

**Effective 5/3/2023**

## **Part 4 Child Care Licensing**

### **26B-2-401 Definitions.**

As used in this part:

- (1) "Capacity limit" means the maximum number of qualifying children that a regulated provider may care for at any given time, in accordance with rules made by the department.
- (2)
  - (a) "Center based child care" means child care provided in a facility or program that is not the home of the provider.
  - (b) "Center based child care" does not include:
    - (i) residential child care; or
    - (ii) care provided in a facility or program exempt under Section 26B-2-405.
- (3) "Certified provider" means a person who holds a certificate from the department under Section 26B-2-404.
- (4) "Child care" means continuous care and supervision of a qualifying child, that is:
  - (a) in lieu of care ordinarily provided by a parent in the parent's home;
  - (b) for less than 24 hours a day; and
  - (c) for direct or indirect compensation.
- (5) "Child care program" means a child care facility or program operated by a regulated provider.
- (6) "Exempt provider" means a person who provides care described in Subsection 26B-2-405(2).
- (7) "Licensed provider" means a person who holds a license from the department under Section 26B-2-403.
- (8) "Licensing committee" means the Child Care Provider Licensing Committee created in Section 26B-1-204.
- (9) "Public school" means:
  - (a) a school, including a charter school, that:
    - (i) is directly funded at public expense; and
    - (ii) provides education to qualifying children for any grade from first grade through twelfth grade;or
  - (b) a school, including a charter school, that provides:
    - (i) preschool or kindergarten to qualifying children, regardless of whether the preschool or kindergarten is funded at public expense; and
    - (ii) education to qualifying children for any grade from first grade through twelfth grade, if each grade, from first grade to twelfth grade, that is provided at the school, is directly funded at public expense.
- (10) "Qualifying child" means an individual who is:
  - (a)
    - (i) under the age of 13 years old; or
    - (ii) under the age of 18 years old, if the person has a disability; and
  - (b) a child of:
    - (i) a person other than the person providing care to the child;
    - (ii) a regulated provider, if the child is under the age of four; or
    - (iii) an employee or owner of a licensed child care center, if the child is under the age of four.
- (11) "Regulated provider" means a licensed provider or certified provider.
- (12) "Residential child care" means child care provided in the home of the provider.

Amended by Chapter 249, 2023 General Session  
Renumbered and Amended by Chapter 305, 2023 General Session

**26B-2-402 Duties of the department -- Enforcement of part -- Licensing committee requirements.**

- (1) With regard to residential child care licensed or certified under this part, the department may:
  - (a) make and enforce rules to implement this part and, as necessary to protect qualifying children's common needs for a safe and healthy environment, to provide for:
    - (i) adequate facilities and equipment; and
    - (ii) competent caregivers, considering the age of the children and the type of program offered by the licensee; and
  - (b) make and enforce rules necessary to carry out the purposes of this part, in the following areas:
    - (i) requirements for applications, the application process, and compliance with other applicable statutes and rules;
    - (ii) documentation and policies and procedures that providers shall have in place in order to be licensed, in accordance with Subsection (1)(a);
    - (iii) categories, classifications, and duration of initial and ongoing licenses;
    - (iv) changes of ownership or name, changes in licensure status, and changes in operational status;
    - (v) license expiration and renewal, contents, and posting requirements;
    - (vi) procedures for inspections, complaint resolution, disciplinary actions, and other procedural measures to encourage and assure compliance with statute and rule; and
    - (vii) guidelines necessary to assure consistency and appropriateness in the regulation and discipline of licensees.
- (2) The department shall enforce the rules established by the licensing committee, with the concurrence of the department, for center based child care.
- (3) The department shall make rules that allow a regulated provider to provide after school child care for a reasonable number of qualifying children in excess of the regulated provider's capacity limit, without requiring the regulated provider to obtain a waiver or new license from the department.
- (4) Rules made under this part by the department, or the licensing committee with the concurrence of the department, shall be made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
- (5)
  - (a) The licensing committee and the department may not regulate educational curricula, academic methods, or the educational philosophy or approach of the provider.
  - (b) The licensing committee and the department shall allow for a broad range of educational training and academic background in certification or qualification of child day care directors.
- (6) In licensing and regulating child care programs, the licensing committee and the department shall reasonably balance the benefits and burdens of each regulation and, by rule, provide for a range of licensure, depending upon the needs and different levels and types of child care provided.
- (7) Notwithstanding the definition of "qualifying child" in Section 26B-2-401, the licensing committee and the department shall count children through age 12 and children with disabilities through age 18 toward the minimum square footage requirement for indoor and outdoor areas, including the child of:

- (a) a licensed residential child care provider; or
  - (b) an owner or employee of a licensed child care center.
- (8) Notwithstanding Subsection (1)(a)(i), the licensing committee and the department may not exclude floor space used for furniture, fixtures, or equipment from the minimum square footage requirement for indoor and outdoor areas if the furniture, fixture, or equipment is used:
- (a) by qualifying children;
  - (b) for the care of qualifying children; or
  - (c) to store classroom materials.
- (9)
- (a) A child care center constructed prior to January 1, 2004, and licensed and operated as a child care center continuously since January 1, 2004, is exempt from the licensing committee's and the department's group size restrictions, if the child to caregiver ratios are maintained, and adequate square footage is maintained for specific classrooms.
  - (b) An exemption granted under Subsection (9)(a) is transferrable to subsequent licensed operators at the center if a licensed child care center is continuously maintained at the center.
- (10) The licensing committee, with the concurrence of the department, shall develop, by rule, a five-year phased-in compliance schedule for playground equipment safety standards.
- (11) The department shall set and collect licensing and other fees in accordance with Section 26B-1-209.

Renumbered and Amended by Chapter 305, 2023 General Session

**26B-2-403 Licensure requirements -- Expiration -- Renewal.**

- (1) Except as provided in Section 26B-2-405, and subject to Subsection (2), a person shall obtain a license from the department if:
- (a) the person provides center based child care for five or more qualifying children;
  - (b) the person provides residential child care for nine or more qualifying children; or
  - (c) the person:
    - (i) provides child care;
    - (ii) is not required to obtain a license under Subsection (1)(a) or (b); and
    - (iii) requests to be licensed.
- (2) Notwithstanding Subsection (1), a certified provider may, in accordance with rules made by the department under Subsection 26B-2-402(3), exceed the certified provider's capacity limit to provide after school child care without obtaining a license from the department.
- (3) The department may issue licenses for a period not exceeding 24 months to child care providers who meet the requirements of:
- (a) this part; and
  - (b) the department's rules governing child care programs.
- (4) A license issued under this part is not assignable or transferable.

Renumbered and Amended by Chapter 305, 2023 General Session

**26B-2-404 Residential Child Care Certificate.**

- (1) Except as provided in Section 26B-2-405, a person shall obtain a Residential Child Care Certificate from the department if:
- (a) the person provides residential child care for seven or eight qualifying children; or
  - (b) the person:
    - (i) provides residential child care for six or less qualifying children; and

- (ii) requests to be certified.
- (2) The minimum qualifications for a Residential Child Care Certificate are:
  - (a) the submission of:
    - (i) an application in the form prescribed by the department;
    - (ii) a certification and criminal background fee established in accordance with Section 26B-1-209; and
    - (iii) in accordance with Section 26B-2-406, identifying information for each adult person and each juvenile age 12 through 17 years old who resides in the provider's home:
      - (A) for processing by the Department of Public Safety to determine whether any such person has been convicted of a crime;
      - (B) to screen for a substantiated finding of child abuse or neglect by a juvenile court; and
      - (C) to discover whether the person is listed in the Licensing Information System described in Section 80-2-1002;
  - (b) an initial and annual inspection of the provider's home within 90 days of sending an intent to inspect notice to:
    - (i) check the immunization record, as defined in Section 53G-9-301, of each qualifying child who receives child care in the provider's home;
    - (ii) identify serious sanitation, fire, and health hazards to qualifying children; and
    - (iii) make appropriate recommendations; and
  - (c) annual training consisting of 10 hours of department-approved training as specified by the department by administrative rule, including a current department-approved CPR and first aid course.
- (3) If a serious sanitation, fire, or health hazard has been found during an inspection conducted pursuant to Subsection (2)(b), the department shall require corrective action for the serious hazards found and make an unannounced follow up inspection to determine compliance.
- (4) In addition to an inspection conducted pursuant to Subsection (2)(b), the department may inspect the home of a certified provider in response to a complaint of:
  - (a) child abuse or neglect;
  - (b) serious health hazards in or around the provider's home; or
  - (c) providing residential child care without the appropriate certificate or license.
- (5) With respect to residential child care, the department may only make and enforce rules necessary to implement this section.

Renumbered and Amended by Chapter 305, 2023 General Session

**26B-2-405 Exclusions from part -- Criminal background checks by an excluded person.**

- (1)
  - (a) Except as provided in Subsection (1)(b), the provisions and requirements of this part do not apply to:
    - (i) a facility or program owned or operated by an agency of the United States government;
    - (ii) group counseling provided by a mental health therapist, as defined in Section 58-60-102, who is licensed to practice in this state;
    - (iii) a health care facility licensed under Part 2, Health Care Facility Licensing and Inspection;
    - (iv) care provided to a qualifying child by or in the home of a parent, legal guardian, grandparent, brother, sister, uncle, or aunt;
    - (v) care provided to a qualifying child, in the home of the provider, for less than four hours a day or on a sporadic basis, unless that child care directly affects or is related to a business licensed in this state;

- (vi) care provided at a residential support program that is licensed by the department;
  - (vii) center based child care for four or less qualifying children, unless the provider requests to be licensed under Section 26B-2-403; or
  - (viii) residential child care for six or less qualifying children, unless the provider requests to be licensed under Section 26B-2-403 or certified under Section 26B-2-404.
- (b) Notwithstanding Subsection (1)(a), a person who does not hold a license or certificate from the department under this part may not, at any given time, provide child care in the person's home for more than 10 children in total under the age of 13, or under the age of 18 if a child has a disability, regardless of whether a child is related to the person providing child care.
- (2) The licensing and certification requirements of this part do not apply to:
- (a) care provided to a qualifying child as part of a course of study at or a program administered by an educational institution that is regulated by the boards of education of this state, a private education institution that provides education in lieu of that provided by the public education system, or by a parochial education institution;
  - (b) care provided to a qualifying child by a public or private institution of higher education, if the care is provided in connection with a course of study or program, relating to the education or study of children, that is provided to students of the institution of higher education;
  - (c) care provided to a qualifying child at a public school by an organization other than the public school, if:
    - (i) the care is provided under contract with the public school or on school property; or
    - (ii) the public school accepts responsibility and oversight for the care provided by the organization;
  - (d) care provided to a qualifying child as part of a summer camp that operates on federal land pursuant to a federal permit;
  - (e) care provided by an organization that:
    - (i) qualifies for tax exempt status under Section 501(c)(3) of the Internal Revenue Code;
    - (ii) provides care pursuant to a written agreement with:
      - (A) a municipality, as defined in Section 10-1-104, that provides oversight for the program; or
      - (B) a county that provides oversight for the program; and
    - (iii) provides care to a child who is over the age of four and under the age of 13; or
  - (f) care provided to a qualifying child at a facility where:
    - (i) the parent or guardian of the qualifying child is at all times physically present in the building where the care is provided and the parent or guardian is near enough to reach the child within five minutes if needed;
    - (ii) the duration of the care is less than four hours for an individual qualifying child in any one day;
    - (iii) the care is provided on a sporadic basis;
    - (iv) the care does not include diapering a qualifying child; and
    - (v) the care does not include preparing or serving meals to a qualifying child.
- (3) An exempt provider shall submit to the department:
- (a) the information required under Subsections 26B-2-406(1) and (2); and
  - (b) of the children receiving care from the exempt provider:
    - (i) the number of children who are less than two years old;
    - (ii) the number of children who are at least two years old and less than five years old; and
    - (iii) the number of children who are five years old or older.
- (4) An exempt provider shall post, in a conspicuous location near the entrance of the exempt provider's facility, a notice prepared by the department that:
- (a) states that the facility is exempt from licensure and certification; and

- (b) provides the department's contact information for submitting a complaint.
- (5)
- (a) Except as provided in Subsection (5)(b), the department may not release the information the department collects from exempt providers under Subsection (3).
  - (b) The department may release an aggregate count of children receiving care from exempt providers, without identifying a specific provider.

Renumbered and Amended by Chapter 305, 2023 General Session

**26B-2-406 Disqualified individuals -- Criminal history checks -- Payment of costs.**

- (1)
- (a) Each exempt provider, except as provided in Subsection (1)(c), and each person requesting a residential certificate or to be licensed or to renew a license under this part shall submit to the department the name and other identifying information, which shall include fingerprints, of existing, new, and proposed:
    - (i) owners;
    - (ii) directors;
    - (iii) members of the governing body;
    - (iv) employees;
    - (v) providers of care;
    - (vi) volunteers, except parents of children enrolled in the programs; and
    - (vii) all adults residing in a residence where child care is provided.
  - (b)
    - (i) The Utah Division of Criminal Investigation and Technical Services within the Department of Public Safety shall process the information required under Subsection (1)(a) to determine whether the individual has been convicted of any crime.
    - (ii) The Utah Division of Criminal Investigation and Technical Services shall submit fingerprints required under Subsection (1)(a) to the FBI for a national criminal history record check.
    - (iii) A person required to submit information to the department under Subsection (1) shall pay the cost of conducting the record check described in this Subsection (1)(b).
  - (c) An exempt provider who provides care to a qualifying child as part of a program administered by an educational institution that is regulated by the State Board of Education is not subject to this Subsection (1), unless required by the Child Care and Development Block Grant, 42 U.S.C. Secs. 9857-9858r.
- (2)
- (a) Each person requesting a residential certificate or to be licensed or to renew a license under this part shall submit to the department the name and other identifying information of any person age 12 through 17 who resides in the residence where the child care is provided. The identifying information required for a person age 12 through 17 does not include fingerprints.
  - (b) The department shall access the juvenile court records to determine whether a person described in Subsection (1) or (2)(a) has been adjudicated in juvenile court of committing an act which if committed by an adult would be a felony or misdemeanor if:
    - (i) the person described in Subsection (1) is under the age of 28; or
    - (ii) the person described in Subsection (1) is:
      - (A) over the age of 28; and
      - (B) has been convicted, has pleaded no contest, or is currently subject to a plea in abeyance or diversion agreement for a felony or misdemeanor.

- (3) Except as provided in Subsections (4) and (5), a licensee under this part or an exempt provider may not permit a person who has been convicted, has pleaded no contest, or is currently subject to a plea in abeyance or diversion agreement for any felony or misdemeanor, or if the provisions of Subsection (2)(b) apply, who has been adjudicated in juvenile court of committing an act which if committed by an adult would be a felony or a misdemeanor, to:
- (a) provide child care;
  - (b) provide volunteer services for a child care program or an exempt provider;
  - (c) reside at the premises where child care is provided; or
  - (d) function as an owner, director, or member of the governing body of a child care program or an exempt provider.
- (4)
- (a) The department may, by rule, exempt the following from the restrictions of Subsection (3):
    - (i) specific misdemeanors; and
    - (ii) specific acts adjudicated in juvenile court, which if committed by an adult would be misdemeanors.
  - (b) In accordance with criteria established by rule, the executive director may consider and exempt individual cases not otherwise exempt under Subsection (4)(a) from the restrictions of Subsection (3).
- (5) The restrictions of Subsection (3) do not apply to the following:
- (a) a conviction or plea of no contest to any nonviolent drug offense that occurred on a date 10 years or more before the date of the criminal history check described in this section; or
  - (b) if the provisions of Subsection (2)(b) apply, any nonviolent drug offense adjudicated in juvenile court on a date 10 years or more before the date of the criminal history check described in this section.
- (6) The department may retain background check information submitted to the department for up to one year after the day on which the covered individual is no longer associated with a Utah child care provider.

Renumbered and Amended by Chapter 305, 2023 General Session

#### **26B-2-407 Drinking water quality in child care centers.**

A child care center, as defined in Section 19-4-115, may comply with Section 19-4-115.

Renumbered and Amended by Chapter 305, 2023 General Session

#### **26B-2-408 Investigations -- Records.**

- (1) As used in this section:
- (a) "Anonymous complainant" means a complainant for whom the department does not have the minimum personal identifying information necessary, including the complainant's full name, to attempt to communicate with the complainant after a complaint has been made.
  - (b) "Confidential complainant" means a complainant for whom the department has the minimum personal identifying information necessary, including the complainant's full name, to attempt to communicate with the complainant after a complaint has been made, but who elects under Subsection (3)(c) not to be identified to the subject of the complaint.
  - (c) "Subject of the complaint" means the licensee or certificate holder about whom the complainant is informing the department.
- (2) The department may conduct investigations necessary to enforce the provisions of this part.
- (3)

- (a) If the department receives a complaint about a child care program or an exempt provider, the department shall:
  - (i) solicit information from the complainant to determine whether the complaint suggests actions or conditions that could pose a serious risk to the safety or well-being of a qualifying child;
  - (ii) as necessary:
    - (A) encourage the complainant to disclose the minimum personal identifying information necessary, including the complainant's full name, for the department to attempt to subsequently communicate with the complainant;
    - (B) inform the complainant that the department may not investigate an anonymous complaint;
    - (C) inform the complainant that the identity of a confidential complainant may be withheld from the subject of a complaint only as provided in Subsection (3)(c)(ii); and
    - (D) inform the complainant that the department may be limited in its use of information provided by a confidential complainant, as provided in Subsection (3)(c)(ii)(B); and
  - (iii) inform the complainant that a person is guilty of a class B misdemeanor under Section 76-8-506 if the person gives false information to the department with the purpose of inducing a change in that person's or another person's licensing or certification status.
- (b) If the complainant elects to be an anonymous complainant, or if the complaint concerns events which occurred more than six weeks before the complainant contacted the department:
  - (i) shall refer the information in the complaint to the Division of Child and Family Services within the department, law enforcement, or any other appropriate agency, if the complaint suggests actions or conditions which could pose a serious risk to the safety or well-being of a child;
  - (ii) may not investigate or substantiate the complaint; and
  - (iii) may, during a regularly scheduled annual survey, inform the exempt provider, licensee, or certificate holder that is the subject of the complaint of allegations or concerns raised by:
    - (A) the anonymous complainant; or
    - (B) the complainant who reported events more than six weeks after the events occurred.
- (c)
  - (i) If the complainant elects to be a confidential complainant, the department shall determine whether the complainant wishes to remain confidential:
    - (A) only until the investigation of the complaint has been completed; or
    - (B) indefinitely.
  - (ii)
    - (A) If the complainant elects to remain confidential only until the investigation of the complaint has been completed, the department shall disclose the name of the complainant to the subject of the complaint at the completion of the investigation, but no sooner.
    - (B) If the complainant elects to remain confidential indefinitely, the department:
      - (I) notwithstanding Subsection 63G-2-201(5)(b), may not disclose the name of the complainant, including to the subject of the complaint; and
      - (II) may not use information provided by the complainant to substantiate an alleged violation of state law or department rule unless the department independently corroborates the information.
- (4)
  - (a) Prior to conducting an investigation of a child care program or an exempt provider in response to a complaint, a department investigator shall review the complaint with the investigator's supervisor.
  - (b) The investigator may proceed with the investigation only if:



- (i) the supervisor determines the complaint is credible;
  - (ii) the complaint is not from an anonymous complainant; and
  - (iii) prior to the investigation, the investigator informs the subject of the complaint of:
    - (A) except as provided in Subsection (3)(c), the name of the complainant; and
    - (B) except as provided in Subsection (4)(c), the substance of the complaint.
- (c) An investigator is not required to inform the subject of a complaint of the substance of the complaint prior to an investigation if doing so would jeopardize the investigation. However, the investigator shall inform the subject of the complaint of the substance of the complaint as soon as doing so will no longer jeopardize the investigation.
- (5) If the department is unable to substantiate a complaint, any record related to the complaint or the investigation of the complaint:
  - (a) shall be classified under Title 63G, Chapter 2, Government Records Access and Management Act, as:
    - (i) a private or controlled record if appropriate under Section 63G-2-302 or 63G-2-304; or
    - (ii) a protected record under Section 63G-2-305; and
  - (b) if disclosed in accordance with Subsection 63G-2-201(5)(b), may not identify an individual child care program, exempt provider, licensee, certificate holder, or complainant.
- (6) Any record of the department related to a complaint by an anonymous complainant is a protected record under Title 63G, Chapter 2, Government Records Access and Management Act, and, notwithstanding Subsection 63G-2-201(5)(b), may not be disclosed in a manner that identifies an individual child care program, exempt provider, licensee, certificate holder, or complainant.

Renumbered and Amended by Chapter 305, 2023 General Session

#### **26B-2-409 License violations -- Penalties.**

- (1) The department may deny or revoke a license and otherwise invoke disciplinary penalties if it finds:
  - (a) evidence of committing or of aiding, abetting, or permitting the commission of any illegal act on the premises of the child care facility;
  - (b) a failure to meet the qualifications for licensure; or
  - (c) conduct adverse to the public health, morals, welfare, and safety of children under its care.
- (2) The department may also place a department representative as a monitor in a facility, and may assess the cost of that monitoring to the facility, until the licensee has remedied the deficiencies that brought about the department action.
- (3) The department may impose civil monetary penalties in accordance with Title 63G, Chapter 4, Administrative Procedures Act, if there has been a failure to comply with the provisions of this part, or rules made pursuant to this part, as follows:
  - (a) if significant problems exist that are likely to lead to the harm of a qualifying child, the department may impose a civil penalty of \$50 to \$1,000 per day; and
  - (b) if significant problems exist that result in actual harm to a qualifying child, the department may impose a civil penalty of \$1,050 to \$5,000 per day.

Renumbered and Amended by Chapter 305, 2023 General Session

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

Notwithstanding the provisions of Section 26B-1-224, a person who provides or offers child care except as provided by this part is guilty of a class A misdemeanor.

Renumbered and Amended by Chapter 305, 2023 General Session