section **26B-2-105** is amended to read:

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

(1) Except as provided in Section 26B-2-115, an individual, agency, firm, corporation, association, or governmental unit acting severally or jointly with any other individual, agency, firm, corporation, association, or governmental unit may not establish, conduct, or maintain a human services program in this state without a valid and current license issued by and under the authority of the office as provided by this part and the rules under the authority of this part.

(2) (a) For purposes of this Subsection (2), "member" means a person or entity that is associated with another person or entity:

(i) as a member;

(ii) as a partner;

(iii) as a shareholder; or

(iv) as a person or entity involved in the ownership or management of a human services program owned or managed by the other person or entity.

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

(c) An application for a license under this part shall be treated as an application for reinstatement of a revoked license if:

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

(B) the revoked license described in Subsection (2)(c)(i)(A) is not reinstated before the application described in this Subsection (2)(c) is made; or

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

(A) (I) had a license revoked under this part; and

(II) the revoked license described in Subsection (2)(c)(ii)(A)(I) is not reinstated before the application described in this Subsection (2)(c) is made; or

(B) (I) was a member of an entity that had a license revoked under this part at any time before the license was revoked; and

SB0229S02 compared with SB0229S01

(II) the revoked license described in Subsection (2)(c)(ii)(B)(I) is not reinstated before the application described in this Subsection (2)(c) is made.

(3) A current license shall at all times be posted in the facility where each human services program is operated, in a place that is visible and readily accessible to the public.

(4) (a) Except as provided in Subsection (4)(c), each license issued under this part expires at midnight on the last day of the same month the license was issued, one year following the date of issuance unless the license has been:

- (i) previously revoked by the office;
- (ii) voluntarily returned to the office by the licensee; or
- (iii) extended by the office.

(b) A license shall be renewed upon application and payment of the applicable fee, unless the office finds that the licensee:

- (i) is not in compliance with the:
 - (A) provisions of this part; or
 - (B) rules made under this part;
- (ii) has engaged in a pattern of noncompliance with the:
 - (A) provisions of this part; or
 - (B) rules made under this part;

(iii) has engaged in conduct that is grounds for denying a license under Section ~~[26B-2-112]~~ 26B-2-703; or

- (iv) has engaged in conduct that poses a substantial risk of harm to any person.

(c) The office may issue a renewal license that expires at midnight on the last day of the same month the license was issued, two years following the date of issuance, if:

(i) the licensee has maintained a human services license for at least 24 months before the day on which the licensee applies for the renewal; and

- (ii) the licensee has not violated this part or a rule made under this part.

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

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

- (b) A human services program shall obtain a separate license for each site where the

SB0229S02 compared with SB0229S01

human services program is operated.

Section ~~2~~3. Section **26B-2-107** is amended to read:

26B-2-107. Administrative inspections.

(1) (a) Subject to Subsection (1)(b), the office may, for the purpose of ascertaining compliance with this part, enter and inspect on a routine basis the facility of a licensee.

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

(ii) At least two of the inspections described in Subsection (1)(b)(i) shall be unannounced.

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

(2) Before conducting an inspection under Subsection (1), the office shall, after identifying the person in charge:

(a) give proper identification;

(b) request to see the applicable license;

(c) describe the nature and purpose of the inspection; and

(d) if necessary, explain the authority of the office to conduct the inspection and the penalty for refusing to permit the inspection as provided in Section ~~[26B-2-113]~~ 26B-2-707.

(3) In conducting an inspection under Subsection (1), the office may, after meeting the requirements of Subsection (2):

(a) inspect the physical facilities;

(b) inspect and copy records and documents;

(c) interview officers, employees, clients, family members of clients, and others; and

(d) observe the licensee in operation.

(4) An inspection conducted under Subsection (1) shall be during regular business hours and may be announced or unannounced.

(5) The licensee shall make copies of inspection reports available to the public upon request.

(6) The provisions of this section apply to on-site inspections and do not restrict the office from contacting family members, neighbors, or other individuals, or from seeking

SB0229S02 compared with SB0229S01

information from other sources to determine compliance with this part.

Section ~~33~~4. Section **26B-2-120** is amended to read:

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

(1) As used in this section:

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

(A) an individual who applies for an initial license or certification or a license or certification renewal under this part;

(B) an individual who is associated with a licensee and has or will likely have direct access to a child or a vulnerable adult;

(C) an individual who provides respite care to a foster parent or an adoptive parent on more than one occasion;

(D) a department contractor;

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

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

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

(ii) "Applicant" does not include:

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

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

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

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

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

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

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

SB0229S02 compared with SB0229S01

(ii) charges for a criminal offense; or

(iii) a criminal conviction.

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

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

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

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

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

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

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

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

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

(v) a state child abuse or neglect registry.

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

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

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

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

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

(j) "Personal identifying information" means:

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

(ii) date of birth;

(iii) physical address and email address;

(iv) telephone number;

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

(vi) social security number;

SB0229S02 compared with SB0229S01

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

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

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

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

(a) personal identifying information;

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

(c) a disclosure form, specified by the office, for consent for:

(i) an initial background check upon submission of the information described in this Subsection (2);

(ii) ongoing monitoring of fingerprints and registries until no longer associated with a licensee for 90 days;

(iii) a background check when the office determines that reasonable cause exists; and

(iv) retention of personal identifying information, including fingerprints, for monitoring and notification as described in Subsections (3)(d) and (4); and

(d) if an applicant resided outside of the United States and its territories during the five years immediately preceding the day on which the information described in Subsections (2)(a) through (c) is submitted to the office, documentation establishing whether the applicant was convicted of a crime during the time that the applicant resided outside of the United States or its territories.

(3) The office:

(a) shall perform the following duties as part of a background check of an applicant:

(i) check state and regional criminal background databases for the applicant's criminal history by:

(A) submitting personal identifying information to the bureau for a search; or

(B) using the applicant's personal identifying information to search state and regional criminal background databases as authorized under Section 53-10-108;

(ii) submit the applicant's personal identifying information and fingerprints to the

SB0229S02 compared with SB0229S01

bureau for a criminal history search of applicable national criminal background databases;

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

(iv) if the applicant is applying to become a prospective foster or adoptive parent, search the Division of Child and Family Services' Management Information System described in Section 80-2-1001 for:

(A) the applicant; and

(B) any adult living in the applicant's home;

(v) for an applicant described in Subsection (1)(a)(i)(F), search the Division of Child and Family Services' Management Information System described in Section 80-2-1001;

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

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

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

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

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

(i) for an annual renewal; or

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

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

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

(i) more than one license;

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

SB0229S02 compared with SB0229S01

program; or

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

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

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

(h) as necessary to comply with the federal requirement to check a state's child abuse and neglect registry regarding any individual working in a congregate care program, shall:

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

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

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

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

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

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

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

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

SB0229S02 compared with SB0229S01

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

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

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

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

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

(i) discard and destroy any retained fingerprints; and

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

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

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

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

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

(C) sexual solicitation;

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

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

SB0229S02 compared with SB0229S01

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

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

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

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

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

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

(b) (i) Subsection (5)(a) does not apply to an applicant who is seeking a position as a peer support provider, a mental health professional, or in a program that serves only adults with a primary mental health diagnosis, with or without a co-occurring substance use disorder.

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

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

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

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

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

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

(e) is currently subject to a plea in abeyance or diversion agreement for an offense

SB0229S02 compared with SB0229S01

described in Subsection (5);

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

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

(i) under 28 years old; or

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

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

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

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

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

(l) (i) is seeking a position:

(A) as a peer support provider;

(B) as a mental health professional; or

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

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

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

(B) has a listing in the Division of Child and Family Services' Licensing Information

SB0229S02 compared with SB0229S01

System described in Section 80-2-1002;

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

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

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

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

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

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

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

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

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

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

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

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

(i) the date of the offense or incident;

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

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

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

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

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

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

SB0229S02 compared with SB0229S01

(B) sexual abuse;

(C) sexual exploitation; or

(D) negligent treatment;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SB0229S02 compared with SB0229S01

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

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

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

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

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

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

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

(b) If the notice under Subsection (11)(a) states that the applicant's application is denied, the notice shall further advise the applicant that the applicant may, under Subsection [~~26B-2-111(2)~~] 26B-2-703(12), request a hearing in the department's Office of Administrative Hearings, to challenge the office's decision.

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

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

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

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

(b) The exemption described in Subsection (12)(a) does not extend to a program

SB0229S02 compared with SB0229S01

director or a member, as defined by Section 26B-2-105, of the program.

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

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

(ii) check the child abuse and neglect registry in each state where each adult living in the home of the applicant described in Subsection (13)(a)(i) resided in the five years immediately preceding the day on which the applicant applied to be a foster or adoptive parent, to determine whether the adult is listed in the registry as having a substantiated or supported finding of child abuse or neglect.

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

(i) federal law or rule permits otherwise; or

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

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

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

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

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

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

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

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

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

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

SB0229S02 compared with SB0229S01

- (F) murder, as described in Section 76-5-203;
- (G) manslaughter, as described in Section 76-5-205;
- (H) child abuse homicide, as described in Section 76-5-208;
- (I) homicide by assault, as described in Section 76-5-209;
- (J) kidnapping, as described in Section 76-5-301;
- (K) child kidnapping, as described in Section 76-5-301.1;
- (L) aggravated kidnapping, as described in Section 76-5-302;
- (M) human trafficking of a child, as described in Section 76-5-308.5;
- (N) an offense described in Title 76, Chapter 5, Part 4, Sexual Offenses;
- (O) sexual exploitation of a minor, as described in Title 76, Chapter 5b, Sexual

Exploitation Act;

- (P) aggravated exploitation of a minor, as described in Section 76-5b-201.1;
- (Q) aggravated arson, as described in Section 76-6-103;
- (R) aggravated burglary, as described in Section 76-6-203;
- (S) aggravated robbery, as described in Section 76-6-302;
- (T) lewdness involving a child, as described in Section 76-9-702.5;
- (U) incest, as described in Section 76-7-102; or
- (V) domestic violence, as described in Section 77-36-1; or
- (ii) an offense committed outside the state that, if committed in the state, would

constitute a violation of an offense described in Subsection (13)(c)(i).

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

- (i) aggravated assault, as described in Section 76-5-103;
- (ii) aggravated assault by a prisoner, as described in Section 76-5-103.5;
- (iii) mayhem, as described in Section 76-5-105;
- (iv) an offense described in Title 58, Chapter 37, Utah Controlled Substances Act;
- (v) an offense described in Title 58, Chapter 37a, Utah Drug Paraphernalia Act;
- (vi) an offense described in Title 58, Chapter 37b, Imitation Controlled Substances

SB0229S02 compared with SB0229S01

Act;

(vii) an offense described in Title 58, Chapter 37c, Utah Controlled Substance Precursor Act; or

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

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

(14) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the office may make rules, consistent with this part, to:

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

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

Section 5. Section 26B-2-123 is amended to read:

26B-2-123. Congregate care program regulation.

(1) (a) A congregate care program may not use a cruel, severe, unusual, or unnecessary practice on a child, including:

~~(a)~~ (i) a strip search unless the congregate care program determines and documents that a strip search is necessary to protect an individual's health or safety;

~~(b)~~ (ii) a body cavity search unless the congregate care program determines and documents that a body cavity search is necessary to protect an individual's health or safety;

~~(c)~~ (iii) inducing pain to obtain compliance;

~~(d)~~ (iv) hyperextending joints;

~~(e)~~ (v) peer restraints;

~~(f)~~ (vi) discipline or punishment that is intended to frighten or humiliate;

~~(g)~~ (vii) requiring or forcing the child to take an uncomfortable position, including squatting or bending;

SB0229S02 compared with SB0229S01

~~[(h)]~~ (viii) for the purpose of punishing or humiliating, requiring or forcing the child to repeat physical movements or physical exercises such as running laps or performing push-ups;

~~[(f)]~~ (ix) spanking, hitting, shaking, or otherwise engaging in aggressive physical contact;

~~[(f)]~~ (x) denying an essential program service;

~~[(k)]~~ (xi) depriving the child of a meal, water, rest, or opportunity for toileting;

~~[(f)]~~ (xii) denying shelter, clothing, or bedding;

~~[(m)]~~ (xiii) withholding personal interaction, emotional response, or stimulation;

~~[(n)]~~ (xiv) prohibiting the child from entering the residence;

~~[(o)]~~ (xv) abuse as defined in Section 80-1-102; and

~~[(p)]~~ (xvi) neglect as defined in Section 80-1-102.

(b) A properly used emergency safety intervention is not considered a cruel, severe, unusual, or unnecessary practice.

(2) Before a congregate care program may use a restraint ~~[(or)]~~, seclusion, or emergency safety intervention, the congregate care program shall:

(a) develop and implement written policies and procedures that:

(i) describe the circumstances under which a staff member may use a restraint ~~[(or)]~~ seclusion, or emergency safety intervention;

(ii) describe which staff members are authorized to use a restraint ~~[(or)]~~ seclusion, or emergency safety intervention;

(iii) describe procedures for monitoring a child that is restrained or in seclusion;

(iv) describe time limitations on the use of a restraint or seclusion;

(v) require immediate and continuous review of the decision to use a restraint ~~[(or)]~~ seclusion, or emergency safety intervention;

(vi) require documenting the use of a restraint ~~[(or)]~~ seclusion, or emergency safety intervention;

(vii) describe record keeping requirements for records related to the use of a restraint ~~[(or)]~~ seclusion, or emergency safety intervention;

(viii) to the extent practicable, require debriefing the following individuals if debriefing would not interfere with an ongoing investigation, violate any law or regulation, or conflict with a child's treatment plan:

SB0229S02 compared with SB0229S01

- (A) each witness to the event;
 - (B) each staff member involved; and
 - (C) the child who was restrained or in seclusion;
 - (ix) include a procedure for complying with Subsection (5); and
 - (x) provide an administrative review process and required follow up actions after a child is restrained or put in seclusion; and
- (b) consult with the office to ensure that the congregate care program's written policies and procedures align with applicable law.
- (3) A congregate care program:
- (a) may use a passive physical restraint only if the passive physical restraint is supported by a nationally or regionally recognized curriculum focused on non-violent interventions and de-escalation techniques;
 - (b) may not use a chemical or mechanical restraint unless the office has authorized the congregate care program to use a chemical or mechanical restraint;
 - (c) shall ensure that a staff member that uses a restraint on a child is:
 - (i) properly trained to use the restraint; and
 - (ii) familiar with the child and if the child has a treatment plan, the child's treatment plan; and
 - (d) shall train each staff member on how to intervene if another staff member fails to follow correct procedures when using a restraint.
- (4) (a) A congregate care program:
- (i) may use seclusion if:
 - (A) the purpose for the seclusion is to ensure the immediate safety of the child or others; and
 - (B) no less restrictive intervention is likely to ensure the safety of the child or others; and
 - (ii) may not use seclusion:
 - (A) for coercion, retaliation, or humiliation; or
 - (B) due to inadequate staffing or for the staff's convenience.
- (b) While a child is in seclusion, a staff member who is familiar to the child shall actively supervise the child for the duration of the seclusion.

SB0229S02 compared with SB0229S01

(5) Subject to the office's review and approval, a congregate care program shall develop:

(a) suicide prevention policies and procedures that describe:

(i) how the congregate care program will respond in the event a child exhibits self-injurious, self-harm, or suicidal behavior;

(ii) warning signs of suicide;

(iii) emergency protocol and contacts;

(iv) training requirements for staff, including suicide prevention training;

(v) procedures for implementing additional supervision precautions and for removing any additional supervision precautions;

(vi) suicide risk assessment procedures;

(vii) documentation requirements for a child's suicide ideation and self-harm;

(viii) special observation precautions for a child exhibiting warning signs of suicide;

(ix) communication procedures to ensure all staff are aware of a child who exhibits warning signs of suicide;

(x) a process for tracking suicide behavioral patterns; and

(xi) a post-intervention plan with identified resources; and

(b) based on state law and industry best practices, policies and procedures for managing a child's behavior during the child's participation in the congregate care program.

(6) (a) A congregate care program:

(i) is subject to Subsection (6)(b), shall facilitate weekly confidential voice-to-voice communication between a child and the child's parents, guardian, foster parents, and siblings, as applicable;

(ii) shall ensure that the communication described in Subsection (6)(a)(i) complies with the child's treatment plan, if any; and

(iii) may not use family contact as an incentive for proper behavior or withhold family contact as a punishment.

(b) For the communication described in Subsection (6)(a)(i), a congregate care program may not:

(i) deny the communication unless state law or a court order prohibits the communication; or

SB0229S02 compared with SB0229S01

(ii) modify the frequency or form of the communication unless:

(A) the office approves the modification; or

(B) state law or a court order prohibits the frequency or the form of the communication.

Section ~~4~~6. Section **26B-2-222** is amended to read:

26B-2-222. Licensing of a new nursing care facility -- Approval for a licensed bed in an existing nursing care facility -- Fine for excess Medicare inpatient revenue.

(1) Notwithstanding Section 26B-2-201, as used in this section:

(a) "Medicaid" means the Medicaid program, as that term is defined in Section 26B-3-101.

(b) "Medicaid certification" means the same as that term is defined in Section 26B-3-301.

(c) "Nursing care facility" and "small health care facility":

(i) mean the following facilities licensed by the department under this part:

(A) a skilled nursing facility;

(B) an intermediate care facility; or

(C) a small health care facility with four to 16 beds functioning as a skilled nursing facility; and

(ii) do not mean:

(A) an intermediate care facility for the intellectually disabled;

(B) a critical access hospital that meets the criteria of 42 U.S.C. Sec. 1395i-4(c)(2) (1998);

(C) a small health care facility that is hospital based; or

(D) a small health care facility other than a skilled nursing care facility with no more than 16 beds.

(d) "Rural county" means the same as that term is defined in Section 26B-3-301.

(2) Except as provided in Subsection (6) and Section 26B-2-227, a new nursing care facility shall be approved for a health facility license only if:

(a) under the provisions of Section 26B-3-311 the facility's nursing care facility program has received Medicaid certification or will receive Medicaid certification for each bed in the facility;

SB0229S02 compared with SB0229S01

(b) the facility's nursing care facility program has received or will receive approval for Medicaid certification under Subsection 26B-3-311(5), if the facility is located in a rural county; or

(c) (i) the applicant submits to the department the information described in Subsection (3); and

(ii) based on that information, and in accordance with Subsection (4), the department determines that approval of the license best meets the needs of the current and future patients of nursing care facilities within the area impacted by the new facility.

(3) A new nursing care facility seeking licensure under Subsection (2) shall submit to the department the following information:

(a) proof of the following as reasonable evidence that bed capacity provided by nursing care facilities within the county or group of counties that would be impacted by the facility is insufficient:

(i) nursing care facility occupancy within the county or group of counties:

(A) has been at least 75% during each of the past two years for all existing facilities combined; and

(B) is projected to be at least 75% for all nursing care facilities combined that have been approved for licensure but are not yet operational;

(ii) there is no other nursing care facility within a 35-mile radius of the new nursing care facility seeking licensure under Subsection (2); and

(b) a feasibility study that:

(i) shows the facility's annual Medicare inpatient revenue, including Medicare Advantage revenue, will not exceed 49% of the facility's annual total revenue during each of the first three years of operation;

(ii) shows the facility will be financially viable if the annual occupancy rate is at least 88%;

(iii) shows the facility will be able to achieve financial viability;

(iv) shows the facility will not:

(A) have an adverse impact on existing or proposed nursing care facilities within the county or group of counties that would be impacted by the facility; or

(B) be within a three-mile radius of an existing nursing care facility or a new nursing

SB0229S02 compared with SB0229S01

care facility that has been approved for licensure but is not yet operational;

- (v) is based on reasonable and verifiable demographic and economic assumptions;
- (vi) is based on data consistent with department or other publicly available data; and
- (vii) is based on existing sources of revenue.

(4) When determining under Subsection (2)(c) whether approval of a license for a new nursing care facility best meets the needs of the current and future patients of nursing care facilities within the area impacted by the new facility, the department shall consider:

- (a) whether the county or group of counties that would be impacted by the facility is underserved by specialized or unique services that would be provided by the facility; and
- (b) how additional bed capacity should be added to the long-term care delivery system to best meet the needs of current and future nursing care facility patients within the impacted area.

(5) The department may approve the addition of a licensed bed in an existing nursing care facility only if:

- (a) each time the facility seeks approval for the addition of a licensed bed, the facility satisfies each requirement for licensure of a new nursing care facility in Subsections (2)(c), (3), and (4); or

- (b) the bed has been approved for Medicaid certification under Section 26B-3-311 or 26B-3-313.

(6) Subsection (2) does not apply to a nursing care facility that:

- (a) has, by the effective date of this act, submitted to the department schematic drawings, and paid applicable fees, for a particular site or a site within a three-mile radius of that site;

- (b) before July 1, 2016:

- (i) filed an application with the department for licensure under this section and paid all related fees due to the department; and

- (ii) submitted to the department architectural plans and specifications, as defined by the department by administrative rule, for the facility;

- (c) applies for a license within three years of closing for renovation;

- (d) replaces a nursing care facility that:

- (i) closed within the past three years; or

SB0229S02 compared with SB0229S01

(ii) is located within five miles of the facility;

(e) is undergoing a change of ownership, even if a government entity designates the facility as a new nursing care facility; or

(f) is a state-owned veterans home, regardless of who operates the home.

(7) (a) For each year the annual Medicare inpatient revenue, including Medicare Advantage revenue, of a nursing care facility approved for a health facility license under Subsection (2)(c) exceeds 49% of the facility's total revenue for the year, the facility shall be subject to a fine of \$50,000, payable to the department.

(b) A nursing care facility approved for a health facility license under Subsection (2)(c) shall submit to the department the information necessary for the department to annually determine whether the facility is subject to the fine in Subsection (7)(a).

(c) The department:

(i) shall make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, specifying the information a nursing care facility shall submit to the department under Subsection (7)(b);

(ii) shall annually determine whether a facility is subject to the fine in Subsection (7)(a);

(iii) may take one or more of the actions in Section 26B-2-202 or [~~26B-2-208~~] 26B-2-703 against a facility for nonpayment of a fine due under Subsection (7)(a); and

(iv) shall deposit fines paid to the department under Subsection (7)(a) into the Nursing Care Facilities Provider Assessment Fund, created in Section 26B-3-405.

Section ~~5~~7. Section **26B-2-701** is enacted to read:

Part 7. Penalties and Investigations

26B-2-701. Definitions.

As used in this part:

(1) "Certificate" means a residential child care certificate issued by the office.

(2) "Certification" means an approval to operate in compliance with local or federal requirements or regulations, completed by the office or on behalf of the office for a local or federal agency.

(3) "Client" means an individual, resident, or patient who receives services from a provider.

SB0229S02 compared with SB0229S01

(4) "Program or facility" means the settings, activities, services, procedures, and premises used by a provider to provide services regulated by the department.

(5) "Provider" means a license holder, certificate holder, or legally responsible person that provides services regulated by the department.

Section ~~6~~8. Section **26B-2-702** is enacted to read:

26B-2-702. Licensure.

(1) A person that operates a program or facility that requires a license, certificate, or certification under this chapter is subject to this part regardless of whether the person holds a license, certificate, or certification.

(2) A person may not offer a service, operate or provide services, or engage in any activity regulated by this chapter without holding a license, certificate, or certification issued or approved under this chapter.

(3) A person who holds a license, certificate, or certification under this chapter may only provide services to the extent allowed by the license, certificate, or certification.

(4) A person may not advertise or represent that the person holds a license, certificate, or certification required by this chapter unless the person holds that license, certificate, or certification.

(5) A person who violates this section is subject to Section 26B-1-224.

Section ~~7~~9. Section **26B-2-703** is enacted to read:

26B-2-703. Sanctions -- Penalties and adjudicative procedure -- Rulemaking.

(1) If the department has reason to believe that a provider has failed to comply with this chapter or rules made pursuant to this chapter, the department may serve a notice of agency action to commence an adjudicative proceeding in accordance with Title 63G, Chapter 4, Administrative Procedures Act.

(2) In accordance with Title 63G, Chapter 4, Administrative Procedures Act, the department may deny, place conditions on, suspend, or revoke a license, certificate, or certification, and invoke penalties, including restricting or prohibiting new admissions to a program or facility, if the department finds that there has been:

(a) a failure to comply with:

(i) rules established under this chapter; or

(ii) any lawful order of the department or a local health department, or applicable rule,

SB0229S02 compared with SB0229S01

statute, regulation, or requirement;

(b) aiding, abetting, or permitting the commission of any illegal act;

(c) conduct adverse to the standards required to provide services and promote public trust, including aiding, abetting, or permitting the commission of abuse, neglect, exploitation, harm, mistreatment, or fraud; or

(d) a failure to provide applicable health and safety services for clients.

(3) (a) The department may act on an emergency basis if the department determines immediate action is necessary to protect a client.

(b) Immediate action taken under Subsection (3)(a) may include restricting new admissions to a program or facility, or increased monitoring of the operations of a program or facility.

(4) The department may impose civil monetary penalties against any person, in a sum not to exceed \$10,000 per violation, in:

(a) an administrative action in accordance with Title 63G, Chapter 4, Administrative Procedures Act;

(b) a similar administrative proceeding adopted by a county or local government; or

(c) a judicial civil proceeding.

(5) Assessment of a civil penalty or administrative penalty does not preclude the department or a local health department from:

(a) seeking criminal penalties;

(b) denying, revoking, imposing conditions on, or refusing to renew a license, certificate, or certification; or

(c) seeking injunctive or equitable remedies.

(6) If the department revokes a license, certificate, or certification, the office may not grant a new license, certificate, or certification unless:

(a) at least five years have passed since the day on which the provider was served with final notice that the provider's license, certificate, or certification was revoked; and

(b) the office determines that the interests of the public will not be jeopardized by granting the provider a new license, certificate, or certification.

(7) If the department does not renew a license, certificate, or certification because of noncompliance with the provisions of this part or rules adopted under this part, the department

SB0229S02 compared with SB0229S01

may not issue a new license, certificate, or certification unless:

- (a) at least one year has passed since the day on which the renewal was denied;
- (b) the provider complies with all renewal requirements; and
- (c) the office determines that the interests of the public will not be jeopardized by

issuing a new license, certificate, or certification.

(8) The office may suspend a license, certificate, or certification for up to three years.

(9) When a license, certificate, or certification has been suspended, the office may restore, or restore subject to conditions, the suspended license, certificate, or certification upon a determination that the:

(a) conditions upon which the suspension were based have been completely or partially corrected; and

(b) interests of the public will not be jeopardized by restoration of the license, certificate, or certification.

(10) If a provider fails to comply with the provisions of this chapter, the department may impose a penalty on the provider that is less than or equal to the cost incurred by the department, which may include:

(a) the cost to continue providing services, including ensuring client safety and relocating clients through the transition or closure of a program or facility;

(b) the cost to place an administrator or department representative as a monitor in a program or facility; or

(c) the cost to assess to the provider those costs incurred by the department.

(11) If a congregate care program or facility knowingly fails to comply with the provisions of Section 26B-2-124, the office may impose a penalty on the congregate care program or facility that is less than or equal to the cost of care incurred by the state for a private-placement child described in Subsection 26B-2-124(3).

(12) If the department finds that an abortion has been performed in violation of Section 76-7-314 or 76-7a-201, the department shall deny or revoke the license.

(13) A provider, program or facility, or person may commence adjudicative proceedings in accordance with Title 63G, Chapter 4, Administrative Procedures Act, regarding all agency actions that determine the legal rights, duties, privileges, immunities, or other legal interests of the provider, program or facility, or persons associated with the

SB0229S02 compared with SB0229S01

provider, including all office actions to grant, deny, place conditions on, revoke, suspend, withdraw, or amend an authority, right, license, certificate, or certification under this part.

(14) Subject to the requirements of federal and state law, the office shall make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to establish sanctions, penalties, and adjudicative proceedings as described in this chapter.

Section ~~8~~10. Section **26B-2-704**, which is renumbered from Section 26B-2-209 is renumbered and amended to read:

[26B-2-209]. **26B-2-704. Failure to follow certain health care claims practices -- Penalties.**

(1) The department may assess a fine of up to \$500 per violation against a health care facility that violates Section 31A-26-313.

(2) The department shall waive the fine described in Subsection (1) if:

(a) the health care facility demonstrates to the department that the health care facility mitigated and reversed any damage to the insured caused by the health care facility or third party's violation; or

(b) the insured does not pay the full amount due on the bill that is the subject of the violation, including any interest, fees, costs, and expenses, within 120 days after the day on which the health care facility or third party makes a report to a credit bureau or takes an action in violation of Section 31A-26-313.

Section ~~9~~11. Section **26B-2-705**, which is renumbered from Section 26B-2-214 is renumbered and amended to read:

[26B-2-214]. **26B-2-705. Immediate access restriction.**

(1) If, in any program or facility requiring a license, certificate, or certification under this part, the department finds a condition [~~in any licensed health care facility~~] that is a clear hazard to the public health or safety, the department may immediately order that [~~facility closed~~] the facility restrict access and may prevent the entrance of any [~~resident or patient~~] client onto the premises of that facility until the condition is eliminated.

(2) Parties aggrieved by the actions of the department under this section may obtain an adjudicative proceeding and judicial review.

Section ~~10~~12. Section **26B-2-706**, which is renumbered from Section 26B-2-114 is renumbered and amended to read:

SB0229S02 compared with SB0229S01

~~[26B-2-114].~~ **26B-2-706.** Action by department for injunction.

~~[In addition to, and notwithstanding,]~~ Notwithstanding the existence of any other remedy ~~[provided by law]~~, the department may, in ~~[a]~~ the manner provided by law and upon the advice of the attorney general, who shall represent the department in the proceedings, maintain an action in the name of the state for injunction or other process against any person or governmental unit to restrain or prevent the establishment, conduct, management, or operation of a ~~[human services]~~ program or facility in violation of this ~~[part]~~ chapter or rules established under this ~~[part]~~ chapter.

Section ~~{11}~~13. Section **26B-2-707**, which is renumbered from Section 26B-2-113 is renumbered and amended to read:

~~[26B-2-113].~~ **26B-2-707.** Operating a program or facility in violation of this chapter -- Criminal penalties.

(1) (a) ~~[A]~~ In addition to the penalties in Section 26B-1-224, any person who owns, establishes, conducts, maintains, manages, or operates a ~~[human services]~~ program or facility in violation of this ~~[part]~~ chapter is guilty of a class A misdemeanor ~~[if the violation endangers or harms the health, welfare, or safety of persons participating in that program]~~.

(b) Conviction in a criminal proceeding does not preclude the office from:

(i) assessing a civil penalty or an administrative penalty;

(ii) denying, placing conditions on, suspending, or revoking a license, certificate, or certification; or

(iii) seeking injunctive or equitable relief.

~~[(2) Any person that violates a provision of this part, lawful orders of the office, or rules adopted under this part may be assessed a penalty not to exceed the sum of \$10,000 per violation, in:]~~

~~[(a) a judicial civil proceeding; or]~~

~~[(b) an administrative action in accordance with Title 63G, Chapter 4, Administrative Procedures Act.]~~

~~[(3)]~~ (2) Assessment of a judicial penalty or an administrative penalty does not preclude the office from:

(a) seeking criminal penalties;

(b) denying, placing conditions on, suspending, or revoking a license, certificate, or

SB0229S02 compared with SB0229S01

certification; or

(c) seeking injunctive or equitable relief.

~~[(4) The office may assess the human services program the cost incurred by the office in placing a monitor.]~~

~~[(5)]~~ (3) Notwithstanding Subsection (1)(a) and subject to ~~[Subsections]~~ Subsection (1)(b) ~~[and (2)]~~, an individual is guilty of a class A misdemeanor if the individual knowingly and willfully offers, pays, promises to pay, solicits, or receives any remuneration, including any commission, bonus, kickback, bribe, or rebate, directly or indirectly, overtly or covertly, in cash or in kind, or engages in any split-fee arrangement in return for:

(a) referring an individual to a person for the furnishing or arranging for the furnishing of any item or service for the treatment of a substance use disorder;

(b) receiving a referred individual for the furnishing or arranging for the furnishing of any item or service for the treatment of a substance use disorder; or

(c) referring a clinical sample to a person, including a laboratory, for testing that is used toward the furnishing of any item or service for the treatment of a substance use disorder.

~~[(6)]~~ (4) Subsection ~~[(5)]~~ (3) does not prohibit:

(a) any discount, payment, waiver of payment, or payment practice not prohibited by 42 U.S.C. Sec. 1320a-7(b) or regulations made under 42 U.S.C. Sec. 1320a-7(b);

(b) patient referrals within a practice group;

(c) payments by a health insurer who reimburses, provides, offers to provide, or administers health, mental health, or substance use disorder goods or services under a health benefit plan;

(d) payments to or by a health care provider, practice group, or substance use disorder treatment program that has contracted with a local mental health authority, a local substance abuse authority, a health insurer, a health care purchasing group, or the Medicare or Medicaid program to provide health, mental health, or substance use disorder services;

(e) payments by a health care provider, practice group, or substance use disorder treatment program to a health, mental health, or substance use disorder information service that provides information upon request and without charge to consumers about providers of health care goods or services to enable consumers to select appropriate providers or facilities, if the information service:

SB0229S02 compared with SB0229S01

(i) does not attempt, through standard questions for solicitation of consumer criteria or through any other means, to steer or lead a consumer to select or consider selection of a particular health care provider, practice group, or substance use disorder treatment program;

(ii) does not provide or represent that the information service provides diagnostic or counseling services or assessments of illness or injury and does not make any promises of cure or guarantees of treatment; and

(iii) charges and collects fees from a health care provider, practice group, or substance use disorder treatment program participating in information services that:

(A) are set in advance;

(B) are consistent with the fair market value for those information services; and

(C) are not based on the potential value of the goods or services that a health care provider, practice group, or substance use disorder treatment program may provide to a patient; or

(f) payments by a laboratory to a person that:

(i) does not have a financial interest in or with a facility or person who refers a clinical sample to the laboratory;

(ii) is not related to an owner of a facility or a person who refers a clinical sample to the laboratory;

(iii) is not related to and does not have a financial relationship with a health care provider who orders the laboratory to conduct a test that is used toward the furnishing of an item or service for the treatment of a substance use disorder;

(iv) identifies, in advance of providing marketing or sales services, the types of clinical samples that each laboratory will receive, if the person provides marketing or sales services to more than one laboratory;

(v) the person does not identify as or hold itself out to be a laboratory or part of a network with an insurance payor, if the person provides marketing or sales services under a contract with a laboratory, as described in Subsection ~~[(6)(f)(vii)(B)]~~ (4)(f)(vii)(B);

(vi) the person identifies itself in all marketing materials as a salesperson for a licensed laboratory and identifies each laboratory that the person represents, if the person provides marketing or sales services under a contract with a laboratory, as described in Subsection ~~[(6)(f)(vii)(B)]~~ (4)(f)(vii)(B); and

SB0229S02 compared with SB0229S01

(vii) (A) is a sales person employed by the laboratory to market or sell the laboratory's services to a person who provides substance use disorder treatment; or

(B) is a person under contract with the laboratory to market or sell the laboratory's services to a person who provides substance use disorder treatment, if the total compensation paid by the laboratory does not exceed the total compensation that the laboratory pays to employees of the laboratory for similar marketing or sales services.

~~[(7)]~~ (5) (a) A person may not knowingly or willfully, in exchange for referring an individual to a youth transportation company:

(i) offer, pay, promise to pay, solicit, or receive any remuneration directly or indirectly, overtly or covertly, in cash or in kind, including:

(A) a commission;

(B) a bonus;

(C) a kickback;

(D) a bribe; or

(E) a rebate; or

(ii) engage in any split-fee arrangement.

(b) A person who violates Subsection ~~[(7)(a)]~~ (5)(a) is guilty of a class A misdemeanor and shall be assessed a penalty in accordance with ~~[Subsection (2)]~~ this part.

Section ~~112~~ 14. Section **26B-2-708**, which is renumbered from Section 26B-2-133 is renumbered and amended to read:

~~[26B-2-133].~~ **26B-2-708. Injunctive relief and civil penalty for unlawful child placing -- Enforcement by county attorney or attorney general.**

(1) The office or another interested person may commence an action in court to enjoin any person~~[-, agency, firm, corporation, or association]~~ from violating Section 26B-2-127.

(2) The office shall:

(a) solicit information from the public relating to violations of Section 26B-2-127; and

(b) upon identifying a violation of Section 26B-2-127:

(i) send a written notice to the person who violated Section 26B-2-127 that describes the alleged violation; and

(ii) notify the following persons of the alleged violation:

(A) the local county attorney; and

SB0229S02 compared with SB0229S01

(B) the Division of Professional Licensing.

(3) (a) A county attorney or the attorney general shall institute legal action as necessary to enforce the provisions of Section 26B-2-127 after being informed of an alleged violation.

(b) If a county attorney does not take action within 30 days after the day on which the county attorney is informed of an alleged violation of Section 26B-2-127, the attorney general may be requested to take action, and shall then institute legal proceedings in place of the county attorney.

(4) (a) In addition to the remedies provided in Subsections (1) and (3), any person[; ~~agency, firm, corporation, or association~~] found to be in violation of Section 26B-2-127 shall forfeit all proceeds identified as resulting from the transaction, and may also be assessed a civil penalty of not more than \$10,000 for each violation.

(b) Each act in violation of Section 26B-2-127, including each placement or attempted placement of a child, is a separate violation.

(5) (a) The amount recovered as a penalty under Subsection (4) shall be placed in the General Fund of the prosecuting county, or in the state General Fund if the attorney general prosecutes.

(b) If two or more governmental entities are involved in the prosecution, the court shall apportion the penalty among the entities, according to the entities' involvement.

(6) A judgment ordering the payment of any penalty or forfeiture under Subsection (4) is a lien when recorded in the judgment docket, and has the same effect and is subject to the same rules as a judgment for money in a civil action.

Section ~~{13}~~15. Section **26B-2-709**, which is renumbered from Section 26B-2-408 is renumbered and amended to read:

~~[26B-2-408].~~ **26B-2-709. Complaint investigations -- Records.**

(1) As used in this section:

(a) "Anonymous complainant" means a complainant for whom the department does not have the minimum personal identifying information necessary, including the complainant's full name, to attempt to communicate with the complainant after a complaint has been made.

(b) "Child care program" means the same as that term is defined in Section 26B-2-401.

~~{b}~~ (c) "Confidential complainant" means a complainant for whom the department has the minimum personal identifying information necessary, including the complainant's full

SB0229S02 compared with SB0229S01

name, to attempt to communicate with the complainant after a complaint has been made, but who elects under Subsection (3)(c) not to be identified to the subject of the complaint.

(d) "Exempt provider" means the same as that term is defined in Section 26B-2-401.

~~[(c)]~~ (e) "Subject of the complaint" means the ~~[licensee or certificate holder]~~ provider about whom the complainant is informing the department.

(2) The department may conduct investigations necessary to enforce the provisions of this ~~[part]~~ chapter.

(3) (a) If the department receives a complaint about a ~~[child care]~~ program or facility or an exempt provider, the department shall:

(i) solicit information from the complainant to determine whether the complaint suggests actions or conditions that could pose a serious risk to the safety or well-being of a ~~[qualifying child]~~ client;

(ii) as necessary:

(A) encourage the complainant to disclose the minimum personal identifying information necessary, including the complainant's full name, for the department to attempt to subsequently communicate with the complainant;

(B) if the complaint is against a child care program or an exempt provider, inform the complainant that the department may not investigate an anonymous complaint;

(C) if the complaint is not against a child care program or an exempt provider, inform the complainant that the department may not use information provided by the complainant to substantiate an alleged violation of state law or department rule unless the department independently corroborates the information;

~~[(c)]~~ (D) inform the complainant that the identity of a confidential complainant may be withheld from the subject of a complaint only as provided in Subsection ~~[(3)(c)(ii)]~~ (3)(c)(iii); and

~~[(D)]~~ (E) inform the complainant that the department may be limited in its use of information provided by a confidential complainant, as provided in Subsection ~~[(3)(c)(ii)(B)]~~ (3)(c)(iii)(B); and

(iii) inform the complainant that a person is guilty of a class B misdemeanor under Section 76-8-506 if the person gives false information to the department with the purpose of inducing a change in that person's or another person's ~~[licensing or certification]~~ license.

SB0229S02 compared with SB0229S01

certificate, or certification status.

(b) If the complainant elects to be an anonymous complainant, or if the complaint concerns events ~~[which]~~ that occurred more than six ~~[weeks]~~ months before the complainant contacted the department, the department:

(i) shall refer the information in the complaint to the Division of Child and Family Services within the department, law enforcement, or any other appropriate agency, if the complaint suggests actions or conditions which could pose a serious risk to the safety or well-being of a ~~[child]~~ client;

(ii) may not investigate or substantiate the complaint if the complaint is against a child care program or an exempt provider; and

(iii) may, during a regularly scheduled annual survey, inform the ~~[exempt] provider~~; licensee, ~~or certificate holder~~ that is the subject of the complaint of allegations or concerns raised by~~[:]~~

~~[(A)]~~ the ~~[the]~~ anonymous complainant~~[:or]~~.

~~[(B)] the complainant who reported events more than six weeks after the events occurred.~~

(c) (i) If the complainant elects to be a confidential complainant, the department shall determine whether the complainant wishes to remain confidential:

(A) only until the investigation of the complaint has been completed; or

(B) indefinitely.

(ii) ~~[(A)]~~ If the complainant elects to remain confidential only until the investigation of the complaint has been completed, the department shall disclose the name of the complainant to the subject of the complaint at the completion of the investigation, but no sooner.

~~[(B)]~~ (iii) If the complainant elects to remain confidential indefinitely, the department:

~~[(A)]~~ (A) notwithstanding Subsection 63G-2-201(5)(b), may not disclose the name of the complainant, including to the subject of the complaint; and

~~[(B)]~~ (B) may not use information provided by the complainant to substantiate an alleged violation of state law or department rule unless the department independently corroborates the information.

(4) (a) Prior to conducting an investigation of a ~~[child care]~~ program or facility or an exempt provider in response to a complaint, a department investigator shall review the

SB0229S02 compared with SB0229S01

complaint with the investigator's supervisor.

(b) The investigator may proceed with the investigation only if:

(i) the supervisor determines the complaint is credible;

(ii) the complaint is not from an anonymous complainant and against a child care program or an exempt provider; and

(iii) prior to the investigation, the investigator informs the subject of the complaint of:

(A) except as provided in Subsection (3)(c), the name of the complainant; and

(B) except as provided in Subsection (4)(c), the substance of the complaint.

(c) An investigator is not required to inform the subject of a complaint of the substance of the complaint prior to an investigation if doing so would jeopardize the investigation.

However, the investigator shall inform the subject of the complaint of the substance of the complaint as soon as doing so will no longer jeopardize the investigation.

(5) If the department is unable to substantiate a complaint, any record related to the complaint or the investigation of the complaint:

(a) shall be classified under Title 63G, Chapter 2, Government Records Access and Management Act, as:

(i) a private or controlled record if appropriate under Section 63G-2-302 or 63G-2-304; or

(ii) a protected record under Section 63G-2-305; and

(b) if disclosed in accordance with Subsection 63G-2-201(5)(b), may not identify an individual [~~child care program, exempt provider, licensee, certificate holder,~~] provider, exempt provider, or complainant.

(6) Any record of the department related to a complaint [~~by an anonymous complainant~~] is a protected record under Title 63G, Chapter 2, Government Records Access and Management Act, and, notwithstanding Subsection 63G-2-201(5)(b), may not be disclosed in a manner that identifies an individual [~~child care~~] program or facility, exempt provider, [~~licensee, certificate holder~~] provider, or complainant.

Section ~~14~~16. Section **26B-4-502** is amended to read:

26B-4-502. Emergency contraception services for a victim of sexual assault.

(1) Except as provided in Subsection (2), a designated facility shall provide the following services to a victim of sexual assault:

SB0229S02 compared with SB0229S01

(a) provide the victim with written and oral medical information regarding emergency contraception that is unbiased, accurate, and generally accepted by the medical community as being scientifically valid;

(b) orally inform the victim of sexual assault that the victim may obtain emergency contraception at the designated facility;

(c) offer a complete regimen of emergency contraception to a victim of sexual assault;

(d) provide, at the designated facility, emergency contraception to the victim of sexual assault upon her request;

(e) maintain a protocol, prepared by a physician, for the administration of emergency contraception at the designated facility to a victim of sexual assault; and

(f) develop and implement a written policy to ensure that a person is present at the designated facility, or on-call, who:

(i) has authority to dispense or prescribe emergency contraception, independently, or under the protocol described in Subsection (1)(e), to a victim of sexual assault; and

(ii) is trained to comply with the requirements of this section.

(2) A freestanding urgent care center is exempt from the requirements of Subsection (1) if:

(a) there is a general acute hospital or a critical access hospital within 30 miles of the freestanding urgent care center; and

(b) an employee of the freestanding urgent care center provides the victim with:

(i) written and oral medical information regarding emergency contraception that is unbiased, accurate, and generally accepted by the medical community as being scientifically valid; and

(ii) the name and address of the general acute hospital or critical access hospital described in Subsection (2)(a).

(3) A practitioner shall comply with Subsection (4) with regard to a person who is a victim of sexual assault, if the person presents to receive medical care, or receives medical care, from the practitioner at a location that is not a designated facility.

(4) A practitioner described in Subsection (3) shall:

(a) provide the victim with written and oral medical information regarding emergency contraception that is unbiased, accurate, and generally accepted by the medical community as

SB0229S02 compared with SB0229S01

being scientifically valid; and

(b) (i) (A) orally inform the victim of sexual assault that the victim may obtain emergency contraception at the facility where the practitioner is located; and

(B) provide emergency contraception to the victim of sexual assault, if she requests emergency contraception; or

(ii) inform the victim of sexual assault of the nearest location where she may obtain emergency contraception.

(5) (a) The department may make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to enforce the provisions of this section.

(b) The department shall, in an expeditious manner, investigate any complaint received by the department regarding the failure of a health care facility to comply with a requirement of this section.

(c) If the department finds a violation of this section or any rules adopted under this section, the department may take one or more of the actions described in Section ~~[26B-2-208]~~ 26B-2-703.

Section ~~15~~ 17. Section **63G-2-305** is amended to read:

63G-2-305. Protected records.

The following records are protected if properly classified by a governmental entity:

(1) trade secrets as defined in Section 13-24-2 if the person submitting the trade secret has provided the governmental entity with the information specified in Section 63G-2-309;

(2) commercial information or nonindividual financial information obtained from a person if:

(a) disclosure of the information could reasonably be expected to result in unfair competitive injury to the person submitting the information or would impair the ability of the governmental entity to obtain necessary information in the future;

(b) the person submitting the information has a greater interest in prohibiting access than the public in obtaining access; and

(c) the person submitting the information has provided the governmental entity with the information specified in Section 63G-2-309;

(3) commercial or financial information acquired or prepared by a governmental entity to the extent that disclosure would lead to financial speculations in currencies, securities, or

SB0229S02 compared with SB0229S01

commodities that will interfere with a planned transaction by the governmental entity or cause substantial financial injury to the governmental entity or state economy;

(4) records, the disclosure of which could cause commercial injury to, or confer a competitive advantage upon a potential or actual competitor of, a commercial project entity as defined in Subsection 11-13-103(4);

(5) test questions and answers to be used in future license, certification, registration, employment, or academic examinations;

(6) records, the disclosure of which would impair governmental procurement proceedings or give an unfair advantage to any person proposing to enter into a contract or agreement with a governmental entity, except, subject to Subsections (1) and (2), that this Subsection (6) does not restrict the right of a person to have access to, after the contract or grant has been awarded and signed by all parties:

(a) a bid, proposal, application, or other information submitted to or by a governmental entity in response to:

- (i) an invitation for bids;
- (ii) a request for proposals;
- (iii) a request for quotes;
- (iv) a grant; or
- (v) other similar document; or

(b) an unsolicited proposal, as defined in Section 63G-6a-712;

(7) information submitted to or by a governmental entity in response to a request for information, except, subject to Subsections (1) and (2), that this Subsection (7) does not restrict the right of a person to have access to the information, after:

(a) a contract directly relating to the subject of the request for information has been awarded and signed by all parties; or

(b) (i) a final determination is made not to enter into a contract that relates to the subject of the request for information; and

(ii) at least two years have passed after the day on which the request for information is issued;

(8) records that would identify real property or the appraisal or estimated value of real or personal property, including intellectual property, under consideration for public acquisition

SB0229S02 compared with SB0229S01

before any rights to the property are acquired unless:

(a) public interest in obtaining access to the information is greater than or equal to the governmental entity's need to acquire the property on the best terms possible;

(b) the information has already been disclosed to persons not employed by or under a duty of confidentiality to the entity;

(c) in the case of records that would identify property, potential sellers of the described property have already learned of the governmental entity's plans to acquire the property;

(d) in the case of records that would identify the appraisal or estimated value of property, the potential sellers have already learned of the governmental entity's estimated value of the property; or

(e) the property under consideration for public acquisition is a single family residence and the governmental entity seeking to acquire the property has initiated negotiations to acquire the property as required under Section 78B-6-505;

(9) records prepared in contemplation of sale, exchange, lease, rental, or other compensated transaction of real or personal property including intellectual property, which, if disclosed prior to completion of the transaction, would reveal the appraisal or estimated value of the subject property, unless:

(a) the public interest in access is greater than or equal to the interests in restricting access, including the governmental entity's interest in maximizing the financial benefit of the transaction; or

(b) when prepared by or on behalf of a governmental entity, appraisals or estimates of the value of the subject property have already been disclosed to persons not employed by or under a duty of confidentiality to the entity;

(10) records created or maintained for civil, criminal, or administrative enforcement purposes or audit purposes, or for discipline, licensing, certification, or registration purposes, if release of the records:

(a) reasonably could be expected to interfere with investigations undertaken for enforcement, discipline, licensing, certification, or registration purposes;

(b) reasonably could be expected to interfere with audits, disciplinary, or enforcement proceedings;

(c) would create a danger of depriving a person of a right to a fair trial or impartial

SB0229S02 compared with SB0229S01

hearing;

(d) reasonably could be expected to disclose the identity of a source who is not generally known outside of government and, in the case of a record compiled in the course of an investigation, disclose information furnished by a source not generally known outside of government if disclosure would compromise the source; or

(e) reasonably could be expected to disclose investigative or audit techniques, procedures, policies, or orders not generally known outside of government if disclosure would interfere with enforcement or audit efforts;

(11) records the disclosure of which would jeopardize the life or safety of an individual;

(12) records the disclosure of which would jeopardize the security of governmental property, governmental programs, or governmental recordkeeping systems from damage, theft, or other appropriation or use contrary to law or public policy;

(13) records that, if disclosed, would jeopardize the security or safety of a correctional facility, or records relating to incarceration, treatment, probation, or parole, that would interfere with the control and supervision of an offender's incarceration, treatment, probation, or parole;

(14) records that, if disclosed, would reveal recommendations made to the Board of Pardons and Parole by an employee of or contractor for the Department of Corrections, the Board of Pardons and Parole, or the Department of Health and Human Services that are based on the employee's or contractor's supervision, diagnosis, or treatment of any person within the board's jurisdiction;

(15) records and audit workpapers that identify audit, collection, and operational procedures and methods used by the State Tax Commission, if disclosure would interfere with audits or collections;

(16) records of a governmental audit agency relating to an ongoing or planned audit until the final audit is released;

(17) records that are subject to the attorney client privilege;

(18) records prepared for or by an attorney, consultant, surety, indemnitor, insurer, employee, or agent of a governmental entity for, or in anticipation of, litigation or a judicial, quasi-judicial, or administrative proceeding;

(19) (a) (i) personal files of a state legislator, including personal correspondence to or

SB0229S02 compared with SB0229S01

from a member of the Legislature; and

(ii) notwithstanding Subsection (19)(a)(i), correspondence that gives notice of legislative action or policy may not be classified as protected under this section; and

(b) (i) an internal communication that is part of the deliberative process in connection with the preparation of legislation between:

(A) members of a legislative body;

(B) a member of a legislative body and a member of the legislative body's staff; or

(C) members of a legislative body's staff; and

(ii) notwithstanding Subsection (19)(b)(i), a communication that gives notice of legislative action or policy may not be classified as protected under this section;

(20) (a) records in the custody or control of the Office of Legislative Research and General Counsel, that, if disclosed, would reveal a particular legislator's contemplated legislation or contemplated course of action before the legislator has elected to support the legislation or course of action, or made the legislation or course of action public; and

(b) notwithstanding Subsection (20)(a), the form to request legislation submitted to the Office of Legislative Research and General Counsel is a public document unless a legislator asks that the records requesting the legislation be maintained as protected records until such time as the legislator elects to make the legislation or course of action public;

(21) research requests from legislators to the Office of Legislative Research and General Counsel or the Office of the Legislative Fiscal Analyst and research findings prepared in response to these requests;

(22) drafts, unless otherwise classified as public;

(23) records concerning a governmental entity's strategy about:

(a) collective bargaining; or

(b) imminent or pending litigation;

(24) records of investigations of loss occurrences and analyses of loss occurrences that may be covered by the Risk Management Fund, the Employers' Reinsurance Fund, the Uninsured Employers' Fund, or similar divisions in other governmental entities;

(25) records, other than personnel evaluations, that contain a personal recommendation concerning an individual if disclosure would constitute a clearly unwarranted invasion of personal privacy, or disclosure is not in the public interest;

SB0229S02 compared with SB0229S01

(26) records that reveal the location of historic, prehistoric, paleontological, or biological resources that if known would jeopardize the security of those resources or of valuable historic, scientific, educational, or cultural information;

(27) records of independent state agencies if the disclosure of the records would conflict with the fiduciary obligations of the agency;

(28) records of an institution within the state system of higher education defined in Section 53B-1-102 regarding tenure evaluations, appointments, applications for admissions, retention decisions, and promotions, which could be properly discussed in a meeting closed in accordance with Title 52, Chapter 4, Open and Public Meetings Act, provided that records of the final decisions about tenure, appointments, retention, promotions, or those students admitted, may not be classified as protected under this section;

(29) records of the governor's office, including budget recommendations, legislative proposals, and policy statements, that if disclosed would reveal the governor's contemplated policies or contemplated courses of action before the governor has implemented or rejected those policies or courses of action or made them public;

(30) records of the Office of the Legislative Fiscal Analyst relating to budget analysis, revenue estimates, and fiscal notes of proposed legislation before issuance of the final recommendations in these areas;

(31) records provided by the United States or by a government entity outside the state that are given to the governmental entity with a requirement that they be managed as protected records if the providing entity certifies that the record would not be subject to public disclosure if retained by it;

(32) transcripts, minutes, recordings, or reports of the closed portion of a meeting of a public body except as provided in Section 52-4-206;

(33) records that would reveal the contents of settlement negotiations but not including final settlements or empirical data to the extent that they are not otherwise exempt from disclosure;

(34) memoranda prepared by staff and used in the decision-making process by an administrative law judge, a member of the Board of Pardons and Parole, or a member of any other body charged by law with performing a quasi-judicial function;

(35) records that would reveal negotiations regarding assistance or incentives offered

SB0229S02 compared with SB0229S01

by or requested from a governmental entity for the purpose of encouraging a person to expand or locate a business in Utah, but only if disclosure would result in actual economic harm to the person or place the governmental entity at a competitive disadvantage, but this section may not be used to restrict access to a record evidencing a final contract;

(36) materials to which access must be limited for purposes of securing or maintaining the governmental entity's proprietary protection of intellectual property rights including patents, copyrights, and trade secrets;

(37) the name of a donor or a prospective donor to a governmental entity, including an institution within the state system of higher education defined in Section 53B-1-102, and other information concerning the donation that could reasonably be expected to reveal the identity of the donor, provided that:

(a) the donor requests anonymity in writing;

(b) any terms, conditions, restrictions, or privileges relating to the donation may not be classified protected by the governmental entity under this Subsection (37); and

(c) except for an institution within the state system of higher education defined in Section 53B-1-102, the governmental unit to which the donation is made is primarily engaged in educational, charitable, or artistic endeavors, and has no regulatory or legislative authority over the donor, a member of the donor's immediate family, or any entity owned or controlled by the donor or the donor's immediate family;

(38) accident reports, except as provided in Sections 41-6a-404, 41-12a-202, and 73-18-13;

(39) a notification of workers' compensation insurance coverage described in Section 34A-2-205;

(40) (a) the following records of an institution within the state system of higher education defined in Section 53B-1-102, which have been developed, discovered, disclosed to, or received by or on behalf of faculty, staff, employees, or students of the institution:

(i) unpublished lecture notes;

(ii) unpublished notes, data, and information:

(A) relating to research; and

(B) of:

(I) the institution within the state system of higher education defined in Section

SB0229S02 compared with SB0229S01

53B-1-102; or

- (II) a sponsor of sponsored research;
- (iii) unpublished manuscripts;
- (iv) creative works in process;
- (v) scholarly correspondence; and
- (vi) confidential information contained in research proposals;

(b) Subsection (40)(a) may not be construed to prohibit disclosure of public information required pursuant to Subsection 53B-16-302(2)(a) or (b); and

- (c) Subsection (40)(a) may not be construed to affect the ownership of a record;

(41) (a) records in the custody or control of the Office of the Legislative Auditor General that would reveal the name of a particular legislator who requests a legislative audit prior to the date that audit is completed and made public; and

(b) notwithstanding Subsection (41)(a), a request for a legislative audit submitted to the Office of the Legislative Auditor General is a public document unless the legislator asks that the records in the custody or control of the Office of the Legislative Auditor General that would reveal the name of a particular legislator who requests a legislative audit be maintained as protected records until the audit is completed and made public;

(42) records that provide detail as to the location of an explosive, including a map or other document that indicates the location of:

- (a) a production facility; or
- (b) a magazine;

(43) information contained in the statewide database of the Division of Aging and Adult Services created by Section 26B-6-210;

(44) information contained in the Licensing Information System described in Title 80, Chapter 2, Child Welfare Services;

(45) information regarding National Guard operations or activities in support of the National Guard's federal mission;

(46) records provided by any pawn or secondhand business to a law enforcement agency or to the central database in compliance with Title 13, Chapter 32a, Pawnshop, Secondhand Merchandise, and Catalytic Converter Transaction Information Act;

- (47) information regarding food security, risk, and vulnerability assessments performed

SB0229S02 compared with SB0229S01

by the Department of Agriculture and Food;

(48) except to the extent that the record is exempt from this chapter pursuant to Section 63G-2-106, records related to an emergency plan or program, a copy of which is provided to or prepared or maintained by the Division of Emergency Management, and the disclosure of which would jeopardize:

- (a) the safety of the general public; or
- (b) the security of:
 - (i) governmental property;
 - (ii) governmental programs; or
 - (iii) the property of a private person who provides the Division of Emergency

Management information;

(49) records of the Department of Agriculture and Food that provides for the identification, tracing, or control of livestock diseases, including any program established under Title 4, Chapter 24, Utah Livestock Brand and Anti-Theft Act, or Title 4, Chapter 31, Control of Animal Disease;

(50) as provided in Section ~~[26B-2-408]~~ 26B-2-709:

(a) information or records held by the Department of Health and Human Services related to a complaint regarding a ~~[child care program or residential child care]~~ provider, program, or facility which the department is unable to substantiate; and

(b) information or records related to a complaint received by the Department of Health and Human Services from an anonymous complainant regarding a ~~[child care program or residential child care]~~ provider, program, or facility;

(51) unless otherwise classified as public under Section 63G-2-301 and except as provided under Section 41-1a-116, an individual's home address, home telephone number, or personal mobile phone number, if:

(a) the individual is required to provide the information in order to comply with a law, ordinance, rule, or order of a government entity; and

(b) the subject of the record has a reasonable expectation that this information will be kept confidential due to:

- (i) the nature of the law, ordinance, rule, or order; and
- (ii) the individual complying with the law, ordinance, rule, or order;

SB0229S02 compared with SB0229S01

(52) the portion of the following documents that contains a candidate's residential or mailing address, if the candidate provides to the filing officer another address or phone number where the candidate may be contacted:

(a) a declaration of candidacy, a nomination petition, or a certificate of nomination, described in Section 20A-9-201, 20A-9-202, 20A-9-203, 20A-9-404, 20A-9-405, 20A-9-408, 20A-9-408.5, 20A-9-502, or 20A-9-601;

(b) an affidavit of impecuniosity, described in Section 20A-9-201; or

(c) a notice of intent to gather signatures for candidacy, described in Section 20A-9-408;

(53) the name, home address, work addresses, and telephone numbers of an individual that is engaged in, or that provides goods or services for, medical or scientific research that is:

(a) conducted within the state system of higher education, as defined in Section 53B-1-102; and

(b) conducted using animals;

(54) in accordance with Section 78A-12-203, any record of the Judicial Performance Evaluation Commission concerning an individual commissioner's vote, in relation to whether a judge meets or exceeds minimum performance standards under Subsection 78A-12-203(4), and information disclosed under Subsection 78A-12-203(5)(e);

(55) information collected and a report prepared by the Judicial Performance Evaluation Commission concerning a judge, unless Section 20A-7-702 or Title 78A, Chapter 12, Judicial Performance Evaluation Commission Act, requires disclosure of, or makes public, the information or report;

(56) records provided or received by the Public Lands Policy Coordinating Office in furtherance of any contract or other agreement made in accordance with Section 63L-11-202;

(57) information requested by and provided to the 911 Division under Section 63H-7a-302;

(58) in accordance with Section 73-10-33:

(a) a management plan for a water conveyance facility in the possession of the Division of Water Resources or the Board of Water Resources; or

(b) an outline of an emergency response plan in possession of the state or a county or municipality;

SB0229S02 compared with SB0229S01

(59) the following records in the custody or control of the Office of Inspector General of Medicaid Services, created in Section 63A-13-201:

(a) records that would disclose information relating to allegations of personal misconduct, gross mismanagement, or illegal activity of a person if the information or allegation cannot be corroborated by the Office of Inspector General of Medicaid Services through other documents or evidence, and the records relating to the allegation are not relied upon by the Office of Inspector General of Medicaid Services in preparing a final investigation report or final audit report;

(b) records and audit workpapers to the extent they would disclose the identity of a person who, during the course of an investigation or audit, communicated the existence of any Medicaid fraud, waste, or abuse, or a violation or suspected violation of a law, rule, or regulation adopted under the laws of this state, a political subdivision of the state, or any recognized entity of the United States, if the information was disclosed on the condition that the identity of the person be protected;

(c) before the time that an investigation or audit is completed and the final investigation or final audit report is released, records or drafts circulated to a person who is not an employee or head of a governmental entity for the person's response or information;

(d) records that would disclose an outline or part of any investigation, audit survey plan, or audit program; or

(e) requests for an investigation or audit, if disclosure would risk circumvention of an investigation or audit;

(60) records that reveal methods used by the Office of Inspector General of Medicaid Services, the fraud unit, or the Department of Health and Human Services, to discover Medicaid fraud, waste, or abuse;

(61) information provided to the Department of Health and Human Services or the Division of Professional Licensing under Subsections 58-67-304(3) and (4) and Subsections 58-68-304(3) and (4);

(62) a record described in Section 63G-12-210;

(63) captured plate data that is obtained through an automatic license plate reader system used by a governmental entity as authorized in Section 41-6a-2003;

(64) any record in the custody of the Utah Office for Victims of Crime relating to a

SB0229S02 compared with SB0229S01

victim, including:

(a) a victim's application or request for benefits;

(b) a victim's receipt or denial of benefits; and

(c) any administrative notes or records made or created for the purpose of, or used to, evaluate or communicate a victim's eligibility for or denial of benefits from the Crime Victim Reparations Fund;

(65) an audio or video recording created by a body-worn camera, as that term is defined in Section 77-7a-103, that records sound or images inside a hospital or health care facility as those terms are defined in Section 78B-3-403, inside a clinic of a health care provider, as that term is defined in Section 78B-3-403, or inside a human service program as that term is defined in Section 26B-2-101, except for recordings that:

(a) depict the commission of an alleged crime;

(b) record any encounter between a law enforcement officer and a person that results in death or bodily injury, or includes an instance when an officer fires a weapon;

(c) record any encounter that is the subject of a complaint or a legal proceeding against a law enforcement officer or law enforcement agency;

(d) contain an officer involved critical incident as defined in Subsection 76-2-408(1)(f); or

(e) have been requested for reclassification as a public record by a subject or authorized agent of a subject featured in the recording;

(66) a record pertaining to the search process for a president of an institution of higher education described in Section 53B-2-102, except for application materials for a publicly announced finalist;

(67) an audio recording that is:

(a) produced by an audio recording device that is used in conjunction with a device or piece of equipment designed or intended for resuscitating an individual or for treating an individual with a life-threatening condition;

(b) produced during an emergency event when an individual employed to provide law enforcement, fire protection, paramedic, emergency medical, or other first responder service:

(i) is responding to an individual needing resuscitation or with a life-threatening condition; and

SB0229S02 compared with SB0229S01

(ii) uses a device or piece of equipment designed or intended for resuscitating an individual or for treating an individual with a life-threatening condition; and

(c) intended and used for purposes of training emergency responders how to improve their response to an emergency situation;

(68) records submitted by or prepared in relation to an applicant seeking a recommendation by the Research and General Counsel Subcommittee, the Budget Subcommittee, or the Audit Subcommittee, established under Section 36-12-8, for an employment position with the Legislature;

(69) work papers as defined in Section 31A-2-204;

(70) a record made available to Adult Protective Services or a law enforcement agency under Section 61-1-206;

(71) a record submitted to the Insurance Department in accordance with Section 31A-37-201;

(72) a record described in Section 31A-37-503;

(73) any record created by the Division of Professional Licensing as a result of Subsection 58-37f-304(5) or 58-37f-702(2)(a)(ii);

(74) a record described in Section 72-16-306 that relates to the reporting of an injury involving an amusement ride;

(75) except as provided in Subsection 63G-2-305.5(1), the signature of an individual on a political petition, or on a request to withdraw a signature from a political petition, including a petition or request described in the following titles:

(a) Title 10, Utah Municipal Code;

(b) Title 17, Counties;

(c) Title 17B, Limited Purpose Local Government Entities - Special Districts;

(d) Title 17D, Limited Purpose Local Government Entities - Other Entities; and

(e) Title 20A, Election Code;

(76) except as provided in Subsection 63G-2-305.5(2), the signature of an individual in a voter registration record;

(77) except as provided in Subsection 63G-2-305.5(3), any signature, other than a signature described in Subsection (75) or (76), in the custody of the lieutenant governor or a local political subdivision collected or held under, or in relation to, Title 20A, Election Code;

SB0229S02 compared with SB0229S01

(78) a Form I-918 Supplement B certification as described in Title 77, Chapter 38, Part 5, Victims Guidelines for Prosecutors Act;

(79) a record submitted to the Insurance Department under Section 31A-48-103;

(80) personal information, as defined in Section 63G-26-102, to the extent disclosure is prohibited under Section 63G-26-103;

(81) an image taken of an individual during the process of booking the individual into jail, unless:

(a) the individual is convicted of a criminal offense based upon the conduct for which the individual was incarcerated at the time the image was taken;

(b) a law enforcement agency releases or disseminates the image:

(i) after determining that the individual is a fugitive or an imminent threat to an individual or to public safety and releasing or disseminating the image will assist in apprehending the individual or reducing or eliminating the threat; or

(ii) to a potential witness or other individual with direct knowledge of events relevant to a criminal investigation or criminal proceeding for the purpose of identifying or locating an individual in connection with the criminal investigation or criminal proceeding; or

(c) a judge orders the release or dissemination of the image based on a finding that the release or dissemination is in furtherance of a legitimate law enforcement interest;

(82) a record:

(a) concerning an interstate claim to the use of waters in the Colorado River system;

(b) relating to a judicial proceeding, administrative proceeding, or negotiation with a representative from another state or the federal government as provided in Section 63M-14-205; and

(c) the disclosure of which would:

(i) reveal a legal strategy relating to the state's claim to the use of the water in the Colorado River system;

(ii) harm the ability of the Colorado River Authority of Utah or river commissioner to negotiate the best terms and conditions regarding the use of water in the Colorado River system; or

(iii) give an advantage to another state or to the federal government in negotiations regarding the use of water in the Colorado River system;

SB0229S02 compared with SB0229S01

(83) any part of an application described in Section 63N-16-201 that the Governor's Office of Economic Opportunity determines is nonpublic, confidential information that if disclosed would result in actual economic harm to the applicant, but this Subsection (83) may not be used to restrict access to a record evidencing a final contract or approval decision;

(84) the following records of a drinking water or wastewater facility:

(a) an engineering or architectural drawing of the drinking water or wastewater facility;
and

(b) except as provided in Section 63G-2-106, a record detailing tools or processes the drinking water or wastewater facility uses to secure, or prohibit access to, the records described in Subsection (84)(a);

(85) a statement that an employee of a governmental entity provides to the governmental entity as part of the governmental entity's personnel or administrative investigation into potential misconduct involving the employee if the governmental entity:

(a) requires the statement under threat of employment disciplinary action, including possible termination of employment, for the employee's refusal to provide the statement; and

(b) provides the employee assurance that the statement cannot be used against the employee in any criminal proceeding;

(86) any part of an application for a Utah Fits All Scholarship account described in Section 53F-6-402 or other information identifying a scholarship student as defined in Section 53F-6-401; and

(87) a record:

(a) concerning a claim to the use of waters in the Great Salt Lake;

(b) relating to a judicial proceeding, administrative proceeding, or negotiation with a person concerning the claim, including a representative from another state or the federal government; and

(c) the disclosure of which would:

(i) reveal a legal strategy relating to the state's claim to the use of the water in the Great Salt Lake;

(ii) harm the ability of the Great Salt Lake commissioner to negotiate the best terms and conditions regarding the use of water in the Great Salt Lake; or

(iii) give an advantage to another person including another state or to the federal

SB0229S02 compared with SB0229S01

government in negotiations regarding the use of water in the Great Salt Lake.

Section ~~16~~18. Section **76-7-314** is amended to read:

76-7-314. Violations of abortion laws -- Classifications.

(1) An intentional violation of Section 76-7-307, 76-7-308, 76-7-310, 76-7-310.5, 76-7-311, or 76-7-312 is a felony of the third degree.

(2) A violation of Section 76-7-326 is a felony of the third degree.

(3) A violation of Section 76-7-314.5 is a felony of the second degree.

(4) A violation of any other provision of this part, including Subsections 76-7-305(2)(a) through (c), and (e), is a class A misdemeanor.

(5) The Department of Health and Human Services shall report a physician's violation of any provision of this part to the Physicians Licensing Board, described in Section 58-67-201.

(6) Any person with knowledge of a physician's violation of any provision of this part may report the violation to the Physicians Licensing Board, described in Section 58-67-201.

(7) In addition to the penalties described in this section, the department may take any action described in Section ~~26B-2-208~~ 26B-2-703 against a health care facility if a violation of this chapter occurs at the health care facility.

Section ~~17~~19. Section **80-2-909** is amended to read:

80-2-909. Existing authority for child placement continues.

Any person who, under any law of this state other than this part or the Interstate Compact on the Placement of Children established under Section 80-2-905, has authority to make or assist in making the placement of a child, shall continue to have the ability lawfully to make or assist in making that placement, and the provisions of Sections 26B-2-127, 26B-2-131, 26B-2-132, ~~26B-2-133~~ and 26B-2-708, Subsections 80-2-802(3)(a) and (4) and 80-2-803(1), (2), and (5) through (7), and Title 78B, Chapter 6, Part 1, Utah Adoption Act, continue to apply.

Section ~~18~~20. **Repealer.**

This bill repeals:

Section **26B-2-110, License revocation -- Suspension.**

Section **26B-2-111, Adjudicative proceedings.**

Section **26B-2-112, Violations -- Penalties.**

Section **26B-2-208, Violations -- Denial or revocation of license -- Restricting or**

SB0229S02 compared with SB0229S01

prohibiting new admissions -- Monitor.

Section 26B-2-210, Issuance of new license after revocation -- Restoration.

Section 26B-2-211, License issued to facility in compliance or substantial compliance with part and rules.

Section 26B-2-215, Action by department for injunction.

Section 26B-2-216, Operating facility in violation of part a misdemeanor.

Section 26B-2-409, License violations -- Penalties.

Section 26B-2-410, Offering or providing care in violation of part -- Misdemeanor.

Section ~~{19}~~21. Effective date.

This bill takes effect on May 1, 2024.