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VULNERABLE POPULATION AMENDMENTS
2024 GENERAL SESSION
STATE OF UTAH
Chief Sponsor: Karianne Lisonbee
Senate Sponsor: Wayne A. Harper

LONG TITLE

General Description:

This bill concerns protections for vulnerable populations.

Highlighted Provisions:

This bill:

- defines terms;
- modifies provisions relating to a monitoring device in the room of a resident of an assisted living facility and includes certain other facilities;
- requires fingerprint background checks for certain individuals who will have direct access to patients in certain health care facilities;
- requires certain facilities to report certain incidents of abuse, neglect, or exploitation to the Department of Health and Human Services (department), the Division of Child and Family Services, Adult Protective Services, or a law enforcement agency;
- requires, with an automatic repeal provision, the department to collect and compile all reported incidents of abuse, neglect, or exploitation at certain facilities and annually report the information to the Health and Human Services Interim Committee;
- prohibits inmates from receiving certain training while incarcerated; and
- makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a special effective date.

This bill provides a coordination clause.

Utah Code Sections Affected:

AMENDS:

28 **26B-2-236**, as renumbered and amended by Laws of Utah 2023, Chapter 305
 29 **26B-2-238**, as renumbered and amended by Laws of Utah 2023, Chapter 305
 30 **26B-2-240**, as renumbered and amended by Laws of Utah 2023, Chapter 305
 31 **63I-2-226**, as last amended by Laws of Utah 2023, Chapters 33, 139, 249, 295, 310, and
 32 465 and repealed and reenacted by Laws of Utah 2023, Chapter 329 and last amended by
 33 Coordination Clause, Laws of Utah 2023, Chapter 329
 34 **64-13-48**, as enacted by Laws of Utah 2022, Chapter 144

35 ENACTS:

36 **26B-2-243**, Utah Code Annotated 1953

37 **Utah Code Sections affected by Coordination Clause:**

38 **26B-2-240**, as renumbered and amended by Laws of Utah 2023, Chapter 305

39

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

41 Section 1. Section **26B-2-236** is amended to read:

42 **26B-2-236 . Monitoring device -- Installation, notice, and consent -- Admission**
 43 **and discharge -- Liability.**

44 (1) As used in this section:

45 (a) "Facility" means:

46 (i) an assisted living facility; or

47 (ii) a secure memory care unit inside of:

48 (A) a nursing care facility; or

49 (B) any other medical or mental health facility.

50 (b) "Legal representative" means an individual who is legally authorized to make health
 51 care decisions on behalf of another individual.

52 [(b)] (c) (i) "Monitoring device" means:

53 (A) a video surveillance camera; or

54 (B) a microphone or other device that captures audio.

55 (ii) "Monitoring device" does not include:

56 (A) a device that is specifically intended to intercept wire, electronic, or oral
 57 communication without notice to or the consent of a party to the
 58 communication; or

59 (B) a device that is connected to the Internet or that is set up to transmit data via
 60 an electronic communication.

61 [(e)] (d) "Resident" means an individual who receives health care from a facility.

- 62 ~~[(d)]~~ (e) "Room" means a resident's private or shared primary living space.
- 63 ~~[(e)]~~ (f) "Roommate" means an individual sharing a room with a resident.
- 64 (2) A resident or the resident's legal representative may operate or install a monitoring
- 65 device in the resident's room if the resident and the resident's legal representative, if any,
- 66 unless the resident is incapable of informed consent:
- 67 (a) notifies the resident's ~~[assisted-living]~~ facility in writing that the resident or the
- 68 resident's legal representative, if any:
- 69 (i) intends to operate or install a monitoring device in the resident's room; and
- 70 (ii) consents to a waiver agreement, if required by ~~[an-assisted-living]~~ a facility;
- 71 (b) obtains written consent from each of the resident's roommates, and their legal
- 72 representative, if any, that specifically states the hours when each roommate consents
- 73 to the resident or the resident's legal representative operating the monitoring device;
- 74 and
- 75 (c) assumes all responsibility for any cost related to installing or operating the
- 76 monitoring device.
- 77 (3) ~~[An-assisted-living]~~ A facility shall not be civilly or criminally liable to:
- 78 (a) a resident or resident's roommate for the operation of a monitoring device consistent
- 79 with this part; and
- 80 (b) any person other than the resident or resident's roommate for any claims related to
- 81 the use or operation of a monitoring device consistent with this part, unless the claim
- 82 is caused by the acts or omissions of an employee or agent of the ~~[assisted-living]~~
- 83 facility.
- 84 (4) (a) ~~[An-assisted-living]~~ A facility may not deny an individual admission to the facility
- 85 for the sole reason that the individual or the individual's legal representative requests
- 86 to install or operate a monitoring device in the individual's room.
- 87 (b) ~~[An-assisted-living]~~ A facility may not discharge a resident for the sole reason that the
- 88 resident or the resident's legal representative requests to install or operate a
- 89 monitoring device in the individual's room.
- 90 (c) A facility shall prohibit all employees of a facility from deactivating, repositioning,
- 91 or otherwise interfering with the operation of a monitoring device in an individual's
- 92 room.
- 93 ~~[(e)]~~ (d) ~~[An-assisted-living]~~ A facility may require the resident or the resident's legal
- 94 representative to place a sign near the entrance of the resident's room that states that
- 95 the room contains a monitoring device.

- 96 (5) Notwithstanding any other provision of this part, an individual may not, under this part,
97 operate a monitoring device in [~~an assisted living~~] a facility without a court order:
98 (a) in secret; or
99 (b) with an intent to intercept a wire, electronic, or oral communication without notice to
100 or the consent of a party to the communication.

101 Section 2. Section **26B-2-238** is amended to read:

102 **26B-2-238 . Definitions for Sections 26B-2-238 through 26B-2-241.**

103 As used in this section and Sections 26B-2-239, 26B-2-240, and 26B-2-241:

- 104 (1) "Clearance" means approval by the department under Section 26B-2-239 for an
105 individual to have direct patient access.
- 106 (2) "Covered body" means a covered provider, covered contractor, or covered employer.
- 107 (3) "Covered contractor" means a person that supplies covered individuals, by contract, to a
108 covered employer or covered provider.
- 109 (4) "Covered employer" means an individual who:
110 (a) engages a covered individual to provide services in a private residence to:
111 (i) an aged individual, as defined by department rule; or
112 (ii) a disabled individual, as defined by department rule;
113 (b) is not a covered provider; and
114 (c) is not a licensed health care facility within the state.
- 115 (5) "Covered individual":
116 (a) means an individual:
117 (i) whom a covered body engages; and
118 (ii) who may have direct patient access;
119 (b) includes:
120 (i) a nursing assistant, as defined by department rule;
121 (ii) a personal care aide, as defined by department rule;
122 (iii) an individual licensed to engage in the practice of nursing under Title 58,
123 Chapter 31b, Nurse Practice Act;
124 (iv) a provider of medical, therapeutic, or social services, including a provider of
125 laboratory and radiology services;
126 (v) an executive;
127 (vi) administrative staff, including a manager or other administrator;
128 (vii) dietary and food service staff;
129 (viii) housekeeping and maintenance staff; and

- 130 (ix) any other individual, as defined by department rule, who has direct patient
131 access; and
- 132 (c) does not include a student, as defined by department rule, directly supervised by a
133 member of the staff of the covered body or the student's instructor.
- 134 (6) "Covered provider" means:
- 135 (a) an end stage renal disease facility;
- 136 (b) a long-term care hospital;
- 137 (c) a nursing care facility;
- 138 (d) a small health care facility;
- 139 (e) an assisted living facility;
- 140 (f) a hospice;
- 141 (g) a home health agency; or
- 142 (h) a personal care agency.
- 143 (7) "Direct patient access" means for an individual to be in a position where the individual
144 could, in relation to a patient or resident of the covered body who engages the individual:
- 145 (a) cause physical or mental harm;
- 146 (b) commit theft; or
- 147 (c) view medical or financial records.
- 148 (8) "Engage" means to obtain one's services:
- 149 (a) by employment;
- 150 (b) by contract;
- 151 (c) as a volunteer; or
- 152 (d) by other arrangement.
- 153 (9) "Long-term care hospital":
- 154 (a) means a hospital that is certified to provide long-term care services under the
155 provisions of 42 U.S.C. Sec. 1395tt; and
- 156 (b) does not include a critical access hospital, designated under 42 U.S.C. Sec.
157 1395i-4(c)(2).
- 158 (10) "Patient" means an individual who receives health care services from one of the
159 following covered providers:
- 160 (a) an end stage renal disease facility;
- 161 (b) a long-term care hospital;
- 162 (c) a hospice;
- 163 (d) a home health agency; or

- 164 (e) a personal care agency.
- 165 (11) "Personal care agency" means a health care facility defined by department rule.
- 166 ~~(12)~~ "Rap back system" means a system that enables authorized entities to receive ongoing
 167 status notifications of any criminal history reported on individuals who are registered in
 168 the system.
- 169 ~~[(12)]~~ (13) "Resident" means an individual who receives health care services from one of
 170 the following covered providers:
- 171 (a) a nursing care facility;
- 172 (b) a small health care facility;
- 173 (c) an assisted living facility; or
- 174 (d) a hospice that provides living quarters as part of its services.
- 175 ~~[(13)]~~ (14) "Residential setting" means a place provided by a covered provider:
- 176 (a) for residents to live as part of the services provided by the covered provider; and
- 177 (b) where an individual who is not a resident also lives.
- 178 ~~[(14)]~~ (15) "Volunteer" means an individual, as defined by department rule, who provides
 179 services without pay or other compensation.
- 180 Section 3. Section **26B-2-240** is amended to read:
- 181 **26B-2-240 . Department authorized to grant, deny, or revoke clearance --**
 182 **Department may limit direct patient access -- Clearance.**
- 183 (1) The definitions in Section 26B-2-238 apply to this section.
- 184 (2) (a) As provided in this section, the department may grant, deny, or revoke clearance
 185 for an individual, including a covered individual.
- 186 (b) The department may limit the circumstances under which a covered individual
 187 granted clearance may have direct patient access, based on the relationship factors
 188 under Subsection (4) and other mitigating factors related to patient and resident
 189 protection.
- 190 (c) The department shall determine whether to grant clearance for each applicant for
 191 whom it receives:
- 192 (i) the personal identification information specified by the department under
 193 Subsection (4)(b); and
- 194 (ii) any fees established by the department under Subsection (9).
- 195 (d) The department shall[-] :
- 196 (i) establish a procedure for obtaining and evaluating relevant information concerning
 197 covered individuals, including fingerprinting the applicant and submitting the

198 prints to the Criminal Investigations and Technical Services Division of the
199 Department of Public Safety for checking against applicable state, regional, and
200 national criminal records files[-] ; and

201 (ii) require that a finding of clearance include a fingerprint-based criminal history
202 background check in the databases described under Subsection (3)(a), including
203 the inclusion of the individual's fingerprints in a rap back system.

204 (3) The department may review the following sources to determine whether an individual
205 should be granted or retain clearance, which may include:

206 (a) Department of Public Safety arrest, conviction, and disposition records described in
207 Title 53, Chapter 10, Criminal Investigations and Technical Services Act, including
208 information in state, regional, and national records files;

209 (b) juvenile court arrest, adjudication, and disposition records, as allowed under Section
210 78A-6-209;

211 (c) federal criminal background databases available to the state;

212 (d) the Division of Child and Family Services Licensing Information System described
213 in Section 80-2-1002;

214 (e) child abuse or neglect findings described in Section 80-3-404;

215 (f) the Division of Aging and Adult Services vulnerable adult abuse, neglect, or
216 exploitation database described in Section 26B-6-210;

217 (g) registries of nurse aids described in 42 C.F.R. Sec. 483.156;

218 (h) licensing and certification records of individuals licensed or certified by the Division
219 of Professional Licensing under Title 58, Occupations and Professions; and

220 (i) the List of Excluded Individuals and Entities database maintained by the United
221 States Department of Health and Human Services' Office of Inspector General.

222 (4) The department shall adopt rules that:

223 (a) specify the criteria the department will use to determine whether an individual is
224 granted or retains clearance:

225 (i) based on an initial evaluation and ongoing review of information under Subsection
226 (3); and

227 (ii) including consideration of the relationship the following may have to patient and
228 resident protection:

229 (A) warrants for arrest;

230 (B) arrests;

231 (C) convictions, including pleas in abeyance;

- 232 (D) pending diversion agreements;
- 233 (E) adjudications by a juvenile court under Section 80-6-701 if the individual is
234 over 28 years old and has been convicted, has pleaded no contest, or is subject
235 to a plea in abeyance or diversion agreement for a felony or misdemeanor, or
236 the individual is under 28 years old; and
- 237 (F) any other findings under Subsection (3); and
- 238 (b) specify the personal identification information that must be submitted by an
239 individual or covered body with an application for clearance, including:
- 240 (i) the applicant's Social Security number; and
241 (ii) fingerprints.
- 242 (5) For purposes of Subsection (4)(a), the department shall classify a crime committed in
243 another state according to the closest matching crime under Utah law, regardless of how
244 the crime is classified in the state where the crime was committed.
- 245 (6) The Department of Public Safety, the Administrative Office of the Courts, the Division
246 of Professional Licensing, and any other state agency or political subdivision of the state:
- 247 (a) shall allow the department to review the information the department may review
248 under Subsection (3); and
- 249 (b) except for the Department of Public Safety, may not charge the department for
250 access to the information.
- 251 (7) The department shall adopt measures to protect the security of the information it
252 reviews under Subsection (3) and strictly limit access to the information to department
253 employees responsible for processing an application for clearance.
- 254 (8) The department may disclose personal identification information specified under
255 Subsection (4)(b) to other divisions and offices within the department to verify that the
256 subject of the information is not identified as a perpetrator or offender in the information
257 sources described in Subsections (3)(d) through (f).
- 258 (9) The department may establish fees, in accordance with Section 63J-1-504, for an
259 application for clearance, which may include:
- 260 (a) the cost of obtaining and reviewing information under Subsection (3);
261 (b) a portion of the cost of creating and maintaining the Direct Access Clearance System
262 database under Section 26B-2-241; and
263 (c) other department costs related to the processing of the application and the ongoing
264 review of information pursuant to Subsection (4)(a) to determine whether clearance
265 should be retained.

266 Section 4. Section **26B-2-243** is enacted to read:

267 **26B-2-243 . Data collection and reporting requirements concerning incidents of**
268 **abuse, neglect, or exploitation.**

269 (1) As used in this section, "facility" means the same as that term is defined in Section
270 26B-2-236.

271 (2) In addition to the requirements in Section 26B-6-205 or 80-2-602, the department shall
272 require a facility to report any incident of abuse, neglect, or exploitation of a resident:

273 (a) to the department; and

274 (b) to the Division of Child and Family Services or Adult Protective Services, if
275 appropriate, or a law enforcement agency with jurisdiction over the covered provider
276 in which the alleged incident occurred.

277 (3) The department shall collect and compile all reported incidents described in Subsection
278 (2)(a) and annually on or before June 30 report the data to the Health and Human
279 Services Interim Committee.

280 Section 5. Section **63I-2-226** is amended to read:

281 **63I-2-226 . Repeal dates: Titles 26A through 26B.**

282 (1) Section 26B-1-241 is repealed July 1, 2024.

283 (2) Section 26B-1-302 is repealed on July 1, 2024.

284 (3) Section 26B-1-313 is repealed on July 1, 2024.

285 (4) Section 26B-1-314 is repealed on July 1, 2024.

286 (5) Section 26B-1-321 is repealed on July 1, 2024.

287 (6) Section 26B-1-419, which creates the Utah Health Care Workforce Financial Assistance
288 Program Advisory Committee, is repealed July 1, 2027.

289 (7) In relation to the Air Ambulance Committee, on July 1, 2024, Subsection 26B-2-231(1)(a)
290 is amended to read:

291 "(a) provide the patient or the patient's representative with the following information
292 before contacting an air medical transport provider:

293 (i) which health insurers in the state the air medical transport provider contracts with;

294 (ii) if sufficient data is available, the average charge for air medical transport services for a
295 patient who is uninsured or out of network; and

296 (iii) whether the air medical transport provider balance bills a patient for any charge not paid
297 by the patient's health insurer; and".

298 (8) Section 26B-2-243 is repealed July 1, 2027.

299 [~~8~~] (9) Section 26B-3-142 is repealed July 1, 2024.

300 ~~[(9)]~~ (10) Subsection 26B-3-215(5), related to reporting on coverage for in vitro fertilization
301 and genetic testing, is repealed July 1, 2030.

302 ~~[(10)]~~ (11) Section 26B-4-702, related to the Utah Health Care Workforce Financial
303 Assistance Program, is repealed July 1, 2027.

304 ~~[(11)]~~ (12) Section 26B-5-117, related to early childhood mental health support grant
305 programs, is repealed January 2, 2025.

306 ~~[(12)]~~ (13) Subsection 26B-7-117(3), related to reports to the Legislature on syringe
307 exchange and education, is repealed January 1, 2027.

308 ~~[(13)]~~ (14) Section 26B-7-120, relating to sickle cell disease, is repealed on July 1, 2025.

309 Section 6. Section **64-13-48** is amended to read:

310 **64-13-48 . Educational and career-readiness programs.**

311 (1) The department shall, in accordance with Subsection 64-13-6(1)(c), ensure that
312 appropriate evidence-based and evidence-informed educational or career-readiness
313 programs are made available to an inmate as soon as practicable after the creation of the
314 inmate's case action plan.

315 (2) The department shall provide incarcerated women with substantially equivalent
316 educational and career-readiness opportunities as incarcerated men.

317 (3) Before an inmate begins an educational or career-readiness program, the department
318 shall provide reasonable access to resources necessary for an inmate to apply for grants
319 or other available financial aid that may be available to pay for the inmate's program.

320 (4) (a) The department shall consider an inmate's current participation in an educational
321 or career-readiness program when the department makes a decision with regard to an
322 inmate's:

323 (i) transfer to another area or facility; or

324 (ii) appropriate disciplinary sanction.

325 (b) When possible, the department shall use best efforts to allow an inmate to continue
326 the inmate's participation in an educational or career-readiness program while the
327 facility is under lockdown, quarantine, or a similar status.

328 (5) (a) The department shall maintain records on an inmate's educational progress,
329 including completed life skills, certifications, and credit- and non-credit-bearing
330 courses, made while the inmate is incarcerated.

331 (b) The department shall facilitate the transfer of information related to the inmate's
332 educational process upon the inmate's release, including the inmate's post-release
333 contact information and the records described in Subsection (5)(a), to:

- 334 (i) the inmate; or
- 335 (ii) an entity that the inmate has authorized to receive the inmate's records or
- 336 post-release contact information, including an institution:
- 337 (A) from which the inmate received educational instruction while the inmate was
- 338 incarcerated; or
- 339 (B) at which the inmate plans to continue the inmate's post-incarceration
- 340 education.
- 341 (6) Beginning May 1, 2023, the department shall provide an annual report to the Higher
- 342 Education Appropriations Subcommittee regarding educational and career-readiness
- 343 programs for inmates, which shall include:
- 344 (a) the number of inmates who are participating in an educational or career-readiness
- 345 program, including an accredited postsecondary education program;
- 346 (b) the percentage of inmates who are participating in an educational or career-readiness
- 347 program as compared to the total inmate population;
- 348 (c) inmate program completion and graduation data, including the number of
- 349 completions and graduations in each educational or career-readiness program;
- 350 (d) the potential effect of educational or career-readiness programs on recidivism, as
- 351 determined by a comparison of:
- 352 (i) the total number of inmates who return to incarceration after a previous
- 353 incarceration; and
- 354 (ii) the number of inmates who return to incarceration after a previous incarceration
- 355 who participated in or completed an educational or career-readiness program;
- 356 (e) the number of inmates who were transferred to a different facility while currently
- 357 participating in an educational or career-readiness program, including the number of
- 358 inmates who were unable to continue a program after a transfer to a different facility;
- 359 and
- 360 (f) the department's:
- 361 (i) recommendation for resources that may increase inmates' access to and
- 362 participation in an educational or career-readiness program; and
- 363 (ii) estimate of how many additional inmates would participate in an educational or
- 364 career-readiness program if the resources were provided.
- 365 (7) The department may not offer training for an inmate to become a certified nursing
- 366 assistant certified by the Department of Health and Human Services.
- 367 [(7)] (8) The department may make rules in accordance with Section 64-13-10 and Title

368 63G, Chapter 3, Utah Administrative Rulemaking Act, to carry out the provisions of this
369 section.

370 Section 7. **Effective date.**

371 This bill takes effect on July 1, 2024.

372 Section 8. **Coordinating H.B. 495 with S.B. 46.**

373 If H.B. 495, Vulnerable Population Amendments, and S.B. 46, Health and Human
374 Services Amendments, both pass and become law, the Legislature intends that, on July
375 1, 2024, Subsection 26B-2-240(2)(d) be amended to read:

376 "(d)[-] The department shall:

377 (i) [-]establish a procedure for obtaining and evaluating relevant information
378 concerning covered individuals, including fingerprinting the applicant and submitting
379 the prints to the Criminal Investigations and Technical Services Division of the
380 Department of Public Safety for checking against applicable state, regional, and national
381 criminal records files[-] ; and

382 (ii) require that a certification for direct patient access include a fingerprint-based
383 criminal history background check in the databases described under Subsection (3)(a),
384 including the inclusion of the individual's fingerprints in a rap back system."