

1 **APPLIED BEHAVIORAL LICENSING AMENDMENTS**

2 2020 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Logan Wilde**

5 Senate Sponsor: _____

6

LONG TITLE

7 **General Description:**

8 This bill modifies provisions of the Utah Human Services Code.

9 **Highlighted Provisions:**

10 This bill:

- 11 ▶ defines "applied behavior analysis treatment";
- 12 ▶ includes applied behavior analysis treatment in the definition of "human services
- 13 program," which has the effect of requiring certain health care providers and
- 14 practice groups to be licensed under Title 62A, Chapter 2, Licensure of Programs
- 15 and Facilities; and
- 16 ▶ makes technical changes.

17 **Money Appropriated in this Bill:**

18 None

19 **Other Special Clauses:**

20 None

21 **Utah Code Sections Affected:**

22 AMENDS:

23 **62A-2-101**, as last amended by Laws of Utah 2019, Chapters 136, 193 and last
24 amended by Coordination Clause, Laws of Utah 2019, Chapter 193

25

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



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

29 **62A-2-101. Definitions.**

30 As used in this chapter:

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

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

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

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

38 (3) "Applied behavior analysis treatment" means specialized treatment that:

39 (a) focuses on improving specific behaviors and adaptive learning skills, including for
40 a client with a diagnosis of autism spectrum disorder;

41 (b) is provided to one or more clients:

42 (i) for more than two hours a day; and

43 (ii) for less than 24 hours a day; and

44 (c) is provided by a health care provider or practice group that is not otherwise licensed
45 under this chapter as a day treatment or outpatient treatment facility or program.

46 [~~3~~] (4) (a) "Associated with the licensee" means that an individual is:

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

49 (ii) applying to become affiliated with a licensee in a capacity described in Subsection
50 [~~3~~] (4)(a)(i).

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

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

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

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

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

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

61 [~~(4)~~] (5) (a) "Boarding school" means a private school that:

62 (i) uses a regionally accredited education program;

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

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

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

66 (iii) has the primary purpose of providing the school's students with an education, as

67 defined in Subsection [~~(4)~~] (5)(b)(i); and

68 (iv) (A) does not provide the treatment or services described in Subsection [~~(33)~~]

69 (34)(a); or

70 (B) provides the treatment or services described in Subsection [~~(33)~~] (34)(a) on a

71 limited basis, as described in Subsection [~~(4)~~] (5)(b)(ii).

72 (b) (i) For purposes of Subsection [~~(4)~~] (5)(a)(iii), "education" means a course of study

73 for one or more of grades kindergarten through 12th grade.

74 (ii) For purposes of Subsection [~~(4)~~] (5)(a)(iv)(B), a private school provides the

75 treatment or services described in Subsection [~~(33)~~] (34)(a) on a limited basis if:

76 (A) the treatment or services described in Subsection [~~(33)~~] (34)(a) are provided only

77 as an incidental service to a student; and

78 (B) the school does not:

79 (I) specifically solicit a student for the purpose of providing the treatment or services

80 described in Subsection [~~(33)~~] (34)(a); or

81 (II) have a primary purpose of providing the treatment or services described in

82 Subsection [~~(33)~~] (34)(a).

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

84 [~~(5)~~] (6) "Child" means a person under 18 years of age.

85 [~~(6)~~] (7) "Child placing" means receiving, accepting, or providing custody or care for

86 any child, temporarily or permanently, for the purpose of:

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

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

89 (c) foster home placement.

- 90 [~~(7)~~] (8) "Child-placing agency" means a person that engages in child placing.
- 91 [~~(8)~~] (9) "Client" means an individual who receives or has received services from a
- 92 licensee.
- 93 [~~(9)~~] (10) "Day treatment" means specialized treatment that is provided to:
- 94 (a) a client less than 24 hours a day; and
- 95 (b) four or more persons who:
- 96 (i) are unrelated to the owner or provider; and
- 97 (ii) have emotional, psychological, developmental, physical, or behavioral
- 98 dysfunctions, impairments, or chemical dependencies.
- 99 [~~(10)~~] (11) "Department" means the Department of Human Services.
- 100 [~~(11)~~] (12) "Department contractor" means an individual who:
- 101 (a) provides services under a contract with the department; and
- 102 (b) due to the contract with the department, has or will likely have direct access to a
- 103 child or vulnerable adult.
- 104 [~~(12)~~] (13) "Direct access" means that an individual has, or likely will have:
- 105 (a) contact with or access to a child or vulnerable adult that provides the individual
- 106 with an opportunity for personal communication or touch; or
- 107 (b) an opportunity to view medical, financial, or other confidential personal identifying
- 108 information of the child, the child's parents or legal guardians, or the vulnerable adult.
- 109 [~~(13)~~] (14) "Directly supervised" means that an individual is being supervised under
- 110 the uninterrupted visual and auditory surveillance of another individual who has a current
- 111 background screening approval issued by the office.
- 112 [~~(14)~~] (15) "Director" means the director of the Office of Licensing.
- 113 [~~(15)~~] (16) "Domestic violence" means the same as that term is defined in Section
- 114 [77-36-1](#).
- 115 [~~(16)~~] (17) "Domestic violence treatment program" means a nonresidential program
- 116 designed to provide psychological treatment and educational services to perpetrators and
- 117 victims of domestic violence.
- 118 [~~(17)~~] (18) "Elder adult" means a person 65 years of age or older.
- 119 [~~(18)~~] (19) "Executive director" means the executive director of the department.
- 120 [~~(19)~~] (20) "Foster home" means a residence that is licensed or certified by the Office

121 of Licensing for the full-time substitute care of a child.

122 ~~[(20)]~~ (21) "Health benefit plan" means the same as that term is defined in Section
123 31A-1-301.

124 ~~[(21)]~~ (22) "Health care provider" means the same as that term is defined in Section
125 78B-3-403.

126 ~~[(22)]~~ (23) "Health insurer" means the same as that term is defined in Section
127 31A-22-615.5.

128 ~~[(23)]~~ (24) (a) "Human services program" means a:

129 (i) foster home;

130 (ii) therapeutic school;

131 (iii) youth program;

132 (iv) resource family home;

133 (v) recovery residence; or

134 (vi) facility or program that provides:

135 (A) secure treatment;

136 (B) inpatient treatment;

137 (C) residential treatment;

138 (D) residential support;

139 (E) adult day care;

140 (F) day treatment;

141 (G) outpatient treatment;

142 (H) applied behavior analysis treatment;

143 ~~[(H)]~~ (I) domestic violence treatment;

144 ~~[(I)]~~ (J) child-placing services;

145 ~~[(J)]~~ (K) social detoxification; or

146 ~~[(K)]~~ (L) any other human services that are required by contract with the department to
147 be licensed with the department.

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

149 (i) a boarding school; or

150 (ii) a residential, vocational and life skills program, as defined in Section 13-53-102.

151 ~~[(24)]~~ (25) "Indian child" means the same as that term is defined in 25 U.S.C. Sec.

152 1903.

153 ~~[(25)]~~ (26) "Indian country" means the same as that term is defined in 18 U.S.C. Sec.

154 1151.

155 ~~[(26)]~~ (27) "Indian tribe" means the same as that term is defined in 25 U.S.C. Sec.

156 1903.

157 ~~[(27)]~~ (28) "Licensee" means an individual or a human services program licensed by
158 the office.

159 ~~[(28)]~~ (29) "Local government" means a city, town, metro township, or county.

160 ~~[(29)]~~ (30) "Minor" has the same meaning as "child."

161 ~~[(30)]~~ (31) "Office" means the Office of Licensing within the Department of Human
162 Services.

163 ~~[(31)]~~ (32) "Outpatient treatment" means individual, family, or group therapy or
164 counseling designed to improve and enhance social or psychological functioning for those
165 whose physical and emotional status allows them to continue functioning in their usual living
166 environment.

167 ~~[(32)]~~ (33) "Practice group" or "group practice" means two or more health care
168 providers legally organized as a partnership, professional corporation, or similar association,
169 for which:

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

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

175 ~~[(33)]~~ (34) (a) "Recovery residence" means a home, residence, or facility that meets at
176 least two of the following requirements:

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

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

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

183 (iv) is held out as a living environment in which individuals recovering from substance
184 abuse disorders live together to encourage continued sobriety; or

185 (v) (A) receives public funding; or

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

187 (b) "Recovery residence" does not mean:

188 (i) a residential treatment program;

189 (ii) residential support; or

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

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

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

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

198 [~~34~~] (35) "Regular business hours" means:

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

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

201 [~~35~~] (36) (a) "Residential support" means arranging for or providing the necessities of
202 life as a protective service to individuals or families who have a disability or who are
203 experiencing a dislocation or emergency that prevents them from providing these services for
204 themselves or their families.

205 (b) "Residential support" includes providing a supervised living environment for
206 persons with dysfunctions or impairments that are:

207 (i) emotional;

208 (ii) psychological;

209 (iii) developmental; or

210 (iv) behavioral.

211 (c) Treatment is not a necessary component of residential support.

212 (d) "Residential support" does not include:

213 (i) a recovery residence; or

214 (ii) residential services that are performed:

215 (A) exclusively under contract with the Division of Services for People with
216 Disabilities; or

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

218 [~~36~~] (37) (a) "Residential treatment" means a 24-hour group living environment for
219 four or more individuals unrelated to the owner or provider that offers room or board and
220 specialized treatment, behavior modification, rehabilitation, discipline, emotional growth, or
221 habilitation services for persons with emotional, psychological, developmental, or behavioral
222 dysfunctions, impairments, or chemical dependencies.

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

224 (i) boarding school;

225 (ii) foster home; or

226 (iii) recovery residence.

227 [~~37~~] (38) "Residential treatment program" means a human services program that
228 provides:

229 (a) residential treatment; or

230 (b) secure treatment.

231 [~~38~~] (39) (a) "Secure treatment" means 24-hour specialized residential treatment or
232 care for persons whose current functioning is such that they cannot live independently or in a
233 less restrictive environment.

234 (b) "Secure treatment" differs from residential treatment to the extent that it requires
235 intensive supervision, locked doors, and other security measures that are imposed on residents
236 with neither their consent nor control.

237 [~~39~~] (40) "Social detoxification" means short-term residential services for persons
238 who are experiencing or have recently experienced drug or alcohol intoxication, that are
239 provided outside of a health care facility licensed under Title 26, Chapter 21, Health Care
240 Facility Licensing and Inspection Act, and that include:

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

243 (b) specialized rehabilitation to acquire sobriety; and

244 (c) aftercare services.

245 ~~[(40)]~~ (41) "Substance abuse disorder" or "substance use disorder" mean the same as
246 "substance use disorder" is defined in Section 62A-15-1202.

247 ~~[(41)]~~ (42) "Substance abuse treatment program" or "substance use disorder treatment
248 program" means a program:

249 (a) designed to provide:

250 (i) specialized drug or alcohol treatment;

251 (ii) rehabilitation; or

252 (iii) habilitation services; and

253 (b) that provides the treatment or services described in Subsection ~~[(41)]~~ (42)(a) to
254 persons with:

255 (i) a diagnosed substance use disorder; or

256 (ii) chemical dependency disorder.

257 ~~[(42)]~~ (43) "Therapeutic school" means a residential group living facility:

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

259 (i) the owner of the facility; or

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

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

262 (i) at home;

263 (ii) in a public school; or

264 (iii) in a nonresidential private school; and

265 (c) that offers:

266 (i) room and board; and

267 (ii) an academic education integrated with:

268 (A) specialized structure and supervision; or

269 (B) services or treatment related to:

270 (I) a disability;

271 (II) emotional development;

272 (III) behavioral development;

273 (IV) familial development; or

274 (V) social development.

275 ~~[(43)]~~ (44) "Unrelated persons" means persons other than parents, legal guardians,

276 grandparents, brothers, sisters, uncles, or aunts.

277 ~~[(44)]~~ (45) "Vulnerable adult" means an elder adult or an adult who has a temporary or
278 permanent mental or physical impairment that substantially affects the person's ability to:

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

286 ~~[(45)]~~ (46) (a) "Youth program" means a nonresidential program designed to provide
287 behavioral, substance abuse, or mental health services to minors that:

- 288 (i) serves adjudicated or nonadjudicated youth;
- 289 (ii) charges a fee for its services;
- 290 (iii) may or may not provide host homes or other arrangements for overnight
291 accommodation of the youth;
- 292 (iv) may or may not provide all or part of its services in the outdoors;
- 293 (v) may or may not limit or censor access to parents or guardians; and
- 294 (vi) prohibits or restricts a minor's ability to leave the program at any time of the
295 minor's own free will.

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