

Senator Curtis S. Bramble proposes the following substitute bill:

HEALTH AND HUMAN SERVICES LICENSING AMENDMENTS

2024 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Curtis S. Bramble

House Sponsor: Stephanie Gricius

LONG TITLE

General Description:

This bill consolidates and amends provisions relating to the licenses, certificates, and certifications issued by the Department of Health and Human Services.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ amends provisions relating to the use of emergency safety intervention in licensed congregate care programs;
- ▶ consolidates into a single part and amends provisions concerning licenses, certificates, and certifications issued by the Department of Health and Human Services, including provisions addressing:
 - revocation, suspension, sanctions, and penalties;
 - adjudicative proceedings;
 - access restrictions and injunctive relief;
 - criminal penalties; and
 - investigations, records, and enforcement; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:



26 None

27 **Other Special Clauses:**

28 None

29 **Utah Code Sections Affected:**

30 AMENDS:

31 **26B-2-101**, as last amended by Laws of Utah 2023, Chapter 305

32 **26B-2-105**, as renumbered and amended by Laws of Utah 2023, Chapter 305

33 **26B-2-107**, as renumbered and amended by Laws of Utah 2023, Chapter 305

34 **26B-2-120**, as last amended by Laws of Utah 2023, Chapter 344 and renumbered and
35 amended by Laws of Utah 2023, Chapter 305

36 **26B-2-123**, as renumbered and amended by Laws of Utah 2023, Chapter 305

37 **26B-2-222**, as renumbered and amended by Laws of Utah 2023, Chapter 305

38 **26B-4-502**, as renumbered and amended by Laws of Utah 2023, Chapter 307

39 **63G-2-305**, as last amended by Laws of Utah 2023, Chapters 1, 16, 205, and 329

40 **76-7-314**, as last amended by Laws of Utah 2023, Chapters 301, 330

41 **80-2-909**, as last amended by Laws of Utah 2023, Chapter 330

42 ENACTS:

43 **26B-2-701**, Utah Code Annotated 1953

44 **26B-2-702**, Utah Code Annotated 1953

45 **26B-2-703**, Utah Code Annotated 1953

46 RENUMBERS AND AMENDS:

47 **26B-2-704**, (Renumbered from 26B-2-209, as renumbered and amended by Laws of
48 Utah 2023, Chapter 305)

49 **26B-2-705**, (Renumbered from 26B-2-214, as renumbered and amended by Laws of
50 Utah 2023, Chapter 305)

51 **26B-2-706**, (Renumbered from 26B-2-114, as renumbered and amended by Laws of
52 Utah 2023, Chapter 305)

53 **26B-2-707**, (Renumbered from 26B-2-113, as renumbered and amended by Laws of
54 Utah 2023, Chapter 305)

55 **26B-2-708**, (Renumbered from 26B-2-133, as renumbered and amended by Laws of
56 Utah 2023, Chapter 305)

57 **26B-2-709**, (Renumbered from 26B-2-408, as renumbered and amended by Laws of
58 Utah 2023, Chapter 305)

59 REPEALS:

60 **26B-2-110**, as renumbered and amended by Laws of Utah 2023, Chapter 305

61 **26B-2-111**, as renumbered and amended by Laws of Utah 2023, Chapter 305

62 **26B-2-112**, as renumbered and amended by Laws of Utah 2023, Chapter 305

63 **26B-2-208**, as last amended by Laws of Utah 2023, Chapter 301 and renumbered and
64 amended by Laws of Utah 2023, Chapter 305

65 **26B-2-210**, as renumbered and amended by Laws of Utah 2023, Chapter 305

66 **26B-2-211**, as renumbered and amended by Laws of Utah 2023, Chapter 305

67 **26B-2-215**, as renumbered and amended by Laws of Utah 2023, Chapter 305

68 **26B-2-216**, as renumbered and amended by Laws of Utah 2023, Chapter 305

69 **26B-2-409**, as renumbered and amended by Laws of Utah 2023, Chapter 305

70 **26B-2-410**, as renumbered and amended by Laws of Utah 2023, Chapter 305

71

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

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

74 **26B-2-101. Definitions.**

75 As used in this part:

76 (1) "Adoption services" means the same as that term is defined in Section **80-2-801**.

77 (2) "Adult day care" means nonresidential care and supervision:

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

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

82 (3) "Applicant" means a person that applies for an initial license or a license renewal
83 under this part.

84 (4) (a) "Associated with the licensee" means that an individual is:

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

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

88 (4)(a)(i).

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

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

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

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

94 (C) a board of an organization operating under a contract to provide mental health or
95 substance use programs, or services for the local mental health authority or substance abuse
96 authority; or

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

99 (5) (a) "Boarding school" means a private school that:

100 (i) uses a regionally accredited education program;

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

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

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

104 (iii) has the primary purpose of providing the school's students with an education, as
105 defined in Subsection (5)(b)(i); and

106 (iv) (A) does not provide the treatment or services described in Subsection [(38)(a)]
107 (39)(a); or

108 (B) provides the treatment or services described in Subsection [(38)(a)] (39)(a) on a
109 limited basis, as described in Subsection (5)(b)(ii).

110 (b) (i) For purposes of Subsection (5)(a)(iii), "education" means a course of study for
111 one or more grades from kindergarten through grade 12.

112 (ii) For purposes of Subsection (5)(a)(iv)(B), a private school provides the treatment or
113 services described in Subsection [(38)(a)] (39)(a) on a limited basis if:

114 (A) the treatment or services described in Subsection [(38)(a)] (39)(a) are provided
115 only as an incidental service to a student; and

116 (B) the school does not:

117 (I) specifically solicit a student for the purpose of providing the treatment or services
118 described in Subsection [(38)(a)] (39)(a); or

- 119 (II) have a primary purpose of providing the treatment or services described in
120 Subsection [~~(38)(a)~~] (39)(a).
- 121 (c) "Boarding school" does not include a therapeutic school.
- 122 (6) "Child" means an individual under 18 years old.
- 123 (7) "Child placing" means receiving, accepting, or providing custody or care for any
124 child, temporarily or permanently, for the purpose of:
- 125 (a) finding a person to adopt the child;
- 126 (b) placing the child in a home for adoption; or
- 127 (c) foster home placement.
- 128 (8) "Child-placing agency" means a person that engages in child placing.
- 129 (9) "Client" means an individual who receives or has received services from a licensee.
- 130 (10) (a) "Congregate care program" means any of the following that provide services to
131 a child:
- 132 (i) an outdoor youth program;
- 133 (ii) a residential support program;
- 134 (iii) a residential treatment program; or
- 135 (iv) a therapeutic school.
- 136 (b) "Congregate care program" does not include a human services program that:
- 137 (i) is licensed to serve adults; and
- 138 (ii) is approved by the office to service a child for a limited time.
- 139 (11) "Day treatment" means specialized treatment that is provided to:
- 140 (a) a client less than 24 hours a day; and
- 141 (b) four or more persons who:
- 142 (i) are unrelated to the owner or provider; and
- 143 (ii) have emotional, psychological, developmental, physical, or behavioral
144 dysfunctions, impairments, or chemical dependencies.
- 145 (12) "Department contractor" means an individual who:
- 146 (a) provides services under a contract with the department; and
- 147 (b) due to the contract with the department, has or will likely have direct access to a
148 child or vulnerable adult.
- 149 (13) "Direct access" means that an individual has, or likely will have:

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

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

154 (14) "Directly supervised" means that an individual is being supervised under the
155 uninterrupted visual and auditory surveillance of another individual who has a current
156 background screening approval issued by the office.

157 (15) "Director" means the director of the office.

158 (16) "Domestic violence" means the same as that term is defined in Section [77-36-1](#).

159 (17) "Domestic violence treatment program" means a nonresidential program designed
160 to provide psychological treatment and educational services to perpetrators and victims of
161 domestic violence.

162 (18) "Elder adult" means a person 65 years old or older.

163 (19) "Emergency safety intervention" means a tactic used to protect staff or a client
164 from being physically injured, utilized by an appropriately trained direct care staff and only
165 performed in accordance with a nationally or regionally recognized curriculum in the least
166 restrictive manner to restore staff or client safety.

167 [~~19~~] (20) "Foster home" means a residence that is licensed or certified by the office
168 for the full-time substitute care of a child.

169 [~~20~~] (21) "Health benefit plan" means the same as that term is defined in Section
170 [31A-22-634](#).

171 [~~21~~] (22) "Health care provider" means the same as that term is defined in Section
172 [78B-3-403](#).

173 [~~22~~] (23) "Health insurer" means the same as that term is defined in Section
174 [31A-22-615.5](#).

175 [~~23~~] (24) (a) "Human services program" means:

176 (i) a foster home;

177 (ii) a therapeutic school;

178 (iii) a youth program;

179 (iv) an outdoor youth program;

180 (v) a residential treatment program;

- 181 (vi) a residential support program;
- 182 (vii) a resource family home;
- 183 (viii) a recovery residence; or
- 184 (ix) a facility or program that provides:
 - 185 (A) adult day care;
 - 186 (B) day treatment;
 - 187 (C) outpatient treatment;
 - 188 (D) domestic violence treatment;
 - 189 (E) child-placing services;
 - 190 (F) social detoxification; or
 - 191 (G) any other human services that are required by contract with the department to be
 - 192 licensed with the department.
- 193 (b) "Human services program" does not include:
 - 194 (i) a boarding school; or
 - 195 (ii) a residential, vocational and life skills program, as defined in Section [13-53-102](#).
- 196 [~~(24)~~] (25) "Indian child" means the same as that term is defined in 25 U.S.C. Sec.
- 197 1903.
- 198 [~~(25)~~] (26) "Indian country" means the same as that term is defined in 18 U.S.C. Sec.
- 199 1151.
- 200 [~~(26)~~] (27) "Indian tribe" means the same as that term is defined in 25 U.S.C. Sec.
- 201 1903.
- 202 [~~(27)~~] (28) "Intermediate secure treatment" means 24-hour specialized residential
- 203 treatment or care for an individual who:
 - 204 (a) cannot live independently or in a less restrictive environment; and
 - 205 (b) requires, without the individual's consent or control, the use of locked doors to care
 - 206 for the individual.
- 207 [~~(28)~~] (29) "Licensee" means an individual or a human services program licensed by
- 208 the office.
- 209 [~~(29)~~] (30) "Local government" means a city, town, metro township, or county.
- 210 [~~(30)~~] (31) "Minor" means child.
- 211 [~~(31)~~] (32) "Office" means the Office of Licensing within the department.

212 [~~(32)~~] (33) "Outdoor youth program" means a program that provides:

213 (a) services to a child that has:

214 (i) a chemical dependency; or

215 (ii) a dysfunction or impairment that is emotional, psychological, developmental,

216 physical, or behavioral;

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

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

219 (ii) informal therapy or similar services, including wilderness therapy, adventure

220 therapy, or outdoor behavioral healthcare.

221 [~~(33)~~] (34) "Outpatient treatment" means individual, family, or group therapy or

222 counseling designed to improve and enhance social or psychological functioning for those

223 whose physical and emotional status allows them to continue functioning in their usual living

224 environment.

225 [~~(34)~~] (35) "Practice group" or "group practice" means two or more health care

226 providers legally organized as a partnership, professional corporation, or similar association,

227 for which:

228 (a) substantially all of the services of the health care providers who are members of the

229 group are provided through the group and are billed in the name of the group and amounts

230 received are treated as receipts of the group; and

231 (b) the overhead expenses of and the income from the practice are distributed in

232 accordance with methods previously determined by members of the group.

233 [~~(35)~~] (36) "Private-placement child" means a child whose parent or guardian enters

234 into a contract with a congregate care program for the child to receive services.

235 [~~(36)~~] (37) (a) "Recovery residence" means a home, residence, or facility that meets at

236 least two of the following requirements:

237 (i) provides a supervised living environment for individuals recovering from a

238 substance use disorder;

239 (ii) provides a living environment in which more than half of the individuals in the

240 residence are recovering from a substance use disorder;

241 (iii) provides or arranges for residents to receive services related to the resident's

242 recovery from a substance use disorder, either on or off site;

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

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

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

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

248 (i) a residential treatment program;

249 (ii) residential support program; or

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

251 (A) residents, by a majority vote of the residents, establish, implement, and enforce
252 policies governing the living environment, including the manner in which applications for
253 residence are approved and the manner in which residents are expelled;

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

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

258 [~~37~~] (38) "Regular business hours" means:

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

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

261 [~~38~~] (39) (a) "Residential support program" means a program that arranges for or
262 provides the necessities of life as a protective service to individuals or families who have a
263 disability or who are experiencing a dislocation or emergency that prevents them from
264 providing these services for themselves or their families.

265 (b) "Residential support program" includes a program that provides a supervised living
266 environment for individuals with dysfunctions or impairments that are:

267 (i) emotional;

268 (ii) psychological;

269 (iii) developmental; or

270 (iv) behavioral.

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

272 (d) "Residential support program" does not include:

273 (i) a recovery residence; or

274 (ii) a program that provides residential services that are performed:
275 (A) exclusively under contract with the department and provided to individuals through
276 the Division of Services for People with Disabilities; or
277 (B) in a facility that serves fewer than four individuals.

278 [~~(39)~~] (40) (a) "Residential treatment" means a 24-hour group living environment for
279 four or more individuals unrelated to the owner or provider that offers room or board and
280 specialized treatment, behavior modification, rehabilitation, discipline, emotional growth, or
281 habilitation services for persons with emotional, psychological, developmental, or behavioral
282 dysfunctions, impairments, or chemical dependencies.

283 (b) "Residential treatment" does not include a:
284 (i) boarding school;
285 (ii) foster home; or
286 (iii) recovery residence.

287 [~~(40)~~] (41) "Residential treatment program" means a program or facility that provides:
288 (a) residential treatment; or
289 (b) intermediate secure treatment.

290 [~~(41)~~] (42) "Seclusion" means the involuntary confinement of an individual in a room
291 or an area:
292 (a) away from the individual's peers; and
293 (b) in a manner that physically prevents the individual from leaving the room or area.

294 [~~(42)~~] (43) "Social detoxification" means short-term residential services for persons
295 who are experiencing or have recently experienced drug or alcohol intoxication, that are
296 provided outside of a health care facility licensed under Part 2, Health Care Facility Licensing
297 and Inspection, and that include:
298 (a) room and board for persons who are unrelated to the owner or manager of the
299 facility;
300 (b) specialized rehabilitation to acquire sobriety; and
301 (c) aftercare services.

302 [~~(43)~~] (44) "Substance abuse disorder" or "substance use disorder" mean the same as
303 "substance use disorder" is defined in Section [26B-5-501](#).

304 [~~(44)~~] (45) "Substance abuse treatment program" or "substance use disorder treatment

305 program" means a program:

306 (a) designed to provide:

307 (i) specialized drug or alcohol treatment;

308 (ii) rehabilitation; or

309 (iii) habilitation services; and

310 (b) that provides the treatment or services described in Subsection [~~(44)~~(a)] (45)(a) to

311 persons with:

312 (i) a diagnosed substance use disorder; or

313 (ii) chemical dependency disorder.

314 [~~(45)~~] (46) "Therapeutic school" means a residential group living facility:

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

316 (i) the owner of the facility; or

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

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

319 (i) at home;

320 (ii) in a public school; or

321 (iii) in a nonresidential private school; and

322 (c) that offers:

323 (i) room and board; and

324 (ii) an academic education integrated with:

325 (A) specialized structure and supervision; or

326 (B) services or treatment related to:

327 (I) a disability;

328 (II) emotional development;

329 (III) behavioral development;

330 (IV) familial development; or

331 (V) social development.

332 [~~(46)~~] (47) "Unrelated persons" means persons other than parents, legal guardians,

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

334 [~~(47)~~] (48) "Vulnerable adult" means an elder adult or an adult who has a temporary or

335 permanent mental or physical impairment that substantially affects the person's ability to:

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

343 ~~[(48)]~~ (49) (a) "Youth program" means a program designed to provide behavioral,

344 substance use, or mental health services to minors that:

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

353 (b) "Youth program" does not include recreational programs such as Boy Scouts, Girl

354 Scouts, 4-H, and other such organizations.

355 ~~[(49)]~~ (50) (a) "Youth transportation company" means any person that transports a

356 child for payment to or from a congregate care program in Utah.

- 357 (b) "Youth transportation company" does not include:
- 358 (i) a relative of the child;
- 359 (ii) a state agency; or
- 360 (iii) a congregate care program's employee who transports the child from the
- 361 congregate care program that employs the employee and returns the child to the same
- 362 congregate care program.

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

364 **26B-2-105. Licensure requirements -- Expiration -- Renewal.**

365 (1) Except as provided in Section **26B-2-115**, an individual, agency, firm, corporation,

366 association, or governmental unit acting severally or jointly with any other individual, agency,

367 firm, corporation, association, or governmental unit may not establish, conduct, or maintain a
368 human services program in this state without a valid and current license issued by and under
369 the authority of the office as provided by this part and the rules under the authority of this part.

370 (2) (a) For purposes of this Subsection (2), "member" means a person or entity that is
371 associated with another person or entity:

372 (i) as a member;

373 (ii) as a partner;

374 (iii) as a shareholder; or

375 (iv) as a person or entity involved in the ownership or management of a human
376 services program owned or managed by the other person or entity.

377 (b) A license issued under this part may not be assigned or transferred.

378 (c) An application for a license under this part shall be treated as an application for
379 reinstatement of a revoked license if:

380 (i) (A) the person or entity applying for the license had a license revoked under this
381 part; and

382 (B) the revoked license described in Subsection (2)(c)(i)(A) is not reinstated before the
383 application described in this Subsection (2)(c) is made; or

384 (ii) a member of an entity applying for the license:

385 (A) (I) had a license revoked under this part; and

386 (II) the revoked license described in Subsection (2)(c)(ii)(A)(I) is not reinstated before
387 the application described in this Subsection (2)(c) is made; or

388 (B) (I) was a member of an entity that had a license revoked under this part at any time
389 before the license was revoked; and

390 (II) the revoked license described in Subsection (2)(c)(ii)(B)(I) is not reinstated before
391 the application described in this Subsection (2)(c) is made.

392 (3) A current license shall at all times be posted in the facility where each human
393 services program is operated, in a place that is visible and readily accessible to the public.

394 (4) (a) Except as provided in Subsection (4)(c), each license issued under this part
395 expires at midnight on the last day of the same month the license was issued, one year
396 following the date of issuance unless the license has been:

397 (i) previously revoked by the office;

- 398 (ii) voluntarily returned to the office by the licensee; or
399 (iii) extended by the office.
- 400 (b) A license shall be renewed upon application and payment of the applicable fee,
401 unless the office finds that the licensee:
- 402 (i) is not in compliance with the:
- 403 (A) provisions of this part; or
404 (B) rules made under this part;
- 405 (ii) has engaged in a pattern of noncompliance with the:
- 406 (A) provisions of this part; or
407 (B) rules made under this part;
- 408 (iii) has engaged in conduct that is grounds for denying a license under Section
409 ~~[26B-2-112]~~ [26B-2-703](#); or
- 410 (iv) has engaged in conduct that poses a substantial risk of harm to any person.
- 411 (c) The office may issue a renewal license that expires at midnight on the last day of
412 the same month the license was issued, two years following the date of issuance, if:
- 413 (i) the licensee has maintained a human services license for at least 24 months before
414 the day on which the licensee applies for the renewal; and
- 415 (ii) the licensee has not violated this part or a rule made under this part.
- 416 (5) Any licensee that is in operation at the time rules are made in accordance with this
417 part shall be given a reasonable time for compliance as determined by the rule.
- 418 (6) (a) A license for a human services program issued under this section shall apply to
419 a specific human services program site.
- 420 (b) A human services program shall obtain a separate license for each site where the
421 human services program is operated.
- 422 Section 3. Section **26B-2-107** is amended to read:
- 423 **26B-2-107. Administrative inspections.**
- 424 (1) (a) Subject to Subsection (1)(b), the office may, for the purpose of ascertaining
425 compliance with this part, enter and inspect on a routine basis the facility of a licensee.
- 426 (b) (i) The office shall enter and inspect a congregate care program at least once each
427 calendar quarter.
- 428 (ii) At least two of the inspections described in Subsection (1)(b)(i) shall be

429 unannounced.

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

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

435 (a) give proper identification;

436 (b) request to see the applicable license;

437 (c) describe the nature and purpose of the inspection; and

438 (d) if necessary, explain the authority of the office to conduct the inspection and the
439 penalty for refusing to permit the inspection as provided in Section [\[26B-2-113\]](#) [26B-2-707](#).

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

442 (a) inspect the physical facilities;

443 (b) inspect and copy records and documents;

444 (c) interview officers, employees, clients, family members of clients, and others; and

445 (d) observe the licensee in operation.

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

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

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

453 Section 4. Section **26B-2-120** is amended to read:

454 **26B-2-120. Background check -- Direct access to children or vulnerable adults.**

455 (1) As used in this section:

456 (a) (i) "Applicant" means, notwithstanding Section [26B-2-101](#):

457 (A) an individual who applies for an initial license or certification or a license or
458 certification renewal under this part;

459 (B) an individual who is associated with a licensee and has or will likely have direct

460 access to a child or a vulnerable adult;

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

463 (D) a department contractor;

464 (E) an individual who transports a child for a youth transportation company;

465 (F) a guardian submitting an application on behalf of an individual, other than the child
466 or vulnerable adult who is receiving the service, if the individual is 12 years old or older and
467 resides in a home, that is licensed or certified by the office; or

468 (G) a guardian submitting an application on behalf of an individual, other than the
469 child or vulnerable adult who is receiving the service, if the individual is 12 years old or older
470 and is a person described in Subsection (1)(a)(i)(A), (B), (C), or (D).

471 (ii) "Applicant" does not include:

472 (A) an individual who is in the custody of the Division of Child and Family Services or
473 the Division of Juvenile Justice Services; or

474 (B) an individual who applies for employment with, or is employed by, the Department
475 of Health and Human Services.

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

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

479 (d) "Certified peer support specialist" means the same as that term is defined in Section
480 [26B-5-610](#).

481 (e) "Criminal finding" means a record of:

482 (i) an arrest or a warrant for an arrest;

483 (ii) charges for a criminal offense; or

484 (iii) a criminal conviction.

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

487 (g) "Mental health professional" means an individual who:

488 (i) is licensed under Title 58, Chapter 60, Mental Health Professional Practice Act; and

489 (ii) engaged in the practice of mental health therapy.

490 (h) "Non-criminal finding" means a record maintained in:

- 491 (i) the Division of Child and Family Services' Management Information System
492 described in Section 80-2-1001;
- 493 (ii) the Division of Child and Family Services' Licensing Information System described
494 in Section 80-2-1002;
- 495 (iii) the Division of Aging and Adult Services' vulnerable adult abuse, neglect, or
496 exploitation database described in Section 26B-6-210;
- 497 (iv) the Sex and Kidnap Offender Registry described in Title 77, Chapter 41, Sex and
498 Kidnap Offender Registry, or a national sex offender registry; or
- 499 (v) a state child abuse or neglect registry.
- 500 (i) (i) "Peer support specialist" means an individual who:
501 (A) has a disability or a family member with a disability, or is in recovery from a
502 mental illness or a substance use disorder; and
503 (B) uses personal experience to provide support, guidance, or services to promote
504 resiliency and recovery.
- 505 (ii) "Peer support specialist" includes a certified peer support specialist.
506 (iii) "Peer support specialist" does not include a mental health professional.
- 507 (j) "Personal identifying information" means:
508 (i) current name, former names, nicknames, and aliases;
509 (ii) date of birth;
510 (iii) physical address and email address;
511 (iv) telephone number;
512 (v) driver license or other government-issued identification;
513 (vi) social security number;
514 (vii) only for applicants who are 18 years old or older, fingerprints, in a form specified
515 by the office; and
516 (viii) other information specified by the office by rule made in accordance with Title
517 63G, Chapter 3, Utah Administrative Rulemaking Act.
- 518 (k) "Practice of mental health therapy" means the same as that term is defined in
519 Section 58-60-102.
- 520 (2) Except as provided in Subsection (12), an applicant or a representative shall submit
521 the following to the office:

- 522 (a) personal identifying information;
- 523 (b) a fee established by the office under Section 63J-1-504; and
- 524 (c) a disclosure form, specified by the office, for consent for:
- 525 (i) an initial background check upon submission of the information described in this
- 526 Subsection (2);
- 527 (ii) ongoing monitoring of fingerprints and registries until no longer associated with a
- 528 licensee for 90 days;
- 529 (iii) a background check when the office determines that reasonable cause exists; and
- 530 (iv) retention of personal identifying information, including fingerprints, for
- 531 monitoring and notification as described in Subsections (3)(d) and (4); and
- 532 (d) if an applicant resided outside of the United States and its territories during the five
- 533 years immediately preceding the day on which the information described in Subsections (2)(a)
- 534 through (c) is submitted to the office, documentation establishing whether the applicant was
- 535 convicted of a crime during the time that the applicant resided outside of the United States or
- 536 its territories.
- 537 (3) The office:
- 538 (a) shall perform the following duties as part of a background check of an applicant:
- 539 (i) check state and regional criminal background databases for the applicant's criminal
- 540 history by:
- 541 (A) submitting personal identifying information to the bureau for a search; or
- 542 (B) using the applicant's personal identifying information to search state and regional
- 543 criminal background databases as authorized under Section 53-10-108;
- 544 (ii) submit the applicant's personal identifying information and fingerprints to the
- 545 bureau for a criminal history search of applicable national criminal background databases;
- 546 (iii) search the Division of Child and Family Services' Licensing Information System
- 547 described in Section 80-2-1002;
- 548 (iv) if the applicant is applying to become a prospective foster or adoptive parent,
- 549 search the Division of Child and Family Services' Management Information System described
- 550 in Section 80-2-1001 for:
- 551 (A) the applicant; and
- 552 (B) any adult living in the applicant's home;

553 (v) for an applicant described in Subsection (1)(a)(i)(F), search the Division of Child
554 and Family Services' Management Information System described in Section 80-2-1001;

555 (vi) search the Division of Aging and Adult Services' vulnerable adult abuse, neglect,
556 or exploitation database described in Section 26B-6-210;

557 (vii) search the juvenile court records for substantiated findings of severe child abuse
558 or neglect described in Section 80-3-404; and

559 (viii) search the juvenile court arrest, adjudication, and disposition records, as provided
560 under Section 78A-6-209;

561 (b) shall conduct a background check of an applicant for an initial background check
562 upon submission of the information described in Subsection (2);

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

566 (i) for an annual renewal; or

567 (ii) when the office determines that reasonable cause exists;

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

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

574 (i) more than one license;

575 (ii) direct access to a child or a vulnerable adult in more than one human services
576 program; or

577 (iii) direct access to a child or a vulnerable adult under a contract with the department;

578 (f) shall track the status of each individual with direct access to a child or a vulnerable
579 adult and notify the bureau within 90 days after the day on which the license expires or the
580 individual's direct access to a child or a vulnerable adult ceases;

581 (g) shall adopt measures to strictly limit access to personal identifying information
582 solely to the individuals responsible for processing and entering the applications for

583 background checks and to protect the security of the personal identifying information the office

584 reviews under this Subsection (3);

585 (h) as necessary to comply with the federal requirement to check a state's child abuse
586 and neglect registry regarding any individual working in a congregate care program, shall:

587 (i) search the Division of Child and Family Services' Licensing Information System
588 described in Section 80-2-1002; and

589 (ii) require the child abuse and neglect registry be checked in each state where an
590 applicant resided at any time during the five years immediately preceding the day on which the
591 applicant submits the information described in Subsection (2) to the office; and

592 (i) shall make rules, in accordance with Title 63G, Chapter 3, Utah Administrative
593 Rulemaking Act, to implement the provisions of this Subsection (3) relating to background
594 checks.

595 (4) (a) With the personal identifying information the office submits to the bureau under
596 Subsection (3), the bureau shall check against state and regional criminal background databases
597 for the applicant's criminal history.

598 (b) With the personal identifying information and fingerprints the office submits to the
599 bureau under Subsection (3), the bureau shall check against national criminal background
600 databases for the applicant's criminal history.

601 (c) Upon direction from the office, and with the personal identifying information and
602 fingerprints the office submits to the bureau under Subsection (3)(d), the bureau shall:

603 (i) maintain a separate file of the fingerprints for search by future submissions to the
604 local and regional criminal records databases, including latent prints; and

605 (ii) monitor state and regional criminal background databases and identify criminal
606 activity associated with the applicant.

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

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

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

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

617 (f) Upon notice that an individual's direct access to a child or a vulnerable adult has
618 ceased for 90 days, the bureau shall:

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

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

624 (5) (a) Except as provided in Subsection (5)(b), after conducting the background check
625 described in Subsections (3) and (4), the office shall deny an application to an applicant who,
626 within three years before the day on which the applicant submits information to the office
627 under Subsection (2) for a background check, has been convicted of:

628 (i) a felony or misdemeanor involving conduct that constitutes any of the following:

629 (A) an offense identified as domestic violence, lewdness, voyeurism, battery, cruelty to
630 animals, or bestiality;

631 (B) a violation of any pornography law, including sexual exploitation of a minor or
632 aggravated sexual exploitation of a minor;

633 (C) sexual solicitation;

634 (D) an offense included in Title 76, Chapter 5, Offenses Against the Individual, Title
635 76, Chapter 5b, Sexual Exploitation Act, Title 76, Chapter 4, Part 4, Enticement of a Minor, or
636 Title 76, Chapter 7, Offenses Against the Family;

637 (E) aggravated arson, as described in Section 76-6-103;

638 (F) aggravated burglary, as described in Section 76-6-203;

639 (G) aggravated robbery, as described in Section 76-6-302;

640 (H) identity fraud crime, as described in Section 76-6-1102;

641 (I) sexual battery, as described in Section 76-9-702.1; or

642 (J) a violent offense committed in the presence of a child, as described in Section
643 76-3-203.10; or

644 (ii) a felony or misdemeanor offense committed outside of the state that, if committed
645 in the state, would constitute a violation of an offense described in Subsection (5)(a)(i).

646 (b) (i) Subsection (5)(a) does not apply to an applicant who is seeking a position as a
647 peer support provider, a mental health professional, or in a program that serves only adults with
648 a primary mental health diagnosis, with or without a co-occurring substance use disorder.

649 (ii) The office shall conduct a comprehensive review of an applicant described in
650 Subsection (5)(b)(i) in accordance with Subsection (6).

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

653 (a) has a felony or class A misdemeanor conviction for an offense described in
654 Subsection (5) with a date of conviction that is more than three years before the date on which
655 the applicant submits the information described in Subsection (2);

656 (b) has a felony charge or conviction for an offense not described in Subsection (5)
657 with a date of charge or conviction that is no more than 10 years before the date on which the
658 applicant submits the application under Subsection (2) and no criminal findings or
659 non-criminal findings after the date of conviction;

660 (c) has a class B misdemeanor or class C misdemeanor conviction for an offense
661 described in Subsection (5) with a date of conviction that is more than three years after, and no
662 more than 10 years before, the date on which the applicant submits the information described
663 in Subsection (2) and no criminal findings or non-criminal findings after the date of conviction;

664 (d) has a misdemeanor conviction for an offense not described in Subsection (5) with a
665 date of conviction that is no more than three years before the date on which the applicant
666 submits information described in Subsection (2) and no criminal findings or non-criminal
667 findings after the date of conviction;

668 (e) is currently subject to a plea in abeyance or diversion agreement for an offense
669 described in Subsection (5);

670 (f) appears on the Sex and Kidnap Offender Registry described in Title 77, Chapter 41,
671 Sex and Kidnap Offender Registry, or a national sex offender registry;

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

674 (i) under 28 years old; or

675 (ii) 28 years old or older and has been convicted of, has pleaded no contest to, or is
676 currently subject to a plea in abeyance or diversion agreement for a felony or a misdemeanor

677 offense described in Subsection (5);

678 (h) has a pending charge for an offense described in Subsection (5);

679 (i) has a listing in the Division of Child and Family Services' Licensing Information
680 System described in Section 80-2-1002 that occurred no more than 15 years before the date on
681 which the applicant submits the information described in Subsection (2) and no criminal
682 findings or non-criminal findings dated after the date of the listing;

683 (j) has a listing in the Division of Aging and Adult Services' vulnerable adult abuse,
684 neglect, or exploitation database described in Section 26B-6-210 that occurred no more than 15
685 years before the date on which the applicant submits the information described in Subsection
686 (2) and no criminal findings or non-criminal findings dated after the date of the listing;

687 (k) has a substantiated finding of severe child abuse or neglect under Section 80-3-404
688 or 80-3-504 that occurred no more than 15 years before the date on which the applicant submits
689 the information described in Subsection (2) and no criminal findings or non-criminal findings
690 dated after the date of the finding;

691 (l) (i) is seeking a position:

692 (A) as a peer support provider;

693 (B) as a mental health professional; or

694 (C) in a program that serves only adults with a primary mental health diagnosis, with or
695 without a co-occurring substance use disorder; and

696 (ii) within three years before the day on which the applicant submits the information
697 described in Subsection (2):

698 (A) has a felony or misdemeanor charge or conviction;

699 (B) has a listing in the Division of Child and Family Services' Licensing Information
700 System described in Section 80-2-1002;

701 (C) has a listing in the Division of Aging and Adult Services' vulnerable adult abuse,
702 neglect, or exploitation database described in Section 26B-6-210; or

703 (D) has a substantiated finding of severe child abuse or neglect under Section 80-3-404
704 or 80-3-504;

705 (m) (i) (A) is seeking a position in a congregate care program;

706 (B) is seeking to become a prospective foster or adoptive parent; or

707 (C) is an applicant described in Subsection (1)(a)(i)(F); and

708 (ii) (A) has an infraction conviction for conduct that constitutes an offense or violation
709 described in Subsection (5)(a)(i)(A) or (B);

710 (B) has a listing in the Division of Child and Family Services' Licensing Information
711 System described in Section 80-2-1002;

712 (C) has a listing in the Division of Aging and Adult Services' vulnerable adult abuse,
713 neglect, or exploitation database described in Section 26B-6-210;

714 (D) has a substantiated finding of severe child abuse or neglect under Section 80-3-404
715 or 80-3-504; or

716 (E) has a listing on the registry check described in Subsection (13)(a) as having a
717 substantiated or supported finding of a severe type of child abuse or neglect as defined in
718 Section 80-1-102; or

719 (n) is seeking to become a prospective foster or adoptive parent and has, or has an adult
720 living with the applicant who has, a conviction, finding, or listing described in Subsection
721 (6)(m)(ii).

722 (7) (a) The comprehensive review shall include an examination of:

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

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

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

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

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

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

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

731 (B) sexual abuse;

732 (C) sexual exploitation; or

733 (D) negligent treatment;

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

736 (viii) the applicant's risk of harm to clientele in the program or in the capacity for
737 which the applicant is applying.

738 (b) At the conclusion of the comprehensive review, the office shall deny an application

739 to an applicant if the office finds:

740 (i) that approval would likely create a risk of harm to a child or a vulnerable adult; or

741 (ii) an individual is prohibited from having direct access to a child or vulnerable adult
742 by court order.

743 (8) The office shall approve an application to an applicant who is not denied under this
744 section.

745 (9) (a) The office may conditionally approve an application of an applicant, for a
746 maximum of 60 days after the day on which the office sends written notice to the applicant
747 under Subsection (11), without requiring that the applicant be directly supervised, if the office:

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

750 (ii) would otherwise approve an application of the applicant under this section.

751 (b) The office may conditionally approve an application of an applicant, for a
752 maximum of one year after the day on which the office sends written notice to the applicant
753 under Subsection (11), without requiring that the applicant be directly supervised if the office:

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

756 (ii) would otherwise approve an application of the applicant under this section.

757 (c) Upon receiving the results of the criminal history search of a national criminal
758 background database, the office shall approve or deny the application of the applicant in
759 accordance with this section.

760 (10) (a) A licensee or department contractor may not permit an individual to have
761 direct access to a child or a vulnerable adult without being directly supervised unless:

762 (i) the individual is associated with the licensee or department contractor and the
763 department conducts a background screening in accordance with this section;

764 (ii) the individual is the parent or guardian of the child, or the guardian of the
765 vulnerable adult;

766 (iii) the individual is approved by the parent or guardian of the child, or the guardian of
767 the vulnerable adult, to have direct access to the child or the vulnerable adult;

768 (iv) the individual is only permitted to have direct access to a vulnerable adult who
769 voluntarily invites the individual to visit; or

770 (v) the individual only provides incidental care for a foster child on behalf of a foster
771 parent who has used reasonable and prudent judgment to select the individual to provide the
772 incidental care for the foster child.

773 (b) Notwithstanding any other provision of this section, an individual for whom the
774 office denies an application may not have direct access to a child or vulnerable adult unless the
775 office approves a subsequent application by the individual.

776 (11) (a) Within 30 days after the day on which the applicant submits the information
777 described in Subsection (2), the office shall notify the applicant of any potentially disqualifying
778 criminal findings or non-criminal findings.

779 (b) If the notice under Subsection (11)(a) states that the applicant's application is
780 denied, the notice shall further advise the applicant that the applicant may, under Subsection
781 [~~26B-2-111(2)~~] [26B-2-703\(12\)](#), request a hearing in the department's Office of Administrative
782 Hearings, to challenge the office's decision.

783 (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
784 office shall make rules, consistent with this part:

785 (i) defining procedures for the challenge of the office's background check decision
786 described in Subsection (11)(b); and

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

789 (12) (a) An individual or a department contractor who provides services in an adults
790 only substance use disorder program, as defined by rule made in accordance with Title 63G,
791 Chapter 3, Utah Administrative Rulemaking Act, is exempt from this section.

792 (b) The exemption described in Subsection (12)(a) does not extend to a program
793 director or a member, as defined by Section [26B-2-105](#), of the program.

794 (13) (a) Except as provided in Subsection (13)(b), in addition to the other requirements
795 of this section, if the background check of an applicant is being conducted for the purpose of
796 giving clearance status to an applicant seeking a position in a congregate care program or an
797 applicant seeking to become a prospective foster or adoptive parent, the office shall:

798 (i) check the child abuse and neglect registry in each state where each applicant resided
799 in the five years immediately preceding the day on which the applicant applied to be a foster or
800 adoptive parent, to determine whether the prospective foster or adoptive parent is listed in the

801 registry as having a substantiated or supported finding of child abuse or neglect; and

802 (ii) check the child abuse and neglect registry in each state where each adult living in
803 the home of the applicant described in Subsection (13)(a)(i) resided in the five years
804 immediately preceding the day on which the applicant applied to be a foster or adoptive parent,
805 to determine whether the adult is listed in the registry as having a substantiated or supported
806 finding of child abuse or neglect.

807 (b) The requirements described in Subsection (13)(a) do not apply to the extent that:

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

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

811 (A) a noncustodial parent under Section 80-2a-301, 80-3-302, or 80-3-303; or

812 (B) a relative, other than a noncustodial parent, under Section 80-2a-301, 80-3-302, or
813 80-3-303, pending completion of the background check described in Subsection (5).

814 (c) Notwithstanding Subsections (5) through (10), the office shall deny a clearance to
815 an applicant seeking a position in a congregate care program or an applicant to become a
816 prospective foster or adoptive parent if the applicant has been convicted of:

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

818 (A) child abuse, as described in Sections 76-5-109, 76-5-109.2, and 76-5-109.3;

819 (B) commission of domestic violence in the presence of a child, as described in Section
820 76-5-114;

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

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

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

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

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

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

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

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

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

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

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

- 832 (N) an offense described in Title 76, Chapter 5, Part 4, Sexual Offenses;
- 833 (O) sexual exploitation of a minor, as described in Title 76, Chapter 5b, Sexual
- 834 Exploitation Act;
- 835 (P) aggravated exploitation of a minor, as described in Section 76-5b-201.1;
- 836 (Q) aggravated arson, as described in Section 76-6-103;
- 837 (R) aggravated burglary, as described in Section 76-6-203;
- 838 (S) aggravated robbery, as described in Section 76-6-302;
- 839 (T) lewdness involving a child, as described in Section 76-9-702.5;
- 840 (U) incest, as described in Section 76-7-102; or
- 841 (V) domestic violence, as described in Section 77-36-1; or
- 842 (ii) an offense committed outside the state that, if committed in the state, would
- 843 constitute a violation of an offense described in Subsection (13)(c)(i).
- 844 (d) Notwithstanding Subsections (5) through (10), the office shall deny a license or
- 845 license renewal to an individual seeking a position in a congregate care program or a
- 846 prospective foster or adoptive parent if, within the five years immediately preceding the day on
- 847 which the individual's application or license would otherwise be approved, the individual was
- 848 convicted of a felony involving conduct that constitutes a violation of any of the following:
- 849 (i) aggravated assault, as described in Section 76-5-103;
- 850 (ii) aggravated assault by a prisoner, as described in Section 76-5-103.5;
- 851 (iii) mayhem, as described in Section 76-5-105;
- 852 (iv) an offense described in Title 58, Chapter 37, Utah Controlled Substances Act;
- 853 (v) an offense described in Title 58, Chapter 37a, Utah Drug Paraphernalia Act;
- 854 (vi) an offense described in Title 58, Chapter 37b, Imitation Controlled Substances
- 855 Act;
- 856 (vii) an offense described in Title 58, Chapter 37c, Utah Controlled Substance
- 857 Precursor Act; or
- 858 (viii) an offense described in Title 58, Chapter 37d, Clandestine Drug Lab Act.
- 859 (e) In addition to the circumstances described in Subsection (6), the office shall
- 860 conduct the comprehensive review of an applicant's background check under this section if the
- 861 registry check described in Subsection (13)(a) indicates that the individual is listed in a child
- 862 abuse and neglect registry of another state as having a substantiated or supported finding of a

863 severe type of child abuse or neglect as defined in Section [80-1-102](#).

864 (14) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,
865 the office may make rules, consistent with this part, to:

866 (a) establish procedures for, and information to be examined in, the comprehensive
867 review described in Subsections (6) and (7); and

868 (b) determine whether to consider an offense or incident that occurred while an
869 individual was in the custody of the Division of Child and Family Services or the Division of
870 Juvenile Justice Services for purposes of approval or denial of an application for a prospective
871 foster or adoptive parent.

872 Section 5. Section **26B-2-123** is amended to read:

873 **26B-2-123. Congregate care program regulation.**

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

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

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

880 ~~(c)~~ (iii) inducing pain to obtain compliance;

881 ~~(d)~~ (iv) hyperextending joints;

882 ~~(e)~~ (v) peer restraints;

883 ~~(f)~~ (vi) discipline or punishment that is intended to frighten or humiliate;

884 ~~(g)~~ (vii) requiring or forcing the child to take an uncomfortable position, including
885 squatting or bending;

886 ~~(h)~~ (viii) for the purpose of punishing or humiliating, requiring or forcing the child to
887 repeat physical movements or physical exercises such as running laps or performing push-ups;

888 ~~(i)~~ (ix) spanking, hitting, shaking, or otherwise engaging in aggressive physical
889 contact;

890 ~~(j)~~ (x) denying an essential program service;

891 ~~(k)~~ (xi) depriving the child of a meal, water, rest, or opportunity for toileting;

892 ~~(l)~~ (xii) denying shelter, clothing, or bedding;

893 ~~(m)~~ (xiii) withholding personal interaction, emotional response, or stimulation;

894 [~~(n)~~] (xiv) prohibiting the child from entering the residence;

895 [~~(o)~~] (xv) abuse as defined in Section 80-1-102; and

896 [~~(p)~~] (xvi) neglect as defined in Section 80-1-102.

897 (b) A properly used emergency safety intervention is not considered a cruel, severe,
898 unusual, or unnecessary practice.

899 (2) Before a congregate care program may use a restraint [~~(o)~~], seclusion, or emergency
900 safety intervention, the congregate care program shall:

901 (a) develop and implement written policies and procedures that:

902 (i) describe the circumstances under which a staff member may use a restraint [~~(o)~~],
903 seclusion, or emergency safety intervention;

904 (ii) describe which staff members are authorized to use a restraint [~~(o)~~], seclusion, or
905 emergency safety intervention;

906 (iii) describe procedures for monitoring a child that is restrained or in seclusion;

907 (iv) describe time limitations on the use of a restraint or seclusion;

908 (v) require immediate and continuous review of the decision to use a restraint [~~(o)~~],
909 seclusion, or emergency safety intervention;

910 (vi) require documenting the use of a restraint [~~(o)~~], seclusion, or emergency safety
911 intervention;

912 (vii) describe record keeping requirements for records related to the use of a restraint
913 [~~(o)~~], seclusion, or emergency safety intervention;

914 (viii) to the extent practicable, require debriefing the following individuals if
915 debriefing would not interfere with an ongoing investigation, violate any law or regulation, or
916 conflict with a child's treatment plan:

917 (A) each witness to the event;

918 (B) each staff member involved; and

919 (C) the child who was restrained or in seclusion;

920 (ix) include a procedure for complying with Subsection (5); and

921 (x) provide an administrative review process and required follow up actions after a
922 child is restrained or put in seclusion; and

923 (b) consult with the office to ensure that the congregate care program's written policies
924 and procedures align with applicable law.

- 925 (3) A congregate care program:
- 926 (a) may use a passive physical restraint only if the passive physical restraint is
- 927 supported by a nationally or regionally recognized curriculum focused on non-violent
- 928 interventions and de-escalation techniques;
- 929 (b) may not use a chemical or mechanical restraint unless the office has authorized the
- 930 congregate care program to use a chemical or mechanical restraint;
- 931 (c) shall ensure that a staff member that uses a restraint on a child is:
- 932 (i) properly trained to use the restraint; and
- 933 (ii) familiar with the child and if the child has a treatment plan, the child's treatment
- 934 plan; and
- 935 (d) shall train each staff member on how to intervene if another staff member fails to
- 936 follow correct procedures when using a restraint.
- 937 (4) (a) A congregate care program:
- 938 (i) may use seclusion if:
- 939 (A) the purpose for the seclusion is to ensure the immediate safety of the child or
- 940 others; and
- 941 (B) no less restrictive intervention is likely to ensure the safety of the child or others;
- 942 and
- 943 (ii) may not use seclusion:
- 944 (A) for coercion, retaliation, or humiliation; or
- 945 (B) due to inadequate staffing or for the staff's convenience.
- 946 (b) While a child is in seclusion, a staff member who is familiar to the child shall
- 947 actively supervise the child for the duration of the seclusion.
- 948 (5) Subject to the office's review and approval, a congregate care program shall
- 949 develop:
- 950 (a) suicide prevention policies and procedures that describe:
- 951 (i) how the congregate care program will respond in the event a child exhibits
- 952 self-injurious, self-harm, or suicidal behavior;
- 953 (ii) warning signs of suicide;
- 954 (iii) emergency protocol and contacts;
- 955 (iv) training requirements for staff, including suicide prevention training;

956 (v) procedures for implementing additional supervision precautions and for removing
957 any additional supervision precautions;

958 (vi) suicide risk assessment procedures;

959 (vii) documentation requirements for a child's suicide ideation and self-harm;

960 (viii) special observation precautions for a child exhibiting warning signs of suicide;

961 (ix) communication procedures to ensure all staff are aware of a child who exhibits
962 warning signs of suicide;

963 (x) a process for tracking suicide behavioral patterns; and

964 (xi) a post-intervention plan with identified resources; and

965 (b) based on state law and industry best practices, policies and procedures for
966 managing a child's behavior during the child's participation in the congregate care program.

967 (6) (a) A congregate care program:

968 (i) subject to Subsection (6)(b), shall facilitate weekly confidential voice-to-voice
969 communication between a child and the child's parents, guardian, foster parents, and siblings,
970 as applicable;

971 (ii) shall ensure that the communication described in Subsection (6)(a)(i) complies
972 with the child's treatment plan, if any; and

973 (iii) may not use family contact as an incentive for proper behavior or withhold family
974 contact as a punishment.

975 (b) For the communication described in Subsection (6)(a)(i), a congregate care
976 program may not:

977 (i) deny the communication unless state law or a court order prohibits the
978 communication; or

979 (ii) modify the frequency or form of the communication unless:

980 (A) the office approves the modification; or

981 (B) state law or a court order prohibits the frequency or the form of the
982 communication.

983 Section 6. Section **26B-2-222** is amended to read:

984 **26B-2-222. Licensing of a new nursing care facility -- Approval for a licensed bed**
985 **in an existing nursing care facility -- Fine for excess Medicare inpatient revenue.**

986 (1) Notwithstanding Section **26B-2-201**, as used in this section:

987 (a) "Medicaid" means the Medicaid program, as that term is defined in Section
988 [26B-3-101](#).

989 (b) "Medicaid certification" means the same as that term is defined in Section
990 [26B-3-301](#).

991 (c) "Nursing care facility" and "small health care facility":

992 (i) mean the following facilities licensed by the department under this part:

993 (A) a skilled nursing facility;

994 (B) an intermediate care facility; or

995 (C) a small health care facility with four to 16 beds functioning as a skilled nursing
996 facility; and

997 (ii) do not mean:

998 (A) an intermediate care facility for the intellectually disabled;

999 (B) a critical access hospital that meets the criteria of 42 U.S.C. Sec. 1395i-4(c)(2)
1000 (1998);

1001 (C) a small health care facility that is hospital based; or

1002 (D) a small health care facility other than a skilled nursing care facility with no more
1003 than 16 beds.

1004 (d) "Rural county" means the same as that term is defined in Section [26B-3-301](#).

1005 (2) Except as provided in Subsection (6) and Section [26B-2-227](#), a new nursing care
1006 facility shall be approved for a health facility license only if:

1007 (a) under the provisions of Section [26B-3-311](#) the facility's nursing care facility
1008 program has received Medicaid certification or will receive Medicaid certification for each bed
1009 in the facility;

1010 (b) the facility's nursing care facility program has received or will receive approval for
1011 Medicaid certification under Subsection [26B-3-311](#)(5), if the facility is located in a rural
1012 county; or

1013 (c) (i) the applicant submits to the department the information described in Subsection
1014 (3); and

1015 (ii) based on that information, and in accordance with Subsection (4), the department
1016 determines that approval of the license best meets the needs of the current and future patients
1017 of nursing care facilities within the area impacted by the new facility.

1018 (3) A new nursing care facility seeking licensure under Subsection (2) shall submit to
1019 the department the following information:

1020 (a) proof of the following as reasonable evidence that bed capacity provided by nursing
1021 care facilities within the county or group of counties that would be impacted by the facility is
1022 insufficient:

1023 (i) nursing care facility occupancy within the county or group of counties:

1024 (A) has been at least 75% during each of the past two years for all existing facilities
1025 combined; and

1026 (B) is projected to be at least 75% for all nursing care facilities combined that have
1027 been approved for licensure but are not yet operational;

1028 (ii) there is no other nursing care facility within a 35-mile radius of the new nursing
1029 care facility seeking licensure under Subsection (2); and

1030 (b) a feasibility study that:

1031 (i) shows the facility's annual Medicare inpatient revenue, including Medicare
1032 Advantage revenue, will not exceed 49% of the facility's annual total revenue during each of
1033 the first three years of operation;

1034 (ii) shows the facility will be financially viable if the annual occupancy rate is at least
1035 88%;

1036 (iii) shows the facility will be able to achieve financial viability;

1037 (iv) shows the facility will not:

1038 (A) have an adverse impact on existing or proposed nursing care facilities within the
1039 county or group of counties that would be impacted by the facility; or

1040 (B) be within a three-mile radius of an existing nursing care facility or a new nursing
1041 care facility that has been approved for licensure but is not yet operational;

1042 (v) is based on reasonable and verifiable demographic and economic assumptions;

1043 (vi) is based on data consistent with department or other publicly available data; and

1044 (vii) is based on existing sources of revenue.

1045 (4) When determining under Subsection (2)(c) whether approval of a license for a new
1046 nursing care facility best meets the needs of the current and future patients of nursing care
1047 facilities within the area impacted by the new facility, the department shall consider:

1048 (a) whether the county or group of counties that would be impacted by the facility is

1049 underserved by specialized or unique services that would be provided by the facility; and

1050 (b) how additional bed capacity should be added to the long-term care delivery system
1051 to best meet the needs of current and future nursing care facility patients within the impacted
1052 area.

1053 (5) The department may approve the addition of a licensed bed in an existing nursing
1054 care facility only if:

1055 (a) each time the facility seeks approval for the addition of a licensed bed, the facility
1056 satisfies each requirement for licensure of a new nursing care facility in Subsections (2)(c), (3),
1057 and (4); or

1058 (b) the bed has been approved for Medicaid certification under Section [26B-3-311](#) or
1059 [26B-3-313](#).

1060 (6) Subsection (2) does not apply to a nursing care facility that:

1061 (a) has, by the effective date of this act, submitted to the department schematic
1062 drawings, and paid applicable fees, for a particular site or a site within a three-mile radius of
1063 that site;

1064 (b) before July 1, 2016:

1065 (i) filed an application with the department for licensure under this section and paid all
1066 related fees due to the department; and

1067 (ii) submitted to the department architectural plans and specifications, as defined by the
1068 department by administrative rule, for the facility;

1069 (c) applies for a license within three years of closing for renovation;

1070 (d) replaces a nursing care facility that:

1071 (i) closed within the past three years; or

1072 (ii) is located within five miles of the facility;

1073 (e) is undergoing a change of ownership, even if a government entity designates the
1074 facility as a new nursing care facility; or

1075 (f) is a state-owned veterans home, regardless of who operates the home.

1076 (7) (a) For each year the annual Medicare inpatient revenue, including Medicare
1077 Advantage revenue, of a nursing care facility approved for a health facility license under
1078 Subsection (2)(c) exceeds 49% of the facility's total revenue for the year, the facility shall be
1079 subject to a fine of \$50,000, payable to the department.

1080 (b) A nursing care facility approved for a health facility license under Subsection (2)(c)
1081 shall submit to the department the information necessary for the department to annually
1082 determine whether the facility is subject to the fine in Subsection (7)(a).

1083 (c) The department:

1084 (i) shall make rules, in accordance with Title 63G, Chapter 3, Utah Administrative
1085 Rulemaking Act, specifying the information a nursing care facility shall submit to the
1086 department under Subsection (7)(b);

1087 (ii) shall annually determine whether a facility is subject to the fine in Subsection
1088 (7)(a);

1089 (iii) may take one or more of the actions in Section 26B-2-202 or [26B-2-208]
1090 26B-2-703 against a facility for nonpayment of a fine due under Subsection (7)(a); and

1091 (iv) shall deposit fines paid to the department under Subsection (7)(a) into the Nursing
1092 Care Facilities Provider Assessment Fund, created in Section 26B-3-405.

1093 Section 7. Section 26B-2-701 is enacted to read:

1094 **Part 7. Penalties and Investigations**

1095 **26B-2-701. Definitions.**

1096 As used in this part:

1097 (1) "Certificate" means a residential child care certificate issued by the office.

1098 (2) "Certification" means an approval to operate in compliance with local or federal
1099 requirements or regulations, completed by the office or on behalf of the office for a local or
1100 federal agency.

1101 (3) "Client" means an individual, resident, or patient who receives services from a
1102 provider.

1103 (4) "Program or facility" means the settings, activities, services, procedures, and
1104 premises used by a provider to provide services regulated by the department.

1105 (5) "Provider" means a license holder, certificate holder, or legally responsible person
1106 that provides services regulated by the department.

1107 Section 8. Section 26B-2-702 is enacted to read:

1108 **26B-2-702. Licensure.**

1109 (1) A person that operates a program or facility that requires a license, certificate, or
1110 certification under this chapter is subject to this part regardless of whether the person holds a

1111 license, certificate, or certification.

1112 (2) A person may not offer a service, operate or provide services, or engage in any
1113 activity regulated by this chapter without holding a license, certificate, or certification issued or
1114 approved under this chapter.

1115 (3) A person who holds a license, certificate, or certification under this chapter may
1116 only provide services to the extent allowed by the license, certificate, or certification.

1117 (4) A person may not advertise or represent that the person holds a license, certificate,
1118 or certification required by this chapter unless the person holds that license, certificate, or
1119 certification.

1120 (5) A person who violates this section is subject to Section [26B-1-224](#).

1121 Section 9. Section **26B-2-703** is enacted to read:

1122 **26B-2-703. Sanctions -- Penalties and adjudicative procedure -- Rulemaking.**

1123 (1) If the department has reason to believe that a provider has failed to comply with
1124 this chapter or rules made pursuant to this chapter, the department may serve a notice of agency
1125 action to commence an adjudicative proceeding in accordance with Title 63G, Chapter 4,
1126 Administrative Procedures Act.

1127 (2) In accordance with Title 63G, Chapter 4, Administrative Procedures Act, the
1128 department may deny, place conditions on, suspend, or revoke a license, certificate, or
1129 certification, and invoke penalties, including restricting or prohibiting new admissions to a
1130 program or facility, if the department finds that there has been:

1131 (a) a failure to comply with:

1132 (i) rules established under this chapter; or

1133 (ii) any lawful order of the department or a local health department, or applicable rule,
1134 statute, regulation, or requirement;

1135 (b) aiding, abetting, or permitting the commission of any illegal act;

1136 (c) conduct adverse to the standards required to provide services and promote public
1137 trust, including aiding, abetting, or permitting the commission of abuse, neglect, exploitation,
1138 harm, mistreatment, or fraud; or

1139 (d) a failure to provide applicable health and safety services for clients.

1140 (3) (a) The department may act on an emergency basis if the department determines
1141 immediate action is necessary to protect a client.

1142 (b) Immediate action taken under Subsection (3)(a) may include restricting new
1143 admissions to a program or facility, or increased monitoring of the operations of a program or
1144 facility.

1145 (4) The department may impose civil monetary penalties against any person, in a sum
1146 not to exceed \$10,000 per violation, in:

1147 (a) an administrative action in accordance with Title 63G, Chapter 4, Administrative
1148 Procedures Act;

1149 (b) a similar administrative proceeding adopted by a county or local government; or

1150 (c) a judicial civil proceeding.

1151 (5) Assessment of a civil penalty or administrative penalty does not preclude the
1152 department or a local health department from:

1153 (a) seeking criminal penalties;

1154 (b) denying, revoking, imposing conditions on, or refusing to renew a license,
1155 certificate, or certification; or

1156 (c) seeking injunctive or equitable remedies.

1157 (6) If the department revokes a license, certificate, or certification, the office may not
1158 grant a new license, certificate, or certification unless:

1159 (a) at least five years have passed since the day on which the provider was served with
1160 final notice that the provider's license, certificate, or certification was revoked; and

1161 (b) the office determines that the interests of the public will not be jeopardized by
1162 granting the provider a new license, certificate, or certification.

1163 (7) If the department does not renew a license, certificate, or certification because of
1164 noncompliance with the provisions of this part or rules adopted under this part, the department
1165 may not issue a new license, certificate, or certification unless:

1166 (a) at least one year has passed since the day on which the renewal was denied;

1167 (b) the provider complies with all renewal requirements; and

1168 (c) the office determines that the interests of the public will not be jeopardized by
1169 issuing a new license, certificate, or certification.

1170 (8) The office may suspend a license, certificate, or certification for up to three years.

1171 (9) When a license, certificate, or certification has been suspended, the office may
1172 restore, or restore subject to conditions, the suspended license, certificate, or certification upon

1173 a determination that the:

1174 (a) conditions upon which the suspension were based have been completely or partially
1175 corrected; and

1176 (b) interests of the public will not be jeopardized by restoration of the license,
1177 certificate, or certification.

1178 (10) If a provider fails to comply with the provisions of this chapter, the department
1179 may impose a penalty on the provider that is less than or equal to the cost incurred by the
1180 department, which may include:

1181 (a) the cost to continue providing services, including ensuring client safety and
1182 relocating clients through the transition or closure of a program or facility;

1183 (b) the cost to place an administrator or department representative as a monitor in a
1184 program or facility; or

1185 (c) the cost to assess to the provider those costs incurred by the department.

1186 (11) If a congregate care program or facility knowingly fails to comply with the
1187 provisions of Section [26B-2-124](#), the office may impose a penalty on the congregate care
1188 program or facility that is less than or equal to the cost of care incurred by the state for a
1189 private-placement child described in Subsection [26B-2-124](#)(3).

1190 (12) If the department finds that an abortion has been performed in violation of Section
1191 [76-7-314](#) or [76-7a-201](#), the department shall deny or revoke the license.

1192 (13) A provider, program or facility, or person may commence adjudicative
1193 proceedings in accordance with Title 63G, Chapter 4, Administrative Procedures Act,
1194 regarding all agency actions that determine the legal rights, duties, privileges, immunities, or
1195 other legal interests of the provider, program or facility, or persons associated with the
1196 provider, including all office actions to grant, deny, place conditions on, revoke, suspend,
1197 withdraw, or amend an authority, right, license, certificate, or certification under this part.

1198 (14) Subject to the requirements of federal and state law, the office shall make rules in
1199 accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to establish
1200 sanctions, penalties, and adjudicative proceedings as described in this chapter.

1201 Section 10. Section **26B-2-704**, which is renumbered from Section 26B-2-209 is
1202 renumbered and amended to read:

1203 ~~[26B-2-209]~~. **26B-2-704. Failure to follow certain health care claims**

1204 **practices -- Penalties.**

1205 (1) The department may assess a fine of up to \$500 per violation against a health care
1206 facility that violates Section 31A-26-313.

1207 (2) The department shall waive the fine described in Subsection (1) if:

1208 (a) the health care facility demonstrates to the department that the health care facility
1209 mitigated and reversed any damage to the insured caused by the health care facility or third
1210 party's violation; or

1211 (b) the insured does not pay the full amount due on the bill that is the subject of the
1212 violation, including any interest, fees, costs, and expenses, within 120 days after the day on
1213 which the health care facility or third party makes a report to a credit bureau or takes an action
1214 in violation of Section 31A-26-313.

1215 Section 11. Section 26B-2-705, which is renumbered from Section 26B-2-214 is
1216 renumbered and amended to read:

1217 ~~[26B-2-214].~~ **26B-2-705. Immediate access restriction.**

1218 (1) If, in any program or facility requiring a license, certificate, or certification under
1219 this part, the department finds a condition [~~in any licensed health care facility~~] that is a clear
1220 hazard to the public health or safety, the department may immediately order that [~~facility~~
1221 ~~closed~~] the facility restrict access and may prevent the entrance of any [~~resident or patient~~]
1222 client onto the premises of that facility until the condition is eliminated.

1223 (2) Parties aggrieved by the actions of the department under this section may obtain an
1224 adjudicative proceeding and judicial review.

1225 Section 12. Section 26B-2-706, which is renumbered from Section 26B-2-114 is
1226 renumbered and amended to read:

1227 ~~[26B-2-114].~~ **26B-2-706. Action by department for injunction.**

1228 [~~In addition to, and notwithstanding,~~] Notwithstanding the existence of any other
1229 remedy [~~provided by law~~], the department may, in [~~a~~] the manner provided by law and upon
1230 the advice of the attorney general, who shall represent the department in the proceedings,
1231 maintain an action in the name of the state for injunction or other process against any person or
1232 governmental unit to restrain or prevent the establishment, conduct, management, or operation
1233 of a [~~human services~~] program or facility in violation of this [~~part~~] chapter or rules established
1234 under this [~~part~~] chapter.

1235 Section 13. Section **26B-2-707**, which is renumbered from Section 26B-2-113 is
 1236 renumbered and amended to read:

1237 ~~[26B-2-113].~~ **26B-2-707. Operating a program or facility in violation of**
 1238 **this chapter -- Criminal penalties.**

1239 (1) (a) ~~[A]~~ In addition to the penalties in Section 26B-1-224, any person who owns,
 1240 establishes, conducts, maintains, manages, or operates a ~~[human services]~~ program or facility
 1241 in violation of this ~~[part]~~ chapter is guilty of a class A misdemeanor ~~[if the violation endangers~~
 1242 ~~or harms the health, welfare, or safety of persons participating in that program].~~

1243 (b) Conviction in a criminal proceeding does not preclude the office from:

1244 (i) assessing a civil penalty or an administrative penalty;

1245 (ii) denying, placing conditions on, suspending, or revoking a license, certificate, or
 1246 certification; or

1247 (iii) seeking injunctive or equitable relief.

1248 ~~[(2) Any person that violates a provision of this part, lawful orders of the office, or~~
 1249 ~~rules adopted under this part may be assessed a penalty not to exceed the sum of \$10,000 per~~
 1250 ~~violation, in:]~~

1251 ~~[(a) a judicial civil proceeding; or]~~

1252 ~~[(b) an administrative action in accordance with Title 63G, Chapter 4, Administrative~~
 1253 ~~Procedures Act.]~~

1254 ~~[(3)]~~ (2) Assessment of a judicial penalty or an administrative penalty does not
 1255 preclude the office from:

1256 (a) seeking criminal penalties;

1257 (b) denying, placing conditions on, suspending, or revoking a license, certificate, or
 1258 certification; or

1259 (c) seeking injunctive or equitable relief.

1260 ~~[(4) The office may assess the human services program the cost incurred by the office~~
 1261 ~~in placing a monitor.]~~

1262 ~~[(5)]~~ (3) Notwithstanding Subsection (1)(a) and subject to ~~[Subsections]~~ Subsection
 1263 (1)(b) ~~[and (2)]~~, an individual is guilty of a class A misdemeanor if the individual knowingly
 1264 and willfully offers, pays, promises to pay, solicits, or receives any remuneration, including any
 1265 commission, bonus, kickback, bribe, or rebate, directly or indirectly, overtly or covertly, in cash

1266 or in kind, or engages in any split-fee arrangement in return for:

1267 (a) referring an individual to a person for the furnishing or arranging for the furnishing
1268 of any item or service for the treatment of a substance use disorder;

1269 (b) receiving a referred individual for the furnishing or arranging for the furnishing of
1270 any item or service for the treatment of a substance use disorder; or

1271 (c) referring a clinical sample to a person, including a laboratory, for testing that is
1272 used toward the furnishing of any item or service for the treatment of a substance use disorder.

1273 [~~6~~] (4) Subsection [~~5~~] (3) does not prohibit:

1274 (a) any discount, payment, waiver of payment, or payment practice not prohibited by
1275 42 U.S.C. Sec. 1320a-7(b) or regulations made under 42 U.S.C. Sec. 1320a-7(b);

1276 (b) patient referrals within a practice group;

1277 (c) payments by a health insurer who reimburses, provides, offers to provide, or
1278 administers health, mental health, or substance use disorder goods or services under a health
1279 benefit plan;

1280 (d) payments to or by a health care provider, practice group, or substance use disorder
1281 treatment program that has contracted with a local mental health authority, a local substance
1282 abuse authority, a health insurer, a health care purchasing group, or the Medicare or Medicaid
1283 program to provide health, mental health, or substance use disorder services;

1284 (e) payments by a health care provider, practice group, or substance use disorder
1285 treatment program to a health, mental health, or substance use disorder information service that
1286 provides information upon request and without charge to consumers about providers of health
1287 care goods or services to enable consumers to select appropriate providers or facilities, if the
1288 information service:

1289 (i) does not attempt, through standard questions for solicitation of consumer criteria or
1290 through any other means, to steer or lead a consumer to select or consider selection of a
1291 particular health care provider, practice group, or substance use disorder treatment program;

1292 (ii) does not provide or represent that the information service provides diagnostic or
1293 counseling services or assessments of illness or injury and does not make any promises of cure
1294 or guarantees of treatment; and

1295 (iii) charges and collects fees from a health care provider, practice group, or substance
1296 use disorder treatment program participating in information services that:

1297 (A) are set in advance;
1298 (B) are consistent with the fair market value for those information services; and
1299 (C) are not based on the potential value of the goods or services that a health care
1300 provider, practice group, or substance use disorder treatment program may provide to a patient;
1301 or
1302 (f) payments by a laboratory to a person that:
1303 (i) does not have a financial interest in or with a facility or person who refers a clinical
1304 sample to the laboratory;
1305 (ii) is not related to an owner of a facility or a person who refers a clinical sample to
1306 the laboratory;
1307 (iii) is not related to and does not have a financial relationship with a health care
1308 provider who orders the laboratory to conduct a test that is used toward the furnishing of an
1309 item or service for the treatment of a substance use disorder;
1310 (iv) identifies, in advance of providing marketing or sales services, the types of clinical
1311 samples that each laboratory will receive, if the person provides marketing or sales services to
1312 more than one laboratory;
1313 (v) the person does not identify as or hold itself out to be a laboratory or part of a
1314 network with an insurance payor, if the person provides marketing or sales services under a
1315 contract with a laboratory, as described in Subsection [~~(6)(f)(vii)(B)~~] (4)(f)(vii)(B);
1316 (vi) the person identifies itself in all marketing materials as a salesperson for a licensed
1317 laboratory and identifies each laboratory that the person represents, if the person provides
1318 marketing or sales services under a contract with a laboratory, as described in Subsection
1319 [~~(6)(f)(vii)(B)~~] (4)(f)(vii)(B); and
1320 (vii) (A) is a sales person employed by the laboratory to market or sell the laboratory's
1321 services to a person who provides substance use disorder treatment; or
1322 (B) is a person under contract with the laboratory to market or sell the laboratory's
1323 services to a person who provides substance use disorder treatment, if the total compensation
1324 paid by the laboratory does not exceed the total compensation that the laboratory pays to
1325 employees of the laboratory for similar marketing or sales services.
1326 [~~(7)~~] (5) (a) A person may not knowingly or willfully, in exchange for referring an
1327 individual to a youth transportation company:

1328 (i) offer, pay, promise to pay, solicit, or receive any remuneration directly or indirectly,
1329 overtly or covertly, in cash or in kind, including:

1330 (A) a commission;

1331 (B) a bonus;

1332 (C) a kickback;

1333 (D) a bribe; or

1334 (E) a rebate; or

1335 (ii) engage in any split-fee arrangement.

1336 (b) A person who violates Subsection [~~(7)(a)~~] (5)(a) is guilty of a class A misdemeanor
1337 and shall be assessed a penalty in accordance with [~~Subsection (2)~~] this part.

1338 Section 14. Section **26B-2-708**, which is renumbered from Section 26B-2-133 is
1339 renumbered and amended to read:

1340 ~~[26B-2-133]~~. **26B-2-708. Injunctive relief and civil penalty for unlawful**
1341 **child placing -- Enforcement by county attorney or attorney general.**

1342 (1) The office or another interested person may commence an action in court to enjoin
1343 any person~~[- agency, firm, corporation, or association]~~ from violating Section 26B-2-127.

1344 (2) The office shall:

1345 (a) solicit information from the public relating to violations of Section 26B-2-127; and

1346 (b) upon identifying a violation of Section 26B-2-127:

1347 (i) send a written notice to the person who violated Section 26B-2-127 that describes
1348 the alleged violation; and

1349 (ii) notify the following persons of the alleged violation:

1350 (A) the local county attorney; and

1351 (B) the Division of Professional Licensing.

1352 (3) (a) A county attorney or the attorney general shall institute legal action as necessary
1353 to enforce the provisions of Section 26B-2-127 after being informed of an alleged violation.

1354 (b) If a county attorney does not take action within 30 days after the day on which the
1355 county attorney is informed of an alleged violation of Section 26B-2-127, the attorney general
1356 may be requested to take action, and shall then institute legal proceedings in place of the county
1357 attorney.

1358 (4) (a) In addition to the remedies provided in Subsections (1) and (3), any person[;

1359 ~~agency, firm, corporation, or association]~~ found to be in violation of Section 26B-2-127 shall
1360 forfeit all proceeds identified as resulting from the transaction, and may also be assessed a civil
1361 penalty of not more than \$10,000 for each violation.

1362 (b) Each act in violation of Section 26B-2-127, including each placement or attempted
1363 placement of a child, is a separate violation.

1364 (5) (a) The amount recovered as a penalty under Subsection (4) shall be placed in the
1365 General Fund of the prosecuting county, or in the state General Fund if the attorney general
1366 prosecutes.

1367 (b) If two or more governmental entities are involved in the prosecution, the court shall
1368 apportion the penalty among the entities, according to the entities' involvement.

1369 (6) A judgment ordering the payment of any penalty or forfeiture under Subsection (4)
1370 is a lien when recorded in the judgment docket, and has the same effect and is subject to the
1371 same rules as a judgment for money in a civil action.

1372 Section 15. Section **26B-2-709**, which is renumbered from Section 26B-2-408 is
1373 renumbered and amended to read:

1374 ~~[26B-2-408].~~ **26B-2-709. Complaint investigations -- Records.**

1375 (1) As used in this section:

1376 (a) "Anonymous complainant" means a complainant for whom the department does not
1377 have the minimum personal identifying information necessary, including the complainant's full
1378 name, to attempt to communicate with the complainant after a complaint has been made.

1379 (b) "Child care program" means the same as that term is defined in Section 26B-2-401.

1380 ~~[(b)]~~ (c) "Confidential complainant" means a complainant for whom the department
1381 has the minimum personal identifying information necessary, including the complainant's full
1382 name, to attempt to communicate with the complainant after a complaint has been made, but
1383 who elects under Subsection (3)(c) not to be identified to the subject of the complaint.

1384 (d) "Exempt provider" means the same as that term is defined in Section 26B-2-401.

1385 ~~[(c)]~~ (e) "Subject of the complaint" means the ~~[licensee or certificate holder]~~ provider
1386 about whom the complainant is informing the department.

1387 (2) The department may conduct investigations necessary to enforce the provisions of
1388 this ~~[part]~~ chapter.

1389 (3) (a) If the department receives a complaint about a ~~[child care]~~ program or facility or

1390 an exempt provider, the department shall:

1391 (i) solicit information from the complainant to determine whether the complaint
1392 suggests actions or conditions that could pose a serious risk to the safety or well-being of a
1393 ~~[qualifying child]~~ client;

1394 (ii) as necessary:

1395 (A) encourage the complainant to disclose the minimum personal identifying
1396 information necessary, including the complainant's full name, for the department to attempt to
1397 subsequently communicate with the complainant;

1398 (B) if the complaint is against a child care program or an exempt provider, inform the
1399 complainant that the department may not investigate an anonymous complaint;

1400 (C) if the complaint is not against a child care program or an exempt provider, inform
1401 the complainant that the department may not use information provided by the complainant to
1402 substantiate an alleged violation of state law or department rule unless the department
1403 independently corroborates the information;

1404 ~~[(C)]~~ (D) inform the complainant that the identity of a confidential complainant may be
1405 withheld from the subject of a complaint only as provided in Subsection ~~[(3)(c)(ii)]~~ (3)(c)(iii);
1406 and

1407 ~~[(D)]~~ (E) inform the complainant that the department may be limited in its use of
1408 information provided by a confidential complainant, as provided in Subsection ~~[(3)(c)(ii)(B)]~~
1409 (3)(c)(iii)(B); and

1410 (iii) inform the complainant that a person is guilty of a class B misdemeanor under
1411 Section 76-8-506 if the person gives false information to the department with the purpose of
1412 inducing a change in that person's or another person's ~~[licensing or certification]~~ license,
1413 certificate, or certification status.

1414 (b) If the complainant elects to be an anonymous complainant, or if the complaint
1415 concerns events ~~[which]~~ that occurred more than six ~~[weeks]~~ months before the complainant
1416 contacted the department, the department:

1417 (i) shall refer the information in the complaint to the Division of Child and Family
1418 Services within the department, law enforcement, or any other appropriate agency, if the
1419 complaint suggests actions or conditions which could pose a serious risk to the safety or
1420 well-being of a ~~[child]~~ client;

1421 (ii) may not investigate or substantiate the complaint if the complaint is against a child
1422 care program or an exempt provider; and

1423 (iii) may, during a regularly scheduled annual survey, inform the [~~exempt~~] provider[;
1424 ~~licensee, or certificate holder~~] that is the subject of the complaint of allegations or concerns
1425 raised by[;]

1426 [(A)] the anonymous complainant[; ~~or~~].

1427 [(B) ~~the complainant who reported events more than six weeks after the events~~
1428 ~~occurred.~~]

1429 (c) (i) If the complainant elects to be a confidential complainant, the department shall
1430 determine whether the complainant wishes to remain confidential:

1431 (A) only until the investigation of the complaint has been completed; or

1432 (B) indefinitely.

1433 (ii) [(A)] If the complainant elects to remain confidential only until the investigation of
1434 the complaint has been completed, the department shall disclose the name of the complainant
1435 to the subject of the complaint at the completion of the investigation, but no sooner.

1436 [(B)] (iii) If the complainant elects to remain confidential indefinitely, the department:

1437 [(H)] (A) notwithstanding Subsection 63G-2-201(5)(b), may not disclose the name of
1438 the complainant, including to the subject of the complaint; and

1439 [(H)] (B) may not use information provided by the complainant to substantiate an
1440 alleged violation of state law or department rule unless the department independently
1441 corroborates the information.

1442 (4) (a) Prior to conducting an investigation of a [~~child care~~] program or facility or an
1443 exempt provider in response to a complaint, a department investigator shall review the
1444 complaint with the investigator's supervisor.

1445 (b) The investigator may proceed with the investigation only if:

1446 (i) the supervisor determines the complaint is credible;

1447 (ii) the complaint is not from an anonymous complainant and against a child care
1448 program or an exempt provider; and

1449 (iii) prior to the investigation, the investigator informs the subject of the complaint of:

1450 (A) except as provided in Subsection (3)(c), the name of the complainant; and

1451 (B) except as provided in Subsection (4)(c), the substance of the complaint.

1452 (c) An investigator is not required to inform the subject of a complaint of the substance
1453 of the complaint prior to an investigation if doing so would jeopardize the investigation.
1454 However, the investigator shall inform the subject of the complaint of the substance of the
1455 complaint as soon as doing so will no longer jeopardize the investigation.

1456 (5) If the department is unable to substantiate a complaint, any record related to the
1457 complaint or the investigation of the complaint:

1458 (a) shall be classified under Title 63G, Chapter 2, Government Records Access and
1459 Management Act, as:

1460 (i) a private or controlled record if appropriate under Section 63G-2-302 or 63G-2-304;
1461 or

1462 (ii) a protected record under Section 63G-2-305; and

1463 (b) if disclosed in accordance with Subsection 63G-2-201(5)(b), may not identify an
1464 individual [~~child care program, exempt provider, licensee, certificate holder,~~] provider, exempt
1465 provider, or complainant.

1466 (6) Any record of the department related to a complaint [~~by an anonymous~~
1467 ~~complainant~~] is a protected record under Title 63G, Chapter 2, Government Records Access
1468 and Management Act, and, notwithstanding Subsection 63G-2-201(5)(b), may not be disclosed
1469 in a manner that identifies an individual [~~child care~~] program or facility, exempt provider,
1470 [~~licensee, certificate holder~~] provider, or complainant.

1471 Section 16. Section 26B-4-502 is amended to read:

1472 **26B-4-502. Emergency contraception services for a victim of sexual assault.**

1473 (1) Except as provided in Subsection (2), a designated facility shall provide the
1474 following services to a victim of sexual assault:

1475 (a) provide the victim with written and oral medical information regarding emergency
1476 contraception that is unbiased, accurate, and generally accepted by the medical community as
1477 being scientifically valid;

1478 (b) orally inform the victim of sexual assault that the victim may obtain emergency
1479 contraception at the designated facility;

1480 (c) offer a complete regimen of emergency contraception to a victim of sexual assault;

1481 (d) provide, at the designated facility, emergency contraception to the victim of sexual
1482 assault upon her request;

1483 (e) maintain a protocol, prepared by a physician, for the administration of emergency
1484 contraception at the designated facility to a victim of sexual assault; and

1485 (f) develop and implement a written policy to ensure that a person is present at the
1486 designated facility, or on-call, who:

1487 (i) has authority to dispense or prescribe emergency contraception, independently, or
1488 under the protocol described in Subsection (1)(e), to a victim of sexual assault; and

1489 (ii) is trained to comply with the requirements of this section.

1490 (2) A freestanding urgent care center is exempt from the requirements of Subsection
1491 (1) if:

1492 (a) there is a general acute hospital or a critical access hospital within 30 miles of the
1493 freestanding urgent care center; and

1494 (b) an employee of the freestanding urgent care center provides the victim with:

1495 (i) written and oral medical information regarding emergency contraception that is
1496 unbiased, accurate, and generally accepted by the medical community as being scientifically
1497 valid; and

1498 (ii) the name and address of the general acute hospital or critical access hospital
1499 described in Subsection (2)(a).

1500 (3) A practitioner shall comply with Subsection (4) with regard to a person who is a
1501 victim of sexual assault, if the person presents to receive medical care, or receives medical
1502 care, from the practitioner at a location that is not a designated facility.

1503 (4) A practitioner described in Subsection (3) shall:

1504 (a) provide the victim with written and oral medical information regarding emergency
1505 contraception that is unbiased, accurate, and generally accepted by the medical community as
1506 being scientifically valid; and

1507 (b) (i) (A) orally inform the victim of sexual assault that the victim may obtain
1508 emergency contraception at the facility where the practitioner is located; and

1509 (B) provide emergency contraception to the victim of sexual assault, if she requests
1510 emergency contraception; or

1511 (ii) inform the victim of sexual assault of the nearest location where she may obtain
1512 emergency contraception.

1513 (5) (a) The department may make rules, in accordance with Title 63G, Chapter 3, Utah

1514 Administrative Rulemaking Act, to enforce the provisions of this section.

1515 (b) The department shall, in an expeditious manner, investigate any complaint received
1516 by the department regarding the failure of a health care facility to comply with a requirement of
1517 this section.

1518 (c) If the department finds a violation of this section or any rules adopted under this
1519 section, the department may take one or more of the actions described in Section [26B-2-208]
1520 [26B-2-703](#).

1521 Section 17. Section **63G-2-305** is amended to read:

1522 **63G-2-305. Protected records.**

1523 The following records are protected if properly classified by a governmental entity:

1524 (1) trade secrets as defined in Section [13-24-2](#) if the person submitting the trade secret
1525 has provided the governmental entity with the information specified in Section [63G-2-309](#);

1526 (2) commercial information or nonindividual financial information obtained from a
1527 person if:

1528 (a) disclosure of the information could reasonably be expected to result in unfair
1529 competitive injury to the person submitting the information or would impair the ability of the
1530 governmental entity to obtain necessary information in the future;

1531 (b) the person submitting the information has a greater interest in prohibiting access
1532 than the public in obtaining access; and

1533 (c) the person submitting the information has provided the governmental entity with
1534 the information specified in Section [63G-2-309](#);

1535 (3) commercial or financial information acquired or prepared by a governmental entity
1536 to the extent that disclosure would lead to financial speculations in currencies, securities, or
1537 commodities that will interfere with a planned transaction by the governmental entity or cause
1538 substantial financial injury to the governmental entity or state economy;

1539 (4) records, the disclosure of which could cause commercial injury to, or confer a
1540 competitive advantage upon a potential or actual competitor of, a commercial project entity as
1541 defined in Subsection [11-13-103\(4\)](#);

1542 (5) test questions and answers to be used in future license, certification, registration,
1543 employment, or academic examinations;

1544 (6) records, the disclosure of which would impair governmental procurement

1545 proceedings or give an unfair advantage to any person proposing to enter into a contract or
1546 agreement with a governmental entity, except, subject to Subsections (1) and (2), that this
1547 Subsection (6) does not restrict the right of a person to have access to, after the contract or
1548 grant has been awarded and signed by all parties:

1549 (a) a bid, proposal, application, or other information submitted to or by a governmental
1550 entity in response to:

1551 (i) an invitation for bids;

1552 (ii) a request for proposals;

1553 (iii) a request for quotes;

1554 (iv) a grant; or

1555 (v) other similar document; or

1556 (b) an unsolicited proposal, as defined in Section [63G-6a-712](#);

1557 (7) information submitted to or by a governmental entity in response to a request for
1558 information, except, subject to Subsections (1) and (2), that this Subsection (7) does not restrict
1559 the right of a person to have access to the information, after:

1560 (a) a contract directly relating to the subject of the request for information has been
1561 awarded and signed by all parties; or

1562 (b) (i) a final determination is made not to enter into a contract that relates to the
1563 subject of the request for information; and

1564 (ii) at least two years have passed after the day on which the request for information is
1565 issued;

1566 (8) records that would identify real property or the appraisal or estimated value of real
1567 or personal property, including intellectual property, under consideration for public acquisition
1568 before any rights to the property are acquired unless:

1569 (a) public interest in obtaining access to the information is greater than or equal to the
1570 governmental entity's need to acquire the property on the best terms possible;

1571 (b) the information has already been disclosed to persons not employed by or under a
1572 duty of confidentiality to the entity;

1573 (c) in the case of records that would identify property, potential sellers of the described
1574 property have already learned of the governmental entity's plans to acquire the property;

1575 (d) in the case of records that would identify the appraisal or estimated value of

1576 property, the potential sellers have already learned of the governmental entity's estimated value
1577 of the property; or

1578 (e) the property under consideration for public acquisition is a single family residence
1579 and the governmental entity seeking to acquire the property has initiated negotiations to acquire
1580 the property as required under Section 78B-6-505;

1581 (9) records prepared in contemplation of sale, exchange, lease, rental, or other
1582 compensated transaction of real or personal property including intellectual property, which, if
1583 disclosed prior to completion of the transaction, would reveal the appraisal or estimated value
1584 of the subject property, unless:

1585 (a) the public interest in access is greater than or equal to the interests in restricting
1586 access, including the governmental entity's interest in maximizing the financial benefit of the
1587 transaction; or

1588 (b) when prepared by or on behalf of a governmental entity, appraisals or estimates of
1589 the value of the subject property have already been disclosed to persons not employed by or
1590 under a duty of confidentiality to the entity;

1591 (10) records created or maintained for civil, criminal, or administrative enforcement
1592 purposes or audit purposes, or for discipline, licensing, certification, or registration purposes, if
1593 release of the records:

1594 (a) reasonably could be expected to interfere with investigations undertaken for
1595 enforcement, discipline, licensing, certification, or registration purposes;

1596 (b) reasonably could be expected to interfere with audits, disciplinary, or enforcement
1597 proceedings;

1598 (c) would create a danger of depriving a person of a right to a fair trial or impartial
1599 hearing;

1600 (d) reasonably could be expected to disclose the identity of a source who is not
1601 generally known outside of government and, in the case of a record compiled in the course of
1602 an investigation, disclose information furnished by a source not generally known outside of
1603 government if disclosure would compromise the source; or

1604 (e) reasonably could be expected to disclose investigative or audit techniques,
1605 procedures, policies, or orders not generally known outside of government if disclosure would
1606 interfere with enforcement or audit efforts;

- 1607 (11) records the disclosure of which would jeopardize the life or safety of an
1608 individual;
- 1609 (12) records the disclosure of which would jeopardize the security of governmental
1610 property, governmental programs, or governmental recordkeeping systems from damage, theft,
1611 or other appropriation or use contrary to law or public policy;
- 1612 (13) records that, if disclosed, would jeopardize the security or safety of a correctional
1613 facility, or records relating to incarceration, treatment, probation, or parole, that would interfere
1614 with the control and supervision of an offender's incarceration, treatment, probation, or parole;
- 1615 (14) records that, if disclosed, would reveal recommendations made to the Board of
1616 Pardons and Parole by an employee of or contractor for the Department of Corrections, the
1617 Board of Pardons and Parole, or the Department of Health and Human Services that are based
1618 on the employee's or contractor's supervision, diagnosis, or treatment of any person within the
1619 board's jurisdiction;
- 1620 (15) records and audit workpapers that identify audit, collection, and operational
1621 procedures and methods used by the State Tax Commission, if disclosure would interfere with
1622 audits or collections;
- 1623 (16) records of a governmental audit agency relating to an ongoing or planned audit
1624 until the final audit is released;
- 1625 (17) records that are subject to the attorney client privilege;
- 1626 (18) records prepared for or by an attorney, consultant, surety, indemnitor, insurer,
1627 employee, or agent of a governmental entity for, or in anticipation of, litigation or a judicial,
1628 quasi-judicial, or administrative proceeding;
- 1629 (19) (a) (i) personal files of a state legislator, including personal correspondence to or
1630 from a member of the Legislature; and
- 1631 (ii) notwithstanding Subsection (19)(a)(i), correspondence that gives notice of
1632 legislative action or policy may not be classified as protected under this section; and
- 1633 (b) (i) an internal communication that is part of the deliberative process in connection
1634 with the preparation of legislation between:
- 1635 (A) members of a legislative body;
- 1636 (B) a member of a legislative body and a member of the legislative body's staff; or
- 1637 (C) members of a legislative body's staff; and

1638 (ii) notwithstanding Subsection (19)(b)(i), a communication that gives notice of
1639 legislative action or policy may not be classified as protected under this section;

1640 (20) (a) records in the custody or control of the Office of Legislative Research and
1641 General Counsel, that, if disclosed, would reveal a particular legislator's contemplated
1642 legislation or contemplated course of action before the legislator has elected to support the
1643 legislation or course of action, or made the legislation or course of action public; and

1644 (b) notwithstanding Subsection (20)(a), the form to request legislation submitted to the
1645 Office of Legislative Research and General Counsel is a public document unless a legislator
1646 asks that the records requesting the legislation be maintained as protected records until such
1647 time as the legislator elects to make the legislation or course of action public;

1648 (21) research requests from legislators to the Office of Legislative Research and
1649 General Counsel or the Office of the Legislative Fiscal Analyst and research findings prepared
1650 in response to these requests;

1651 (22) drafts, unless otherwise classified as public;

1652 (23) records concerning a governmental entity's strategy about:

1653 (a) collective bargaining; or

1654 (b) imminent or pending litigation;

1655 (24) records of investigations of loss occurrences and analyses of loss occurrences that
1656 may be covered by the Risk Management Fund, the Employers' Reinsurance Fund, the
1657 Uninsured Employers' Fund, or similar divisions in other governmental entities;

1658 (25) records, other than personnel evaluations, that contain a personal recommendation
1659 concerning an individual if disclosure would constitute a clearly unwarranted invasion of
1660 personal privacy, or disclosure is not in the public interest;

1661 (26) records that reveal the location of historic, prehistoric, paleontological, or
1662 biological resources that if known would jeopardize the security of those resources or of
1663 valuable historic, scientific, educational, or cultural information;

1664 (27) records of independent state agencies if the disclosure of the records would
1665 conflict with the fiduciary obligations of the agency;

1666 (28) records of an institution within the state system of higher education defined in
1667 Section [53B-1-102](#) regarding tenure evaluations, appointments, applications for admissions,
1668 retention decisions, and promotions, which could be properly discussed in a meeting closed in

1669 accordance with Title 52, Chapter 4, Open and Public Meetings Act, provided that records of
1670 the final decisions about tenure, appointments, retention, promotions, or those students
1671 admitted, may not be classified as protected under this section;

1672 (29) records of the governor's office, including budget recommendations, legislative
1673 proposals, and policy statements, that if disclosed would reveal the governor's contemplated
1674 policies or contemplated courses of action before the governor has implemented or rejected
1675 those policies or courses of action or made them public;

1676 (30) records of the Office of the Legislative Fiscal Analyst relating to budget analysis,
1677 revenue estimates, and fiscal notes of proposed legislation before issuance of the final
1678 recommendations in these areas;

1679 (31) records provided by the United States or by a government entity outside the state
1680 that are given to the governmental entity with a requirement that they be managed as protected
1681 records if the providing entity certifies that the record would not be subject to public disclosure
1682 if retained by it;

1683 (32) transcripts, minutes, recordings, or reports of the closed portion of a meeting of a
1684 public body except as provided in Section [52-4-206](#);

1685 (33) records that would reveal the contents of settlement negotiations but not including
1686 final settlements or empirical data to the extent that they are not otherwise exempt from
1687 disclosure;

1688 (34) memoranda prepared by staff and used in the decision-making process by an
1689 administrative law judge, a member of the Board of Pardons and Parole, or a member of any
1690 other body charged by law with performing a quasi-judicial function;

1691 (35) records that would reveal negotiations regarding assistance or incentives offered
1692 by or requested from a governmental entity for the purpose of encouraging a person to expand
1693 or locate a business in Utah, but only if disclosure would result in actual economic harm to the
1694 person or place the governmental entity at a competitive disadvantage, but this section may not
1695 be used to restrict access to a record evidencing a final contract;

1696 (36) materials to which access must be limited for purposes of securing or maintaining
1697 the governmental entity's proprietary protection of intellectual property rights including patents,
1698 copyrights, and trade secrets;

1699 (37) the name of a donor or a prospective donor to a governmental entity, including an

1700 institution within the state system of higher education defined in Section 53B-1-102, and other
1701 information concerning the donation that could reasonably be expected to reveal the identity of
1702 the donor, provided that:

1703 (a) the donor requests anonymity in writing;

1704 (b) any terms, conditions, restrictions, or privileges relating to the donation may not be
1705 classified protected by the governmental entity under this Subsection (37); and

1706 (c) except for an institution within the state system of higher education defined in
1707 Section 53B-1-102, the governmental unit to which the donation is made is primarily engaged
1708 in educational, charitable, or artistic endeavors, and has no regulatory or legislative authority
1709 over the donor, a member of the donor's immediate family, or any entity owned or controlled
1710 by the donor or the donor's immediate family;

1711 (38) accident reports, except as provided in Sections 41-6a-404, 41-12a-202, and
1712 73-18-13;

1713 (39) a notification of workers' compensation insurance coverage described in Section
1714 34A-2-205;

1715 (40) (a) the following records of an institution within the state system of higher
1716 education defined in Section 53B-1-102, which have been developed, discovered, disclosed to,
1717 or received by or on behalf of faculty, staff, employees, or students of the institution:

1718 (i) unpublished lecture notes;

1719 (ii) unpublished notes, data, and information:

1720 (A) relating to research; and

1721 (B) of:

1722 (I) the institution within the state system of higher education defined in Section
1723 53B-1-102; or

1724 (II) a sponsor of sponsored research;

1725 (iii) unpublished manuscripts;

1726 (iv) creative works in process;

1727 (v) scholarly correspondence; and

1728 (vi) confidential information contained in research proposals;

1729 (b) Subsection (40)(a) may not be construed to prohibit disclosure of public
1730 information required pursuant to Subsection 53B-16-302(2)(a) or (b); and

- 1731 (c) Subsection (40)(a) may not be construed to affect the ownership of a record;
- 1732 (41) (a) records in the custody or control of the Office of the Legislative Auditor
- 1733 General that would reveal the name of a particular legislator who requests a legislative audit
- 1734 prior to the date that audit is completed and made public; and
- 1735 (b) notwithstanding Subsection (41)(a), a request for a legislative audit submitted to the
- 1736 Office of the Legislative Auditor General is a public document unless the legislator asks that
- 1737 the records in the custody or control of the Office of the Legislative Auditor General that would
- 1738 reveal the name of a particular legislator who requests a legislative audit be maintained as
- 1739 protected records until the audit is completed and made public;
- 1740 (42) records that provide detail as to the location of an explosive, including a map or
- 1741 other document that indicates the location of:
- 1742 (a) a production facility; or
- 1743 (b) a magazine;
- 1744 (43) information contained in the statewide database of the Division of Aging and
- 1745 Adult Services created by Section [26B-6-210](#);
- 1746 (44) information contained in the Licensing Information System described in Title 80,
- 1747 Chapter 2, Child Welfare Services;
- 1748 (45) information regarding National Guard operations or activities in support of the
- 1749 National Guard's federal mission;
- 1750 (46) records provided by any pawn or secondhand business to a law enforcement
- 1751 agency or to the central database in compliance with Title 13, Chapter 32a, Pawnshop,
- 1752 Secondhand Merchandise, and Catalytic Converter Transaction Information Act;
- 1753 (47) information regarding food security, risk, and vulnerability assessments performed
- 1754 by the Department of Agriculture and Food;
- 1755 (48) except to the extent that the record is exempt from this chapter pursuant to Section
- 1756 [63G-2-106](#), records related to an emergency plan or program, a copy of which is provided to or
- 1757 prepared or maintained by the Division of Emergency Management, and the disclosure of
- 1758 which would jeopardize:
- 1759 (a) the safety of the general public; or
- 1760 (b) the security of:
- 1761 (i) governmental property;

- 1762 (ii) governmental programs; or
1763 (iii) the property of a private person who provides the Division of Emergency
1764 Management information;
- 1765 (49) records of the Department of Agriculture and Food that provides for the
1766 identification, tracing, or control of livestock diseases, including any program established under
1767 Title 4, Chapter 24, Utah Livestock Brand and Anti-Theft Act, or Title 4, Chapter 31, Control
1768 of Animal Disease;
- 1769 (50) as provided in Section ~~[26B-2-408]~~ [26B-2-709](#):
- 1770 (a) information or records held by the Department of Health and Human Services
1771 related to a complaint regarding a ~~[child care program or residential child care]~~ provider,
1772 program, or facility which the department is unable to substantiate; and
- 1773 (b) information or records related to a complaint received by the Department of Health
1774 and Human Services from an anonymous complainant regarding a ~~[child care program or~~
1775 ~~residential child care]~~ provider, program, or facility;
- 1776 (51) unless otherwise classified as public under Section [63G-2-301](#) and except as
1777 provided under Section [41-1a-116](#), an individual's home address, home telephone number, or
1778 personal mobile phone number, if:
- 1779 (a) the individual is required to provide the information in order to comply with a law,
1780 ordinance, rule, or order of a government entity; and
- 1781 (b) the subject of the record has a reasonable expectation that this information will be
1782 kept confidential due to:
- 1783 (i) the nature of the law, ordinance, rule, or order; and
1784 (ii) the individual complying with the law, ordinance, rule, or order;
- 1785 (52) the portion of the following documents that contains a candidate's residential or
1786 mailing address, if the candidate provides to the filing officer another address or phone number
1787 where the candidate may be contacted:
- 1788 (a) a declaration of candidacy, a nomination petition, or a certificate of nomination,
1789 described in Section [20A-9-201](#), [20A-9-202](#), [20A-9-203](#), [20A-9-404](#), [20A-9-405](#), [20A-9-408](#),
1790 [20A-9-408.5](#), [20A-9-502](#), or [20A-9-601](#);
- 1791 (b) an affidavit of impecuniosity, described in Section [20A-9-201](#); or
1792 (c) a notice of intent to gather signatures for candidacy, described in Section

1793 20A-9-408;

1794 (53) the name, home address, work addresses, and telephone numbers of an individual
1795 that is engaged in, or that provides goods or services for, medical or scientific research that is:

1796 (a) conducted within the state system of higher education, as defined in Section

1797 53B-1-102; and

1798 (b) conducted using animals;

1799 (54) in accordance with Section 78A-12-203, any record of the Judicial Performance

1800 Evaluation Commission concerning an individual commissioner's vote, in relation to whether a

1801 judge meets or exceeds minimum performance standards under Subsection 78A-12-203(4), and

1802 information disclosed under Subsection 78A-12-203(5)(e);

1803 (55) information collected and a report prepared by the Judicial Performance

1804 Evaluation Commission concerning a judge, unless Section 20A-7-702 or Title 78A, Chapter

1805 12, Judicial Performance Evaluation Commission Act, requires disclosure of, or makes public,

1806 the information or report;

1807 (56) records provided or received by the Public Lands Policy Coordinating Office in

1808 furtherance of any contract or other agreement made in accordance with Section 63L-11-202;

1809 (57) information requested by and provided to the 911 Division under Section

1810 63H-7a-302;

1811 (58) in accordance with Section 73-10-33:

1812 (a) a management plan for a water conveyance facility in the possession of the Division

1813 of Water Resources or the Board of Water Resources; or

1814 (b) an outline of an emergency response plan in possession of the state or a county or

1815 municipality;

1816 (59) the following records in the custody or control of the Office of Inspector General

1817 of Medicaid Services, created in Section 63A-13-201:

1818 (a) records that would disclose information relating to allegations of personal

1819 misconduct, gross mismanagement, or illegal activity of a person if the information or

1820 allegation cannot be corroborated by the Office of Inspector General of Medicaid Services

1821 through other documents or evidence, and the records relating to the allegation are not relied

1822 upon by the Office of Inspector General of Medicaid Services in preparing a final investigation

1823 report or final audit report;

1824 (b) records and audit workpapers to the extent they would disclose the identity of a
1825 person who, during the course of an investigation or audit, communicated the existence of any
1826 Medicaid fraud, waste, or abuse, or a violation or suspected violation of a law, rule, or
1827 regulation adopted under the laws of this state, a political subdivision of the state, or any
1828 recognized entity of the United States, if the information was disclosed on the condition that
1829 the identity of the person be protected;

1830 (c) before the time that an investigation or audit is completed and the final
1831 investigation or final audit report is released, records or drafts circulated to a person who is not
1832 an employee or head of a governmental entity for the person's response or information;

1833 (d) records that would disclose an outline or part of any investigation, audit survey
1834 plan, or audit program; or

1835 (e) requests for an investigation or audit, if disclosure would risk circumvention of an
1836 investigation or audit;

1837 (60) records that reveal methods used by the Office of Inspector General of Medicaid
1838 Services, the fraud unit, or the Department of Health and Human Services, to discover
1839 Medicaid fraud, waste, or abuse;

1840 (61) information provided to the Department of Health and Human Services or the
1841 Division of Professional Licensing under Subsections 58-67-304(3) and (4) and Subsections
1842 58-68-304(3) and (4);

1843 (62) a record described in Section 63G-12-210;

1844 (63) captured plate data that is obtained through an automatic license plate reader
1845 system used by a governmental entity as authorized in Section 41-6a-2003;

1846 (64) any record in the custody of the Utah Office for Victims of Crime relating to a
1847 victim, including:

1848 (a) a victim's application or request for benefits;

1849 (b) a victim's receipt or denial of benefits; and

1850 (c) any administrative notes or records made or created for the purpose of, or used to,
1851 evaluate or communicate a victim's eligibility for or denial of benefits from the Crime Victim
1852 Reparations Fund;

1853 (65) an audio or video recording created by a body-worn camera, as that term is
1854 defined in Section 77-7a-103, that records sound or images inside a hospital or health care

1855 facility as those terms are defined in Section 78B-3-403, inside a clinic of a health care
1856 provider, as that term is defined in Section 78B-3-403, or inside a human service program as
1857 that term is defined in Section 26B-2-101, except for recordings that:

1858 (a) depict the commission of an alleged crime;

1859 (b) record any encounter between a law enforcement officer and a person that results in
1860 death or bodily injury, or includes an instance when an officer fires a weapon;

1861 (c) record any encounter that is the subject of a complaint or a legal proceeding against
1862 a law enforcement officer or law enforcement agency;

1863 (d) contain an officer involved critical incident as defined in Subsection
1864 76-2-408(1)(f); or

1865 (e) have been requested for reclassification as a public record by a subject or
1866 authorized agent of a subject featured in the recording;

1867 (66) a record pertaining to the search process for a president of an institution of higher
1868 education described in Section 53B-2-102, except for application materials for a publicly
1869 announced finalist;

1870 (67) an audio recording that is:

1871 (a) produced by an audio recording device that is used in conjunction with a device or
1872 piece of equipment designed or intended for resuscitating an individual or for treating an
1873 individual with a life-threatening condition;

1874 (b) produced during an emergency event when an individual employed to provide law
1875 enforcement, fire protection, paramedic, emergency medical, or other first responder service:

1876 (i) is responding to an individual needing resuscitation or with a life-threatening
1877 condition; and

1878 (ii) uses a device or piece of equipment designed or intended for resuscitating an
1879 individual or for treating an individual with a life-threatening condition; and

1880 (c) intended and used for purposes of training emergency responders how to improve
1881 their response to an emergency situation;

1882 (68) records submitted by or prepared in relation to an applicant seeking a
1883 recommendation by the Research and General Counsel Subcommittee, the Budget
1884 Subcommittee, or the Audit Subcommittee, established under Section 36-12-8, for an
1885 employment position with the Legislature;

- 1886 (69) work papers as defined in Section 31A-2-204;
- 1887 (70) a record made available to Adult Protective Services or a law enforcement agency
- 1888 under Section 61-1-206;
- 1889 (71) a record submitted to the Insurance Department in accordance with Section
- 1890 31A-37-201;
- 1891 (72) a record described in Section 31A-37-503;
- 1892 (73) any record created by the Division of Professional Licensing as a result of
- 1893 Subsection 58-37f-304(5) or 58-37f-702(2)(a)(ii);
- 1894 (74) a record described in Section 72-16-306 that relates to the reporting of an injury
- 1895 involving an amusement ride;
- 1896 (75) except as provided in Subsection 63G-2-305.5(1), the signature of an individual
- 1897 on a political petition, or on a request to withdraw a signature from a political petition,
- 1898 including a petition or request described in the following titles:
- 1899 (a) Title 10, Utah Municipal Code;
- 1900 (b) Title 17, Counties;
- 1901 (c) Title 17B, Limited Purpose Local Government Entities - Special Districts;
- 1902 (d) Title 17D, Limited Purpose Local Government Entities - Other Entities; and
- 1903 (e) Title 20A, Election Code;
- 1904 (76) except as provided in Subsection 63G-2-305.5(2), the signature of an individual in
- 1905 a voter registration record;
- 1906 (77) except as provided in Subsection 63G-2-305.5(3), any signature, other than a
- 1907 signature described in Subsection (75) or (76), in the custody of the lieutenant governor or a
- 1908 local political subdivision collected or held under, or in relation to, Title 20A, Election Code;
- 1909 (78) a Form I-918 Supplement B certification as described in Title 77, Chapter 38, Part
- 1910 5, Victims Guidelines for Prosecutors Act;
- 1911 (79) a record submitted to the Insurance Department under Section 31A-48-103;
- 1912 (80) personal information, as defined in Section 63G-26-102, to the extent disclosure is
- 1913 prohibited under Section 63G-26-103;
- 1914 (81) an image taken of an individual during the process of booking the individual into
- 1915 jail, unless:
- 1916 (a) the individual is convicted of a criminal offense based upon the conduct for which

1917 the individual was incarcerated at the time the image was taken;

1918 (b) a law enforcement agency releases or disseminates the image:

1919 (i) after determining that the individual is a fugitive or an imminent threat to an

1920 individual or to public safety and releasing or disseminating the image will assist in

1921 apprehending the individual or reducing or eliminating the threat; or

1922 (ii) to a potential witness or other individual with direct knowledge of events relevant

1923 to a criminal investigation or criminal proceeding for the purpose of identifying or locating an

1924 individual in connection with the criminal investigation or criminal proceeding; or

1925 (c) a judge orders the release or dissemination of the image based on a finding that the

1926 release or dissemination is in furtherance of a legitimate law enforcement interest;

1927 (82) a record:

1928 (a) concerning an interstate claim to the use of waters in the Colorado River system;

1929 (b) relating to a judicial proceeding, administrative proceeding, or negotiation with a

1930 representative from another state or the federal government as provided in Section

1931 [63M-14-205](#); and

1932 (c) the disclosure of which would:

1933 (i) reveal a legal strategy relating to the state's claim to the use of the water in the

1934 Colorado River system;

1935 (ii) harm the ability of the Colorado River Authority of Utah or river commissioner to

1936 negotiate the best terms and conditions regarding the use of water in the Colorado River

1937 system; or

1938 (iii) give an advantage to another state or to the federal government in negotiations

1939 regarding the use of water in the Colorado River system;

1940 (83) any part of an application described in Section [63N-16-201](#) that the Governor's

1941 Office of Economic Opportunity determines is nonpublic, confidential information that if

1942 disclosed would result in actual economic harm to the applicant, but this Subsection (83) may

1943 not be used to restrict access to a record evidencing a final contract or approval decision;

1944 (84) the following records of a drinking water or wastewater facility:

1945 (a) an engineering or architectural drawing of the drinking water or wastewater facility;

1946 and

1947 (b) except as provided in Section [63G-2-106](#), a record detailing tools or processes the

1948 drinking water or wastewater facility uses to secure, or prohibit access to, the records described
1949 in Subsection (84)(a);

1950 (85) a statement that an employee of a governmental entity provides to the
1951 governmental entity as part of the governmental entity's personnel or administrative
1952 investigation into potential misconduct involving the employee if the governmental entity:

1953 (a) requires the statement under threat of employment disciplinary action, including
1954 possible termination of employment, for the employee's refusal to provide the statement; and

1955 (b) provides the employee assurance that the statement cannot be used against the
1956 employee in any criminal proceeding;

1957 (86) any part of an application for a Utah Fits All Scholarship account described in
1958 Section [53F-6-402](#) or other information identifying a scholarship student as defined in Section
1959 [53F-6-401](#); and

1960 (87) a record:

1961 (a) concerning a claim to the use of waters in the Great Salt Lake;

1962 (b) relating to a judicial proceeding, administrative proceeding, or negotiation with a
1963 person concerning the claim, including a representative from another state or the federal
1964 government; and

1965 (c) the disclosure of which would:

1966 (i) reveal a legal strategy relating to the state's claim to the use of the water in the Great
1967 Salt Lake;

1968 (ii) harm the ability of the Great Salt Lake commissioner to negotiate the best terms
1969 and conditions regarding the use of water in the Great Salt Lake; or

1970 (iii) give an advantage to another person including another state or to the federal
1971 government in negotiations regarding the use of water in the Great Salt Lake.

1972 Section 18. Section **76-7-314** is amended to read:

1973 **76-7-314. Violations of abortion laws -- Classifications.**

1974 (1) An intentional violation of Section [76-7-307](#), [76-7-308](#), [76-7-310](#), [76-7-310.5](#),
1975 [76-7-311](#), or [76-7-312](#) is a felony of the third degree.

1976 (2) A violation of Section [76-7-326](#) is a felony of the third degree.

1977 (3) A violation of Section [76-7-314.5](#) is a felony of the second degree.

1978 (4) A violation of any other provision of this part, including Subsections

1979 76-7-305(2)(a) through (c), and (e), is a class A misdemeanor.

1980 (5) The Department of Health and Human Services shall report a physician's violation
1981 of any provision of this part to the Physicians Licensing Board, described in Section 58-67-201.

1982 (6) Any person with knowledge of a physician's violation of any provision of this part
1983 may report the violation to the Physicians Licensing Board, described in Section 58-67-201.

1984 (7) In addition to the penalties described in this section, the department may take any
1985 action described in Section [26B-2-208] 26B-2-703 against a health care facility if a violation
1986 of this chapter occurs at the health care facility.

1987 Section 19. Section 80-2-909 is amended to read:

1988 **80-2-909. Existing authority for child placement continues.**

1989 Any person who, under any law of this state other than this part or the Interstate
1990 Compact on the Placement of Children established under Section 80-2-905, has authority to
1991 make or assist in making the placement of a child, shall continue to have the ability lawfully to
1992 make or assist in making that placement, and the provisions of Sections 26B-2-127, 26B-2-131,
1993 26B-2-132, [26B-2-133] and 26B-2-708, Subsections 80-2-802(3)(a) and (4) and 80-2-803(1),
1994 (2), and (5) through (7), and Title 78B, Chapter 6, Part 1, Utah Adoption Act, continue to
1995 apply.

1996 Section 20. **Repealer.**

1997 This bill repeals:

1998 Section 26B-2-110, **License revocation -- Suspension.**

1999 Section 26B-2-111, **Adjudicative proceedings.**

2000 Section 26B-2-112, **Violations -- Penalties.**

2001 Section 26B-2-208, **Violations -- Denial or revocation of license -- Restricting or**
2002 **prohibiting new admissions -- Monitor.**

2003 Section 26B-2-210, **Issuance of new license after revocation -- Restoration.**

2004 Section 26B-2-211, **License issued to facility in compliance or substantial**
2005 **compliance with part and rules.**

2006 Section 26B-2-215, **Action by department for injunction.**

2007 Section 26B-2-216, **Operating facility in violation of part a misdemeanor.**

2008 Section 26B-2-409, **License violations -- Penalties.**

2009 Section 26B-2-410, **Offering or providing care in violation of part -- Misdemeanor.**

2010 Section 21. **Effective date.**
2011 This bill takes effect on May 1, 2024.