

Derrin R. Owens proposes the following substitute bill:

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Congregate Care Modifications
2025 GENERAL SESSION
STATE OF UTAH
Chief Sponsor: Derrin R. Owens
House Sponsor:

LONG TITLE

General Description:

This bill addresses congregate care programs.

Highlighted Provisions:

This bill:

- requires the Department of Health and Human Services (department) to take reasonable effort to determine, within seven days after receiving a completed report about an individual from the Bureau of Criminal Identification, whether to grant an application for direct patient access;
- disallows the department from:
 - restricting or prohibiting new admissions at a congregate care program on the sole basis that the program is operating under a conditional license; or
 - restricting or altering the rights of a congregate care program on the basis that the program or facility has filed an adjudicative proceeding or appeal, or that an adjudicative proceeding or appeal is pending;
- requires the department, in certain circumstances, to:
 - inspect a congregate care program;
 - provide notice to a congregate care program; or
 - remove restrictions and conditions on a congregate care program's license; and
- makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

29 **26B-2-120**, as last amended by Laws of Utah 2024, Chapter 234

30 **26B-2-703**, as enacted by Laws of Utah 2024, Chapter 267

31

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

33 Section 1. Section **26B-2-120** is amended to read:

34 **26B-2-120 . Background check -- Direct access to children or vulnerable adults.**

35 (1) As used in this section:

36 (a)(i) "Applicant" means an individual who is associated with a certification,
37 contract, or licensee with the department under this part and has direct access,
38 including:

39 (A) an adoptive parent or prospective adoptive parent, including an applicant for
40 an adoption in accordance with Section 78B-6-128;

41 (B) a foster parent or prospective foster parent;

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

44 (D) an individual who transports a child for a youth transportation company;

45 (E) an individual who provides certified peer support, as defined in Section
46 26B-5-610;

47 (F) an individual who provides peer supports, has a disability or a family member
48 with a disability, or is in recovery from a mental illness or a substance use
49 disorder;

50 (G) an individual who has lived experience with the services provided by the
51 department, and uses that lived experience to provide support, guidance, or
52 services to promote resiliency and recovery;

53 (H) an individual who is identified as a mental health professional, licensed under
54 Title 58, Chapter 60, Mental Health Professional Practice Act, and engaged in
55 the practice of mental health therapy, as defined in Section 58-60-102;

56 (I) an individual, other than the child or vulnerable adult receiving the service,
57 who is 12 years old or older and resides in a home, that is licensed or certified
58 by the division;

59 (J) an individual who is 12 years old or older and is associated with a certification,
60 contract, or licensee with the department under this part and has or will likely
61 have direct access;

62 (K) a foster home licensee that submits an application for an annual background

- 63 screening as required by Subsection 26B-2-105(4)(d)(iii); or
64 (L) a short-term relief care provider.
- 65 (ii) "Applicant" does not include:
- 66 (A) an individual who is in the custody of the Division of Child and Family
67 Services or the Division of Juvenile Justice and Youth Services;
- 68 (B) an individual who applies for employment with, or is employed by, the
69 Department of Health and Human Services;
- 70 (C) a parent of a person receiving services from the Division of Services for
71 People with Disabilities, if the parent provides direct care to and resides with
72 the person, including if the parent provides direct care to and resides with the
73 person pursuant to a court order; or
- 74 (D) an individual or a department contractor who provides services in an adults
75 only substance use disorder program, as defined by rule adopted by the
76 Department of Health and Human Services in accordance with Title 63G,
77 Chapter 3, Utah Administrative Rulemaking Act, and who is not a program
78 director or a member, as defined by Section 26B-2-105, of the program.
- 79 (b) "Application" means a background check application to the office.
- 80 (c) "Bureau" means the Bureau of Criminal Identification within the Department of
81 Public Safety, created in Section 53-10-201.
- 82 (d) "Criminal finding" means a record of:
- 83 (i) an arrest for a criminal offense;
- 84 (ii) a warrant for a criminal arrest;
- 85 (iii) charges for a criminal offense; or
- 86 (iv) a criminal conviction.
- 87 (e) "Direct access" means that an individual has, or likely will have:
- 88 (i) contact with or access to a child or vulnerable adult by which the individual will
89 have the opportunity for personal communication or touch with the child or
90 vulnerable adult; or
- 91 (ii) an opportunity to view medical, financial, or other confidential personal
92 identifying information of the child, the child's parent or legal guardian, or the
93 vulnerable adult.
- 94 (f)(i) "Direct access qualified" means that the applicant has an eligible determination
95 by the office within the license and renewal time period; and
- 96 (ii) no more than 180 days have passed since the date on which the applicant's

- 97 association with a certification, contract, or licensee with the department expires.
- 98 (g) "Incidental care" means occasional care, not in excess of five hours per week and
99 never overnight, for a foster child.
- 100 (h) "Licensee" means an individual or a human services program licensed by the
101 division.
- 102 (i) "Non-criminal finding" means a record maintained in:
- 103 (i) the Division of Child and Family Services' Management Information System
104 described in Section 80-2-1001;
- 105 (ii) the Division of Child and Family Services' Licensing Information System
106 described in Section 80-2-1002;
- 107 (iii) the Division of Aging and Adult Services' vulnerable adult abuse, neglect, or
108 exploitation database described in Section 26B-6-210;
- 109 (iv) juvenile court arrest, adjudication, and disposition records;
- 110 (v) the Sex, Kidnap, and Child Abuse Offender Registry described in Title 77,
111 Chapter 41, Sex, Kidnap, and Child Abuse Offender Registry, or a national sex
112 offender registry; or
- 113 (vi) a state child abuse or neglect registry.
- 114 (j) "Office" means the Office of Background Processing within the department.
- 115 (k) "Personal identifying information" means:
- 116 (i) current name, former names, nicknames, and aliases;
- 117 (ii) date of birth;
- 118 (iii) physical address and email address;
- 119 (iv) telephone number;
- 120 (v) driver license or other government-issued identification;
- 121 (vi) social security number;
- 122 (vii) only for applicants who are 18 years old or older, fingerprints, in a form
123 specified by the office; and
- 124 (viii) other information specified by the office by rule made in accordance with Title
125 63G, Chapter 3, Utah Administrative Rulemaking Act.
- 126 (2) Except as provided in Subsection (12), an applicant or a representative shall submit the
127 following to the office:
- 128 (a) personal identifying information;
- 129 (b) a fee established by the office under Section 63J-1-504;
- 130 (c) a disclosure form, specified by the office, for consent for:

- 131 (i) an initial background check upon association with a certification, contract, or
132 licensee with the department;
- 133 (ii) ongoing monitoring of fingerprints and registries until no longer associated with a
134 certification, contract, or licensee with the department for 180 days;
- 135 (iii) a background check when the office determines that reasonable cause exists; and
136 (iv) retention of personal identifying information, including fingerprints, for
137 monitoring and notification as described in Subsections (3)(c) and (4);
- 138 (d) if an applicant resided outside of the United States and its territories during the five
139 years immediately preceding the day on which the information described in
140 Subsections (2)(a) through (c) is submitted to the office, documentation establishing
141 whether the applicant was convicted of a crime during the time that the applicant
142 resided outside of the United States or its territories; and
- 143 (e) an application showing an applicant's association with a certification, contract, or a
144 licensee with the department, for the purpose of the office tracking the direct access
145 qualified status of the applicant, which expires 180 days after the date on which the
146 applicant is no longer associated with a certification, contract, or a licensee with the
147 department.
- 148 (3) The office:
- 149 (a) shall perform the following duties as part of a background check of an applicant
150 before the office grants or denies direct access qualified status to an applicant:
- 151 (i) check state and regional criminal background databases for the applicant's
152 criminal history by:
- 153 (A) submitting personal identifying information to the bureau for a search; or
154 (B) using the applicant's personal identifying information to search state and
155 regional criminal background databases as authorized under Section 53-10-108;
- 156 (ii) submit the applicant's personal identifying information and fingerprints to the
157 bureau for a criminal history search of applicable national criminal background
158 databases;
- 159 (iii) search the Division of Child and Family Services' Licensing Information System
160 described in Section 80-2-1002;
- 161 (iv) search the Sex, Kidnap, and Child Abuse Offender Registry described in Title
162 77, Chapter 41, Sex, Kidnap, and Child Abuse Offender Registry, or a national
163 sex offender registry for an applicant 18 years old or older;
- 164 (v) if the applicant is associated with a licensee for a prospective foster or adoptive

- 165 parent, search the Division of Child and Family Services' Management
166 Information System described in Section 80-2-1001;
- 167 (vi) search the Division of Aging and Adult Services' vulnerable adult abuse, neglect,
168 or exploitation database described in Section 26B-6-210;
- 169 (vii) search the juvenile court records for substantiated findings of severe child abuse
170 or neglect described in Section 80-3-404; and
- 171 (viii) search the juvenile court arrest, adjudication, and disposition records, as
172 provided under Section 78A-6-209;
- 173 (b) may conduct all or portions of a background check in connection with determining
174 whether an applicant is direct access qualified, as provided by rule, made by the
175 office in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act:
176 (i) for an annual renewal; or
177 (ii) when the office determines that reasonable cause exists;
- 178 (c) may submit an applicant's personal identifying information, including fingerprints, to
179 the bureau for checking, retaining, and monitoring of state and national criminal
180 background databases and for notifying the office of new criminal activity associated
181 with the applicant;
- 182 (d) shall track the status of an applicant under this section to ensure that the applicant is
183 not required to duplicate the submission of the applicant's fingerprints if the applicant
184 is associated with more than one certification, contract, or licensee with the
185 department;
- 186 (e) shall notify the bureau when a direct access qualified individual has not been
187 associated with a certification, contract, or licensee with the department for a period
188 of 180 days;
- 189 (f) shall adopt measures to strictly limit access to personal identifying information solely
190 to the individuals responsible for processing and entering the applications for
191 background checks and to protect the security of the personal identifying information
192 the office reviews under this Subsection (3);
- 193 (g) as necessary to comply with the federal requirement to check a state's child abuse
194 and neglect registry regarding any applicant working in a congregate care program,
195 shall:
- 196 (i) search the Division of Child and Family Services' Licensing Information System
197 described in Section 80-2-1002; and
198 (ii) require the child abuse and neglect registry be checked in each state where an

199 applicant resided at any time during the five years immediately preceding the day
200 on which the application is submitted to the office; and

201 (h) shall make rules, in accordance with Title 63G, Chapter 3, Utah Administrative
202 Rulemaking Act, to implement the provisions of this Subsection (3) relating to
203 background checks.

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

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

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

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

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

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

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

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

224 (e) The ~~[Bureau]~~ bureau shall notify and release to the office all information of criminal
225 activity associated with the applicant.

226 (f) Upon notice that an individual who has direct access qualified status will no longer
227 be associated with a certification, contract, or licensee with the department, the
228 bureau shall:

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

230 (ii) notify the Federal Bureau of Investigation when the license has expired or an
231 individual's direct access to a child or a vulnerable adult has ceased, so that the
232 Federal Bureau of Investigation will discard and destroy the retained fingerprints

233 from the Federal Bureau of Investigation Next Generation Identification System.

234 (5)(a) Except as provided in Subsection (5)(b), the office shall deny direct access

235 qualified status to an applicant who, within three years from the date on which the

236 office conducts the background check, was convicted of:

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

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

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

242 (C) sexual solicitation or prostitution;

243 (D) a violent offense committed in the presence of a child, as described in Section
244 76-3-203.10;

245 (E) an offense included in Title 76, Chapter 4, Part 4, Enticement of a Minor;

246 (F) an offense included in Title 76, Chapter 5, Offenses Against the Individual;

247 (G) an offense included in Title 76, Chapter 5b, Sexual Exploitation Act;

248 (H) an offense included in Title 76, Chapter 7, Offenses Against the Family;

249 (I) an offense included in Title 76, Chapter 9, Part 4, Offenses Against Privacy;

250 (J) an offense included in Title 76, Chapter 10, Part 4, Weapons of Mass

251 Destruction;

252 (K) an offense included in Title 78B, Chapter 7, Protective Orders and Stalking
253 Injunctions;

254 (L) aggravated arson, as described in Section 76-6-103;

255 (M) aggravated burglary, as described in Section 76-6-203;

256 (N) aggravated exploitation of prostitution, as described in Section 76-10-1306;

257 (O) aggravated robbery, as described in Section 76-6-302;

258 (P) endangering persons in a human services program, as described in Section
259 26B-2-113;

260 (Q) failure to report, as described in Section 80-2-609;

261 (R) identity fraud crime, as described in Section 76-6-1102;

262 (S) leaving a child unattended in a motor vehicle, as described in Section
263 76-10-2202;

264 (T) riot, as described in Section 76-9-101;

265 (U) sexual battery, as described in Section 76-9-702.1; or

266 (V) threatening with or using a dangerous weapon in a fight or quarrel, as

- 267 described in Section 76-10-506; or
- 268 (ii) a felony or misdemeanor offense committed outside of the state that, if committed
- 269 in the state, would constitute a violation of an offense described in Subsection
- 270 (5)(a)(i).
- 271 (b)(i) Subsection (5)(a) does not apply to an applicant who is seeking a position as a
- 272 peer support provider or a mental health professional, if the applicant provides
- 273 services in a program that serves only adults with a primary mental health
- 274 diagnosis, with or without a co-occurring substance use disorder.
- 275 (ii) The office shall conduct a comprehensive review of an applicant described in
- 276 Subsection (5)(b)(i) in accordance with Subsection (7).
- 277 (c) The office shall deny direct access qualified status to an applicant if the office finds
- 278 that a court order prohibits the applicant from having direct access to a child or
- 279 vulnerable adult.
- 280 (6) The office shall conduct a comprehensive review of an applicant's background check if
- 281 the applicant:
- 282 (a) has a felony or class A misdemeanor conviction that is more than three years from
- 283 the date on which the office conducts the background check, for an offense described
- 284 in Subsection (5)(a);
- 285 (b) has a felony charge or conviction that is no more than 10 years from the date on
- 286 which the office conducts the background check for an offense not described in
- 287 Subsection (5)(a);
- 288 (c) has a felony charge or conviction that is more than 10 years from the date on which
- 289 the office conducts the background check, for an offense not described in Subsection
- 290 (5)(a), with criminal or non-criminal findings after the date of the felony charge or
- 291 conviction;
- 292 (d) has a class B misdemeanor or class C misdemeanor conviction that is more than
- 293 three years and no more than 10 years from the date on which the office conducts the
- 294 background check for an offense described in Subsection (5)(a);
- 295 (e) has a class B misdemeanor or class C misdemeanor conviction that is more than 10
- 296 years from the date on which the office conducts the background check, for an
- 297 offense described in Subsection (5)(a), with criminal or non-criminal findings after
- 298 the date of conviction;
- 299 (f) has a misdemeanor charge or conviction that is no more than three years from the
- 300 date on which the office conducts the background check for an offense not described

- 301 in Subsection (5)(a);
- 302 (g) has a misdemeanor charge or conviction that is more than three years from the date
303 on which the office conducts the background check, for an offense not described in
304 Subsection (5)(a), with criminal or non-criminal findings after the date of charge or
305 conviction;
- 306 (h) is currently subject to a plea in abeyance or diversion agreement for an offense
307 described in Subsection (5)(a);
- 308 (i) appears on the Sex, Kidnap, and Child Abuse Offender Registry described in Title
309 77, Chapter 41, Sex, Kidnap, and Child Abuse Offender Registry, or a national sex
310 offender registry;
- 311 (j) has a record of an adjudication in juvenile court for an act that, if committed by an
312 adult, would be a felony or misdemeanor, if the applicant is:
- 313 (i) under 28 years old; or
- 314 (ii) 28 years old or older and has been convicted of, has pleaded no contest to, or is
315 currently subject to a plea in abeyance or diversion agreement for a felony or a
316 misdemeanor offense described in Subsection (5)(a);
- 317 (k) has a pending charge for an offense described in Subsection (5)(a);
- 318 (l) has a listing that occurred no more than 15 years from the date on which the office
319 conducts the background check in the Division of Child and Family Services'
320 Licensing Information System described in Section 80-2-1002;
- 321 (m) has a listing that occurred more than 15 years from the date on which the office
322 conducts the background check in the Division of Child and Family Services'
323 Licensing Information System described in Section 80-2-1002, with criminal or
324 non-criminal findings after the date of the listing;
- 325 (n) has a listing that occurred no more than 15 years from the date on which the office
326 conducts the background check in the Division of Aging and Adult Services'
327 vulnerable adult abuse, neglect, or exploitation database described in Section
328 26B-6-210;
- 329 (o) has a listing that occurred more than 15 years from the date on which the office
330 conducts the background check in the Division of Aging and Adult Services'
331 vulnerable adult abuse, neglect, or exploitation database described in Section
332 26B-6-210, with criminal or non-criminal findings after the date of the listing;
- 333 (p) has a substantiated finding that occurred no more than 15 years from the date on
334 which the office conducts the background check of severe child abuse or neglect

- 335 under Section 80-3-404 or 80-3-504[-]; or
- 336 (q) has a substantiated finding that occurred more than 15 years from the date on which
- 337 the office conducts the background check of severe child abuse or neglect under
- 338 Section 80-3-404 or 80-3-504, with criminal or non-criminal findings after the date of
- 339 the listing.
- 340 (7)(a) The comprehensive review shall include an examination of:
- 341 (i) the date of the offense or incident;
- 342 (ii) the nature and seriousness of the offense or incident;
- 343 (iii) the circumstances under which the offense or incident occurred;
- 344 (iv) the age of the perpetrator when the offense or incident occurred;
- 345 (v) whether the offense or incident was an isolated or repeated incident;
- 346 (vi) whether the offense or incident directly relates to abuse of a child or vulnerable
- 347 adult, including:
- 348 (A) actual or threatened, nonaccidental physical, mental, or financial harm;
- 349 (B) sexual abuse;
- 350 (C) sexual exploitation; or
- 351 (D) negligent treatment;
- 352 (vii) any evidence provided by the applicant of rehabilitation, counseling, psychiatric
- 353 treatment received, or additional academic or vocational schooling completed;
- 354 (viii) the applicant's risk of harm to clientele in the program or in the capacity for
- 355 which the applicant is applying; and
- 356 (ix) if the background check of an applicant is being conducted for the purpose of
- 357 giving direct access qualified status to an applicant seeking a position in a
- 358 congregate care program or to become a prospective foster or adoptive parent, any
- 359 listing in the Division of Child and Family Services' Management Information
- 360 System described in Section 80-2-1001.
- 361 (b) At the conclusion of the comprehensive review, the office shall deny direct access
- 362 qualified status to an applicant if the office finds the approval would likely create a
- 363 risk of harm to a child or vulnerable adult.
- 364 (8) The office shall grant direct access qualified status to an applicant who is not denied
- 365 under this section.
- 366 (9)(a) The office may conditionally grant direct access qualified status to an applicant,
- 367 for a maximum of 60 days after the day on which the office sends written notice,
- 368 without requiring that the applicant be directly supervised, if the office:

- 369 (i) is awaiting the results of the criminal history search of national criminal
370 background databases; and
- 371 (ii) would otherwise grant direct access qualified status to the applicant under this
372 section.
- 373 (b) The office may conditionally grant direct access qualified status to an applicant, for a
374 maximum of one year after the day on which the office sends written notice, without
375 requiring that the applicant be directly supervised if the office:
- 376 (i) is awaiting the results of an out-of-state registry for providers other than foster and
377 adoptive parents; and
- 378 (ii) would otherwise grant direct access qualified status to the applicant under this
379 section.
- 380 (c) Upon receiving the results of the criminal history search of a national criminal
381 background database, the office shall grant or deny direct access qualified status to
382 the applicant in accordance with this section.
- 383 (10)(a) Each time an applicant is associated with a licensee, the department shall review
384 the current status of the applicant's background check to ensure the applicant is still
385 eligible for direct access qualified status in accordance with this section.
- 386 (b) A licensee may not permit an individual to have direct access to a child or a
387 vulnerable adult without being directly supervised unless:
- 388 (i) the individual is the parent or guardian of the child, or the guardian of the
389 vulnerable adult;
- 390 (ii) the individual is approved by the parent or guardian of the child, or the guardian
391 of the vulnerable adult, to have direct access to the child or the vulnerable adult;
- 392 (iii) the individual is only permitted to have direct access to a vulnerable adult who
393 voluntarily invites the individual to visit; or
- 394 (iv) the individual only provides incidental care for a foster child on behalf of a foster
395 parent who has used reasonable and prudent judgment to select the individual to
396 provide the incidental care for the foster child.
- 397 (c) Notwithstanding any other provision of this section, an applicant who is denied direct
398 access qualified status shall not have direct access to a child or vulnerable adult
399 unless the office grants direct access qualified status to the applicant through a
400 subsequent application in accordance with this section.
- 401 (11) If the office denies direct access qualified status to an applicant, the applicant may
402 request a hearing in the department's Office of Administrative Hearings to challenge the

- 403 office's decision.
- 404 (12)(a) This Subsection (12) applies to an applicant associated with a certification,
405 contract, or licensee serving adults only.
- 406 (b) A program director or a member, as defined in Section 26B-2-105, of the licensee
407 shall comply with this section.
- 408 (c) The office shall conduct a comprehensive review for an applicant if:
- 409 (i) the applicant is seeking a position:
- 410 (A) as a peer support provider;
- 411 (B) as a mental health professional; or
- 412 (C) in a program that serves only adults with a primary mental health diagnosis,
413 with or without a co-occurring substance use disorder; and
- 414 (ii) within three years from the date on which the office conducts the background
415 check, the applicant has a felony or misdemeanor charge or conviction or a
416 non-criminal finding.
- 417 (13)(a) This Subsection (13) applies to an applicant seeking a position in a congregate
418 care program, an applicant seeking to provide a prospective foster home, an applicant
419 seeking to provide a prospective adoptive home, and each adult living in the home of
420 the prospective foster or prospective adoptive home.
- 421 (b) As federally required, the office shall:
- 422 (i) check the child abuse and neglect registry in each state where each applicant
423 resided in the five years immediately preceding the day on which the applicant
424 applied to be a foster or adoptive parent, to determine whether the prospective
425 foster or adoptive parent is listed in the registry as having a substantiated or
426 supported finding of child abuse or neglect; and
- 427 (ii) except for applicants seeking a position in a congregate care program, check the
428 child abuse and neglect registry in each state where each adult living in the home
429 of the prospective foster or adoptive home resided in the five years immediately
430 preceding the day on which the applicant applied to be a foster or adoptive parent,
431 to determine whether the adult is listed in the registry as having a substantiated or
432 supported finding of child abuse or neglect.
- 433 (c) The requirements described in Subsection (13)(b) do not apply to the extent that:
- 434 (i) federal law or rule permits otherwise; or
- 435 (ii) the requirements would prohibit the Division of Child and Family Services or a
436 court from placing a child with:

- 437 (A) a noncustodial parent under Section 80-2a-301, 80-3-302, or 80-3-303; or
438 (B) a relative, other than a noncustodial parent, under Section 80-2a-301, 80-3-302,
439 or 80-3-303, pending completion of the background check described in
440 Subsections (5), (6), and (7).
- 441 (d) Notwithstanding Subsections (5) through (10), the office shall deny direct access
442 qualified status if the applicant has been convicted of:
- 443 (i) a felony involving conduct that constitutes any of the following:
- 444 (A) child abuse, as described in Sections 76-5-109, 76-5-109.2, and 76-5-109.3;
445 (B) commission of domestic violence in the presence of a child, as described in
446 Section 76-5-114;
447 (C) abuse or neglect of a child with a disability, as described in Section 76-5-110;
448 (D) intentional aggravated abuse of a vulnerable adult, as described in Section
449 76-5-111;
450 (E) endangerment of a child or vulnerable adult, as described in Section
451 76-5-112.5;
452 (F) aggravated murder, as described in Section 76-5-202;
453 (G) murder, as described in Section 76-5-203;
454 (H) manslaughter, as described in Section 76-5-205;
455 (I) child abuse homicide, as described in Section 76-5-208;
456 (J) homicide by assault, as described in Section 76-5-209;
457 (K) kidnapping, as described in Section 76-5-301;
458 (L) child kidnapping, as described in Section 76-5-301.1;
459 (M) aggravated kidnapping, as described in Section 76-5-302;
460 (N) human trafficking of a child, as described in Section 76-5-308.5;
461 (O) an offense described in Title 76, Chapter 5, Part 4, Sexual Offenses;
462 (P) sexual exploitation of a minor, as described in Title 76, Chapter 5b, Sexual
463 Exploitation Act;
464 (Q) aggravated exploitation of a minor, as described in Section 76-5b-201.1;
465 (R) aggravated arson, as described in Section 76-6-103;
466 (S) aggravated burglary, as described in Section 76-6-203;
467 (T) aggravated robbery, as described in Section 76-6-302;
468 (U) lewdness involving a child, as described in Section 76-9-702.5;
469 (V) incest, as described in Section 76-7-102; or
470 (W) domestic violence, as described in Section 77-36-1; or

- 471 (ii) an offense committed outside the state that, if committed in the state, would
472 constitute a violation of an offense described in Subsection (13)(d)(i).
- 473 (e) Notwithstanding Subsections (5) through (10), the office shall deny direct access
474 qualified status to an applicant if, within the five years from the date on which the
475 office conducts the background check, the applicant was convicted of a felony
476 involving conduct that constitutes a violation of any of the following:
- 477 (i) aggravated assault, as described in Section 76-5-103;
478 (ii) aggravated assault by a prisoner, as described in Section 76-5-103.5;
479 (iii) mayhem, as described in Section 76-5-105;
480 (iv) an offense described in Title 58, Chapter 37, Utah Controlled Substances Act;
481 (v) an offense described in Title 58, Chapter 37a, Utah Drug Paraphernalia Act;
482 (vi) an offense described in Title 58, Chapter 37b, Imitation Controlled Substances
483 Act;
484 (vii) an offense described in Title 58, Chapter 37c, Utah Controlled Substance
485 Precursor Act; or
486 (viii) an offense described in Title 58, Chapter 37d, Clandestine Drug Lab Act.
- 487 (f) In addition to the circumstances described in Subsection (6), the office shall conduct
488 a comprehensive review of an applicant's background check under this section if the
489 applicant:
- 490 (i) has an offense described in Subsection (5)(a);
491 (ii) has an infraction conviction entered on a date that is no more than three years
492 before the date on which the office conducts the background check;
493 (iii) has a listing in the Division of Child and Family Services' Licensing Information
494 System described in Section 80-2-1002;
495 (iv) has a listing in the Division of Aging and Adult Services' vulnerable adult,
496 neglect, or exploitation database described in Section 26B-2-210;
497 (v) has a substantiated finding of severe child abuse or neglect under Section
498 80-3-404 or 80-3-504; or
499 (vi) has a listing on the registry check described in Subsection (13)(b) as having a
500 substantiated or supported finding of a severe type of child abuse or neglect, as
501 defined in Section 80-1-102.
- 502 (g) The department shall take reasonable effort to determine, no later than seven
503 business days after the date on which the department receives a completed report
504 from the bureau, whether to grant certification for direct patient access for each

- 505 applicant for whom the bureau receives:
 506 (i) the personal identification information specified by the department under
 507 Subsection (2);
 508 (ii) results from other states' child abuse and neglect registries, in accordance with
 509 Subsection (3)(g); and
 510 (iii) any fees established by the department under Subsection (14).

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

- 513 (a) establish procedures for, and information to be examined in, the comprehensive
 514 review described in Subsections (6), (7), and (13);~~and~~
 515 (b) determine whether to consider an offense or incident that occurred while an
 516 individual was in the custody of the Division of Child and Family Services or the
 517 Division of Juvenile Justice and Youth Services for purposes of granting or denying
 518 direct access qualified status to an applicant~~[-]~~ ; and
 519 (c) in accordance with Subsection 26B-2-240(9), establish fees for an application for
 520 certification for direct patient access.

521 Section 2. Section **26B-2-703** is amended to read:

522 **26B-2-703 . Sanctions -- Penalties and adjudicative procedure -- Rulemaking.**

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

- 527 (2)(a) In accordance with Title 63G, Chapter 4, Administrative Procedures Act, the
 528 department may deny, place conditions on, suspend, or revoke a license, certificate,
 529 or certification, and invoke penalties, including restricting or prohibiting new
 530 admissions to a program or facility, if the department finds that there has been:
 531 ~~[(a)]~~ (i) a failure to comply with:
 532 ~~[(+)]~~ (A) rules established under this chapter; or
 533 ~~[(+)]~~ (B) any lawful order of the department or a local health department, or
 534 applicable rule, statute, regulation, or requirement;
 535 ~~[(b)]~~ (ii) aiding, abetting, or permitting the commission of any illegal act;
 536 ~~[(e)]~~ (iii) conduct adverse to the standards required to provide services and promote
 537 public trust, including aiding, abetting, or permitting the commission of abuse,
 538 neglect, exploitation, harm, mistreatment, or fraud; or

- 539 ~~[(d)]~~ (iv) a failure to provide applicable health and safety services for clients.
- 540 (b) The department may not restrict or prohibit new admissions at a congregate care
541 program on the sole basis that the congregate care program is operating under a
542 conditional license.
- 543 (3)(a) The department may act on an emergency basis if the department determines
544 immediate action is necessary to protect a client.
- 545 (b) Immediate action taken under Subsection (3)(a) may include restricting new
546 admissions to a program or facility, or increased monitoring of the operations of a
547 program or facility.
- 548 (4) The department may impose civil monetary penalties against any person, in a sum not to
549 exceed \$10,000 per violation, in:
- 550 (a) an administrative action in accordance with Title 63G, Chapter 4, Administrative
551 Procedures Act;
- 552 (b) a similar administrative proceeding adopted by a county or local government; or
553 (c) a judicial civil proceeding.
- 554 (5) Assessment of a civil penalty or administrative penalty does not preclude the
555 department or a local health department from:
- 556 (a) seeking criminal penalties;
- 557 (b) denying, revoking, imposing conditions on, or refusing to renew a license,
558 certificate, or certification; or
- 559 (c) seeking injunctive or equitable remedies.
- 560 (6) If the department revokes a license, certificate, or certification, the office may not grant
561 a new license, certificate, or certification unless:
- 562 (a) at least five years have passed since the day on which the provider was served with
563 final notice that the provider's license, certificate, or certification was revoked; and
564 (b) the office determines that the interests of the public will not be jeopardized by
565 granting the provider a new license, certificate, or certification.
- 566 (7) If the department does not renew a license, certificate, or certification because of
567 noncompliance with the provisions of this part or rules adopted under this part, the
568 department may not issue a new license, certificate, or certification unless:
- 569 (a) at least one year has passed since the day on which the renewal was denied;
- 570 (b) the provider complies with all renewal requirements; and
571 (c) the office determines that the interests of the public will not be jeopardized by
572 issuing a new license, certificate, or certification.

- 573 (8) The office may suspend a license, certificate, or certification for up to three years.
- 574 (9) When a license, certificate, or certification has been suspended, the office may restore,
575 or restore subject to conditions, the suspended license, certificate, or certification upon a
576 determination that the:
- 577 (a) conditions upon which the suspension were based have been completely or partially
578 corrected; and
- 579 (b) interests of the public will not be jeopardized by restoration of the license, certificate,
580 or certification.
- 581 (10) If a provider fails to comply with the provisions of this chapter, the department may
582 impose a penalty on the provider that is less than or equal to the cost incurred by the
583 department, which may include:
- 584 (a) the cost to continue providing services, including ensuring client safety and
585 relocating clients through the transition or closure of a program or facility;
- 586 (b) the cost to place an administrator or department representative as a monitor in a
587 program or facility; or
- 588 (c) the cost to assess to the provider those costs incurred by the department.
- 589 (11) If a congregate care program or facility knowingly fails to comply with the provisions
590 of Section 26B-2-124, the office may impose a penalty on the congregate care program
591 or facility that is less than or equal to the cost of care incurred by the state for a
592 private-placement child described in Subsection 26B-2-124(3).
- 593 (12) If the department finds that an abortion has been performed in violation of Section
594 76-7-314 or 76-7a-201, the department shall deny or revoke the license.
- 595 (13)(a) A provider, program or facility, or person may commence adjudicative
596 proceedings in accordance with Title 63G, Chapter 4, Administrative Procedures Act,
597 regarding all agency actions that determine the legal rights, duties, privileges,
598 immunities, or other legal interests of the provider, program or facility, or persons
599 associated with the provider, including all office actions to grant, deny, place
600 conditions on, revoke, suspend, withdraw, or amend an authority, right, license,
601 certificate, or certification under this part.
- 602 (b) The department may not deny, place a condition on, revoke, refuse to reinstate,
603 suspend, withdraw, or amend an authority, right, license, certificate, or certification
604 under this part on the basis that an affected congregate care program has appealed an
605 agency action under Subsection (13)(a) or that an appeal or adjudicative proceeding
606 is pending.

607 (c) If, at any time, the department determines that it will not remove a condition on or
608 otherwise unconditionally reinstate or renew a congregate care program's license, the
609 department shall notify the congregate care program within seven days of the
610 department's determination.

611 (14) The department shall:

612 (a)(i) conduct an initial inspection not more than 14 days after the date on which any
613 restriction or prohibition on new admissions has been issued; and

614 (ii) conduct a subsequent inspection not more than 30 days after the date on which
615 the initial inspection under Subsection (14)(a)(i)(A) occurred;

616 (b) remove any restriction on new admissions at a congregate care program or facility if
617 the department:

618 (i) conducts any two consecutive inspections showing full compliance with the
619 violated rules upon which the restriction on new admissions was based; and

620 (ii) finds no new violations upon which the department may restrict new admissions
621 under Subsection (2)(a); and

622 (c) remove any conditions on a congregate care program license if:

623 (i) the congregate care program has rectified all issues for which the conditions were
624 initially imposed;

625 (ii) the department conducts three consecutive inspections showing full compliance
626 with the violated rules upon which the conditions were based;

627 (iii) no less than 90 days have elapsed after the date on which the first of three
628 consecutive inspections showing full compliance occurred; and

629 (iv) the department finds no new violations upon which the department may place
630 conditions on the license under Subsection (2)(a).

631 ~~[(14)]~~ (15) Subject to the requirements of federal and state law, the office shall make rules
632 in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to
633 establish sanctions, penalties, and adjudicative proceedings as described in this chapter.

634 **Section 3. Effective Date.**

635 This bill takes effect on May 7, 2025.