

FOSTER CARE AMENDMENTS

2024 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Stephanie Gricius

Senate Sponsor: Wayne A. Harper

LONG TITLE

General Description:

This bill addresses licensing related to foster care.

Highlighted Provisions:

This bill:

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

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

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

28 **26B-2-104**, as renumbered and amended by Laws of Utah 2023, Chapter 305
29 **26B-2-105**, as renumbered and amended by Laws of Utah 2023, Chapter 305
30 **26B-2-107**, as renumbered and amended by Laws of Utah 2023, Chapter 305
31 **26B-2-120**, as last amended by Laws of Utah 2023, Chapter 344 and renumbered and
32 amended by Laws of Utah 2023, Chapter 305
33 **80-2-301**, as last amended by Laws of Utah 2023, Chapter 280

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

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

37 **26B-2-101 . Definitions.**

38 As used in this part:

- 39 (1) "Adoption services" means the same as that term is defined in Section 80-2-801.
- 40 (2) "Adult day care" means nonresidential care and supervision:
- 41 (a) for three or more adults for at least four but less than 24 hours a day; and
- 42 (b) that meets the needs of functionally impaired adults through a comprehensive
- 43 program that provides a variety of health, social, recreational, and related support
- 44 services in a protective setting.
- 45 (3) "Applicant" means a person that applies for an initial license or a license renewal under
- 46 this part.
- 47 (4) (a) "Associated with the licensee" means that an individual is:
- 48 (i) affiliated with a licensee as an owner, director, member of the governing body,
- 49 employee, agent, provider of care, department contractor, or volunteer; or
- 50 (ii) applying to become affiliated with a licensee in a capacity described in
- 51 Subsection (4)(a)(i).
- 52 (b) "Associated with the licensee" does not include:
- 53 (i) service on the following bodies, unless that service includes direct access to a
- 54 child or a vulnerable adult:
- 55 (A) a local mental health authority described in Section 17-43-301;
- 56 (B) a local substance abuse authority described in Section 17-43-201; or
- 57 (C) a board of an organization operating under a contract to provide mental health
- 58 or substance use programs, or services for the local mental health authority or
- 59 substance abuse authority; or
- 60 (ii) a guest or visitor whose access to a child or a vulnerable adult is directly
- 61 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:

- 96 (i) an outdoor youth program;
97 (ii) a residential support program;
98 (iii) a residential treatment program; or
99 (iv) a therapeutic school.
- 100 (b) "Congregate care program" does not include a human services program that:
101 (i) is licensed to serve adults; and
102 (ii) is approved by the office to service a child for a limited time.
- 103 (11) "Day treatment" means specialized treatment that is provided to:
104 (a) a client less than 24 hours a day; and
105 (b) four or more persons who:
106 (i) are unrelated to the owner or provider; and
107 (ii) have emotional, psychological, developmental, physical, or behavioral
108 dysfunctions, impairments, or chemical dependencies.
- 109 (12) "Department contractor" means an individual who:
110 (a) provides services under a contract with the department; and
111 (b) due to the contract with the department, has or will likely have direct access to a
112 child or vulnerable adult.
- 113 (13) "Direct access" means that an individual has, or likely will have:
114 (a) contact with or access to a child or vulnerable adult that provides the individual with
115 an opportunity for personal communication or touch; or
116 (b) an opportunity to view medical, financial, or other confidential personal identifying
117 information of the child, the child's parents or legal guardians, or the vulnerable adult.
- 118 (14) "Directly supervised" means that an individual is being supervised under the
119 uninterrupted visual and auditory surveillance of another individual who has a current
120 background screening approval issued by the office.
- 121 (15) "Director" means the director of the office.
- 122 (16) "Domestic violence" means the same as that term is defined in Section 77-36-1.
- 123 (17) "Domestic violence treatment program" means a nonresidential program designed to
124 provide psychological treatment and educational services to perpetrators and victims of
125 domestic violence.
- 126 (18) "Elder adult" means a person 65 years old or older.
- 127 (19) "Foster home" means a residence that is licensed or certified by the office for the
128 full-time substitute care of a child.
- 129 (20) "Health benefit plan" means the same as that term is defined in Section 31A-22-634.

- 130 (21) "Health care provider" means the same as that term is defined in Section 78B-3-403.
- 131 (22) "Health insurer" means the same as that term is defined in Section 31A-22-615.5.
- 132 (23) (a) "Human services program" means:
- 133 (i) a foster home;
- 134 (ii) a therapeutic school;
- 135 (iii) a youth program;
- 136 (iv) an outdoor youth program;
- 137 (v) a residential treatment program;
- 138 (vi) a residential support program;
- 139 (vii) a resource family home;
- 140 (viii) a recovery residence; or
- 141 (ix) a facility or program that provides:
- 142 (A) adult day care;
- 143 (B) day treatment;
- 144 (C) outpatient treatment;
- 145 (D) domestic violence treatment;
- 146 (E) child-placing services;
- 147 (F) social detoxification; or
- 148 (G) any other human services that are required by contract with the department to
- 149 be licensed with the department.
- 150 (b) "Human services program" does not include:
- 151 (i) a boarding school; [or]
- 152 (ii) a residential, vocational and life skills program, as defined in Section 13-53-102[.];
- 153 or
- 154 (iii) a short-term relief care provider.
- 155 (24) "Indian child" means the same as that term is defined in 25 U.S.C. Sec. 1903.
- 156 (25) "Indian country" means the same as that term is defined in 18 U.S.C. Sec. 1151.
- 157 (26) "Indian tribe" means the same as that term is defined in 25 U.S.C. Sec. 1903.
- 158 (27) "Intermediate secure treatment" means 24-hour specialized residential treatment or
- 159 care for an individual who:
- 160 (a) cannot live independently or in a less restrictive environment; and
- 161 (b) requires, without the individual's consent or control, the use of locked doors to care
- 162 for the individual.
- 163 (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

- 198 substance abuse disorders live together to encourage continued sobriety; or
199 (v) (A) receives public funding; or
200 (B) is run as a business venture, either for-profit or not-for-profit.
- 201 (b) "Recovery residence" does not mean:
202 (i) a residential treatment program;
203 (ii) residential support program; or
204 (iii) a home, residence, or facility, in which:
205 (A) residents, by a majority vote of the residents, establish, implement, and
206 enforce policies governing the living environment, including the manner in
207 which applications for residence are approved and the manner in which
208 residents are expelled;
209 (B) residents equitably share rent and housing-related expenses; and
210 (C) a landlord, owner, or operator does not receive compensation, other than fair
211 market rental income, for establishing, implementing, or enforcing policies
212 governing the living environment.
- 213 (37) "Regular business hours" means:
214 (a) the hours during which services of any kind are provided to a client; or
215 (b) the hours during which a client is present at the facility of a licensee.
- 216 (38) (a) "Residential support program" means a program that arranges for or provides
217 the necessities of life as a protective service to individuals or families who have a
218 disability or who are experiencing a dislocation or emergency that prevents them
219 from providing these services for themselves or their families.
- 220 (b) "Residential support program" includes a program that provides a supervised living
221 environment for individuals with dysfunctions or impairments that are:
222 (i) emotional;
223 (ii) psychological;
224 (iii) developmental; or
225 (iv) behavioral.
- 226 (c) Treatment is not a necessary component of a residential support program.
- 227 (d) "Residential support program" does not include:
228 (i) a recovery residence; or
229 (ii) a program that provides residential services that are performed:
230 (A) exclusively under contract with the department and provided to individuals
231 through the Division of Services for People with Disabilities; or

- 232 (B) in a facility that serves fewer than four individuals.
- 233 (39) (a) "Residential treatment" means a 24-hour group living environment for four or
234 more individuals unrelated to the owner or provider that offers room or board and
235 specialized treatment, behavior modification, rehabilitation, discipline, emotional
236 growth, or habilitation services for persons with emotional, psychological,
237 developmental, or behavioral dysfunctions, impairments, or chemical dependencies.
- 238 (b) "Residential treatment" does not include a:
- 239 (i) boarding school;
- 240 (ii) foster home; or
- 241 (iii) recovery residence.
- 242 (40) "Residential treatment program" means a program or facility that provides:
- 243 (a) residential treatment; or
- 244 (b) intermediate secure treatment.
- 245 (41) "Seclusion" means the involuntary confinement of an individual in a room or an area:
- 246 (a) away from the individual's peers; and
- 247 (b) in a manner that physically prevents the individual from leaving the room or area.
- 248 (42) "Short-term relief care provider" means an individual who:
- 249 (a) provides short-term and temporary relief care to a foster parent:
- 250 (i) for less than six consecutive nights; and
- 251 (ii) in the short-term relief care provider's home;
- 252 (b) is an immediate family member or relative, as those terms are defined in Section
- 253 80-3-102, of the foster parent;
- 254 (c) is direct access qualified, as that term is defined in Section 26B-2-120;
- 255 (d) has been approved to provide short-term relief care by the department;
- 256 (e) is not reimbursed by the department for the temporary relief care provided; and
- 257 (f) is not an immediate family member or relative, as those terms are defined in Section
- 258 80-3-102, of the foster child.
- 259 [(42)] (43) "Social detoxification" means short-term residential services for persons who are
260 experiencing or have recently experienced drug or alcohol intoxication, that are provided
261 outside of a health care facility licensed under Part 2, Health Care Facility Licensing and
262 Inspection, and that include:
- 263 (a) room and board for persons who are unrelated to the owner or manager of the facility;
- 264 (b) specialized rehabilitation to acquire sobriety; and
- 265 (c) aftercare services.

266 ~~[(43)]~~ (44) "Substance abuse disorder" or "substance use disorder" mean the same as
267 "substance use disorder" is defined in Section 26B-5-501.

268 ~~[(44)]~~ (45) "Substance abuse treatment program" or "substance use disorder treatment
269 program" means a program:
270 (a) designed to provide:
271 (i) specialized drug or alcohol treatment;
272 (ii) rehabilitation; or
273 (iii) habilitation services; and
274 (b) that provides the treatment or services described in Subsection ~~[(44)(a)]~~ (45)(a) to
275 persons with:
276 (i) a diagnosed substance use disorder; or
277 (ii) chemical dependency disorder.

278 ~~[(45)]~~ (46) "Therapeutic school" means a residential group living facility:
279 (a) for four or more individuals that are not related to:
280 (i) the owner of the facility; or
281 (ii) the primary service provider of the facility;
282 (b) that serves students who have a history of failing to function:
283 (i) at home;
284 (ii) in a public school; or
285 (iii) in a nonresidential private school; and
286 (c) that offers:
287 (i) room and board; and
288 (ii) an academic education integrated with:
289 (A) specialized structure and supervision; or
290 (B) services or treatment related to:
291 (I) a disability;
292 (II) emotional development;
293 (III) behavioral development;
294 (IV) familial development; or
295 (V) social development.

296 ~~[(46)]~~ (47) "Unrelated persons" means persons other than parents, legal guardians,
297 grandparents, brothers, sisters, uncles, or aunts.

298 ~~[(47)]~~ (48) "Vulnerable adult" means an elder adult or an adult who has a temporary or
299 permanent mental or physical impairment that substantially affects the person's ability to:

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

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

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

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

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

(b) "Youth transportation company" does not include:

- (i) a relative of the child;
- (ii) a state agency; or
- (iii) a congregate care program's employee who transports the child from the congregate care program that employs the employee and returns the child to the same congregate care program.

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

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:

- 334 (A) fire safety;
335 (B) food safety;
336 (C) sanitation;
337 (D) infectious disease control;
338 (E) safety of the:
339 (I) physical facility and grounds; and
340 (II) area and community surrounding the physical facility;
341 (F) transportation safety;
342 (G) emergency preparedness and response;
343 (H) the administration of medical standards and procedures, consistent with the
344 related provisions of this title;
345 (I) staff and client safety and protection;
346 (J) the administration and maintenance of client and service records;
347 (K) staff qualifications and training, including standards for permitting experience
348 to be substituted for education, unless prohibited by law;
349 (L) staff to client ratios;
350 (M) access to firearms; and
351 (N) the prevention of abuse, neglect, exploitation, harm, mistreatment, or fraud;
352 (ii) basic health and safety standards for therapeutic schools, that shall be limited to:
353 (A) fire safety, except that the standards are limited to those required by law or
354 rule under Title 53, Chapter 7, Part 2, Fire Prevention and Fireworks Act;
355 (B) food safety;
356 (C) sanitation;
357 (D) infectious disease control, except that the standards are limited to:
358 (I) those required by law or rule under this title, or Title 26A, Local Health
359 Authorities; and
360 (II) requiring a separate room for clients who are sick;
361 (E) safety of the physical facility and grounds, except that the standards are
362 limited to those required by law or rule under Title 53, Chapter 7, Part 2, Fire
363 Prevention and Fireworks Act;
364 (F) transportation safety;
365 (G) emergency preparedness and response;
366 (H) access to appropriate medical care, including:
367 (I) subject to the requirements of law, designation of a person who is

- 368 authorized to dispense medication; and
- 369 (II) storing, tracking, and securing medication;
- 370 (I) staff and client safety and protection that permits the school to provide for the
- 371 direct supervision of clients at all times;
- 372 (J) the administration and maintenance of client and service records;
- 373 (K) staff qualifications and training, including standards for permitting experience
- 374 to be substituted for education, unless prohibited by law;
- 375 (L) staff to client ratios;
- 376 (M) access to firearms; and
- 377 (N) the prevention of abuse, neglect, exploitation, harm, mistreatment, or fraud;
- 378 (iii) procedures and standards for permitting a licensee to:
- 379 (A) provide in the same facility and under the same conditions as children,
- 380 residential treatment services to a person 18 years old or older who:
- 381 (I) begins to reside at the licensee's residential treatment facility before the
- 382 person's 18th birthday;
- 383 (II) has resided at the licensee's residential treatment facility continuously since
- 384 the time described in Subsection (1)(a)(iii)(A)(I);
- 385 (III) has not completed the course of treatment for which the person began
- 386 residing at the licensee's residential treatment facility; and
- 387 (IV) voluntarily consents to complete the course of treatment described in
- 388 Subsection (1)(a)(iii)(A)(III); or
- 389 (B) (I) provide residential treatment services to a child who is:
- 390 (Aa) at least 12 years old or, as approved by the office, younger than 12
- 391 years old; and
- 392 (Bb) under the custody of the department, or one of its divisions; and
- 393 (II) provide, in the same facility as a child described in Subsection
- 394 (1)(a)(iii)(B)(I), residential treatment services to a person who is:
- 395 (Aa) at least 18 years old, but younger than 21 years old; and
- 396 (Bb) under the custody of the department, or one of its divisions;
- 397 (iv) minimum administration and financial requirements for licensees;
- 398 (v) guidelines for variances from rules established under this Subsection (1);
- 399 (vi) ethical standards, as described in Subsection 78B-6-106(3), and minimum
- 400 responsibilities of a child-placing agency that provides adoption services and that
- 401 is licensed under this part;

- 402 (vii) what constitutes an "outpatient treatment program" for purposes of this part;
- 403 (viii) a procedure requiring a licensee to provide an insurer the licensee's records
- 404 related to any services or supplies billed to the insurer, and a procedure allowing
- 405 the licensee and the insurer to contact the Insurance Department to resolve any
- 406 disputes;
- 407 (ix) a protocol for the office to investigate and process complaints about licensees;
- 408 (x) a procedure for a licensee to:
- 409 (A) report the use of a restraint or seclusion within one business day after the day
- 410 on which the use of the restraint or seclusion occurs; and
- 411 (B) report a critical incident within one business day after the day on which the
- 412 incident occurs;
- 413 (xi) guidelines for the policies and procedures described in Sections 26B-2-109 and
- 414 26B-2-123;
- 415 (xii) a procedure for the office to review and approve the policies and procedures
- 416 described in Sections 26B-2-109 and 26B-2-123; and
- 417 (xiii) a requirement that each human services program publicly post information that
- 418 informs an individual how to submit a complaint about a human services program
- 419 to the office;
- 420 (b) enforce rules relating to the office;
- 421 (c) issue licenses in accordance with this part;
- 422 (d) if the United States Department of State executes an agreement with the office that
- 423 designates the office to act as an accrediting entity in accordance with the
- 424 Intercountry Adoption Act of 2000, Pub. L. No. 106-279, accredit one or more
- 425 agencies and persons to provide intercountry adoption services pursuant to:
- 426 (i) the Intercountry Adoption Act of 2000, Pub. L. No. 106-279; and
- 427 (ii) the implementing regulations for the Intercountry Adoption Act of 2000, Pub. L.
- 428 No. 106-279;
- 429 (e) make rules to implement the provisions of Subsection (1)(d);
- 430 (f) conduct surveys and inspections of licensees and facilities in accordance with Section
- 431 26B-2-107;
- 432 (g) collect licensure fees;
- 433 (h) notify licensees of the name of a person within the department to contact when filing
- 434 a complaint;
- 435 (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) cooperate with the Division of Child and Family Services to condition, revoke, or suspend the license of a foster home when a child welfare caseworker from the Division of Child and Family Services identifies a safety concern with the foster home;
- ~~[(m)]~~ (n) 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)]~~ (o) 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.

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

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

- (1) Except as provided in Section 26B-2-115, an individual, agency, firm, corporation, association, or governmental unit acting severally or jointly with any other individual, agency, firm, corporation, association, or governmental unit may not establish, conduct, or maintain a human services program in this state without a valid and current license issued by and under the authority of the office as provided by this part and the rules under the authority of this part.
- (2) (a) For purposes of this Subsection (2), "member" means a person or entity that is associated with another person or entity:
- (i) as a member;
 - (ii) as a partner;
 - (iii) as a shareholder; or
 - (iv) as a person or entity involved in the ownership or management of a human services program owned or managed by the other person or entity.
- (b) A license issued under this part may not be assigned or transferred.
- (c) An application for a license under this part shall be treated as an application for reinstatement of a revoked license if:
- (i) (A) the person or entity applying for the license had a license revoked under this part; and
 - (B) the revoked license described in Subsection (2)(c)(i)(A) is not reinstated before the application described in this Subsection (2)(c) is made; or
 - (ii) a member of an entity applying for the license:
 - (A) (I) had a license revoked under this part; and
 - (II) the revoked license described in Subsection (2)(c)(ii)(A)(I) is not reinstated before the application described in this Subsection (2)(c) is made; or
 - (B) (I) was a member of an entity that had a license revoked under this part at any time before the license was revoked; and
 - (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]~~ Subsections (4)(c) and (d), 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;

- 504 (ii) voluntarily returned to the office by the licensee; or
505 (iii) extended by the office.
- 506 (b) A license shall be renewed upon application and payment of the applicable fee,
507 unless the office finds that the licensee:
- 508 (i) is not in compliance with the:
- 509 (A) provisions of this part; or
510 (B) rules made under this part;
- 511 (ii) has engaged in a pattern of noncompliance with the:
- 512 (A) provisions of this part; or
513 (B) rules made under this part;
- 514 (iii) has engaged in conduct that is grounds for denying a license under Section
515 26B-2-112; or
- 516 (iv) has engaged in conduct that poses a substantial risk of harm to any person.
- 517 (c) The office may issue a renewal license that expires at midnight on the last day of the
518 same month the license was issued, two years following the date of issuance, if:
- 519 (i) the licensee has maintained a human services license for at least 24 months before
520 the day on which the licensee applies for the renewal; and
- 521 (ii) the licensee has not violated this part or a rule made under this part.
- 522 (d) (i) For a foster home that has been licensed for fewer than two years, a foster
523 home license issued on or after May 1, 2023, expires at midnight on the last day of
524 the same month the license was issued, one year following the date of issuance.
- 525 (ii) For a foster home that has been licensed for two or more years, a foster home
526 license issued on or after May 1, 2023, expires at midnight on the last day of the
527 same month the license was issued, three years following the date of issuance:
- 528 (A) unless the license is placed on conditions, suspended, or revoked by the office,
529 or voluntarily returned to the office by the licensee; and
- 530 (B) if the licensee has not violated this part or a rule made under this part.
- 531 (iii) A foster home licensee shall complete an annual background screening in
532 compliance with the requirements of Section 26B-2-120.
- 533 (5) Any licensee that is in operation at the time rules are made in accordance with this part
534 shall be given a reasonable time for compliance as determined by the rule.
- 535 (6) (a) A license for a human services program issued under this section shall apply to a
536 specific human services program site.
- 537 (b) A human services program shall obtain a separate license for each site where the

human services program is operated.

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

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

26B-2-107 . Administrative inspections.

- (1) As used in this section:

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

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

(i) a loss or gain of employment;

(ii) a change in marital status;

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

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

- [~~(1)~~] (2) (a) Subject to [~~Subsection (1)(b)~~] Subsections (2)(b) and (3), 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)~~] (2)(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)(b).

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

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

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

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

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

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

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

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

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

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

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

~~[(2)]~~ (4) Before conducting an inspection under ~~[Subsection (1)]~~ Subsection (2) or (3), 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)]~~ (5) In conducting an inspection under ~~[Subsection (1)]~~ Subsection (2) or (3), the office may, after meeting the requirements of Subsection ~~[(2)]~~ (4):

(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)]~~ (6) An inspection conducted under Subsection ~~[(1)]~~ (2) shall be during regular business hours and may be announced or unannounced.

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

~~[(6)]~~ (8) 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.

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

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

(1) As used in this section:

- (a) (i) "Applicant" means, notwithstanding Section 26B-2-101:
- (A) an individual who applies for an initial license or certification or a license or certification renewal under this part;
 - (B) an individual who is associated with a licensee and has or will likely have direct access to a child or a vulnerable adult;
 - (C) an individual who provides respite care to a foster parent or an adoptive parent on more than one occasion;
 - (D) a department contractor;
 - (E) an individual who transports a child for a youth transportation company;
 - (F) a guardian submitting an application on behalf of an individual, other than the child or vulnerable adult who is receiving the service, if the individual is 12 years old or older and resides in a home, that is licensed or certified by the office; ~~or~~
 - (G) a guardian submitting an application on behalf of an individual, other than the child or vulnerable adult who is receiving the service, if the individual is 12 years old or older and is a person described in Subsection (1)(a)(i)(A), (B), (C), or (D)~~;~~ ;
 - (H) a foster home licensee that submits an application for an annual background screening as required by Subsection 26B-2-105(4)(d)(iii); or
 - (I) a short-term relief care provider.
- (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:

- 708 (A) the applicant; and
- 709 (B) any adult living in the applicant's home;
- 710 (v) for an applicant described in Subsection (1)(a)(i)(F), search the Division of Child
- 711 and Family Services' Management Information System described in Section
- 712 80-2-1001;
- 713 (vi) search the Division of Aging and Adult Services' vulnerable adult abuse, neglect,
- 714 or exploitation database described in Section 26B-6-210;
- 715 (vii) search the juvenile court records for substantiated findings of severe child abuse
- 716 or neglect described in Section 80-3-404; and
- 717 (viii) search the juvenile court arrest, adjudication, and disposition records, as
- 718 provided under Section 78A-6-209;
- 719 (b) shall conduct a background check of an applicant for an initial background check
- 720 upon submission of the information described in Subsection (2);
- 721 (c) may conduct all or portions of a background check of an applicant, as provided by
- 722 rule, made by the office in accordance with Title 63G, Chapter 3, Utah
- 723 Administrative Rulemaking Act:
- 724 (i) for an annual renewal; or
- 725 (ii) when the office determines that reasonable cause exists;
- 726 (d) may submit an applicant's personal identifying information, including fingerprints, to
- 727 the bureau for checking, retaining, and monitoring of state and national criminal
- 728 background databases and for notifying the office of new criminal activity associated
- 729 with the applicant;
- 730 (e) shall track the status of an applicant under this section to ensure that the applicant is
- 731 not required to duplicate the submission of the applicant's fingerprints if the applicant
- 732 applies for:
- 733 (i) more than one license;
- 734 (ii) direct access to a child or a vulnerable adult in more than one human services
- 735 program; or
- 736 (iii) direct access to a child or a vulnerable adult under a contract with the department;
- 737 (f) shall track the status of each individual with direct access to a child or a vulnerable
- 738 adult and notify the bureau within 90 days after the day on which the license expires
- 739 or the individual's direct access to a child or a vulnerable adult ceases;
- 740 (g) shall adopt measures to strictly limit access to personal identifying information
- 741 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);

- 844 (i) has a listing in the Division of Child and Family Services' Licensing Information
845 System described in Section 80-2-1002 that occurred no more than 15 years before
846 the date on which the applicant submits the information described in Subsection (2)
847 and no criminal findings or non-criminal findings dated after the date of the listing;
- 848 (j) has a listing in the Division of Aging and Adult Services' vulnerable adult abuse,
849 neglect, or exploitation database described in Section 26B-6-210 that occurred no
850 more than 15 years before the date on which the applicant submits the information
851 described in Subsection (2) and no criminal findings or non-criminal findings dated
852 after the date of the listing;
- 853 (k) has a substantiated finding of severe child abuse or neglect under Section 80-3-404
854 or 80-3-504 that occurred no more than 15 years before the date on which the
855 applicant submits the information described in Subsection (2) and no criminal
856 findings or non-criminal findings dated after the date of the finding;
- 857 (l) (i) is seeking a position:
- 858 (A) as a peer support provider;
- 859 (B) as a mental health professional; or
- 860 (C) in a program that serves only adults with a primary mental health diagnosis,
861 with or without a co-occurring substance use disorder; and
- 862 (ii) within three years before the day on which the applicant submits the information
863 described in Subsection (2):
- 864 (A) has a felony or misdemeanor charge or conviction;
- 865 (B) has a listing in the Division of Child and Family Services' Licensing
866 Information System described in Section 80-2-1002;
- 867 (C) has a listing in the Division of Aging and Adult Services' vulnerable adult
868 abuse, neglect, or exploitation database described in Section 26B-6-210; or
- 869 (D) has a substantiated finding of severe child abuse or neglect under Section
870 80-3-404 or 80-3-504;
- 871 (m) (i) (A) is seeking a position in a congregate care program;
- 872 (B) is seeking to become a prospective foster or adoptive parent; or
- 873 (C) is an applicant described in Subsection (1)(a)(i)(F); and
- 874 (ii) (A) has an infraction conviction for conduct that constitutes an offense or
875 violation described in Subsection (5)(a)(i)(A) or (B);
- 876 (B) has a listing in the Division of Child and Family Services' Licensing
877 Information System described in Section 80-2-1002;

- 878 (C) has a listing in the Division of Aging and Adult Services' vulnerable adult
879 abuse, neglect, or exploitation database described in Section 26B-6-210;
- 880 (D) has a substantiated finding of severe child abuse or neglect under Section
881 80-3-404 or 80-3-504; or
- 882 (E) has a listing on the registry check described in Subsection (13)(a) as having a
883 substantiated or supported finding of a severe type of child abuse or neglect as
884 defined in Section 80-1-102; or
- 885 (n) is seeking to become a prospective foster or adoptive parent and has, or has an adult
886 living with the applicant who has, a conviction, finding, or listing described in
887 Subsection (6)(m)(ii).
- 888 (7) (a) The comprehensive review shall include an examination of:
- 889 (i) the date of the offense or incident;
- 890 (ii) the nature and seriousness of the offense or incident;
- 891 (iii) the circumstances under which the offense or incident occurred;
- 892 (iv) the age of the perpetrator when the offense or incident occurred;
- 893 (v) whether the offense or incident was an isolated or repeated incident;
- 894 (vi) whether the offense or incident directly relates to abuse of a child or vulnerable
895 adult, including:
- 896 (A) actual or threatened, nonaccidental physical, mental, or financial harm;
- 897 (B) sexual abuse;
- 898 (C) sexual exploitation; or
- 899 (D) negligent treatment;
- 900 (vii) any evidence provided by the applicant of rehabilitation, counseling, psychiatric
901 treatment received, or additional academic or vocational schooling completed; and
- 902 (viii) the applicant's risk of harm to clientele in the program or in the capacity for
903 which the applicant is applying.
- 904 (b) At the conclusion of the comprehensive review, the office shall deny an application
905 to an applicant if the office finds:
- 906 (i) that approval would likely create a risk of harm to a child or a vulnerable adult; or
- 907 (ii) an individual is prohibited from having direct access to a child or vulnerable adult
908 by court order.
- 909 (8) The office shall approve an application to an applicant who is not denied under this
910 section.
- 911 (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

- 1014 (V) domestic violence, as described in Section 77-36-1; or
- 1015 (ii) an offense committed outside the state that, if committed in the state, would
- 1016 constitute a violation of an offense described in Subsection (13)(c)(i).
- 1017 (d) Notwithstanding Subsections (5) through (10), the office shall deny a license or
- 1018 license renewal to an individual seeking a position in a congregate care program or a
- 1019 prospective foster or adoptive parent if, within the five years immediately preceding
- 1020 the day on which the individual's application or license would otherwise be approved,
- 1021 the individual was convicted of a felony involving conduct that constitutes a violation
- 1022 of any of the following:
- 1023 (i) aggravated assault, as described in Section 76-5-103;
- 1024 (ii) aggravated assault by a prisoner, as described in Section 76-5-103.5;
- 1025 (iii) mayhem, as described in Section 76-5-105;
- 1026 (iv) an offense described in Title 58, Chapter 37, Utah Controlled Substances Act;
- 1027 (v) an offense described in Title 58, Chapter 37a, Utah Drug Paraphernalia Act;
- 1028 (vi) an offense described in Title 58, Chapter 37b, Imitation Controlled Substances
- 1029 Act;
- 1030 (vii) an offense described in Title 58, Chapter 37c, Utah Controlled Substance
- 1031 Precursor Act; or
- 1032 (viii) an offense described in Title 58, Chapter 37d, Clandestine Drug Lab Act.
- 1033 (e) In addition to the circumstances described in Subsection (6), the office shall conduct
- 1034 the comprehensive review of an applicant's background check under this section if
- 1035 the registry check described in Subsection (13)(a) indicates that the individual is
- 1036 listed in a child abuse and neglect registry of another state as having a substantiated
- 1037 or supported finding of a severe type of child abuse or neglect as defined in Section
- 1038 80-1-102.
- 1039 (14) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
- 1040 office may make rules, consistent with this part, to:
- 1041 (a) establish procedures for, and information to be examined in, the comprehensive
- 1042 review described in Subsections (6) and (7); and
- 1043 (b) determine whether to consider an offense or incident that occurred while an
- 1044 individual was in the custody of the Division of Child and Family Services or the
- 1045 Division of Juvenile Justice Services for purposes of approval or denial of an
- 1046 application for a prospective foster or adoptive parent.
- 1047 Section 6. Section **80-2-301** is amended to read:

1048 **80-2-301 . Division responsibilities.**

- 1049 (1) The division is the child, youth, and family services authority of the state.
- 1050 (2) The division shall:
- 1051 (a) administer services to minors and families, including:
- 1052 (i) child welfare services;
- 1053 (ii) domestic violence services; and
- 1054 (iii) all other responsibilities that the Legislature or the executive director of the
- 1055 department may assign to the division;
- 1056 (b) provide the following services:
- 1057 (i) financial and other assistance to an individual adopting a child with special needs
- 1058 under Sections 80-2-806 through 80-2-809, not to exceed the amount the division
- 1059 would provide for the child as a legal ward of the state;
- 1060 (ii) non-custodial and in-home services in accordance with Section 80-2-306,
- 1061 including:
- 1062 (A) services designed to prevent family break-up; and
- 1063 (B) family preservation services;
- 1064 (iii) reunification services to families whose children are in substitute care in
- 1065 accordance with this chapter, Chapter 2a, Removal and Protective Custody of a
- 1066 Child, and Chapter 3, Abuse, Neglect, and Dependency Proceedings;
- 1067 (iv) protective supervision of a family, upon court order, in an effort to eliminate
- 1068 abuse or neglect of a child in that family;
- 1069 (v) shelter care in accordance with this chapter, Chapter 2a, Removal and Protective
- 1070 Custody of a Child, and Chapter 3, Abuse, Neglect, and Dependency Proceedings;
- 1071 (vi) domestic violence services, in accordance with the requirements of federal law;
- 1072 (vii) protective services to victims of domestic violence and the victims' children, in
- 1073 accordance with this chapter, Chapter 2a, Removal and Protective Custody of a
- 1074 Child, and Chapter 3, Abuse, Neglect, and Dependency Proceedings;
- 1075 (viii) substitute care for dependent, abused, and neglected children;
- 1076 (ix) services for minors who are victims of human trafficking or human smuggling,
- 1077 as described in Sections 76-5-308 through 76-5-310.1, or who have engaged in
- 1078 prostitution or sexual solicitation, as defined in Sections 76-10-1302 and
- 1079 76-10-1313; and
- 1080 (x) training for staff and providers involved in the administration and delivery of
- 1081 services offered by the division in accordance with this chapter and Chapter 2a,

- 1082 Removal and Protective Custody of a Child;
- 1083 (c) establish standards for all:
- 1084 (i) contract providers of out-of-home care for minors and families;
- 1085 (ii) facilities that provide substitute care for dependent, abused, or neglected children
- 1086 placed in the custody of the division; and
- 1087 (iii) direct or contract providers of domestic violence services described in
- 1088 Subsection (2)(b)(vi);
- 1089 (d) have authority to:
- 1090 (i) contract with a private, nonprofit organization to recruit and train foster care
- 1091 families and child welfare volunteers in accordance with Section 80-2-405; ~~and~~
- 1092 (ii) approve facilities that meet the standards established under Subsection (2)(c) to
- 1093 provide substitute care for dependent, abused, or neglected children placed in the
- 1094 custody of the division; and
- 1095 (iii) approve an individual to provide short-term relief care to a foster parent if the
- 1096 individual:
- 1097 (A) provides the relief care for less than six consecutive nights;
- 1098 (B) provides the relief care in the short-term relief care provider's home;
- 1099 (C) is direct access qualified, as that term is defined in Section 26B-2-120; and
- 1100 (D) is an immediate family member or relative, as those terms are defined in
- 1101 Section 80-3-102, of the foster parent;
- 1102 (e) cooperate with the federal government in the administration of child welfare and
- 1103 domestic violence programs and other human service activities assigned by the
- 1104 department;
- 1105 (f) in accordance with Subsection (5)(a), promote and enforce state and federal laws
- 1106 enacted for the protection of abused, neglected, or dependent children, in accordance
- 1107 with this chapter and Chapter 2a, Removal and Protective Custody of a Child, unless
- 1108 administration is expressly vested in another division or department of the state;
- 1109 (g) cooperate with the Workforce Development Division within the Department of
- 1110 Workforce Services in meeting the social and economic needs of an individual who is
- 1111 eligible for public assistance;
- 1112 (h) compile relevant information, statistics, and reports on child and family service
- 1113 matters in the state;
- 1114 (i) prepare and submit to the department, the governor, and the Legislature reports of the
- 1115 operation and administration of the division in accordance with the requirements of

- 1116 Sections 80-2-1102 and 80-2-1103;
- 1117 (j) within appropriations from the Legislature, provide or contract for a variety of
- 1118 domestic violence services and treatment methods;
- 1119 (k) enter into contracts for programs designed to reduce the occurrence or recurrence of
- 1120 abuse and neglect in accordance with Section 80-2-503;
- 1121 (l) seek reimbursement of funds the division expends on behalf of a child in the
- 1122 protective custody, temporary custody, or custody of the division, from the child's
- 1123 parent or guardian in accordance with an order for child support under Section
- 1124 78A-6-356;
- 1125 (m) ensure regular, periodic publication, including electronic publication, regarding the
- 1126 number of children in the custody of the division who:
- 1127 (i) have a permanency goal of adoption; or
- 1128 (ii) have a final plan of termination of parental rights, under Section 80-3-409, and
- 1129 promote adoption of the children;
- 1130 (n) subject to Subsections (5) and (7), refer an individual receiving services from the
- 1131 division to the local substance abuse authority or other private or public resource for
- 1132 a court-ordered drug screening test;
- 1133 (o) report before November 30, 2020, and every third year thereafter, to the Social
- 1134 Services Appropriations Subcommittee regarding:
- 1135 (i) the daily reimbursement rate that is provided to licensed foster parents based on
- 1136 level of care;
- 1137 (ii) the amount of money spent on daily reimbursements for licensed foster parents
- 1138 during the previous fiscal year; and
- 1139 (iii) any recommended changes to the division's budget to support the daily
- 1140 reimbursement rates described in Subsection (2)(o)(i); [and]
- 1141 (p) when a division child welfare caseworker identifies a safety concern with the foster
- 1142 home, cooperate with the Office of Licensing and make a recommendation to the
- 1143 Office of Licensing concerning whether the foster home's license should be placed on
- 1144 conditions, suspended, or revoked; and
- 1145 [~~(p)~~] (q) perform other duties and functions required by law.
- 1146 (3) (a) The division may provide, directly or through contract, services that include the
- 1147 following:
- 1148 (i) adoptions;
- 1149 (ii) day-care services;

- 1150 (iii) out-of-home placements for minors;
1151 (iv) health-related services;
1152 (v) homemaking services;
1153 (vi) home management services;
1154 (vii) protective services for minors;
1155 (viii) transportation services; or
1156 (ix) domestic violence services.
- 1157 (b) The division shall monitor services provided directly by the division or through
1158 contract to ensure compliance with applicable law and rules made in accordance with
1159 Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
- 1160 (c) (i) Except as provided in Subsection (3)(c)(ii), if the division provides a service
1161 through a private contract, the division shall post the name of the service provider
1162 on the division's website.
1163 (ii) Subsection (3)(c)(i) does not apply to a foster parent placement.
- 1164 (4) (a) The division may:
1165 (i) receive gifts, grants, devises, and donations;
1166 (ii) encourage merchants and service providers to:
1167 (A) donate goods or services; or
1168 (B) provide goods or services at a nominal price or below cost;
1169 (iii) distribute goods to applicants or consumers of division services free or for a
1170 nominal charge and tax free; and
1171 (iv) appeal to the public for funds to meet needs of applicants or consumers of
1172 division services that are not otherwise provided by law, including Sub-for-Santa
1173 programs, recreational programs for minors, and requests for household
1174 appliances and home repairs.
- 1175 (b) If requested by the donor and subject to state and federal law, the division shall use a
1176 gift, grant, devise, donation, or proceeds from the gift, grant, devise, or donation for
1177 the purpose requested by the donor.
- 1178 (5) (a) In carrying out the requirements of Subsection (2)(f), the division shall:
1179 (i) cooperate with the juvenile courts, the Division of Juvenile Justice Services, and
1180 with all public and private licensed child welfare agencies and institutions to
1181 develop and administer a broad range of services and support;
1182 (ii) take the initiative in all matters involving the protection of abused or neglected
1183 children, if adequate provisions have not been made or are not likely to be made;

1184 and
1185 (iii) make expenditures necessary for the care and protection of the children described
1186 in Subsection (5)(a)(ii), within the division's budget.

1187 (b) If an individual is referred to a local substance abuse authority or other private or
1188 public resource for court-ordered drug screening under Subsection (2)(n), the court
1189 shall order the individual to pay all costs of the tests unless:

1190 (i) the cost of the drug screening is specifically funded or provided for by other
1191 federal or state programs;

1192 (ii) the individual is a participant in a drug court; or

1193 (iii) the court finds that the individual is an indigent individual.

1194 (6) Except to the extent provided by rules made in accordance with Title 63G, Chapter 3,
1195 Utah Administrative Rulemaking Act, the division is not required to investigate
1196 domestic violence in the presence of a child, as described in Section 76-5-114.

1197 (7) (a) Except as provided in Subsection (7)(b), the division may not:

1198 (i) require a parent who has a child in the custody of the division to pay for some or
1199 all of the cost of any drug testing the parent is required to undergo; or

1200 (ii) refer an individual who is receiving services from the division for drug testing by
1201 means of a hair, fingernail, or saliva test that is administered to detect the presence
1202 of drugs.

1203 (b) Notwithstanding Subsection (7)(a)(ii), the division may refer an individual who is
1204 receiving services from the division for drug testing by means of a saliva test if:

1205 (i) the individual consents to drug testing by means of a saliva test; or

1206 (ii) the court, based on a finding that a saliva test is necessary in the circumstances,
1207 orders the individual to complete drug testing by means of a saliva test.

1208 Section 7. **Effective date.**

1209 This bill takes effect on May 1, 2024.