

REGULATION OF CHILD CARE PROGRAMS

2014 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Gregory H. Hughes

Senate Sponsor: _____

LONG TITLE

General Description:

This bill modifies the Utah Child Care Licensing Act by amending provisions for regulation of child care licensing.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ creates the Child Care Center Licensing Committee to regulate and make rules for center based child care;
- ▶ provides for duties and powers of the Child Care Center Licensing Committee;
- ▶ provides for appointment and membership of the Child Care Center Licensing Committee;
- ▶ changes the name of the Child Care Licensing Advisory Committee to the Residential Child Care Licensing Advisory Committee to advise the department of residential child care; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:



28 AMENDS:

29 **26-1-7**, as last amended by Laws of Utah 2003, Chapter 246

30 **26-39-102**, as last amended by Laws of Utah 2008, Chapter 111

31 **26-39-201**, as renumbered and amended by Laws of Utah 2008, Chapter 111

32 **26-39-202**, as repealed and reenacted by Laws of Utah 2010, Chapter 286

33 **26-39-301**, as renumbered and amended by Laws of Utah 2008, Chapter 111

34 ENACTS:

35 **26-39-200**, Utah Code Annotated 1953

36 **26-39-203**, Utah Code Annotated 1953



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

39 Section 1. Section **26-1-7** is amended to read:

40 **26-1-7. Committees within department.**

41 (1) There are created within the department the following committees:

42 (a) Health Facility Committee;

43 (b) State Emergency Medical Services Committee;

44 (c) Health Data Committee; [~~and~~]

45 (d) Utah Health Care Workforce Financial Assistance Program Advisory Committee[-];

46 (e) Residential Child Care Licensing Advisory Committee; and

47 (f) Child Care Center Licensing Committee.

48 (2) The department shall:

49 (a) review all committees and advisory groups in existence before July 1, 2003 that are
50 not listed in Subsection (1) or Section **26-1-7.5**, and not required by state or federal law; and

51 (b) beginning no later than July 1, 2003:

52 (i) consolidate those advisory groups and committees with other committees or
53 advisory groups as appropriate to create greater efficiencies and budgetary savings for the
54 department; and

55 (ii) create in writing, time-limited and subject-limited duties for the advisory groups or
56 committees as necessary to carry out the responsibilities of the department.

57 Section 2. Section **26-39-102** is amended to read:

58 **26-39-102. Definitions.**

59 As used in this chapter:

60 (1) "Advisory committee" means the Residential Child Care Licensing Advisory
61 Committee, created in Section 26-1-7.

62 ~~[(1)]~~ (2) "Child care" means continuous care and supervision of five or more qualifying
63 children, that is:

- 64 (a) in lieu of care ordinarily provided by a parent in the parent's home;
- 65 (b) for less than 24 hours a day; and
- 66 (c) for direct or indirect compensation.

67 ~~[(2)]~~ (3) "Child care program" means a child care facility or program operated by a
68 person who holds a license or certificate issued in accordance with this chapter.

69 ~~[(3) "Committee" means the Child Care Licensing Advisory Committee, created in~~
70 ~~Section 26-39-201.]~~

71 (4) (a) "Center based child care" means, except as provided in Subsection (4)(b), a
72 child care program licensed under this chapter.

73 (b) "Center based child care" does not include:

- 74 (i) a residential child care provider certified under Section 26-39-402; or
- 75 (ii) a facility or program exempt under Section 26-39-403.

76 (5) "Licensing committee" means the Child Care Center Licensing Committee created
77 in Section 26-1-7.

78 ~~[(4)]~~ (6) "Public school" means:

79 (a) a school, including a charter school, that:

- 80 (i) is directly funded at public expense; and
- 81 (ii) provides education to qualifying children for any grade from first grade through
82 twelfth grade; or

83 (b) a school, including a charter school, that provides:

- 84 (i) preschool or kindergarten to qualifying children, regardless of whether the preschool
85 or kindergarten is funded at public expense; and
- 86 (ii) education to qualifying children for any grade from first grade through twelfth
87 grade, if each grade, from first grade to twelfth grade, that is provided at the school, is directly
88 funded at public expense.

89 ~~[(5)]~~ (7) "Qualifying child" means a person who is:

- 90 (a) (i) under the age of 13; or
 91 (ii) under the age of 18, if the person has a disability; and
 92 (b) a child of:
 93 (i) a person other than the person providing care to the child;
 94 (ii) a licensed or certified residential child care provider, if the child is under the age of
 95 four; or
 96 (iii) an employee or owner of a licensed child care center, if the child is under the age
 97 of four.

98 ~~[(6)]~~ (8) "Residential child care" means child care provided in the home of a provider.
 99 Section 3. Section **26-39-200** is enacted to read:

100 **Part 2. Child Care Licensing Committees**

101 **26-39-200. Child Care Center Licensing Committee.**

102 (1) (a) The Child Care Center Licensing Committee created in Section 26-1-7 shall be
 103 comprised of ~~five~~ **seven** members appointed by the governor and approved by the
 103a Senate **in accordance with this subsection** .

104 (b) ~~Four~~ **The governor shall appoint three** members ~~who~~ :
 105 (i) have at least five years' experience as an owner in or director of a for
 105a **profit or not-for-profit** center based child care
 106 **business** ; and

107 (ii) hold an active license as a child care center from the department to provide center
 108 based child care.

109 (c) ~~One member shall be a member of the general public~~ (i) **The governor shall**
 109a **appoint one member to represent each of the following:**

109b **(A) a parent with a child in center based child care;**

109c **(B) a child development expert from the state system of higher education;**

109d **(C) a pediatrician licensed in the state; and**

109e **(D) an architect licensed in the state.**

109f **(ii) Except as provided in Subsection (1)(c)(i)(B), a member appointed under Subsection**
 109g **(1)(c)(i) may not be an employee of the state or a political subdivision of the state** .

110 (d) At least one member described in Subsection (1)(b) shall at the time of appointment
 111 reside in a county that is not a county of the first class.

112 (2) (a) Except as required by Subsection (2)(b), as terms of current members expire, the
 113 governor shall appoint each new member or reappointed member to a four-year term ending
 114 June 30.

115 (b) Notwithstanding the requirements of Subsection (2)(a), the governor shall, at the
116 time of appointment or reappointment, adjust the length of terms to ensure that the terms of
117 members are staggered so that approximately half of the licensing committee is appointed
118 every two years.

119 (c) Upon the expiration of the term of a member of the licensing committee, the
120 member shall continue to hold office until a successor is appointed and qualified.

121 (d) A member may not serve more than two consecutive terms.

122 (e) Members of the licensing committee shall annually select one member to serve as
 123 chair who shall establish the agenda for licensing committee meetings.

124 (3) When a vacancy occurs in the membership for any reason, the governor, with the
 125 consent of the Senate, shall appoint a replacement for the unexpired term.

126 (4) (a) The licensing committee shall meet at least every two months.

127 (b) The director may call additional meetings:

128 (i) at the director's discretion;

129 (ii) upon the request of the chair; or

130 (iii) upon the written request of three or more members.

131 (5) Three members of the licensing committee constitute a quorum for the transaction
 132 of business.

133 Section 4. Section **26-39-201** is amended to read:

134 **26-39-201. Residential Child Care Licensing Advisory Committee.**

135 (1) (a) [~~There is established the~~] The Residential Child Care Licensing Advisory
 136 Committee [to] created in Section 26-1-7 shall advise the department on rules made by the
 137 department under this chapter for residential child care.

138 (b) The advisory committee shall be composed of the following [~~13~~] nine members
 139 who shall be appointed by the executive director:

140 (i) two child care consumers;

141 (ii) [~~two~~] three licensed residential child care providers;

142 (iii) one certified residential child care provider;

143 [~~(iv) five representatives of licensed child care center programs;~~]

144 [~~(v)~~] (iv) one individual with expertise in early childhood development; and

145 [~~(vi)~~] (v) two health care providers.

146 (2) (a) Members of the advisory committee shall be appointed for four-year terms,
 147 except for those members who have been appointed to complete an unexpired term.

148 (b) Appointments and reappointments may be staggered so that 1/4 of the advisory
 149 committee changes each year.

150 (c) The advisory committee shall annually elect a chairman from its membership.

151 (3) The advisory committee shall meet at least quarterly, or more frequently as

152 determined by the executive director, the chairman, or three or more members of the
153 committee.

154 (4) Five [Seven] members constitute a quorum and a vote of the majority of the
155 members present constitutes an action of the advisory committee.

156 Section 5. Section **26-39-202** is amended to read:

157 **26-39-202. Members serve without pay -- Reimbursement for expenses.**

158 A member of the Residential Child Care Licencing Advisory Committee and the Child
159 Care Center Licensing Committee may not receive compensation or benefits for the member's
160 service, but may receive per diem and travel expenses [in accordance with] as allowed in:

161 (1) Section 63A-3-106;

162 (2) Section 63A-3-107; and

163 (3) rules made by the Division of Finance [pursuant] according to Sections 63A-3-106
164 and 63A-3-107.

165 Section 6. Section **26-39-203** is enacted to read:

166 **26-39-203. Duties of the Child Care Center Licensing Committee.**

167 (1) The licensing committee shall:

168 (a) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,
169 make rules that govern center based child care as necessary to protect qualifying children's
170 common needs for a safe and healthy environment, to provide for:

171 (i) adequate facilities and equipment; and

172 (ii) competent caregivers considering the age of the children and the type of program
173 offered by the licensee;

174 (b) make rules necessary to carry out the purposes of this chapter that govern center
175 based child care, in the following areas:

176 (i) requirements for applications, the application process, and compliance with other
177 applicable statutes and rules;

178 (ii) documentation and policies and procedures that providers shall have in place in
179 order to be licensed, in accordance with Subsection (1);

180 (iii) categories, classifications, and duration of initial and ongoing licenses;

181 (iv) changes of ownership or name, changes in licensure status, and changes in
182 operational status;

- 183 (v) license expiration and renewal, contents, and posting requirements;
184 (vi) procedures for inspections, complaint resolution, disciplinary actions, and other
185 procedural measures to encourage and assure compliance with statute and rule; and
186 (vii) guidelines necessary to assure consistency and appropriateness in the regulation
187 and discipline of licensees;
188 (c) advise the department on the administration of a matter affecting center based child
189 care;
190 (d) advise and assist the department in conducting center based child care provider
191 seminars; and
192 (e) perform other duties as provided under Section [26-39-301](#).

193 (2) The licensing committee may not enforce the rules adopted under this section. The
194 department shall enforce the rules adopted under this section in accordance with Section
195 [26-39-301](#).

196 Section 7. Section **26-39-301** is amended to read:

197 **26-39-301. Duties of the department -- Enforcement of chapter -- Licensing**
198 **committee requirements.**

199 (1) With regard to [~~child care programs~~] residential child care licensed or certified
200 under this chapter, the department may:

201 (a) make and enforce rules to implement this chapter and, as necessary to protect
202 qualifying children's common needs for a safe and healthy environment, to provide for:

203 (i) adequate facilities and equipment; and

204 (ii) competent caregivers considering the age of the children and the type of program
205 offered by the licensee;

206 (b) make and enforce rules necessary to carry out the purposes of this chapter, in the
207 following areas:

208 (i) requirements for applications, the application process, and compliance with other
209 applicable statutes and rules;

210 (ii) documentation and policies and procedures that providers shall have in place in
211 order to be licensed, in accordance with Subsection (1)(a);

212 (iii) categories, classifications, and duration of initial and ongoing licenses;

213 (iv) changes of ownership or name, changes in licensure status, and changes in

214 operational status;

215 (v) license expiration and renewal, contents, and posting requirements;

216 (vi) procedures for inspections, complaint resolution, disciplinary actions, and other
217 procedural measures to encourage and assure compliance with statute and rule; and

218 (vii) guidelines necessary to assure consistency and appropriateness in the regulation
219 and discipline of licensees; and

220 (c) set and collect licensing and other fees in accordance with Section 26-1-6.

221 (2) The department shall enforce the rules established by the licensing committee for
222 center based child care.

223 ~~[(2)]~~ (3) Rules made under this chapter by the department or the licensing committee
224 shall be made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

225 ~~[(3)]~~ (4) (a) The licensing committee and the department may not regulate educational
226 curricula, academic methods, or the educational philosophy or approach of the provider.

227 (b) The licensing committee and the department shall allow for a broad range of
228 educational training and academic background in certification or qualification of child day care
229 directors.

230 ~~[(4)]~~ (5) In licensing and regulating child care programs, the licensing committee and
231 the department shall reasonably balance the benefits and burdens of each regulation and, by
232 rule, provide for a range of licensure, depending upon the needs and different levels and types
233 of child care provided.

234 ~~[(5)]~~ (6) Notwithstanding the definition of "qualifying child" in Section 26-39-102, the
235 licensing committee and the department shall count children through age 12 and children with
236 disabilities through age 18 toward the minimum square footage requirement for indoor and
237 outdoor areas, including the child of:

238 (a) a licensed residential child care provider; or

239 (b) an owner or employee of a licensed child care center.

240 ~~[(6)]~~ (7) Notwithstanding Subsection (1)(a)(i), the licensing committee and the
241 department may not exclude floor space used for furniture, fixtures, or equipment from the
242 minimum square footage requirement for indoor and outdoor areas if the furniture, fixture, or
243 equipment is used:

244 (a) by qualifying children;

245 (b) for the care of qualifying children; or

246 (c) to store classroom materials.

247 [~~7~~] (8) (a) A child care center constructed prior to January 1, 2004, and licensed and
248 operated as a child care center continuously since January 1, 2004, is exempt from the licensing
249 committee's and the department's group size restrictions, if the child to caregiver ratios are
250 maintained, and adequate square footage is maintained for specific classrooms.

251 (b) An exemption granted under Subsection (7)(a) is transferrable to subsequent
252 licensed operators at the center if a licensed child care center is continuously maintained at the
253 center.

254 [~~8~~] (9) The licensing committee and the department shall develop, by rule, a five-year
255 phased-in compliance schedule for playground equipment safety standards.

256 [~~9~~] (10) Nothing in this chapter may be interpreted to grant a municipality or county
257 the authority to license or certify a child care program.

Legislative Review Note
as of 2-11-14 12:33 PM

Office of Legislative Research and General Counsel