

**R430. Health, Family Health and Preparedness, Child Care Licensing.**

**R430-8. Exemptions From Child Care Licensing.**

**R430-8-1. Legal Authority and Purpose.**

- (1) This rule is enacted and enforced in accordance with Title 26, Chapter 39, Utah Child Care Licensing Act.
- (2) This rule defines what constitutes child care that is excluded from any of the regulatory requirements of the Utah Department of Health, Child Care Licensing Program.

**R430-8-2. Definitions.**

- (1) "Background Finding" means information in a background check that Child Care Licensing uses to determine if a covered individual is or is not eligible to be involved with child care.
- (2) "Calendar Week" means from Sunday through Saturday.
- (3) "Caregiver" means a covered individual who protects the health and safety of children. A covered individual is a caregiver when they:
  - (a) count in the caregiver-to-child ratio;
  - (b) meet the physical or emotional needs of the children, including diapering, toileting, feeding, or protecting them from harm; or
  - (c) supervise children.
- (4) "CCL" means the Child Care Licensing Program in the Department of Health that is delegated with the responsibility to enforce the Utah Child Care Licensing Act.
- (5) "Child Care" means continuous care and supervision of five or more qualifying children that is:
  - (a) in place 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.
- (6) "Child Care Program" means a person or business that offers child care.
- (7) "Covered Individual" means any of the following individuals involved with a child care program:
  - (a) an owner;
  - (b) a director;
  - (c) a member of the governing body;
  - (d) an employee;
  - (e) a caregiver;
  - (f) a volunteer, except a parent of a child enrolled in the child care program;
  - (g) an individual age 12 years old or older who resides in the facility; and
  - (h) anyone who has unsupervised contact with a child in care.
- (8) "Department" means the Utah Department of Health.
- (9) "Eligible" means that were no findings in a covered individual's background check that could prohibit that covered individual from being involved with child care.
- (10) "Facility" means a child care program or the premises used for child care.
- (11) "Involved with Child Care" means to do any of the following at or for a child care program:
  - (a) care for or supervise children;
  - (b) volunteer;
  - (c) own, operate, direct;
  - (d) reside;
  - (e) count in the caregiver-to-child ratio; or
  - (f) have unsupervised contact with a child in care.
- (12) "LIS Supported Finding" means background check information from the Licensing Information System (LIS) database for child abuse and neglect, maintained by the Utah Department of Human Services.
- (13) "Parochial Education Institution" means an institution that meets the following criteria:
  - (a) operates as a substitute for, and gives the equivalent of, instruction required in public schools for any grade from first through twelfth grade;
  - (b) has a governing board that actively supervises and directs the educational curriculum used by the institution and exercises oversight over the health and safety of the children in the program;
  - (c) is owned and operated by a religious institution that is registered with the federal government as an 501(c)(3) religious organization;
  - (d) is not directly funded at public expense;
  - (e) does not receive:
    - (i) child care grant or subsidy funds, directly or indirectly, from the Department of Workforce Services; or
    - (ii) child care food program funds, directly or indirectly, from the State Office of Education; and
  - (f) does not provide instruction in the home in lieu of instruction required in public schools for any grade from first through twelfth grade.
- (14) "Private Education Institution" means an institution that meets the following criteria:
  - (a) operates as a substitute for, and gives the equivalent of, instruction required in public schools for any grade from first through twelfth grade;

- (b) has a governing board that actively supervises and directs the educational curriculum used by the institution, and exercises oversight over the health and safety of the children in the program;
  - (c) is not directly funded at public expense;
  - (d) does not receive:
  - (i) child care grant or subsidy funds, directly or indirectly, from the Department of Workforce Services; or
  - (ii) child care food program funds, directly or indirectly, from the State Office of Education; and
  - (e) does not provide instruction in the home in lieu of instruction required in public schools for any grade from first through twelfth grade.
- (15) "Public School" means a school, including a charter school, that is directly funded at public expense and is regulated by a board of education governed by Title 53A, Chapter 3, Local School Boards.
- (16) "Qualifying Child" means:
- (a) a child who is younger than 13 years old and is the child of an individual other than the child care provider or caregiver;
  - (b) a child with a disability who is younger than 18 years old and is the child of an individual other than the provider or caregiver; or
  - (c) a child who is younger than four years old and is the child of the provider or a caregiver.
- (17) "Related Child" means a child for whom a provider is the parent, legal guardian, step-parent, grandparent, step-grandparent, great-grandparent, sibling, step-sibling, aunt, step-aunt, great-aunt, uncle, step-uncle, or great-uncle.
- (18) "Relative Care" means care provided to a qualifying child by or in the home of the parent, legal guardian, step-parent, grandparent, step-grandparent, great-grandparent, sibling, step-sibling, aunt, uncle, step-aunt, step-uncle, great-aunt, or great-uncle.
- (19) "Volunteer" means an individual who receives no form of direct or indirect compensation for their service.

**R430-8-3. License or Certificate, Exemption, and Background Check Not Required.**

- (1) The following types of care do not require a child care license, certificate, exemption, or the submission of background check documents to the department:
- (a) care provided on no more than two days during any calendar week;
  - (b) care provided in the home of the provider for less than four hours a day, or for fewer than five unrelated children in the home at one time;
  - (c) care provided in the home of the provider on a sporadic basis only;
  - (d) care provided by a facility or program owned or operated by an agency of the United States government;
  - (e) a group counseling provided by a mental health therapist who is licensed to practice in this state;
  - (f) a health care facility licensed pursuant to Title 26, Chapter 21, Health Care Facility Licensing and Inspection Act; or
  - (g) care provided at a residential support program that is licensed by the Department of Human Services.

**R430-8-4. Exempt Application and Public Notice Required.**

- (1) The following types of care do not require a child care license or certificate from the department, but do require the provider to meet the application and public notice requirements outlined in this rule:
- (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 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;
  - (f) care provided to a qualifying child at a facility where:
    - (i) the parent or guardian of the qualifying child is physically present in the building where the care is provided while the child is in care 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.
- (2) Providers listed in this subsection shall submit to the department, each year the program is open for business, an application for verification of license exempt status on the form provided by the department.

(3) Providers listed in this subsection shall post, in a conspicuous location near the entrance of the 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.

(4) Substantiated complaint allegations against providers listed in this subsection will be available to the public and posted by the department on the Child Care Licensing website.

#### **R430-8-5. Background Check Requirements and Appeals.**

(1) An exempt provider who cares for 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 the background check requirements listed under this section, unless required by the Child Care and Development Block Grant, 42 U.S.C. Secs. 9857-9858r.

(2) Except as provided in Subsection R430-8-5(1), the requirements of this subsection apply to each facility listed in Section R430-8-4.

(3) The provider shall submit to the department background checks and fees for each covered individual as defined in Subsection R430-8-2(7).

(4) Before a new covered individual becomes involved with child care in the program, the provider shall use the CCL provider portal search to:

- (a) verify that the individual is eligible; and
- (b) associate that individual with their facility if the covered individual appears in the search.

(5) Before a new covered individual who does not appear in the CCL provider portal search becomes involved with child care in the program, the provider shall:

- (a) have the individual submit an online background check form and fingerprints for individuals age 18 years old and older;
- (b) authorize the individual's background check through the CCL provider's portal;
- (c) pay any required fees; and
- (d) receive written notice from CCL that the individual is eligible.

(6) To keep their background check eligibility current, the provider shall also ensure that a new background check form and fingerprints are submitted and authorized and fees are paid for any covered individual who has:

- (a) resided outside of Utah since their last background check was completed;
- (b) not been associated with an active, CCL approved child care facility within the past 180 days; or
- (c) has turned 18 years old and has not previously submitted fingerprints for a CCL background check. If the 18-year-old has previously submitted fingerprints for a CCL background check, only a new background check form will be required.

(7) The provider shall ensure that fingerprints are prepared by a local law enforcement agency or an agency approved by local law enforcement.

(8) If fingerprints are submitted electronically through live scan, the provider shall ensure that the agency taking the fingerprints is one that follows the department's guidelines.

(9) The department may consider a covered individual not eligible for any of the following reasons:

- (a) LIS supported findings;
- (b) the covered individual's name appears on the Utah or national sex offender registry;
- (c) the covered individual refuses to consent to the criminal background check;
- (d) the covered individual knowingly makes a false statement in connection with their background check;
- (e) any felony convictions; or
- (f) for any of the reasons listed under Subsection R430-8-5(10).

(10) The department may also consider a covered individual not eligible for any of the following convictions regardless of severity:

- (a) child pornography;
- (b) sexual enticing of a minor;
- (c) voyeurism;
- (d) a sexual exploitation act;
- (e) pornographic material or performance;
- (f) any crime against an individual;
- (g) providing dangerous weapons or fire arms to a minor; or
- (h) driving under the influence (DUI) while a child is present in the vehicle.

(11) The department shall consider a covered individual eligible if the only background finding is a conviction or plea of no contest to a nonviolent drug offense that occurred ten or more years before the CCL background check was conducted.

(12) If the provider is deemed not eligible by CCL, the department may suspend or deny their license until the reason for the background check finding is resolved.

(13) If a covered individual is deemed not eligible by CCL, including that the individual has been convicted, has pleaded no contest, or is currently subject to a plea in abeyance or diversion agreement for a felony or misdemeanor, the provider shall prohibit that individual from being employed by the child care program or residing at the facility until the reason for the background check finding is resolved.

(14) If a covered individual is denied a license or employment based upon the criminal background check and disagrees with the information provided by the Department of Public Safety, the covered individual may appeal the information to the

Department of Public Safety.

(15) If a covered individual disagrees with a supported finding on the Department of Human Services LIS, the covered individual may appeal the finding to the Department of Human Services.

(16) The provider and the covered individual shall notify the department within 48 hours of becoming aware of the covered individual's arrest warrant, felony or misdemeanor arrest, charge, conviction, or supported LIS finding. Failure to notify the department within 48 hours may result in disciplinary action, including revocation of the license.

(17) The Executive Director of the department may overturn a CCL background check decision if the Executive Director determines that the nature of the background finding or mitigating circumstances do not pose a risk to children.

(18) An applicant or exempt provider may appeal any department decision within 15 working days of being informed in writing of the decision.

**R430-8-6. Voluntary Licensure.**

(1) A child care provider who is not required to be licensed or certified under this rule may voluntarily receive a license and agree to be subject to each of the terms and conditions of the license, except for the following:

- (a) relative care only as defined in Subsection R430-8-2(17); and
- (b) care provided in the home of the provider on a sporadic basis only.

**KEY: child care facilities, exemptions from Child Care Licensing**

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