

Effective 5/3/2023

Part 1
Human Services Programs and Facilities

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 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); or
 - (B) provides the treatment or services described in Subsection (38)(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 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) on a limited basis if:

- (A) the treatment or services described in Subsection (38)(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); or
 - (II) have a primary purpose of providing the treatment or services described in Subsection (38)(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:
 - (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) "Foster home" means a residence that is licensed or certified by the office for the full-time substitute care of a child.
- (20) "Health benefit plan" means the same as that term is defined in Section 31A-22-634.
- (21) "Health care provider" means the same as that term is defined in Section 78B-3-403.
- (22) "Health insurer" means the same as that term is defined in Section 31A-22-615.5.
- (23)
 - (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) "Indian child" means the same as that term is defined in 25 U.S.C. Sec. 1903.
- (25) "Indian country" means the same as that term is defined in 18 U.S.C. Sec. 1151.
- (26) "Indian tribe" means the same as that term is defined in 25 U.S.C. Sec. 1903.
- (27) "Intermediate secure treatment" means 24-hour specialized residential treatment or care for an individual who:
 - (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) "Licensee" means an individual or a human services program licensed by the office.
- (29) "Local government" means a city, town, metro township, or county.
- (30) "Minor" means child.
- (31) "Office" means the Office of Licensing within the department.
- (32) "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) "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) "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) "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.
- (36)
 - (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) "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)
 - (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 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)
 - (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) "Residential treatment program" means a program or facility that provides:
 - (a) residential treatment; or
 - (b) intermediate secure treatment.
- (41) "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) "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 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) "Substance abuse disorder" or "substance use disorder" mean the same as "substance use disorder" is defined in Section 26B-5-501.
- (44) "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) to persons with:
 - (i) a diagnosed substance use disorder; or
 - (ii) chemical dependency disorder.
- (45) "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;
 - (II) emotional development;
 - (III) behavioral development;
 - (IV) familial development; or
 - (V) social development.
- (46) "Unrelated persons" means persons other than parents, legal guardians, grandparents, brothers, sisters, uncles, or aunts.
- (47) "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)
 - (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)
 - (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;
 - (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.

Amended by Chapter 305, 2023 General Session

26B-2-102 Purpose of licensure.

The purpose of licensing under this part is to permit or authorize a public or private agency to provide defined human services programs within statutory and regulatory guidelines.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-2-103 Office of Licensing -- Appointment -- Qualifications of director.

- (1) There is created the Office of Licensing within the department.
- (2) The office shall be the licensing authority for the department, and is vested with all the powers, duties, and responsibilities described in:
 - (a) this part;
 - (b) Part 2, Health Care Facility Licensing and Inspection; and
 - (c) Part 6, Mammography Quality Assurance.
- (3) The executive director shall appoint the director of the office.
- (4) The director shall have a bachelor's degree from an accredited university or college, be experienced in administration, and be knowledgeable of health and human services licensing.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-2-104 Office responsibilities.

- (1) Subject to the requirements of federal and state law, the office shall:
 - (a) make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to establish:
 - (i) except as provided in Subsection (1)(a)(ii), basic health and safety standards for licensees, that shall be limited to:
 - (A) fire safety;
 - (B) food safety;
 - (C) sanitation;
 - (D) infectious disease control;
 - (E) safety of the:
 - (I) physical facility and grounds; and
 - (II) area and community surrounding the physical facility;
 - (F) transportation safety;
 - (G) emergency preparedness and response;
 - (H) the administration of medical standards and procedures, consistent with the related provisions of this title;
 - (I) staff and client safety and protection;
 - (J) the administration and maintenance of client and service records;
 - (K) staff qualifications and training, including standards for permitting experience to be substituted for education, unless prohibited by law;
 - (L) staff to client ratios;
 - (M) access to firearms; and

- (N) the prevention of abuse, neglect, exploitation, harm, mistreatment, or fraud;
- (ii) basic health and safety standards for therapeutic schools, that shall be limited to:
 - (A) fire safety, except that the standards are limited to those required by law or rule under Title 53, Chapter 7, Part 2, Fire Prevention and Fireworks Act;
 - (B) food safety;
 - (C) sanitation;
 - (D) infectious disease control, except that the standards are limited to:
 - (I) those required by law or rule under this title, or Title 26A, Local Health Authorities; and
 - (II) requiring a separate room for clients who are sick;
 - (E) safety of the physical facility and grounds, except that the standards are limited to those required by law or rule under Title 53, Chapter 7, Part 2, Fire Prevention and Fireworks Act;
 - (F) transportation safety;
 - (G) emergency preparedness and response;
 - (H) access to appropriate medical care, including:
 - (I) subject to the requirements of law, designation of a person who is authorized to dispense medication; and
 - (II) storing, tracking, and securing medication;
 - (I) staff and client safety and protection that permits the school to provide for the direct supervision of clients at all times;
 - (J) the administration and maintenance of client and service records;
 - (K) staff qualifications and training, including standards for permitting experience to be substituted for education, unless prohibited by law;
 - (L) staff to client ratios;
 - (M) access to firearms; and
 - (N) the prevention of abuse, neglect, exploitation, harm, mistreatment, or fraud;
- (iii) procedures and standards for permitting a licensee to:
 - (A) provide in the same facility and under the same conditions as children, residential treatment services to a person 18 years old or older who:
 - (I) begins to reside at the licensee's residential treatment facility before the person's 18th birthday;
 - (II) has resided at the licensee's residential treatment facility continuously since the time described in Subsection (1)(a)(iii)(A)(I);
 - (III) has not completed the course of treatment for which the person began residing at the licensee's residential treatment facility; and
 - (IV) voluntarily consents to complete the course of treatment described in Subsection (1)(a)(iii)(A)(III); or
 - (B)
 - (I) provide residential treatment services to a child who is:
 - (Aa) at least 12 years old or, as approved by the office, younger than 12 years old; and
 - (Bb) under the custody of the department, or one of its divisions; and
 - (II) provide, in the same facility as a child described in Subsection (1)(a)(iii)(B)(I), residential treatment services to a person who is:
 - (Aa) at least 18 years old, but younger than 21 years old; and
 - (Bb) under the custody of the department, or one of its divisions;
- (iv) minimum administration and financial requirements for licensees;
- (v) guidelines for variances from rules established under this Subsection (1);

- (vi) ethical standards, as described in Subsection 78B-6-106(3), and minimum responsibilities of a child-placing agency that provides adoption services and that is licensed under this part;
 - (vii) what constitutes an "outpatient treatment program" for purposes of this part;
 - (viii) a procedure requiring a licensee to provide an insurer the licensee's records related to any services or supplies billed to the insurer, and a procedure allowing the licensee and the insurer to contact the Insurance Department to resolve any disputes;
 - (ix) a protocol for the office to investigate and process complaints about licensees;
 - (x) a procedure for a licensee to:
 - (A) report the use of a restraint or seclusion within one business day after the day on which the use of the restraint or seclusion occurs; and
 - (B) report a critical incident within one business day after the day on which the incident occurs;
 - (xi) guidelines for the policies and procedures described in Sections 26B-2-109 and 26B-2-123;
 - (xii) a procedure for the office to review and approve the policies and procedures described in Sections 26B-2-109 and 26B-2-123; and
 - (xiii) a requirement that each human services program publicly post information that informs an individual how to submit a complaint about a human services program to the office;
 - (b) enforce rules relating to the office;
 - (c) issue licenses in accordance with this part;
 - (d) if the United States Department of State executes an agreement with the office that designates the office to act as an accrediting entity in accordance with the Intercountry Adoption Act of 2000, Pub. L. No. 106-279, accredit one or more agencies and persons to provide intercountry adoption services pursuant to:
 - (i) the Intercountry Adoption Act of 2000, Pub. L. No. 106-279; and
 - (ii) the implementing regulations for the Intercountry Adoption Act of 2000, Pub. L. No. 106-279;
 - (e) make rules to implement the provisions of Subsection (1)(d);
 - (f) conduct surveys and inspections of licensees and facilities in accordance with Section 26B-2-107;
 - (g) collect licensure fees;
 - (h) notify licensees of the name of a person within the department to contact when filing a complaint;
 - (i) investigate complaints regarding any licensee or human services program;
 - (j) have access to all records, correspondence, and financial data required to be maintained by a licensee;
 - (k) have authority to interview any client, family member of a client, employee, or officer of a licensee;
 - (l) have authority to deny, condition, revoke, suspend, or extend any license issued by the department under this part by following the procedures and requirements of Title 63G, Chapter 4, Administrative Procedures Act;
 - (m) electronically post notices of agency action issued to a human services program, with the exception of a foster home, on the office's website, in accordance with Title 63G, Chapter 2, Government Records Access and Management Act; and
 - (n) upon receiving a local government's request under Section 26B-2-118, notify the local government of new human services program license applications, except for foster homes, for human services programs located within the local government's jurisdiction.
- (2) In establishing rules under Subsection (1)(a)(ii)(G), the office shall require a licensee to establish and comply with an emergency response plan that requires clients and staff to:

- (a) immediately report to law enforcement any significant criminal activity, as defined by rule, committed:
 - (i) on the premises where the licensee operates its human services program;
 - (ii) by or against its clients; or
 - (iii) by or against a staff member while the staff member is on duty;
- (b) immediately report to emergency medical services any medical emergency, as defined by rule:
 - (i) on the premises where the licensee operates its human services program;
 - (ii) involving its clients; or
 - (iii) involving a staff member while the staff member is on duty; and
- (c) immediately report other emergencies that occur on the premises where the licensee operates its human services program to the appropriate emergency services agency.

Renumbered and Amended by Chapter 305, 2023 General Session

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
 - (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; 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 human services program is operated.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-2-106 License application -- Classification of information.

- (1) An application for a license under this part shall be made to the office and shall contain information that is necessary to comply with approved rules.
- (2) Information received by the office through reports and inspections shall be classified in accordance with Title 63G, Chapter 2, Government Records Access and Management Act.

Renumbered and Amended by Chapter 305, 2023 General Session

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.
- (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 information from other sources to determine compliance with this part.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-2-108 Adoption of inspections, examinations, and studies.

The office may adopt an inspection, examination, or study conducted by a public or private entity, as identified by rule, to determine whether a licensee has complied with a licensing requirement imposed by virtue of this part.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-2-109 Human services program non-discrimination.

A human services program:

- (1) shall perform an individualized assessment when classifying and placing an individual in programs and living environments; and
- (2) subject to the office's review and approval, shall create policies and procedures that include:
 - (a) a description of what constitutes sex and gender based abuse, discrimination, and harassment;
 - (b) procedures for preventing and reporting abuse, discrimination, and harassment; and
 - (c) procedures for teaching effective and professional communication with individuals of all sexual orientations and genders.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-2-110 License revocation -- Suspension.

- (1) If a license is revoked, the office may not grant a new license unless:

- (a) the human services program provides satisfactory evidence to the office that the conditions upon which revocation was based have been corrected;
 - (b) the human services program is inspected by the office and found to be in compliance with all provisions of this part and applicable rules;
 - (c) at least five years have passed since the day on which the licensee is served with final notice that the license is revoked; and
 - (d) the office determines that the interests of the public will not be jeopardized by granting the license.
- (2) The office may suspend a license for no longer than three years.
- (3) When a license has been suspended, the office may restore, or restore subject to conditions, the suspended license upon a determination that the:
- (a) conditions upon which the suspension was based have been completely or partially corrected; and
 - (b) interests of the public will not be jeopardized by restoration of the license.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-2-111 Adjudicative proceedings.

- (1) Whenever the office has reason to believe that a licensee is in violation of this part or rules made under this part, the office may commence adjudicative proceedings to determine the legal rights of the licensee by serving notice of agency action in accordance with Title 63G, Chapter 4, Administrative Procedures Act.
- (2) A licensee, human services program, or individual may commence adjudicative proceedings, in accordance with Title 63G, Chapter 4, Administrative Procedures Act, regarding all office actions that determine the legal rights, duties, privileges, immunities, or other legal interests of the licensee, human services program, or persons associated with the licensee, including all office actions to grant, deny, place conditions on, revoke, suspend, withdraw, or amend an authority, right, or license under this part.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-2-112 Violations -- Penalties.

- (1) As used in this section, "health care provider" means a person licensed to provide health care services under this part.
- (2) The office may deny, place conditions on, suspend, or revoke a human services license, if the office finds, related to the human services program:
- (a) that there has been a failure to comply with the rules established under this part;
 - (b) evidence of aiding, abetting, or permitting the commission of any illegal act; or
 - (c) evidence of 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.
- (3) The office may restrict or prohibit new admissions to a human services program, if it finds:
- (a) that there has been a failure to comply with rules established under this part;
 - (b) evidence of aiding, abetting, or permitting the commission of any illegal act; or
 - (c) evidence of 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.
- (4)

- (a) The office may assess a fine of up to \$500 per violation against a health care provider that violates Section 31A-26-313.
- (b) The office shall waive the fine described in Subsection (4)(a) if:
 - (i) the health care provider demonstrates to the office that the health care provider mitigated and reversed any damage to the insured caused by the health care provider or third party's violation; or
 - (ii) 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 provider or third party makes a report to a credit bureau or takes an action in violation of Section 31A-26-313.
- (5) If a congregate care program knowingly fails to comply with the provisions of Section 26B-2-124, the office may impose a penalty on the congregate care program 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).
- (6) The office shall make rules for calculating the cost of care described in Subsection (5) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-2-113 Violation -- Criminal penalties.

- (1)
 - (a) A person who owns, establishes, conducts, maintains, manages, or operates a human services program in violation of this part 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; 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) 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; 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) Notwithstanding Subsection (1)(a) and subject to Subsections (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) Subsection (5) 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:
 - (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);
 - (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); and

- (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)
 - (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) is guilty of a class A misdemeanor and shall be assessed a penalty in accordance with Subsection (2).

Renumbered and Amended by Chapter 305, 2023 General Session

26B-2-114 Injunctive relief and other legal procedures.

In addition to, and notwithstanding, any other remedy provided by law the department may, in a 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, management, or operation of a human services program or facility in violation of this part or rules established under this part.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-2-115 Exclusions from chapter.

The provisions of this part do not apply to:

- (1) a facility or program owned or operated by an agency of the United States government;
- (2) a facility or program operated by or under an exclusive contract with the Department of Corrections;
- (3) unless required otherwise by a contract with the department, individual or group counseling by a mental health professional licensed under Title 58, Chapter 60, Mental Health Professional Practice Act;
- (4) a general acute hospital, small health care facility, specialty hospital, nursing care facility, or other health care facility licensed by the department under Part 2, Health Care Facility Licensing and Inspection; or
- (5) a boarding school.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-2-116 Coordination of human services and educational services -- Licensing of programs -- Procedures.

- (1) As used in this section:
 - (a) "Accredited private school" means a private school that is accredited by an accrediting entity recognized by the Utah State Board of Education.
 - (b) "Education entitled children" means children:
 - (i) subject to compulsory education under Section 53G-6-202;
 - (ii) subject to the school attendance requirements of Section 53G-6-203; or
 - (iii) who are eligible for special education services as described in Title 53E, Chapter 7, Part 2, Special Education Program.
- (2) Subject to Subsection (9) or (10), a human services program may not be licensed to serve education entitled children unless the human services program presents an educational service plan that includes evidence:
 - (a) satisfactory to:
 - (i) the office; and
 - (ii)
 - (A) the local school board of the school district in which the human services program will be operated; or
 - (B) the school district superintendent of the school district in which the human services program will be operated; and
 - (b) that children served by the human services program shall receive appropriate educational services satisfying the requirements of applicable law.
- (3) An educational services plan may be accepted if the educational services plan includes:
 - (a) the following information provided by the human services program:
 - (i) the number of children served by the human services program estimated to be enrolled in the local school district;
 - (ii) the ages and grade levels of children served by the human services program estimated to be enrolled in the local school district;
 - (iii) the subjects or hours of the school day for which children served by the human services program are estimated to enroll in the local school district;
 - (iv) the direct contact information for the purposes of taking custody of a child served by the human services program during the school day in case of illness, disciplinary removal by a school, or emergency evacuation of a school; and
 - (v) the method or arrangements for the transportation of children served by the human services program to and from the school; and
 - (b) the following information provided by the school district:
 - (i) enrollment procedures and forms;
 - (ii) documentation required prior to enrollment from each of the child's previous schools of enrollment;
 - (iii) if applicable, a schedule of the costs for tuition and school fees; and
 - (iv) schools and services for which a child served by the human services program may be eligible.
- (4) Subject to Subsection (9) or (10), if a human services program serves any education entitled children whose custodial parents or legal guardians reside outside the state, then the program shall also provide an educational funding plan that includes evidence:
 - (a) satisfactory to:
 - (i) the office; and
 - (ii)

- (A) the local school board of the school district in which the human services program will be operated; or
 - (B) the school district superintendent of the school district in which the human services program will be operated; and
 - (b) that all costs for educational services to be provided to the education entitled children, including tuition, and school fees approved by the local school board, shall be borne by the human services program.
- (5) Subject to Subsection (9) or (10), and in accordance with Subsection (2), the human services program shall obtain and provide the office with a letter:
- (a) from the entity referred to in Subsection (2)(a)(ii):
 - (i) approving the educational service plan referred to in Subsection (3); or
 - (ii)
 - (A) disapproving the educational service plan referred to in Subsection (3); and
 - (B) listing the specific requirements the human services program must meet before approval is granted; and
 - (b) from the entity referred to in Subsection (4)(a)(ii):
 - (i) approving the educational funding plan, referred to in Subsection (4); or
 - (ii)
 - (A) disapproving the educational funding plan, referred to in Subsection (4); and
 - (B) listing the specific requirements the human services program must meet before approval is granted.
- (6) Subject to Subsection (9), failure of a local school board or school district superintendent to respond to a proposed plan within 45 days of receipt of the plan is equivalent to approval of the plan by the local school board or school district superintendent if the human services program provides to the office:
- (a) proof that:
 - (i) the human services program submitted the proposed plan to the local school board or school district superintendent; and
 - (ii) more than 45 days have passed from the day on which the plan was submitted; and
 - (b) an affidavit, on a form produced by the office, stating:
 - (i) the date that the human services program submitted the proposed plan to the local school board or school district superintendent;
 - (ii) that more than 45 days have passed from the day on which the plan was submitted; and
 - (iii) that the local school board or school district superintendent described in Subsection (6)(b)
 - (i) failed to respond to the proposed plan within 45 days from the day on which the plan was submitted.
- (7) If a licensee that is licensed to serve an education entitled child fails to comply with the licensee's approved educational service plan or educational funding plan, then:
- (a) the office may give the licensee notice of intent to revoke the licensee's license; and
 - (b) if the licensee continues its noncompliance for more than 30 days after receipt of the notice described in Subsection (7)(a), the office may revoke the licensee's license.
- (8) If an education entitled child whose custodial parent or legal guardian resides within the state is provided with educational services by a school district other than the school district in which the custodial parent or legal guardian resides, then the funding provisions of Section 53G-6-405 apply.
- (9) A human services program that is an accredited private school:
- (a) for purposes of Subsection (3):

- (i) is only required to submit proof to the office that the accreditation of the private school is current; and
 - (ii) is not required to submit an educational service plan for approval by an entity described in Subsection (2)(a)(ii);
 - (b) for purposes of Subsection (4):
 - (i) is only required to submit proof to the office that all costs for educational services provided to education entitled children will be borne by the human services program; and
 - (ii) is not required to submit an educational funding plan for approval by an entity described in Subsection (4)(a)(ii); and
 - (c) is not required to comply with Subsections (5) and (6).
- (10) Except for Subsection (8), the provisions of this section do not apply to a human services program that is a licensed or certified foster home.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-2-117 Licensing residential treatment programs and recovery residences -- Notification of local government.

- (1)
- (a) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the office shall make rules that establish categories of residential treatment and recovery residence licenses based on differences in the types of residential treatment programs and recovery residences.
 - (b) The categories referred to in Subsection (1)(a) may be based on differences in:
 - (i) services offered;
 - (ii) types of clients served;
 - (iii) risks posed to the community; or
 - (iv) other factors that make regulatory differences advisable.
- (2) Subject to the requirements of federal and state law, and pursuant to the authority granted by Section 26B-2-104, the office shall establish and enforce rules that:
- (a) relate generally to all categories of residential treatment program and recovery residence licenses; and
 - (b) relate to specific categories of residential treatment program and recovery residence licenses on the basis of the regulatory needs, as determined by the office, of residential treatment programs and recovery residences within those specific categories.
- (3)
- (a) Beginning July 1, 2014, the office shall charge an annual licensing fee, set by the office in accordance with the procedures described in Section 63J-1-504, to a recovery residence in an amount that will pay for the cost of the licensing and inspection requirements described in this section and in Section 26B-2-104.
 - (b) The office shall deposit the licensing fees described in this section in the General Fund as a dedicated credit to be used solely to pay for the cost of the licensing and inspection requirements described in this section and in Section 26B-2-104.
- (4) Before submitting an application for a license to operate a residential treatment program, the applicant shall serve notice of its intent to operate a residential treatment program on the governing body of:
- (a) the city in which the residential treatment program will be located; or
 - (b) if the residential treatment program will be located in the unincorporated area of a county, the county in which the residential treatment program will be located.

- (5) The notice described in Subsection (4) shall include the following information relating to the residential treatment program:
- (a) an accurate description of the residential treatment program;
 - (b) the location where the residential treatment program will be operated;
 - (c) the services that will be provided by the residential treatment program;
 - (d) the type of clients that the residential treatment program will serve;
 - (e) the category of license for which the residential treatment program is applying to the office;
 - (f) the name, telephone number, and address of a person that may be contacted to make inquiries about the residential treatment program; and
 - (g) any other information that the office may require by rule.
- (6) When submitting an application for a license to operate a residential treatment program, the applicant shall include with the application:
- (a) a copy of the notice described in Subsection (4); and
 - (b) proof that the applicant served the notice described in Subsection (4) on the governing body described in Subsection (4).

Renumbered and Amended by Chapter 305, 2023 General Session

26B-2-118 Request by local government.

- (1) A local government may request that the office notify the local government of new human services program license applications for human services programs located within the local government's jurisdiction.
- (2) Subsection (1) does not apply to foster homes.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-2-119 Residential support program -- Temporary homeless youth shelter.

In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the office shall make rules that establish age-appropriate and gender-appropriate sleeping quarters in temporary homeless youth shelters, as defined in Section 80-5-102, that provide overnight shelter to minors.

Renumbered and Amended by Chapter 305, 2023 General Session

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;
 - (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;

- (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 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 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.
 - (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;
 - (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 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 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;
 - (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:
 - (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), 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 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;
 - (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 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.

Renumbered and Amended by Chapter 305, 2023 General Session
Amended by Chapter 344, 2023 General Session

26B-2-121 Access to abuse and neglect information.

- (1) As used in this section:
 - (a) "Direct service worker" means the same as that term is defined in Section 26B-6-401.
 - (b) "Personal care attendant" means the same as that term is defined in Section 26B-6-401.
- (2) With respect to a licensee, a direct service worker, or a personal care attendant, the department may access only the Licensing Information System of the Division of Child and Family Services created by Section 80-2-1002 and juvenile court records under Subsection 80-3-404(4), for the purpose of:
 - (a)
 - (i) determining whether a person associated with a licensee, with direct access to children:
 - (A) is listed in the Licensing Information System; or
 - (B) has a substantiated finding by a juvenile court of a severe type of child abuse or neglect under Subsections 80-3-404(1) and (2); and
 - (ii) informing a licensee that a person associated with the licensee:
 - (A) is listed in the Licensing Information System; or

- (B) has a substantiated finding by a juvenile court of a severe type of child abuse or neglect under Subsections 80-3-404(1) and (2);
- (b)
 - (i) determining whether a direct service worker:
 - (A) is listed in the Licensing Information System; or
 - (B) has a substantiated finding by a juvenile court of a severe type of child abuse or neglect under Subsections 80-3-404(1) and (2); and
 - (ii) informing a direct service worker or the direct service worker's employer that the direct service worker:
 - (A) is listed in the Licensing Information System; or
 - (B) has a substantiated finding by a juvenile court of a severe type of child abuse or neglect under Subsections 80-3-404(1) and (2); or
- (c)
 - (i) determining whether a personal care attendant:
 - (A) is listed in the Licensing Information System; or
 - (B) has a substantiated finding by a juvenile court of a severe type of child abuse or neglect under Subsections 80-3-404(1) and (2); and
 - (ii) informing a person described in Subsections 26B-6-101(9)(a)(i) through (iv) that a personal care attendant:
 - (A) is listed in the Licensing Information System; or
 - (B) has a substantiated finding by a juvenile court of a severe type of child abuse or neglect under Subsections 80-3-404(1) and (2).
- (3) Notwithstanding Subsection (2), the department may access the Division of Child and Family Services' Management Information System under Section 80-2-1001:
 - (a) for the purpose of licensing and monitoring foster parents;
 - (b) for the purposes described in Subsection 80-2-1001(5)(b)(iii); and
 - (c) for the purpose described in Section 26B-1-211.
- (4) The department shall receive and process personal identifying information under Subsection 26B-2-120(1) for the purposes described in Subsection (2).
- (5) The department shall adopt rules under Title 63G, Chapter 3, Utah Administrative Rulemaking Act, consistent with this part, defining the circumstances under which a person may have direct access or provide services to children when:
 - (a) the person is listed in the Licensing Information System of the Division of Child and Family Services created by Section 80-2-1002; or
 - (b) juvenile court records show that a court made a substantiated finding under Section 80-3-404, that the person committed a severe type of child abuse or neglect.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-2-122 Access to vulnerable adult abuse and neglect information.

- (1) For purposes of this section:
 - (a) "Direct service worker" means the same as that term is defined in Section 26B-6-401.
 - (b) "Personal care attendant" means the same as that term is defined in Section 26B-6-401.
- (2) With respect to a licensee, a direct service worker, or a personal care attendant, the department may access the database created by Section 26B-6-210 for the purpose of:
 - (a)
 - (i) determining whether a person associated with a licensee, with direct access to vulnerable adults, has a supported or substantiated finding of:

- (A) abuse;
 - (B) neglect; or
 - (C) exploitation; and
- (ii) informing a licensee that a person associated with the licensee has a supported or substantiated finding of:
- (A) abuse;
 - (B) neglect; or
 - (C) exploitation;
- (b)
- (i) determining whether a direct service worker has a supported or substantiated finding of:
- (A) abuse;
 - (B) neglect; or
 - (C) exploitation; and
- (ii) informing a direct service worker or the direct service worker's employer that the direct service worker has a supported or substantiated finding of:
- (A) abuse;
 - (B) neglect; or
 - (C) exploitation; or
- (c)
- (i) determining whether a personal care attendant has a supported or substantiated finding of:
- (A) abuse;
 - (B) neglect; or
 - (C) exploitation; and
- (ii) informing a person described in Subsections 26B-6-401(9)(a)(i) through (iv) that a personal care attendant has a supported or substantiated finding of:
- (A) abuse;
 - (B) neglect; or
 - (C) exploitation.
- (3) The department shall receive and process personal identifying information under Subsection 26B-2-120(1) for the purposes described in Subsection (2).
- (4) The department shall adopt rules under Title 63G, Chapter 3, Utah Administrative Rulemaking Act, consistent with this part and Chapter 6, Part 2, Abuse, Neglect, or Exploitation of a Vulnerable Adult, defining the circumstances under which a person may have direct access or provide services to vulnerable adults when the person is listed in the statewide database of the Division of Aging and Adult Services created by Section 26B-6-210 as having a supported or substantiated finding of abuse, neglect, or exploitation.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-2-123 Congregate care program regulation.

- (1) A congregate care program may not use a cruel, severe, unusual, or unnecessary practice on a child, including:
- (a) 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) 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) inducing pain to obtain compliance;
 - (d) hyperextending joints;

- (e) peer restraints;
 - (f) discipline or punishment that is intended to frighten or humiliate;
 - (g) requiring or forcing the child to take an uncomfortable position, including squatting or bending;
 - (h) 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;
 - (i) spanking, hitting, shaking, or otherwise engaging in aggressive physical contact;
 - (j) denying an essential program service;
 - (k) depriving the child of a meal, water, rest, or opportunity for toileting;
 - (l) denying shelter, clothing, or bedding;
 - (m) withholding personal interaction, emotional response, or stimulation;
 - (n) prohibiting the child from entering the residence;
 - (o) abuse as defined in Section 80-1-102; and
 - (p) neglect as defined in Section 80-1-102.
- (2) Before a congregate care program may use a restraint or seclusion, 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;
 - (ii) describe which staff members are authorized to use a restraint or seclusion;
 - (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;
 - (vi) require documenting the use of a restraint or seclusion;
 - (vii) describe record keeping requirements for records related to the use of a restraint or seclusion;
 - (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:
 - (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.
- (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) 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
 - (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.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-2-124 Congregate care program requirements.

- (1) As used in this section, "disruption plan" means a child specific plan used:
 - (a) when the private-placement child stops receiving services from a congregate care program; and

- (b) for transporting a private-placement child to a parent or guardian or to another congregate care program.
- (2) A congregate care program shall keep the following for a private-placement child whose parent or guardian lives outside the state:
 - (a) regularly updated contact information for the parent or guardian that lives outside the state; and
 - (b) a disruption plan.
- (3) If a private-placement child whose parent or guardian resides outside the state leaves a congregate care program without following the child's disruption plan, the congregate care program shall:
 - (a) notify the parent or guardian, office, and local law enforcement authorities;
 - (b) assist the state in locating the private-placement child; and
 - (c) after the child is located, transport the private-placement child:
 - (i) to a parent or guardian;
 - (ii) back to the congregate care program; or
 - (iii) to another congregate care program.
- (4) This section does not apply to a guardian that is a state or agency.
- (5) The office shall make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, describing:
 - (a) additional mandatory provisions for a disruption plan; and
 - (b) how a congregate care program shall notify the office when a private-placement child begins receiving services.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-2-125 Youth transportation company registration.

- (1) The office shall establish a registration system for youth transportation companies.
- (2) The office shall establish a fee:
 - (a) under Section 63J-1-504 that does not exceed \$500; and
 - (b) that when paid by all registrants generates sufficient revenue to cover or substantially cover the costs for the creation and maintenance of the registration system.
- (3) A youth transportation company shall:
 - (a) register with the office; and
 - (b) provide the office:
 - (i) proof of a business insurance policy that provides at least \$1,000,000 in coverage; and
 - (ii) a valid business license from the state where the youth transportation company is headquartered.
- (4) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the office shall make rules to implement this section.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-2-126 Notification requirement for child-placing agencies that provide foster home services -- Rulemaking authority.

- (1) The office shall require a child-placing agency that provides foster home services to notify a foster parent that if the foster parent signs as the responsible adult for a foster child to receive a driver license under Section 53-3-211:

- (a) the foster parent is jointly and severally liable with the minor for civil compensatory damages caused by the minor when operating a motor vehicle upon a highway as provided under Subsections 53-3-211(2) and (4); and
 - (b) the foster parent may file with the Driver License Division a verified written request that the learner permit or driver license be canceled in accordance with Section 53-3-211 if the foster child no longer resides with the foster parent.
- (2) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the office may make rules establishing the procedures for a child-placing agency to provide the notification required under this section.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-2-127 Child placing licensure requirements -- Prohibited acts -- Consortium.

(1) As used in this section:

- (a)
 - (i) "Advertisement" means any written, oral, or graphic statement or representation made in connection with a solicitation of business.
 - (ii) "Advertisement" includes a statement or representation described in Subsection (1)(a)(i) by a noncable television system, radio, printed brochure, newspaper, leaflet, flyer, circular, billboard, banner, Internet website, social media, or sign.
- (b) "Birth parent" means the same as that term is defined in Section 78B-6-103.
- (c) "Clearly and conspicuously disclose" means the same as that term is defined in Section 13-11a-2.
- (d)
 - (i) "Matching advertisement" means any written, oral, or graphic statement or representation made in connection with a solicitation of business to provide the assistance described in Subsection (3)(a)(i), regardless of whether there is or will be an exchange described in Subsection (3)(a)(ii).
 - (ii) "Matching advertisement" includes a statement or representation described in Subsection (1)(d)(i) by a noncable television system, radio, printed brochure, newspaper, leaflet, flyer, circular, billboard, banner, Internet website, social media, or sign.

- (2)
- (a) Subject to Section 78B-24-205, a person may not engage in child placing, or solicit money or other assistance for child placing, without a valid license issued by the office in accordance with this part.
 - (b) If a child-placing agency's license is suspended or revoked in accordance with this part, the care, control, or custody of any child who is in the care, control, or custody of the child-placing agency shall be transferred to the Division of Child and Family Services.

- (3)
- (a)
 - (i) An attorney, physician, or other person may assist:
 - (A) a birth parent to identify or locate a prospective adoptive parent who is interested in adopting the birth parent's child; or
 - (B) a prospective adoptive parent to identify or locate a child to be adopted.
 - (ii) A payment, charge, fee, reimbursement of expense, or exchange of value of any kind, or promise or agreement to make the same, may not be made for the assistance described in Subsection (3)(a)(i).
 - (b) An attorney, physician, or other person may not:

- (i) issue or cause to be issued to any person a card, sign, or device indicating that the attorney, physician, or other person is available to provide the assistance described in Subsection (3)(a)(i);
- (ii) cause, permit, or allow any sign or marking indicating that the attorney, physician, or other person is available to provide the assistance described in Subsection (3)(a)(i), on or in any building or structure;
- (iii) announce, cause, permit, or allow an announcement indicating that the attorney, physician, or other person is available to provide the assistance described in Subsection (3)(a)(i), to appear in any newspaper, magazine, directory, on radio or television, or an Internet website relating to a business;
- (iv) announce, cause, permit, or allow a matching advertisement; or
- (v) announce, cause, permit, or allow an advertisement that indicates or implies the attorney, physician, or other person is available to provide the assistance described in Subsection (3)(a)(i) as part of, or related to, other adoption-related services by using any of the following terms:
 - (A) "comprehensive";
 - (B) "complete";
 - (C) "one-stop";
 - (D) "all-inclusive"; or
 - (E) any other term similar to the terms described in Subsections (3)(b)(v)(A) through (D).
- (c) An attorney, physician, or other person who is not licensed by the office shall clearly and conspicuously disclose in any print media advertisement or written contract regarding adoption services or adoption-related services that the attorney, physician, or other person is not licensed to provide adoption services by the office.
- (4) A person who intentionally or knowingly violates Subsection (2) or (3) is guilty of a third degree felony.
- (5) This section does not preclude payment of fees for medical, legal, or other lawful services rendered in connection with the care of a mother, delivery and care of a child, or lawful adoption proceedings, except that a child-placing agency may not:
 - (a) charge or accept payment for services that were not actually rendered; or
 - (b) charge or accept payment from a prospective adoptive parent for medical or hospital expenses that were paid for by public funds.
- (6) In accordance with federal law, only an agent or employee of the Division of Child and Family Services or of a licensed child-placing agency may certify to United States Citizenship and Immigration Services that a family meets the preadoption requirements of the Division of Child and Family Services.
- (7) A licensed child-placing agency or an attorney practicing in this state may not place a child for adoption, either temporarily or permanently, with an individual who would not be qualified for adoptive placement under Sections 78B-6-102, 78B-6-117, and 78B-6-137.
- (8)
 - (a) A child-placing agency, as that term is defined in Section 63G-20-102, that serves a resident of the state who is a birth mother or a prospective adoptive parent must be a member of a statewide consortium of licensed child-placing agencies that, together, serve all birth mothers lawfully seeking to place a child for adoption and all qualified prospective adoptive parents.
 - (b) The department shall receive and investigate any complaint against a consortium of licensed child-placing agencies.

Renumbered and Amended by Chapter 305, 2023 General Session

Amended by Chapter 466, 2023 General Session

26B-2-128 Numerical limit of foster children in a foster home.

- (1) Except as provided in Subsection (2) or (3), no more than:
 - (a) four foster children may reside in the foster home of a licensed foster parent; or
 - (b) three foster children may reside in the foster home of a certified foster parent.
- (2) When placing a sibling group into a foster home, the limits in Subsection (1) may be exceeded if:
 - (a) no other foster children reside in the foster home;
 - (b) only one other foster child resides in the foster home at the time of a sibling group's placement into the foster home; or
 - (c) a sibling group re-enters foster care and is placed into the foster home where the sibling group previously resided.
- (3) When placing a child into a foster home, the limits in Subsection (1) may be exceeded:
 - (a) to place a child into a foster home where a sibling of the child currently resides; or
 - (b) to place a child in a foster home where the child previously resided.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-2-129 Licensure of tribal foster homes.

- (1) The Indian Child Welfare Act, 25 U.S.C. Secs. 1901-1963, provides that Indian tribes may develop and implement tribal foster home standards.
- (2) The office shall give full faith and credit to an Indian tribe's certification or licensure of a tribal foster home for an Indian child and siblings of that Indian child, both on and off Indian country, according to standards developed and approved by the Indian tribe, pursuant to the Indian Child Welfare Act, 25 U.S.C. Secs. 1901-1963.
- (3) If the Indian tribe has not developed standards, the office shall license tribal foster homes pursuant to this part.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-2-130 Foster care by a child's relative.

- (1) As used in this section:
 - (a) "Custody" means the same as that term is defined in Section 80-2-102.
 - (b) "Relative" means the same as that term is defined in Section 80-3-102.
 - (c) "Temporary custody" means the same as that term is defined in Section 80-2-102.
- (2)
 - (a) In accordance with state and federal law, the division shall provide for licensure of a child's relative for foster or substitute care, when the child is in the temporary custody or custody of the Division of Child and Family Services.
 - (b) If it is determined that, under federal law, allowance is made for an approval process requiring less than full foster parent licensure proceedings for a child's relative, the division shall establish an approval process to accomplish that purpose.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-2-131 Child-placing agency responsibility for educational services -- Payment of costs.

- (1) A child-placing agency shall ensure that the requirements of Subsections 53G-6-202(2) and 53G-6-203(1) are met through the provision of appropriate educational services for all children served in the state by the child-placing agency.
- (2)
 - (a) If the educational services described in Subsection (1) are provided through a public school and the custodial parent or legal guardian resides outside the state, the child-placing agency shall pay all educational costs required under Sections 53G-6-306 and 53G-7-503.
 - (b) If the educational services described in Subsection (1) are provided through a public school and the custodial parent or legal guardian resides within the state, then the child-placing agency shall pay all educational costs required under Section 53G-7-503.
- (3) A child in the custody or under the care of a Utah state agency is exempt from the payment of fees required under Subsection (2).
- (4) A public school shall admit any child living within the public school's boundaries who is under the supervision of a child-placing agency upon payment by the child-placing agency of the tuition and fees required under Subsection (2).

Renumbered and Amended by Chapter 305, 2023 General Session

26B-2-132 Child-placing agency proof of authority in a proceeding.

A child-placing agency is not required to present the child-placing agency's license issued under this part, the child placing agency's certificate of incorporation, or proof of the child-placing agency's authority to consent to adoption, as proof of the child-placing agency's authority in any proceeding in which the child-placing agency is an interested party, unless the court or a party to the proceeding requests that the child-placing agency or the child-placing agency's representative establish proof of authority.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-2-133 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
 - (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.

Renumbered and Amended by Chapter 305, 2023 General Session

26B-2-134 Obligations of persons providing assessment and treatment services.

- (1) As used in this section:
- (a) "Assessor" means a licensee that provides an assessment as ordered by a court in a criminal case.
 - (b) "Criminal case" means a case in which a court of justice described in Section 78A-1-101 has ordered an individual to comply with certain terms and conditions of probation related to a criminal offense.
 - (c) "Licensee" means the same as that term is defined in Section 26B-2-101.
- (2)
- (a) Except as provided in Subsection (4), an assessor that determines that the individual requires specific treatment shall:
 - (i) provide the individual a list of all available licensees that provide the treatment; and
 - (ii) permit the individual to select a licensee described in Subsection (2)(a)(i) with which to complete the treatment.
 - (b) The list described in Subsection (2)(a)(i) may include the assessor, if the assessor is a licensee that provides the required treatment described in Subsection (2)(a).
- (3) Except as provided in Subsection (4), an assessor or other licensee may not solicit defendants as clients on any property that operates as a court of justice as described in Section 78A-1-101.
- (4) An assessor that performs services for a problem-solving court approved by the Judicial Council is not required to comply with this section.

Enacted by Chapter 257, 2023 General Session