

Senator Michael K. McKell proposes the following substitute bill:

HUMAN SERVICES PROGRAM AMENDMENTS

2021 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Michael K. McKell

House Sponsor: _____

LONG TITLE

General Description:

This bill modifies provisions related to human services programs.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ provides incident reporting requirements for persons licensed by the Office of Licensing;
- ▶ requires the Office of Licensing to review certain policies and procedures established by a human services program;
- ▶ requires a human services program to publicly post the Office of Licensing's contact information;
- ▶ requires the Office of Licensing to inspect each congregate care program multiple times a year;
- ▶ describes when a congregate care program may use a restraint or seclusion;
- ▶ requires a congregate care program to maintain suicide prevention policies;
- ▶ prohibits a human services program from engaging in sex and gender based discrimination; and
- ▶ makes technical changes.



26 **Money Appropriated in this Bill:**

27 None

28 **Other Special Clauses:**

29 None

30 **Utah Code Sections Affected:**

31 AMENDS:

32 **62A-2-101**, as last amended by Laws of Utah 2019, Chapters 136, 193 and last
33 amended by Coordination Clause, Laws of Utah 2019, Chapter 193

34 **62A-2-106**, as last amended by Laws of Utah 2017, Chapter 148

35 **62A-2-118**, as last amended by Laws of Utah 2005, Chapter 188

36 **62A-2-120**, as last amended by Laws of Utah 2020, Chapters 176, 225, 250 and last
37 amended by Coordination Clause, Laws of Utah 2020, Chapter 225

38 ENACTS:

39 **62A-2-123**, Utah Code Annotated 1953

40 **62A-2-124**, Utah Code Annotated 1953



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

43 Section 1. Section **62A-2-101** is amended to read:

44 **62A-2-101. Definitions.**

45 As used in this chapter:

46 (1) "Adult day care" means nonresidential care and supervision:

47 (a) for three or more adults for at least four but less than 24 hours a day; and

48 (b) that meets the needs of functionally impaired adults through a comprehensive
49 program that provides a variety of health, social, recreational, and related support services in a
50 protective setting.

51 (2) "Applicant" means a person who applies for an initial license or a license renewal
52 under this chapter.

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

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

56 (ii) applying to become affiliated with a licensee in a capacity described in Subsection

- 57 (3)(a)(i).
- 58 (b) "Associated with the licensee" does not include:
- 59 (i) service on the following bodies, unless that service includes direct access to a child
- 60 or a vulnerable adult:
- 61 (A) a local mental health authority described in Section 17-43-301;
- 62 (B) a local substance abuse authority described in Section 17-43-201; or
- 63 (C) a board of an organization operating under a contract to provide mental health or
- 64 substance abuse programs, or services for the local mental health authority or substance abuse
- 65 authority; or
- 66 (ii) a guest or visitor whose access to a child or a vulnerable adult is directly supervised
- 67 at all times.
- 68 (4) (a) "Boarding school" means a private school that:
- 69 (i) uses a regionally accredited education program;
- 70 (ii) provides a residence to the school's students:
- 71 (A) for the purpose of enabling the school's students to attend classes at the school; and
- 72 (B) as an ancillary service to educating the students at the school;
- 73 (iii) has the primary purpose of providing the school's students with an education, as
- 74 defined in Subsection (4)(b)(i); and
- 75 (iv) (A) does not provide the treatment or services described in Subsection ~~[(33)(a)]~~
- 76 (36)(a); or
- 77 (B) provides the treatment or services described in Subsection ~~[(33)(a)]~~ (36)(a) on a
- 78 limited basis, as described in Subsection (4)(b)(ii).
- 79 (b) (i) For purposes of Subsection (4)(a)(iii), "education" means a course of study for
- 80 one or more of grades kindergarten through 12th grade.
- 81 (ii) For purposes of Subsection (4)(a)(iv)(B), a private school provides the treatment or
- 82 services described in Subsection ~~[(33)(a)]~~ (36)(a) on a limited basis if:
- 83 (A) the treatment or services described in Subsection ~~[(33)(a)]~~ (36)(a) are provided
- 84 only as an incidental service to a student; and
- 85 (B) the school does not:
- 86 (I) specifically solicit a student for the purpose of providing the treatment or services
- 87 described in Subsection ~~[(33)(a)]~~ (36)(a); or

88 (II) have a primary purpose of providing the treatment or services described in
89 Subsection [~~(33)~~(a)] (36)(a).

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

91 (5) "Child" means [~~a person~~] an individual under 18 years [~~of age~~] old.

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

94 (a) finding a person to adopt the child;

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

96 (c) foster home placement.

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

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

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

101 (a) an outdoor youth program;

102 (b) a residential support program;

103 (c) a residential treatment program; or

104 (d) a therapeutic school.

105 [~~(9)~~] (10) "Day treatment" means specialized treatment that is provided to:

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

107 (b) four or more persons who:

108 (i) are unrelated to the owner or provider; and

109 (ii) have emotional, psychological, developmental, physical, or behavioral
110 dysfunctions, impairments, or chemical dependencies.

111 [~~(10)~~] (11) "Department" means the Department of Human Services.

112 [~~(11)~~] (12) "Department contractor" means an individual who:

113 (a) provides services under a contract with the department; and

114 (b) due to the contract with the department, has or will likely have direct access to a
115 child or vulnerable adult.

116 [~~(12)~~] (13) "Direct access" means that an individual has, or likely will have:

117 (a) contact with or access to a child or vulnerable adult that provides the individual
118 with an opportunity for personal communication or touch; or

119 (b) an opportunity to view medical, financial, or other confidential personal identifying
120 information of the child, the child's parents or legal guardians, or the vulnerable adult.

121 ~~[(13)]~~ (14) "Directly supervised" means that an individual is being supervised under
122 the uninterrupted visual and auditory surveillance of another individual who has a current
123 background screening approval issued by the office.

124 ~~[(14)]~~ (15) "Director" means the director of the Office of Licensing.

125 ~~[(15)]~~ (16) "Domestic violence" means the same as that term is defined in Section
126 77-36-1.

127 ~~[(16)]~~ (17) "Domestic violence treatment program" means a nonresidential program
128 designed to provide psychological treatment and educational services to perpetrators and
129 victims of domestic violence.

130 ~~[(17)]~~ (18) "Elder adult" means a person 65 years ~~[of age]~~ old or older.

131 ~~[(18)]~~ (19) "Executive director" means the executive director of the department.

132 ~~[(19)]~~ (20) "Foster home" means a residence that is licensed or certified by the Office
133 of Licensing for the full-time substitute care of a child.

134 ~~[(20)]~~ (21) "Health benefit plan" means the same as that term is defined in Section
135 31A-1-301.

136 ~~[(21)]~~ (22) "Health care provider" means the same as that term is defined in Section
137 78B-3-403.

138 ~~[(22)]~~ (23) "Health insurer" means the same as that term is defined in Section
139 31A-22-615.5.

140 ~~[(23)]~~ (24) (a) "Human services program" means ~~[a]~~:

141 (i) a foster home;

142 (ii) a therapeutic school;

143 (iii) a youth program;

144 (iv) an outdoor youth program;

145 (v) a residential treatment program;

146 (vi) a residential support program;

147 ~~[(iv)]~~ (vii) a resource family home;

148 ~~[(v)]~~ (viii) a recovery residence; or

149 ~~[(vi)]~~ (ix) a facility or program that provides:

150 ~~[(A) secure treatment;]~~
151 ~~[(B) inpatient treatment;]~~
152 ~~[(C) residential treatment;]~~
153 ~~[(D) residential support;]~~
154 ~~[(E)]~~ (A) adult day care;
155 ~~[(F)]~~ (B) day treatment;
156 ~~[(G)]~~ (C) outpatient treatment;
157 ~~[(H)]~~ (D) domestic violence treatment;
158 ~~[(I)]~~ (E) child-placing services;
159 ~~[(J)]~~ (F) social detoxification; or
160 ~~[(K)]~~ (G) any other human services that are required by contract with the department to
161 be licensed with the department.
162 (b) "Human services program" does not include:
163 (i) a boarding school; or
164 (ii) a residential, vocational and life skills program, as defined in Section [13-53-102](#).
165 ~~[(24)]~~ (25) "Indian child" means the same as that term is defined in 25 U.S.C. Sec.
166 1903.
167 ~~[(25)]~~ (26) "Indian country" means the same as that term is defined in 18 U.S.C. Sec.
168 1151.
169 ~~[(26)]~~ (27) "Indian tribe" means the same as that term is defined in 25 U.S.C. Sec.
170 1903.
171 (28) "Intermediate secure treatment" means 24-hour specialized residential treatment or
172 care for an individual who:
173 (a) cannot live independently or in a less restrictive environment; and
174 (b) requires, without the individual's consent or control, the use of locked doors to care
175 for the individual.
176 ~~[(27)]~~ (29) "Licensee" means an individual or a human services program licensed by
177 the office.
178 ~~[(28)]~~ (30) "Local government" means a city, town, metro township, or county.
179 ~~[(29)]~~ (31) "Minor" has the same meaning as "child."
180 ~~[(30)]~~ (32) "Office" means the Office of Licensing within the Department of Human

181 Services.

182 (33) "Outdoor youth program" means a program that provides:

183 (a) services to a child that has:

184 (i) a chemical dependency; or

185 (ii) a dysfunction or impairment that is emotional, psychological, developmental, or
186 behavioral;

187 (b) a 24-hour outdoor group living environment; and

188 (c) (i) regular therapy, including group, individual, or supportive family therapy; or

189 (ii) informal therapy or similar services, including wilderness therapy, adventure
190 therapy, or outdoor behavioral healthcare.

191 [~~31~~] (34) "Outpatient treatment" means individual, family, or group therapy or
192 counseling designed to improve and enhance social or psychological functioning for those
193 whose physical and emotional status allows them to continue functioning in their usual living
194 environment.

195 [~~32~~] (35) "Practice group" or "group practice" means two or more health care
196 providers legally organized as a partnership, professional corporation, or similar association,
197 for which:

198 (a) substantially all of the services of the health care providers who are members of the
199 group are provided through the group and are billed in the name of the group and amounts
200 received are treated as receipts of the group; and

201 (b) the overhead expenses of and the income from the practice are distributed in
202 accordance with methods previously determined by members of the group.

203 [~~33~~] (36) (a) "Recovery residence" means a home, residence, or facility that meets at
204 least two of the following requirements:

205 (i) provides a supervised living environment for individuals recovering from a
206 substance use disorder;

207 (ii) provides a living environment in which more than half of the individuals in the
208 residence are recovering from a substance use disorder;

209 (iii) provides or arranges for residents to receive services related to their recovery from
210 a substance use disorder, either on or off site;

211 (iv) is held out as a living environment in which individuals recovering from substance

212 abuse disorders live together to encourage continued sobriety; or
213 (v) (A) receives public funding; or
214 (B) is run as a business venture, either for-profit or not-for-profit.
215 (b) "Recovery residence" does not mean:
216 (i) a residential treatment program;
217 (ii) residential support; or
218 (iii) a home, residence, or facility, in which:
219 (A) residents, by their majority vote, establish, implement, and enforce policies
220 governing the living environment, including the manner in which applications for residence are
221 approved and the manner in which residents are expelled;
222 (B) residents equitably share rent and housing-related expenses; and
223 (C) a landlord, owner, or operator does not receive compensation, other than fair
224 market rental income, for establishing, implementing, or enforcing policies governing the
225 living environment.
226 [~~34~~] (37) "Regular business hours" means:
227 (a) the hours during which services of any kind are provided to a client; or
228 (b) the hours during which a client is present at the facility of a licensee.
229 [~~35~~] (38) (a) "Residential support program" means [~~arranging for or providing~~] a
230 program that arranges for or provides the necessities of life as a protective service to
231 individuals or families who have a disability or who are experiencing a dislocation or
232 emergency that prevents them from providing these services for themselves or their families.
233 (b) "Residential support program" includes [~~providing~~] a program that provides a
234 supervised living environment for [~~persons~~] individuals with dysfunctions or impairments that
235 are:
236 (i) emotional;
237 (ii) psychological;
238 (iii) developmental; or
239 (iv) behavioral.
240 (c) Treatment is not a necessary component of a residential support program.
241 (d) "Residential support program" does not include:
242 (i) a recovery residence; or

243 (ii) a program that provides residential services that are performed:

244 (A) exclusively under contract with the department and provided to individuals through
245 the Division of Services for People with Disabilities; or

246 (B) in a facility that serves fewer than four individuals.

247 ~~[(36)]~~ (39) (a) "Residential treatment" means a 24-hour group living environment for
248 four or more individuals unrelated to the owner or provider that offers room or board and
249 specialized treatment, behavior modification, rehabilitation, discipline, emotional growth, or
250 habilitation services for persons with emotional, psychological, developmental, or behavioral
251 dysfunctions, impairments, or chemical dependencies.

252 (b) "Residential treatment" does not include a:

253 (i) boarding school;

254 (ii) foster home; or

255 (iii) recovery residence.

256 ~~[(37)]~~ (40) "Residential treatment program" means a ~~[human services program]~~ a
257 program or facility that provides:

258 (a) residential treatment; or

259 (b) intermediate secure treatment.

260 ~~[(38) (a) "Secure treatment" means 24-hour specialized residential treatment or care for~~
261 ~~persons whose current functioning is such that they cannot live independently or in a less~~
262 ~~restrictive environment.]~~

263 ~~[(b) "Secure treatment" differs from residential treatment to the extent that it requires~~
264 ~~intensive supervision, locked doors, and other security measures that are imposed on residents~~
265 ~~with neither their consent nor control.]~~

266 (41) "Seclusion" means the involuntary confinement of an individual in a room or an
267 area:

268 (a) away from the individual's peers; and

269 (b) in a manner that physically prevents the individual from leaving the room or area.

270 ~~[(39)]~~ (42) "Social detoxification" means short-term residential services for persons
271 who are experiencing or have recently experienced drug or alcohol intoxication, that are
272 provided outside of a health care facility licensed under Title 26, Chapter 21, Health Care
273 Facility Licensing and Inspection Act, and that include:

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

276 (b) specialized rehabilitation to acquire sobriety; and

277 (c) aftercare services.

278 ~~[(40)]~~ (43) "Substance abuse disorder" or "substance use disorder" mean the same as
279 "substance use disorder" is defined in Section 62A-15-1202.

280 ~~[(41)]~~ (44) "Substance abuse treatment program" or "substance use disorder treatment
281 program" means a program:

282 (a) designed to provide:

283 (i) specialized drug or alcohol treatment;

284 (ii) rehabilitation; or

285 (iii) habilitation services; and

286 (b) that provides the treatment or services described in Subsection ~~[(41)]~~ (44)(a) to
287 persons with:

288 (i) a diagnosed substance use disorder; or

289 (ii) chemical dependency disorder.

290 ~~[(42)]~~ (45) "Therapeutic school" means a residential group living facility:

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

292 (i) the owner of the facility; or

293 (ii) the primary service provider of the facility;

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

295 (i) at home;

296 (ii) in a public school; or

297 (iii) in a nonresidential private school; and

298 (c) that offers:

299 (i) room and board; and

300 (ii) an academic education integrated with:

301 (A) specialized structure and supervision; or

302 (B) services or treatment related to:

303 (I) a disability;

304 (II) emotional development;

305 (III) behavioral development;

306 (IV) familial development; or

307 (V) social development.

308 [~~(43)~~] (46) "Unrelated persons" means persons other than parents, legal guardians,
309 grandparents, brothers, sisters, uncles, or aunts.

310 [~~(44)~~] (47) "Vulnerable adult" means an elder adult or an adult who has a temporary or
311 permanent mental or physical impairment that substantially affects the person's ability to:

312 (a) provide personal protection;

313 (b) provide necessities such as food, shelter, clothing, or mental or other health care;

314 (c) obtain services necessary for health, safety, or welfare;

315 (d) carry out the activities of daily living;

316 (e) manage the adult's own resources; or

317 (f) comprehend the nature and consequences of remaining in a situation of abuse,
318 neglect, or exploitation.

319 [~~(45)~~] (48) (a) "Youth program" means a [~~nonresidential~~] program designed to provide
320 behavioral, substance abuse, or mental health services to minors that:

321 (i) serves adjudicated or nonadjudicated youth;

322 (ii) charges a fee for its services;

323 (iii) may [~~or may not~~] provide host homes or other arrangements for overnight
324 accommodation of the youth;

325 (iv) may [~~or may not~~] provide all or part of its services in the outdoors;

326 (v) may [~~or may not~~] limit or censor access to parents or guardians; and

327 (vi) prohibits or restricts a minor's ability to leave the program at any time of the
328 minor's own free will.

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

331 Section 2. Section **62A-2-106** is amended to read:

332 **62A-2-106. Office responsibilities.**

333 (1) Subject to the requirements of federal and state law, the office shall:

334 (a) make rules in accordance with Title 63G, Chapter 3, Utah Administrative
335 Rulemaking Act, to establish:

- 336 (i) except as provided in Subsection (1)(a)(ii), basic health and safety standards for
337 licensees, that shall be limited to:
- 338 (A) fire safety;
 - 339 (B) food safety;
 - 340 (C) sanitation;
 - 341 (D) infectious disease control;
 - 342 (E) safety of the:
 - 343 (I) physical facility and grounds; and
 - 344 (II) area and community surrounding the physical facility;
 - 345 (F) transportation safety;
 - 346 (G) emergency preparedness and response;
 - 347 (H) the administration of medical standards and procedures, consistent with the related
348 provisions of this title;
 - 349 (I) staff and client safety and protection;
 - 350 (J) the administration and maintenance of client and service records;
 - 351 (K) staff qualifications and training, including standards for permitting experience to
352 be substituted for education, unless prohibited by law;
 - 353 (L) staff to client ratios;
 - 354 (M) access to firearms; and
 - 355 (N) the prevention of abuse, neglect, exploitation, harm, mistreatment, or fraud;
 - 356 (ii) basic health and safety standards for therapeutic schools, that shall be limited to:
 - 357 (A) fire safety, except that the standards are limited to those required by law or rule
358 under Title 53, Chapter 7, Part 2, Fire Prevention and Fireworks Act;
 - 359 (B) food safety;
 - 360 (C) sanitation;
 - 361 (D) infectious disease control, except that the standards are limited to:
 - 362 (I) those required by law or rule under Title 26, Utah Health Code, or Title 26A, Local
363 Health Authorities; and
 - 364 (II) requiring a separate room for clients who are sick;
 - 365 (E) safety of the physical facility and grounds, except that the standards are limited to
366 those required by law or rule under Title 53, Chapter 7, Part 2, Fire Prevention and Fireworks

367 Act;

368 (F) transportation safety;

369 (G) emergency preparedness and response;

370 (H) access to appropriate medical care, including:

371 (I) subject to the requirements of law, designation of a person who is authorized to

372 dispense medication; and

373 (II) storing, tracking, and securing medication;

374 (I) staff and client safety and protection that permits the school to provide for the direct

375 supervision of clients at all times;

376 (J) the administration and maintenance of client and service records;

377 (K) staff qualifications and training, including standards for permitting experience to

378 be substituted for education, unless prohibited by law;

379 (L) staff to client ratios;

380 (M) access to firearms; and

381 (N) the prevention of abuse, neglect, exploitation, harm, mistreatment, or fraud;

382 (iii) procedures and standards for permitting a licensee to:

383 (A) provide in the same facility and under the same conditions as children, residential

384 treatment services to a person 18 years old or older who:

385 (I) begins to reside at the licensee's residential treatment facility before the person's

386 18th birthday;

387 (II) has resided at the licensee's residential treatment facility continuously since the

388 time described in Subsection (1)(a)(iii)(A)(I);

389 (III) has not completed the course of treatment for which the person began residing at

390 the licensee's residential treatment facility; and

391 (IV) voluntarily consents to complete the course of treatment described in Subsection

392 (1)(a)(iii)(A)(III); or

393 (B) (I) provide residential treatment services to a child who is:

394 (Aa) [~~12 years old or older~~] at least 12 years old or, as approved by the office, younger

395 than 12 years old; and

396 (Bb) under the custody of the Department of Human Services, or one of its divisions;

397 and

398 (II) provide, in the same facility as a child described in Subsection (1)(a)(iii)(B)(I),
399 residential treatment services to a person who is:

400 (Aa) at least 18 years old, but younger than 21 years old; and

401 (Bb) under the custody of the Department of Human Services, or one of its divisions;

402 (iv) minimum administration and financial requirements for licensees;

403 (v) guidelines for variances from rules established under this Subsection (1);

404 (vi) ethical standards, as described in Subsection 78B-6-106(3), and minimum
405 responsibilities of a child-placing agency that provides adoption services and that is licensed
406 under this chapter;

407 (vii) what constitutes an "outpatient treatment program" for purposes of this chapter;

408 (viii) a procedure requiring a licensee to provide an insurer the licensee's records
409 related to any services or supplies billed to the insurer, and a procedure allowing the licensee
410 and the insurer to contact the Insurance Department to resolve any disputes;

411 (ix) a protocol for the office to investigate and process complaints about licensees;

412 [~~and~~]

413 (x) a procedure for [~~licensees to report incidents;~~] a licensee to:

413a **Ŝ→ (A) report the use of a restraint or seclusion within one business day after the day on**
413b **which the use of the restraint or seclusion occurs; and ←Ŝ**

414 **Ŝ→ [~~(A)~~] (B) ←Ŝ report a critical incident within one business day after the day on which**
414a **the**

415 **incident occurs; Ŝ→ [~~and~~**

416 **— (B) provide a monthly report of all incidents during which the licensee used a restraint**
417 **or seclusion;] ←Ŝ**

418 **(xi) guidelines for the policies and procedures described in Sections 62A-2-123 and**
419 **62A-2-124;**

420 **(xii) a procedure for the office to review and approve the policies and procedures**
421 **described in Sections 62A-2-123 and 62A-2-124; and**

422 **(xiii) a requirement that each human services program publicly post information that**
423 **informs an individual how to submit a complaint about a human services program to the office.**

424 (b) enforce rules relating to the office;

425 (c) issue licenses in accordance with this chapter;

426 (d) if the United States Department of State executes an agreement with the office that
427 designates the office to act as an accrediting entity in accordance with the Intercountry
428 Adoption Act of 2000, Pub. L. No. 106-279, accredit one or more agencies and persons to

429 provide intercountry adoption services pursuant to:

430 (i) the Intercountry Adoption Act of 2000, Pub. L. No. 106-279; and

431 (ii) the implementing regulations for the Intercountry Adoption Act of 2000, Pub. L.
432 No. 106-279;

433 (e) make rules to implement the provisions of Subsection (1)(d);

434 (f) conduct surveys and inspections of licensees and facilities in accordance with
435 Section 62A-2-118;

436 (g) collect licensure fees;

437 (h) notify licensees of the name of a person within the department to contact when
438 filing a complaint;

439 (i) investigate complaints regarding any licensee or human services program;

440 (j) have access to all records, correspondence, and financial data required to be
441 maintained by a licensee;

442 (k) have authority to interview any client, family member of a client, employee, or
443 officer of a licensee;

444 (l) have authority to deny, condition, revoke, suspend, or extend any license issued by
445 the department under this chapter by following the procedures and requirements of Title 63G,
446 Chapter 4, Administrative Procedures Act;

447 (m) electronically post notices of agency action issued to a human services program,
448 with the exception of a foster home, on the office's website, in accordance with Title 63G,
449 Chapter 2, Government Records Access and Management Act; and

450 (n) upon receiving a local government's request under Section 62A-2-108.4, notify the
451 local government of new human services program license applications, except for foster
452 homes, for human services programs located within the local government's jurisdiction.

453 (2) In establishing rules under Subsection (1)(a)(ii)(G), the office shall require a
454 licensee to establish and comply with an emergency response plan that requires clients and staff
455 to:

456 (a) immediately report to law enforcement any significant criminal activity, as defined
457 by rule, committed:

458 (i) on the premises where the licensee operates its human services program;

459 (ii) by or against its clients; or

- 460 (iii) by or against a staff member while the staff member is on duty;
 461 (b) immediately report to emergency medical services any medical emergency, as
 462 defined by rule:
 463 (i) on the premises where the licensee operates its human services program;
 464 (ii) involving its clients; or
 465 (iii) involving a staff member while the staff member is on duty; and
 466 (c) immediately report other emergencies that occur on the premises where the licensee
 467 operates its human services program to the appropriate emergency services agency.

468 Section 3. Section **62A-2-118** is amended to read:

469 **62A-2-118. Administrative inspections.**

470 (1) (a) [~~The~~] Subject to Subsection (1)(b), the office may, for the purpose of
 471 ascertaining compliance with this chapter, enter and inspect on a routine basis the facility of a
 472 licensee.

473 (b) ~~§~~ → (i) ← ~~§~~ The office shall enter and inspect a congregate care program at least once
 473a each
 474 calendar quarter.

474a ~~§~~ → (ii) **At least two of the inspections described in Subsection (1)(b)(i) shall be unannounced.**

474b ← ~~§~~

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

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

- 480 (a) give proper identification;
 481 (b) request to see the applicable license;
 482 (c) describe the nature and purpose of the inspection; and
 483 (d) if necessary, explain the authority of the office to conduct the inspection and the
 484 penalty for refusing to permit the inspection as provided in Section **62A-2-116**.

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

- 487 (a) inspect the physical facilities;
 488 (b) inspect and copy records and documents;
 489 (c) interview officers, employees, clients, family members of clients, and others; and
 490 (d) observe the licensee in operation.

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

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

495 (6) The provisions of this section apply to on-site inspections and do not restrict the
496 office from contacting family members, neighbors, or other individuals, or from seeking
497 information from other sources to determine compliance with this chapter.

498 Section 4. Section **62A-2-120** is amended to read:

499 **62A-2-120. Background check -- Direct access to children or vulnerable adults.**

500 (1) As used in this section:

501 (a) (i) "Applicant" means:

502 (A) the same as that term is defined in Section [62A-2-101](#);

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

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

507 (D) a department contractor;

508 (E) a guardian submitting an application on behalf of an individual, other than the child
509 or vulnerable adult who is receiving the service, if the individual is 12 years [~~of age~~] old or
510 older and resides in a home, that is licensed or certified by the office, with the child or
511 vulnerable adult who is receiving services; or

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

515 (ii) "Applicant" does not mean an individual, including an adult, who is in the custody
516 of the Division of Child and Family Services or the Division of Juvenile Justice Services.

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

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

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

- 522 (e) "Personal identifying information" means:
- 523 (i) current name, former names, nicknames, and aliases;
- 524 (ii) date of birth;
- 525 (iii) physical address and email address;
- 526 (iv) telephone number;
- 527 (v) driver license or other government-issued identification;
- 528 (vi) social security number;
- 529 (vii) only for applicants who are 18 years ~~[of age]~~ old or older, fingerprints, in a form
- 530 specified by the office; and
- 531 (viii) other information specified by the office by rule made in accordance with Title
- 532 63G, Chapter 3, Utah Administrative Rulemaking Act.
- 533 (2) (a) Except as provided in Subsection (13), an applicant or a representative shall
- 534 submit the following to the office:
- 535 (i) personal identifying information;
- 536 (ii) a fee established by the office under Section [63J-1-504](#); and
- 537 (iii) a disclosure form, specified by the office, for consent for:
- 538 (A) an initial background check upon submission of the information described under
- 539 this Subsection (2)(a);
- 540 (B) ongoing monitoring of fingerprints and registries until no longer associated with a
- 541 licensee for 90 days;
- 542 (C) a background check when the office determines that reasonable cause exists; and
- 543 (D) retention of personal identifying information, including fingerprints, for
- 544 monitoring and notification as described in Subsections (3)(d) and (4).
- 545 (b) In addition to the requirements described in Subsection (2)(a), if an applicant
- 546 resided outside of the United States and its territories during the five years immediately
- 547 preceding the day on which the information described in Subsection (2)(a) is submitted to the
- 548 office, the office may require the applicant to submit documentation establishing whether the
- 549 applicant was convicted of a crime during the time that the applicant resided outside of the
- 550 United States or its territories.
- 551 (3) The office:
- 552 (a) shall perform the following duties as part of a background check of an applicant:

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

555 (A) submitting personal identifying information to the bureau for a search; or
556 (B) using the applicant's personal identifying information to search state and regional
557 criminal background databases as authorized under Section 53-10-108;

558 (ii) submit the applicant's personal identifying information and fingerprints to the
559 bureau for a criminal history search of applicable national criminal background databases;

560 (iii) search the Department of Human Services, Division of Child and Family Services'
561 Licensing Information System described in Section 62A-4a-1006;

562 (iv) search the Department of Human Services, Division of Aging and Adult Services'
563 vulnerable adult abuse, neglect, or exploitation database described in Section 62A-3-311.1;

564 (v) search the juvenile court records for substantiated findings of severe child abuse or
565 neglect described in Section 78A-6-323; and

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

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

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

573 (i) for an annual renewal; or
574 (ii) when the office determines that reasonable cause exists;

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

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

581 (i) more than one license;
582 (ii) direct access to a child or a vulnerable adult in more than one human services
583 program; or

584 (iii) direct access to a child or a vulnerable adult under a contract with the department;
585 (f) shall track the status of each license and each individual with direct access to a child
586 or a vulnerable adult and notify the bureau within 90 days after the day on which the license
587 expires or the individual's direct access to a child or a vulnerable adult ceases;
588 (g) shall adopt measures to strictly limit access to personal identifying information
589 solely to the individuals responsible for processing and entering the applications for
590 background checks and to protect the security of the personal identifying information the office
591 reviews under this Subsection (3);
592 (h) as necessary to comply with the federal requirement to check a state's child abuse
593 and neglect registry regarding any individual working in a congregate care [~~setting that serves~~
594 ~~children~~] program, shall:
595 (i) search the Department of Human Services, Division of Child and Family Services'
596 Licensing Information System described in Section [62A-4a-1006](#); and
597 (ii) require the child abuse and neglect registry be checked in each state where an
598 applicant resided at any time during the five years immediately preceding the day on which the
599 applicant submits the information described in Subsection (2)(a) to the office; and
600 (i) shall make rules, in accordance with Title 63G, Chapter 3, Utah Administrative
601 Rulemaking Act, to implement the provisions of this Subsection (3) relating to background
602 checks.
603 (4) (a) With the personal identifying information the office submits to the bureau under
604 Subsection (3), the bureau shall check against state and regional criminal background databases
605 for the applicant's criminal history.
606 (b) With the personal identifying information and fingerprints the office submits to the
607 bureau under Subsection (3), the bureau shall check against national criminal background
608 databases for the applicant's criminal history.
609 (c) Upon direction from the office, and with the personal identifying information and
610 fingerprints the office submits to the bureau under Subsection (3)(d), the bureau shall:
611 (i) maintain a separate file of the fingerprints for search by future submissions to the
612 local and regional criminal records databases, including latent prints; and
613 (ii) monitor state and regional criminal background databases and identify criminal
614 activity associated with the applicant.

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

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

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

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

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

627 (i) discard and destroy any retained fingerprints; and

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

632 (5) (a) After conducting the background check described in Subsections (3) and (4), the
633 office shall deny an application to an applicant who, within three years before the day on which
634 the applicant submits information to the office under Subsection (2) for a background check,
635 has been convicted of any of the following, regardless of whether the offense is a felony, a
636 misdemeanor, or an infraction:

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

639 (ii) a violation of any pornography law, including sexual exploitation of a minor;

640 (iii) prostitution;

641 (iv) an offense included in:

642 (A) Title 76, Chapter 5, Offenses Against the Person;

643 (B) Section 76-5b-201, Sexual Exploitation of a Minor; or

644 (C) Title 76, Chapter 7, Offenses Against the Family;

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

646 (vi) aggravated burglary, as described in Section [76-6-203](#);
647 (vii) aggravated robbery, as described in Section [76-6-302](#);
648 (viii) identity fraud crime, as described in Section [76-6-1102](#); or
649 (ix) a felony or misdemeanor offense committed outside of the state that, if committed
650 in the state, would constitute a violation of an offense described in Subsections (5)(a)(i)
651 through (viii).

652 (b) If the office denies an application to an applicant based on a conviction described in
653 Subsection (5)(a), the applicant is not entitled to a comprehensive review described in
654 Subsection (6).

655 (c) If the applicant will be working in a program serving only adults whose only
656 impairment is a mental health diagnosis, including that of a serious mental health disorder,
657 with or without co-occurring substance use disorder, the denial provisions of Subsection (5)(a)
658 do not apply, and the office shall conduct a comprehensive review as described in Subsection
659 (6).

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

662 (i) has an open court case or a conviction for any felony offense, not described in
663 Subsection (5)(a), with a date of conviction that is no more than 10 years before the date on
664 which the applicant submits the application;

665 (ii) has an open court case or a conviction for a misdemeanor offense, not described in
666 Subsection (5)(a), and designated by the office, by rule, in accordance with Title 63G, Chapter
667 3, Utah Administrative Rulemaking Act, if the conviction is within three years before the day
668 on which the applicant submits information to the office under Subsection (2) for a background
669 check;

670 (iii) has a conviction for any offense described in Subsection (5)(a) that occurred more
671 than three years before the day on which the applicant submitted information under Subsection
672 (2)(a);

673 (iv) is currently subject to a plea in abeyance or diversion agreement for any offense
674 described in Subsection (5)(a);

675 (v) has a listing in the Department of Human Services, Division of Child and Family
676 Services' Licensing Information System described in Section [62A-4a-1006](#);

677 (vi) has a listing in the Department of Human Services, Division of Aging and Adult
678 Services' vulnerable adult abuse, neglect, or exploitation database described in Section
679 62A-3-311.1;

680 (vii) has a record in the juvenile court of a substantiated finding of severe child abuse
681 or neglect described in Section 78A-6-323;

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

684 (A) under 28 years [~~of age~~] old; or

685 (B) 28 years [~~of age~~] old or older and has been convicted of, has pleaded no contest to,
686 or is currently subject to a plea in abeyance or diversion agreement for a felony or a
687 misdemeanor offense described in Subsection (5)(a);

688 (ix) has a pending charge for an offense described in Subsection (5)(a); or

689 (x) is an applicant described in Subsection (5)(c).

690 (b) The comprehensive review described in Subsection (6)(a) shall include an
691 examination of:

692 (i) the date of the offense or incident;

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

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

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

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

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

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

700 (B) sexual abuse;

701 (C) sexual exploitation; or

702 (D) negligent treatment;

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

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

707 (ix) any other pertinent information presented to or publicly available to the committee

708 members.

709 (c) At the conclusion of the comprehensive review described in Subsection (6)(a), the
710 office shall deny an application to an applicant if the office finds that approval would likely
711 create a risk of harm to a child or a vulnerable adult.

712 (d) At the conclusion of the comprehensive review described in Subsection (6)(a), the
713 office may not deny an application to an applicant solely because the applicant was convicted
714 of an offense that occurred 10 or more years before the day on which the applicant submitted
715 the information required under Subsection (2)(a) if:

716 (i) the applicant has not committed another misdemeanor or felony offense after the
717 day on which the conviction occurred; and

718 (ii) the applicant has never been convicted of an offense described in Subsection
719 (14)(c).

720 (e) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
721 office may make rules, consistent with this chapter, to establish procedures for the
722 comprehensive review described in this Subsection (6).

723 (7) Subject to Subsection (10), the office shall approve an application to an applicant
724 who is not denied under Subsection (5), (6), or [~~(13)~~] (14).

725 (8) (a) The office may conditionally approve an application of an applicant, for a
726 maximum of 60 days after the day on which the office sends written notice to the applicant
727 under Subsection (12), without requiring that the applicant be directly supervised, if the office:

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

730 (ii) would otherwise approve an application of the applicant under Subsection (7).

731 (b) The office may conditionally approve an application of an applicant, for a
732 maximum of one year after the day on which the office sends written notice to the applicant
733 under Subsection (12), without requiring that the applicant be directly supervised if the office:

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

736 (ii) would otherwise approve an application of the applicant under Subsection (7).

737 (c) Upon receiving the results of the criminal history search of a national criminal
738 background database, the office shall approve or deny the application of the applicant in

739 accordance with Subsections (5) through (7).

740 (9) A licensee or department contractor may not permit an individual to have direct
741 access to a child or a vulnerable adult unless, subject to Subsection (10):

742 (a) the individual is associated with the licensee or department contractor and:

743 (i) the individual's application is approved by the office under this section;

744 (ii) the individual's application is conditionally approved by the office under

745 Subsection (8); or

746 (iii) (A) the individual has submitted the background check information described in

747 Subsection (2) to the office;

748 (B) the office has not determined whether to approve the applicant's application; and

749 (C) the individual is directly supervised by an individual who has a current background

750 screening approval issued by the office under this section and is associated with the licensee or

751 department contractor;

752 (b) (i) the individual is associated with the licensee or department contractor;

753 (ii) the individual has a current background screening approval issued by the office

754 under this section;

755 (iii) one of the following circumstances, that the office has not yet reviewed under

756 Subsection (6), applies to the individual:

757 (A) the individual was charged with an offense described in Subsection (5)(a);

758 (B) the individual is listed in the Licensing Information System, described in Section

759 [62A-4a-1006](#);

760 (C) the individual is listed in the vulnerable adult abuse, neglect, or exploitation

761 database, described in Section [62A-3-311.1](#);

762 (D) the individual has a record in the juvenile court of a substantiated finding of severe

763 child abuse or neglect, described in Section [78A-6-323](#); or

764 (E) the individual has a record of an adjudication in juvenile court for an act that, if

765 committed by an adult, would be a felony or a misdemeanor as described in Subsection (5)(a)

766 or (6); and

767 (iv) the individual is directly supervised by an individual who:

768 (A) has a current background screening approval issued by the office under this

769 section; and

770 (B) is associated with the licensee or department contractor;
771 (c) the individual:
772 (i) is not associated with the licensee or department contractor; and
773 (ii) is directly supervised by an individual who:
774 (A) has a current background screening approval issued by the office under this
775 section; and
776 (B) is associated with the licensee or department contractor;
777 (d) the individual is the parent or guardian of the child, or the guardian of the
778 vulnerable adult;
779 (e) the individual is approved by the parent or guardian of the child, or the guardian of
780 the vulnerable adult, to have direct access to the child or the vulnerable adult;
781 (f) the individual is only permitted to have direct access to a vulnerable adult who
782 voluntarily invites the individual to visit; or
783 (g) the individual only provides incidental care for a foster child on behalf of a foster
784 parent who has used reasonable and prudent judgment to select the individual to provide the
785 incidental care for the foster child.
786 (10) An individual may not have direct access to a child or a vulnerable adult if the
787 individual is prohibited by court order from having that access.
788 (11) Notwithstanding any other provision of this section, an individual for whom the
789 office denies an application may not have direct access to a child or vulnerable adult unless the
790 office approves a subsequent application by the individual.
791 (12) (a) Within 30 days after the day on which the office receives the background
792 check information for an applicant, the office shall give notice of the clearance status to:
793 (i) the applicant, and the licensee or department contractor, of the office's decision
794 regarding the background check and findings; and
795 (ii) the applicant of any convictions and potentially disqualifying charges and
796 adjudications found in the search.
797 (b) With the notice described in Subsection (12)(a), the office shall also give the
798 applicant the details of any comprehensive review conducted under Subsection (6).
799 (c) If the notice under Subsection (12)(a) states that the applicant's application is
800 denied, the notice shall further advise the applicant that the applicant may, under Subsection

801 62A-2-111(2), request a hearing in the department's Office of Administrative Hearings, to
802 challenge the office's decision.

803 (d) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
804 office shall make rules, consistent with this chapter:

805 (i) defining procedures for the challenge of the office's background check decision
806 described in Subsection (12)(c); and

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

809 (13) An individual or a department contractor who provides services in an adults only
810 substance use disorder program, as defined by rule, is exempt from this section. This
811 exemption does not extend to a program director or a member, as defined by Section
812 62A-2-108, of the program.

813 (14) (a) Except as provided in Subsection (14)(b), in addition to the other requirements
814 of this section, if the background check of an applicant is being conducted for the purpose of
815 giving clearance status to an applicant seeking a position in a congregate care [facility]
816 program, an applicant for a one-time adoption, an applicant seeking to provide a prospective
817 foster home, or an applicant seeking to provide a prospective adoptive home, the office shall:

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

823 (ii) check the child abuse and neglect registry in each state where each adult living in
824 the home of the applicant described in Subsection (14)(a)(i) resided in the five years
825 immediately preceding the day on which the applicant applied to be a foster parent or adoptive
826 parent, to determine whether the adult is listed in the registry as having a substantiated or
827 supported finding of child abuse or neglect.

828 (b) The requirements described in Subsection (14)(a) do not apply to the extent that:

829 (i) federal law or rule permits otherwise; or

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

832 (A) a noncustodial parent under Section 62A-4a-209, 78A-6-307, or 78A-6-307.5; or

833 (B) a relative, other than a noncustodial parent, under Section 62A-4a-209, 78A-6-307,

834 or 78A-6-307.5, pending completion of the background check described in Subsection (5).

835 (c) Notwithstanding Subsections (5) through (9), the office shall deny a clearance to an

836 applicant seeking a position in a congregate care [facility] program, an applicant for a one-time

837 adoption, an applicant to become a prospective foster parent, or an applicant to become a

838 prospective adoptive parent if the applicant has been convicted of:

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

840 (A) child abuse, as described in Section 76-5-109;

841 (B) commission of domestic violence in the presence of a child, as described in Section

842 76-5-109.1;

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

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

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

846 (F) murder, as described in Section 76-5-203;

847 (G) manslaughter, as described in Section 76-5-205;

848 (H) child abuse homicide, as described in Section 76-5-208;

849 (I) homicide by assault, as described in Section 76-5-209;

850 (J) kidnapping, as described in Section 76-5-301;

851 (K) child kidnapping, as described in Section 76-5-301.1;

852 (L) aggravated kidnapping, as described in Section 76-5-302;

853 (M) human trafficking of a child, as described in Section 76-5-308.5;

854 (N) an offense described in Title 76, Chapter 5, Part 4, Sexual Offenses;

855 (O) sexual exploitation of a minor, as described in Section 76-5b-201;

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

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

858 (R) aggravated robbery, as described in Section 76-6-302; or

859 (S) domestic violence, as described in Section 77-36-1; or

860 (ii) an offense committed outside the state that, if committed in the state, would

861 constitute a violation of an offense described in Subsection (14)(c)(i).

862 (d) Notwithstanding Subsections (5) through (9), the office shall deny a license or

863 license renewal to a prospective foster parent or a prospective adoptive parent if, within the five
864 years immediately preceding the day on which the individual's application or license would
865 otherwise be approved, the applicant was convicted of a felony involving conduct that
866 constitutes a violation of any of the following:

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

873 Act;

- 874 (vii) an offense described in Title 58, Chapter 37c, Utah Controlled Substance

875 Precursor Act; or

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

877 (e) In addition to the circumstances described in Subsection (6)(a), the office shall
878 conduct the comprehensive review of an applicant's background check pursuant to this section
879 if the registry check described in Subsection (14)(a) indicates that the individual is listed in a
880 child abuse and neglect registry of another state as having a substantiated or supported finding
881 of a severe type of child abuse or neglect as defined in Section 62A-4a-1002.

882 Section 5. Section 62A-2-123 is enacted to read:

883 **62A-2-123. Congregate care program regulation.**

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

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

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

890 (c) inducing pain to obtain compliance;

891 (d) hyperextending joints;

892 (e) peer restraints;

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

- 894 (g) requiring or forcing the child to take an uncomfortable position, including squatting
895 or bending;
- 896 (h) for the purpose of punishing or humiliating, requiring or forcing the child to repeat
897 physical movements or physical exercises such as running laps or performing push-ups;
- 898 (i) spanking, hitting, shaking, or otherwise engaging in aggressive physical contact;
899 (j) denying an essential program service;
- 900 (k) depriving the child of a meal, water, rest, or opportunity for toileting;
901 (l) denying shelter, clothing, or bedding;
- 902 (m) withholding personal interaction, emotional response, or stimulation;
903 (n) prohibiting the child from entering the residence;
- 904 (o) abuse as defined in Section [78A-6-105](#); and
905 (p) neglect as defined in Section [78A-6-105](#).
- 906 (2) Before a congregate care program may use a restraint or seclusion, the congregate
907 care program shall:
- 908 (a) develop and implement written policies and procedures that:
- 909 (i) describe the circumstances under which a staff member may use a restraint or
910 seclusion;
- 911 (ii) describe which staff members are authorized to use a restraint or seclusion;
912 (iii) describe procedures for monitoring a child that is restrained or in seclusion;
913 (iv) describe time limitations on the use of a restraint or seclusion;
- 914 (v) require immediate and continuous review of the decision to use a restraint or
915 seclusion;
- 916 (vi) require documenting the use of a restraint or seclusion;
917 (vii) describe record keeping requirements for records related to the use of a restraint or
918 seclusion;
- 919 (viii) to the extent practicable, require debriefing the following individuals if debriefing
920 would not interfere with an ongoing investigation, violate any law or regulation, or conflict
921 with a child's treatment plan:
- 922 (A) each witness to the event;
923 (B) each staff member involved; and
924 (C) the child who was restrained or in seclusion.

- 925 (ix) include a procedure for complying with Subsection (5); and
926 (x) provide an administrative review process and required follow up actions after a
927 child is restrained or put in seclusion; and
928 (b) consult with the office to ensure that the congregate care program's written policies
929 and procedures align with industry standards and applicable law.
930 (3) A congregate care program:
931 (a) may use a passive physical restraint only if the passive physical restraint is
932 supported by a nationally or regionally recognized curriculum focused on non-violent
933 interventions and de-escalation techniques;
934 (b) may not use a chemical or mechanical restraint unless the office has authorized the
935 congregate care program to use a chemical or mechanical restraint;
936 (c) shall ensure that a staff member that uses a restraint on a child is:
937 (i) properly trained to use the restraint; and
938 (ii) familiar with the child and if the child has a treatment plan, the child's treatment
939 plan; and
940 (d) shall train each staff member on how to intervene if another staff member fails to
941 follow correct procedures when using a restraint.
942 (4) (a) A congregate care program:
943 (i) may use seclusion if:
944 (A) the purpose for the seclusion is to ensure the immediate safety of the child or
945 others; and
946 (B) no less restrictive intervention is likely to ensure the safety of the child or others;
947 and
948 (ii) may not use seclusion:
949 (A) for coercion, retaliation, or humiliation; or
950 (B) due to inadequate staffing or for the staff's convenience.
951 (b) While a child is in seclusion, a staff member who is familiar to the child shall
952 actively supervise the child for the duration of the seclusion.
953 (5) Subject to the office's review and approval, a congregate care program shall
954 develop:
955 (a) suicide prevention policies and procedures that describe:

- 956 (i) how the congregate care program will respond in the event a child exhibits
- 957 self-injurious, self-harm, or suicidal behavior;
- 958 (ii) warning signs of suicide;
- 959 (iii) emergency protocol and contacts;
- 960 (iv) training requirements for staff, including suicide prevention training;
- 961 (v) procedures for implementing additional supervision precautions and for removing
- 962 any additional supervision precautions;
- 963 (vi) suicide risk assessment procedures;
- 964 (vii) documentation requirements for a child's suicide ideation and self-harm;
- 965 (viii) special observation precautions for a child exhibiting warning signs of suicide;
- 966 (ix) communication procedures to ensure all staff are aware of a child who exhibits
- 967 warning signs of suicide;
- 968 (x) a process for tracking suicide behavioral patterns; and
- 969 (xi) a post-intervention plan with identified resources; and
- 970 (b) based on state law and industry best practices, policies and procedures for
- 971 managing a child's behavior during the child's participation in the congregate care program.

- 972 (6) A congregate care program:
- 973 (a) when not otherwise prohibited by law, shall facilitate weekly ~~§~~ **→ confidential ←** ~~§~~
- 973a communication
- 974 between a child and the child's parents, guardian, foster parents, and siblings, as applicable;
- 975 (b) shall ensure that the communication described in Subsection (6)(a) complies with
- 976 the child's treatment plan, if any; and
- 977 (c) may not use family contact as an incentive for proper behavior or withhold family
- 978 contact as a punishment.

979 Section 6. Section **62A-2-124** is enacted to read:

980 **62A-2-124. Human services program non-discrimination.**

981 A human services program:

- 982 (1) shall perform an individualized assessment when classifying and placing an
- 983 individual in programs and living environments; and
- 984 (2) subject to the office's review and approval, shall create policies and procedures that
- 985 include:
- 986 (a) a description of what constitutes sex and gender based abuse, discrimination, and

987 harassment;

988 (b) procedures for preventing and reporting abuse, discrimination, and harassment; and

989 (c) procedures for teaching effective and professional communication with individuals

990 of all sexual orientations and genders.