**R430. Health and Human Services, Residential Child Care Licensing.**

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

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

(1) Section 26B-2-402 authorizes this rule.

(2) This rule defines what constitutes child care that is excluded from any of the regulatory requirements of the Utah Department of Health and Human Services, Child Care Licensing Program.

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

(1) Terms used in this rule are defined in Rule R380-600. Additionally:

(2) "Background finding" means information in a background check that OBP uses to determine if a covered individual is or is not eligible to be involved with child care.

(3) "Calendar week" means from Sunday through Saturday.

(4) "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.

(5) "CCL" means Child Care Licensing in the Office of Licensing, Division of Licensing and Background Checks under the department that is delegated with the responsibility to enforce the rules under Titles R381 and R430 and Rule R380-600.

(6) "Child care" means continuous care and supervision of at least one qualifying child that:

(a) is in place of care ordinarily provided by a parent in the parent's home;

(b) occurs for less than 24 hours a day; and

(c) is provided for direct or indirect compensation.

(7) "Child care program" means a person or business that offers child care.

(8) "Covered individual" means the same as defined in Rule R380-600.

(9) "Department" means the Utah Department of Health and Human Services.

(10) "Eligible" means the same as defined in Rule R380-600.

(11) "Facility" means a program or premises approved by OL to be used for child care.

(12) "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) count in the caregiver-to-child ratio;

(c) have unsupervised contact with a child in care;

(d) own, operate, direct;

(e) reside; or

(f) volunteer.

(13) "LIS supported finding" means a supported finding of child abuse or neglect in the Licensing Information System (LIS) database for child abuse and neglect, maintained by the department.

(14) "OBP" means the same as defined in Rule R380-600.

(15) "OL" means the same as defined in Rule R380-600.

(16) "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.

(17) "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.

(18) "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.

(19) "Qualifying child" means a child:

(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) child who is younger than four years old and is the child of the provider or a caregiver; or

(c) child with a disability who is younger than 18 years old and is the child of an individual other than the provider or caregiver.

(20) "Related child" means a child for whom a provider is the parent, stepparent, grandparent, step-grandparent, great-grandparent, sibling, step-sibling, aunt, step-aunt, great-aunt, uncle, step-uncle, or great-uncle.

(21) "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.

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

(1) A provider of any of the following types of care is not subject to a child care license, certificate, exemption, or the submission of background checks to OL:

(a) a facility or program owned or operated by an agency of the United States government;

(b) a health care facility that is licensed by OL;

(c) a residential support program that is licensed by OL; or

(d) group counseling provided by a mental health therapist who is licensed to practice in this state.

(2) A residential child care provider caring for eight or less qualifying children who is not subject to a child care license, certificate, or exemption, shall submit background checks in accordance with Sections R430-50-3 and 26B-2-405.

**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 OL, 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:

(i) the boards of education of this state;

(ii) a private education institution that provides education in lieu of that provided by the public education system, or

(iii) 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 related to 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), 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) A provider listed in this subsection shall submit to OL, each year the program is open for business, an application for verification of license exempt status on the form provided by OL.

(3) A provider listed in this subsection shall post, in a conspicuous location near the entrance of the provider's facility, a notice prepared by OL that:

(a) states that the facility is exempt from licensure and certification; and

(b) provides OL '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 OL on the Division of Licensing and Background Checks website.

**R430-8-5. Background Checks.**

(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. Sec. 9857-9858r.

(2) Except as outlined in Subsection R430-8-5(1), the requirements of this section apply to:

(a) each facility listed in Section R430-8-4; and

(b) any unlicensed residential child care provider, except for sporadic care, who provides care:

(i) for eight or less qualifying children at one time or for up to ten qualifying children including their own;

(ii) for more than two days a week; and

(iii) in the provider's home for four or more hours a day.

(3) In addition to the requirements of this subsection, each provider as described in Subsection R430-8-5(2)(b) shall:

(a) register with OL to facilitate the OBP background check process in accordance with this section; and

(b) care for no more than two children under the age of three.

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

(5) Before a new covered individual becomes involved with child care, the provider must use the licensing provider portal search to verify that the individual is eligible and either:

(a) associate that individual with their facility; or

(b) not associate the individual if the individual is associated with another CCL facility and the new individual will be at the facility for no more than one business day.

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

(a) have the individual submit an online background check form and fingerprints for individuals age 16 years old and older, except for individuals 12-17 years old who are listed as household members;

(b) authorize the individual's background check through the licensing provider portal;

(c) pay any required fees; and

(d) only allow the individual to be involved with child care if they have an eligible OBP background check determination.

(7) 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) not been associated with an active, OBP-approved child care facility within the past 180 days;

(b) resided outside of Utah since their last background check was completed; or

(c) turned 18 years old and has not previously submitted fingerprints for an OBP background check. If the 18-year-old has previously submitted fingerprints for an OBP background check, only a new background check application will be required.

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

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

(10) OBP may consider a covered individual not eligible for any of the following reasons:

(a) a pending charge for a felony offense;

(b) any felony conviction;

(c) any of the reasons listed under Subsection (11);

(d) LIS supported findings that occurred no more than 15 years from the date the application was submitted;

(e) the covered individual knowingly makes a false statement related to their background check;

(f) the covered individual's name appears on the Utah or national sex offender registry; or

(g) the covered individual refuses to consent to the criminal background check.

(11) OBP may also consider a covered individual not eligible if the individual has been convicted, has pled no contest, or is currently subject to a plea and abeyance or diversion agreement for any of the following pending charges or convictions, regardless of severity:

(a) child pornography;

(b) driving under the influence while a child is present in the vehicle;

(c) lewdness involving a child;

(d) pornographic material or performance;

(e) providing dangerous weapons or firearms to a minor;

(f) sexual battery;

(g) sexual enticing of a minor;

(h) sexual exploitation;

(i) voyeurism; or

(j) any crime against an individual.

(12) OBP 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 OBP background check was conducted.

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

(14) If a covered individual is deemed not eligible by OBP, 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.

(15) If OBP denies a covered individual a license or employment based upon the criminal background check and the covered individual disagrees with the information provided by the Department of Public Safety (DPS), they may appeal the information to the DPS.

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

(17) The OBP director or designee may consider any additional relevant background information in making the decision to grant, deny, or continue an eligible determination on a background check, including:

(a) intervening circumstances regarding an offense or finding;

(b) steps taken to correct or improve since any offense or finding;

(c) surrounding circumstances of an offense or finding;

(d) the length of time since an offense or finding; and

(e) the type and number of offenses or findings.

(18)(a) OBP shall rely on relevant information from Subsections (10) and (11) as conclusive evidence and may deny a covered individual based on that information.

(b) When a covered individual is no longer associated with the program, the provider shall separate that employee from the program's roster in the online system within five days of the covered individual's separation from the program.

(c) A covered individual may resubmit a denied application to OBP no sooner than two years from the date of separation or upon substantial change to the covered individual's circumstances.

(19) If OBP determines evidence exists that a covered individual has been arrested or charged with an offense that may be denied under Subsections (10) and (11), the Division of Licensing and Background Checks may act to protect the health and safety of a child.

(20) The provider may only allow a covered individual with a pending arrest or criminal charge to access a child when:

(a) OBP has authorized conditional access; and

(b) the provider can demonstrate to OBP that the work arrangement does not pose a threat to the health or safety of any child.

(21) A covered individual may request a hearing, in accordance with Section R497-100-5, within 15 calendar days of being informed in writing of any OBP decision.

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

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:

(1) care provided in the home of the child on a sporadic basis only;

(2) care provided in the home of the provider on a sporadic basis only; or

(3) relative care only.

**R430-8-7. Compliance.**

Any person who violates this rule may be subject to the penalties in Rule R380-600 and Title 26B, Chapter 2, Part 7, Penalties and Investigations.

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

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