

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:

26B-2-240, as last amended by Laws of Utah 2024, Chapter 310

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

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

Section 1. Section **26B-2-240** is amended to read:

26B-2-240 . Department authorized to grant, deny, or revoke clearance --

Department may limit direct patient access -- Clearance.

(1) The definitions in Section 26B-2-238 apply to this section.

(2)(a) As provided in this section, the department may grant, deny, or revoke certification for direct patient access for an individual, including a covered individual.

(b) The department may limit the circumstances under which a covered individual granted certification for direct patient access may have direct patient access, based on the relationship factors under Subsection (4) and other mitigating factors related to patient and resident protection.

(c) The department shall ~~[determine-]~~ take reasonable effort to determine no later than seven business days after the date on which the department receives a completed report from the Department of Public Safety's Bureau of Criminal Identification whether to grant certification for direct patient access for each applicant for whom it receives:

(i) the personal identification information specified by the department under Subsection (4)(b);

(ii) results from another state's child abuse and neglect registry, in accordance with Subsection 26B-2-120(3)(g); and

~~[(ii)]~~ (iii) any fees established by the department under Subsection (9).

(d) The department shall:

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

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

(3) The department may review the following sources to determine whether an individual should be granted or retain certification for direct patient access, which may include:

(a) Department of Public Safety arrest, conviction, and disposition records described in

- 65 Title 53, Chapter 10, Criminal Investigations and Technical Services Act, including
66 information in state, regional, and national records files;
- 67 (b) juvenile court arrest, adjudication, and disposition records, as allowed under Section
68 78A-6-209;
- 69 (c) federal criminal background databases available to the state;
- 70 (d) the Division of Child and Family Services Licensing Information System described
71 in Section 80-2-1002;
- 72 (e) child abuse or neglect findings described in Section 80-3-404;
- 73 (f) the Division of Aging and Adult Services vulnerable adult abuse, neglect, or
74 exploitation database described in Section 26B-6-210;
- 75 (g) registries of nurse aids described in 42 C.F.R. Sec. 483.156;
- 76 (h) licensing and certification records of individuals licensed or certified by the Division
77 of Professional Licensing under Title 58, Occupations and Professions; and
- 78 (i) the List of Excluded Individuals and Entities database maintained by the United
79 States Department of Health and Human Services' Office of Inspector General.
- 80 (4) The department shall adopt rules that:
- 81 (a) specify the criteria the department will use to determine whether an individual is
82 granted or retains certification for direct patient access:
- 83 (i) based on an initial evaluation and ongoing review of information under Subsection
84 (3); and
- 85 (ii) including consideration of the relationship the following may have to patient and
86 resident protection:
- 87 (A) warrants for arrest;
- 88 (B) arrests;
- 89 (C) convictions, including pleas in abeyance;
- 90 (D) pending diversion agreements;
- 91 (E) adjudications by a juvenile court under Section 80-6-701 if the individual is
92 over 28 years old and has been convicted, has pleaded no contest, or is subject
93 to a plea in abeyance or diversion agreement for a felony or misdemeanor, or
94 the individual is under 28 years old; and
- 95 (F) any other findings under Subsection (3); and
- 96 (b) specify the personal identification information that must be submitted by an
97 individual or covered body with an application for certification for direct patient
98 access, including:

- 99 (i) the applicant's [~~Social Security~~] social security number; and
100 (ii) fingerprints.
- 101 (5) For purposes of Subsection (4)(a), the department shall classify a crime committed in
102 another state according to the closest matching crime under Utah law, regardless of how
103 the crime is classified in the state where the crime was committed.
- 104 (6) The Department of Public Safety, the Administrative Office of the Courts, the Division
105 of Professional Licensing, and any other state agency or political subdivision of the state:
106 (a) shall allow the department to review the information the department may review
107 under Subsection (3); and
108 (b) except for the Department of Public Safety, may not charge the department for
109 access to the information.
- 110 (7) The department shall adopt measures to protect the security of the information it
111 reviews under Subsection (3) and strictly limit access to the information to department
112 employees responsible for processing an application for certification for direct patient
113 access.
- 114 (8) The department may disclose personal identification information specified under
115 Subsection (4)(b) to other divisions and offices within the department to verify that the
116 subject of the information is not identified as a perpetrator or offender in the information
117 sources described in Subsections (3)(d) through (f).
- 118 (9) The department may establish fees, in accordance with Section 63J-1-504, for an
119 application for certification for direct patient access, which may include:
120 (a) the cost of obtaining and reviewing information under Subsection (3);
121 (b) a portion of the cost of creating and maintaining the Direct Access Clearance System
122 database under Section 26B-2-241; and
123 (c) other department costs related to the processing of the application and the ongoing
124 review of information pursuant to Subsection (4)(a) to determine whether
125 certification for direct patient access should be retained.
- 126 Section 2. Section **26B-2-703** is amended to read:
- 127 **26B-2-703 . Sanctions -- Penalties and adjudicative procedure -- Rulemaking.**
- 128 (1) If the department has reason to believe that a provider has failed to comply with this
129 chapter or rules made pursuant to this chapter, the department may serve a notice of
130 agency action to commence an adjudicative proceeding in accordance with Title 63G,
131 Chapter 4, Administrative Procedures Act.
- 132 (2)(a) In accordance with Title 63G, Chapter 4, Administrative Procedures Act, the

- 133 department may deny, place conditions on, suspend, or revoke a license, certificate,
 134 or certification, and invoke penalties, including restricting or prohibiting new
 135 admissions to a program or facility, if the department finds that there has been:
- 136 ~~[(a)]~~ (i) a failure to comply with:
 137 ~~[(+)]~~ (A) rules established under this chapter; or
 138 ~~[(+)]~~ (B) any lawful order of the department or a local health department, or
 139 applicable rule, statute, regulation, or requirement;
 140 ~~[(b)]~~ (ii) aiding, abetting, or permitting the commission of any illegal act;
 141 ~~[(e)]~~ (iii) conduct adverse to the standards required to provide services and promote
 142 public trust, including aiding, abetting, or permitting the commission of abuse,
 143 neglect, exploitation, harm, mistreatment, or fraud; or
 144 ~~[(d)]~~ (iv) a failure to provide applicable health and safety services for clients.
- 145 (b) The department may not restrict or prohibit new admissions at a congregate care
 146 program on the sole basis that the congregate care program is operating under a
 147 conditional license.
- 148 (3)(a) The department may act on an emergency basis if the department determines
 149 immediate action is necessary to protect a client.
- 150 (b) Immediate action taken under Subsection (3)(a) may include restricting new
 151 admissions to a program or facility, or increased monitoring of the operations of a
 152 program or facility.
- 153 (4) The department may impose civil monetary penalties against any person, in a sum not to
 154 exceed \$10,000 per violation, in:
- 155 (a) an administrative action in accordance with Title 63G, Chapter 4, Administrative
 156 Procedures Act;
 157 (b) a similar administrative proceeding adopted by a county or local government; or
 158 (c) a judicial civil proceeding.
- 159 (5) Assessment of a civil penalty or administrative penalty does not preclude the
 160 department or a local health department from:
- 161 (a) seeking criminal penalties;
 162 (b) denying, revoking, imposing conditions on, or refusing to renew a license,
 163 certificate, or certification; or
 164 (c) seeking injunctive or equitable remedies.
- 165 (6) If the department revokes a license, certificate, or certification, the office may not grant
 166 a new license, certificate, or certification unless:

- 167 (a) at least five years have passed since the day on which the provider was served with
168 final notice that the provider's license, certificate, or certification was revoked; and
169 (b) the office determines that the interests of the public will not be jeopardized by
170 granting the provider a new license, certificate, or certification.
- 171 (7) If the department does not renew a license, certificate, or certification because of
172 noncompliance with the provisions of this part or rules adopted under this part, the
173 department may not issue a new license, certificate, or certification unless:
174 (a) at least one year has passed since the day on which the renewal was denied;
175 (b) the provider complies with all renewal requirements; and
176 (c) the office determines that the interests of the public will not be jeopardized by
177 issuing a new license, certificate, or certification.
- 178 (8) The office may suspend a license, certificate, or certification for up to three years.
- 179 (9) When a license, certificate, or certification has been suspended, the office may restore,
180 or restore subject to conditions, the suspended license, certificate, or certification upon a
181 determination that the:
182 (a) conditions upon which the suspension were based have been completely or partially
183 corrected; and
184 (b) interests of the public will not be jeopardized by restoration of the license, certificate,
185 or certification.
- 186 (10) If a provider fails to comply with the provisions of this chapter, the department may
187 impose a penalty on the provider that is less than or equal to the cost incurred by the
188 department, which may include:
189 (a) the cost to continue providing services, including ensuring client safety and
190 relocating clients through the transition or closure of a program or facility;
191 (b) the cost to place an administrator or department representative as a monitor in a
192 program or facility; or
193 (c) the cost to assess to the provider those costs incurred by the department.
- 194 (11) If a congregate care program or facility knowingly fails to comply with the provisions
195 of Section 26B-2-124, the office may impose a penalty on the congregate care program
196 or facility that is less than or equal to the cost of care incurred by the state for a
197 private-placement child described in Subsection 26B-2-124(3).
- 198 (12) If the department finds that an abortion has been performed in violation of Section
199 76-7-314 or 76-7a-201, the department shall deny or revoke the license.
- 200 (13)(a) A provider, program or facility, or person may commence adjudicative

201 proceedings in accordance with Title 63G, Chapter 4, Administrative Procedures Act,
202 regarding all agency actions that determine the legal rights, duties, privileges,
203 immunities, or other legal interests of the provider, program or facility, or persons
204 associated with the provider, including all office actions to grant, deny, place
205 conditions on, revoke, suspend, withdraw, or amend an authority, right, license,
206 certificate, or certification under this part.

207 (b) The department may not deny, place a condition on, revoke, refuse to reinstate,
208 suspend, withdraw, or amend an authority, right, license, certificate, or certification
209 under this part on the basis that an affected congregate care program has appealed an
210 agency action under Subsection (13)(a) or that an appeal or adjudicative proceeding
211 is pending.

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

216 (14) The department shall:

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

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

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

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

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

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

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

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

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

234 (iv) the department finds no new violations upon which the department may place

235 conditions on the license under Subsection (2)(a).
236 [~~14~~] (15) Subject to the requirements of federal and state law, the office shall make rules
237 in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to
238 establish sanctions, penalties, and adjudicative proceedings as described in this chapter.

239 Section 3. **Effective Date.**

240 This bill takes effect on May 7, 2025.