

1 **CERTIFIED MEDICATION AIDE**

2 2004 GENERAL SESSION

3 STATE OF UTAH

4 **Sponsor: Rebecca D. Lockhart**

5

6 **LONG TITLE**

7 **General Description:**

8 This bill amends the Nurse Practice Act to create a certified medication aide in
9 long-term care facilities.

10 **Highlighted Provisions:**

11 This bill:

- 12 ▶ defines a certified medication aide and the practice of a certified medication aide;
13 ▶ creates a pilot program for the certified medication aide which sunsets on May 15,
14 2008;
15 ▶ establishes qualification and training for a certified medication aide;
16 ▶ repeals the provisions related to health care assistants; and
17 ▶ amends provisions related to unlawful and unprofessional conduct.

18 **Monies Appropriated in this Bill:**

19 None

20 **Other Special Clauses:**

21 None

22 **Utah Code Sections Affected:**

23 AMENDS:

24 **58-31b-102**, as last amended by Chapter 290, Laws of Utah 2002

25 **58-31b-201**, as last amended by Chapter 290, Laws of Utah 2002

26 **58-31b-301**, as last amended by Chapter 290, Laws of Utah 2002

27 **58-31b-302**, as last amended by Chapter 290, Laws of Utah 2002



- 28 **58-31b-303**, as last amended by Chapter 314, Laws of Utah 2000
- 29 **58-31b-304**, as enacted by Chapter 288, Laws of Utah 1998
- 30 **58-31b-305**, as last amended by Chapter 268, Laws of Utah 2001
- 31 **58-31b-307**, as enacted by Chapter 288, Laws of Utah 1998
- 32 **58-31b-308**, as last amended by Chapter 219, Laws of Utah 2003
- 33 **58-31b-401**, as last amended by Chapter 8, Laws of Utah 2002, Fifth Special Session
- 34 **58-31b-501**, as last amended by Chapter 290, Laws of Utah 2002
- 35 **58-31b-502**, as enacted by Chapter 288, Laws of Utah 1998
- 36 **58-31b-503**, as last amended by Chapter 290, Laws of Utah 2002
- 37 **58-31b-601**, as enacted by Chapter 288, Laws of Utah 1998
- 38 **58-31b-701**, as last amended by Chapter 290, Laws of Utah 2002

39 ENACTS:

- 40 **58-31b-301.6**, Utah Code Annotated 1953
- 41 **63-55b-158**, Utah Code Annotated 1953

42 REPEALS:

- 43 **58-31b-308.5**, as enacted by Chapter 290, Laws of Utah 2002



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

46 Section 1. Section **58-31b-102** is amended to read:

47 **58-31b-102. Definitions.**

48 In addition to the definitions in Section 58-1-102, as used in this chapter:

49 (1) "Administrative penalty" means a monetary fine imposed by the division for acts or
50 omissions determined to constitute unprofessional or unlawful conduct in accordance with a
51 fine schedule established by rule and as a result of an adjudicative proceeding conducted in
52 accordance with Title 63, Chapter 46b, Administrative Procedures Act.

53 (2) "Applicant" means a person who applies for licensure or registration under this
54 chapter by submitting a completed application for licensure or registration and the required fees
55 to the department.

56 (3) "Approved education program" means a nursing education program that meets the
57 minimum standards for educational programs established under this chapter and by division
58 rule in collaboration with the board.

59 (4) "Board" means the Board of Nursing created in Section 58-31b-201.

60 (5) "Certified medication aide" means a certified nursing assistant who has received
61 additional training, approved by the division in collaboration with the board, in administering
62 routine medications to patients or residents of long-term care facilities and is certified by the
63 division as a certified medication aide.

64 ~~[(5)]~~ (6) "Consultation and referral plan" means a written plan jointly developed by an
65 advanced practice registered nurse and a consulting physician that permits the advanced
66 practice registered nurse to prescribe schedule II-III controlled substances in consultation with
67 the consulting physician.

68 ~~[(6)]~~ (7) "Consulting physician" means a physician and surgeon or osteopathic
69 physician and surgeon licensed in accordance with this title who has agreed to consult with an
70 advanced practice registered nurse with a controlled substance license, a DEA registration
71 number, and who will be prescribing schedule II-III controlled substances.

72 ~~[(7)]~~ (8) "Diagnosis" means the identification of and discrimination between physical
73 and psychosocial signs and symptoms essential to the effective execution and management of
74 health care.

75 ~~[(8)]~~ (9) "Examinee" means a person who applies to take or does take any examination
76 required under this chapter for licensure.

77 ~~[(9) "Health care assistant" means an individual who:]~~

78 ~~[(a) engages in the practice of a health care assistant; and]~~

79 ~~[(b) is subject to registration under this chapter and is not subject to registration,~~
80 ~~licensure, or certification under any other chapter of this title.]~~

81 (10) "Licensee" means a person who is licensed or ~~[registered]~~ certified under this
82 chapter.

83 ~~[(11) "Practice as a health care assistant" means providing direct personal assistance or~~
84 ~~care for compensation]~~

85 (11) "Long-term care facility" means any of the following facilities licensed by the
86 Department of Health pursuant to Title 26, Chapter 21, Health Care Facility Licensing and
87 Inspection Act:

88 (a) a nursing care facility;

89 (b) a small health care facility;

90 (c) an intermediate care facility for the mentally retarded; or

91 (d) an assisted living facility Type I or II.

92 (12) (a) "Practice as a certified medication aide" means the limited practice of nursing
93 involving routine patient care that requires minimal or limited specialized or general
94 knowledge, judgment, and skill, to an individual who is ill, injured, infirm, developmentally or
95 physically disabled, mentally disabled, or mentally retarded, and who is in a [private residence
96 or] regulated long-term care facility.

97 (b) Practice of a certified medication aide includes:

98 (i) providing direct personal assistance or care; and

99 (ii) administering routine medications to patients who are medically stable in

100 accordance with a formulary and protocols to be defined by the division by rule.

101 ~~[(12)]~~ (13) "Practice of nursing" means assisting individuals or groups to maintain or
102 attain optimal health, implementing a strategy of care to accomplish defined goals and
103 evaluating responses to care and treatment. The practice of nursing requires substantial
104 specialized or general knowledge, judgment, and skill based upon principles of the biological,
105 physical, behavioral, and social sciences, and includes:

106 (a) initiating and maintaining comfort measures;

107 (b) promoting and supporting human functions and responses;

108 (c) establishing an environment conducive to well-being;

109 (d) providing health counseling and teaching;

110 (e) collaborating with health care professionals on aspects of the health care regimen;

111 (f) performing delegated procedures only within the education, knowledge, judgment,
112 and skill of the licensee; and

113 (g) delegating nurse interventions that may be performed by others and are not in
114 conflict with this chapter.

115 ~~[(13)]~~ (14) (a) "Practice of nurse anesthesia" means the practice of nursing related to
116 the provision of preoperative, intraoperative, and postoperative anesthesia care and related
117 services upon the request of a physician, surgeon, or other licensed professional, who is acting
118 within the scope of their practice, by a person licensed under this chapter as a certified
119 registered nurse anesthetist and includes:

120 (i) preanesthesia preparation and evaluation including:

- 121 (A) performing a preanesthetic assessment of the patient;
- 122 (B) ordering and evaluating appropriate lab and other studies to determine the health of
123 the patient; and
- 124 (C) selecting, ordering, or administering appropriate medications;
- 125 (ii) anesthesia induction, maintenance, and emergence, including:
- 126 (A) selecting and initiating the planned anesthetic technique;
- 127 (B) selecting and administering anesthetics and adjunct drugs and fluids; and
- 128 (C) administering general, regional, and local anesthesia;
- 129 (iii) postanesthesia follow-up care, including:
- 130 (A) evaluating the patient's response to anesthesia and implementing corrective
131 actions; and
- 132 (B) selecting, ordering, or administering the above medications and studies; and
- 133 (iv) other related services within the scope of practice of a certified registered nurse
134 anesthetist, including:
- 135 (A) emergency airway management;
- 136 (B) advanced cardiac life support; and
- 137 (C) the establishment of peripheral, central, and arterial invasive lines.
- 138 (b) Nothing in this section shall be construed as to require a certified registered nurse
139 anesthetist to obtain an advance practice registered nurse license in order to select, administer,
140 or provide preoperative, intraoperative, or postoperative anesthesia care and services.
- 141 ~~[(14)]~~ (15) "Practice of practical nursing" means the performance of nursing acts in the
142 generally recognized scope of practice of licensed practical nurses as defined by rule and as
143 provided in this Subsection ~~[(14)]~~ (15) by a person licensed under this chapter as a licensed
144 practical nurse and under the direction of a registered nurse, licensed physician, or other
145 specified health care professional as defined by rule. Practical nursing acts include:
- 146 (a) contributing to the assessment of the health status of individuals and groups;
- 147 (b) participating in the development and modification of the strategy of care;
- 148 (c) implementing appropriate aspects of the strategy of care;
- 149 (d) maintaining safe and effective nursing care rendered to a patient directly or
150 indirectly; and
- 151 (e) participating in the evaluation of responses to interventions.

152 ~~[(15)]~~ (16) "Practice of registered nursing" means performing acts of nursing as
153 provided in this Subsection ~~[(15)]~~ (16) by a person licensed under this chapter as a registered
154 nurse within the generally recognized scope of practice of registered nurses as defined by rule.

155 Registered nursing acts include:

- 156 (a) assessing the health status of individuals and groups;
- 157 (b) identifying health care needs;
- 158 (c) establishing goals to meet identified health care needs;
- 159 (d) planning a strategy of care;
- 160 (e) prescribing nursing interventions to implement the strategy of care;
- 161 (f) implementing the strategy of care;
- 162 (g) maintaining safe and effective nursing care that is rendered to a patient directly or
163 indirectly;
- 164 (h) evaluating responses to interventions;
- 165 (i) teaching the theory and practice of nursing; and
- 166 (j) managing and supervising the practice of nursing.

167 ~~[(16)]~~ (17) "Practice of advanced practice registered nursing" means the practice of
168 nursing within the generally recognized scope and standards of advanced practice registered
169 nursing as defined by rule and consistent with professionally recognized preparation and
170 education standards of an advanced practice registered nurse by a person licensed under this
171 chapter as an advanced practice registered nurse. Advanced practice registered nursing
172 includes:

- 173 (a) maintenance and promotion of health and prevention of disease;
- 174 (b) diagnosis, treatment, correction, consultation, and referral for common health
175 problems; and
- 176 (c) prescription or administration of prescription drugs or devices including:
 - 177 (i) local anesthesia;
 - 178 (ii) schedule IV-V controlled substances; and
 - 179 (iii) schedule II-III controlled substances in accordance with a consultation and referral
180 plan.

181 ~~[(17)] "Regulated facility" means a health care facility subject to licensure under Title~~
182 ~~26, Chapter 21, Health Care Facility Licensing and Inspection Act and does not include:]~~

- 183 ~~[(a) the Utah State Hospital or the Utah State Developmental Center;]~~
184 ~~[(b) a residential treatment or residential support facility;]~~
185 ~~[(i) subject to licensure under Title 62A, Chapter 2, Licensure of Programs and~~
186 ~~Facilities; and]~~
187 ~~[(ii) serving people with disabilities, as defined by Department of Human Services~~
188 ~~rules; or]~~
189 ~~[(c) a covered health care facility as defined in Section 26-21-9.5.]~~
190 (18) "Unlawful conduct" is as defined in Sections 58-1-501 and 58-31b-501.
191 (19) "Unlicensed assistive personnel" means any unlicensed person, regardless of title,
192 to whom tasks are delegated by a licensed nurse as permitted by rule and in accordance with
193 the standards of the profession.
194 (20) "Unprofessional conduct" is as defined in Sections 58-1-501 and 58-31b-502 and
195 as may be further defined by rule.
196 Section 2. Section **58-31b-201** is amended to read:
197 **58-31b-201. Board.**
198 (1) There is created the Board of Nursing that consists of the following eleven
199 members:
200 (a) ~~[eight]~~ nine nurses in a manner as may be further defined in division rule; and
201 ~~[(b) one registered health care assistant; and]~~
202 ~~[(c)]~~ (b) two members of the public.
203 (2) The board shall be appointed and serve in accordance with Section 58-1-201.
204 (3) The board shall carry out the duties and responsibilities in Sections 58-1-202 and
205 58-1-203 and shall:
206 (a) (i) recommend to the division minimum standards for educational programs
207 qualifying a person for licensure or certification under this chapter;
208 (ii) recommend to the division denial, approval, or withdrawal of approval regarding
209 educational programs that meet or fail to meet the established minimum standards; and
210 (iii) designate one of its members on a permanent or rotating basis to:
211 (A) assist the division in reviewing complaints concerning the unlawful or
212 unprofessional conduct of a licensee; and
213 (B) advise the division in its investigation of these complaints.

214 (b) A board member who has, under Subsection (3)(a)(iii), reviewed a complaint or
215 advised in its investigation may be disqualified from participating with the board when the
216 board serves as a presiding officer in an adjudicative proceeding concerning the complaint.

217 (4) (a) The director shall appoint an individual to serve as the executive administrator
218 of the Board of Nursing. Except when the board serves as a presiding officer in an adjudicative
219 procedure, the executive administrator shall serve as an ex officio member of the board and
220 shall represent the position of the division in matters considered by the board.

221 (b) The executive administrator shall be a licensed registered nurse, shall have earned a
222 masters degree in nursing, and shall have a minimum of five years of experience working in
223 nursing administration or nursing education.

224 Section 3. Section **58-31b-301** is amended to read:

225 **58-31b-301. License or certification required -- Classifications.**

226 (1) A license is required to engage in the practice of nursing, except as specifically
227 provided in Sections 58-1-307 and 58-31b-308.

228 (2) The division shall issue to a person who qualifies under this chapter a license or
229 certification in the classification of:

230 (a) certified medication aide;

231 [~~(a)~~] (b) licensed practical nurse;

232 [~~(b)~~] (c) registered nurse;

233 [~~(c)~~] (d) advanced practice registered nurse intern;

234 [~~(d)~~] (e) advanced practice registered nurse; and

235 [~~(e)~~] (f) certified registered nurse anesthetist.

236 (3) An individual holding an advanced practice registered nurse license as of July 1,
237 1998, who cannot document the successful completion of advanced course work in patient
238 assessment, diagnosis and treatment, and pharmacotherapeutics, may not prescribe and shall be
239 issued an "APRN - without prescriptive practice" license.

240 (4) The division shall grant an advanced practice registered nurse license to any
241 licensed advanced practice registered nurse currently holding prescriptive authority under any
242 predecessor act on July 1, 1998.

243 [~~(5) (a) An individual shall be registered under this chapter in order to engage in~~
244 ~~practice as a health care assistant, except as provided in Sections 58-31b-308 and~~

245 58-31b-308.5.]

246 ~~[(b) The division shall issue to a person who qualifies under this chapter a registration~~
247 ~~in the classification of health care assistant.]~~

248 Section 4. Section **58-31b-301.6** is enacted to read:

249 **58-31b-301.6. Certified medication aide pilot program.**

250 (1) (a) The division shall establish a certified medication aide pilot program to
251 determine the safety and efficiency of regulating certified medication aides.

252 (b) The pilot program begins on January 1, 2005, and sunsets in accordance with
253 Section 63-55b-158.

254 (c) If the Legislature does not reauthorize the certification of medication aides in
255 accordance with Section 63-55b-158, all certifications will automatically expire on the sunset
256 date.

257 (2) If at any time the division determines the certification pilot program has become a
258 threat, or potential threat to the public health, safety, or welfare, the division may authorize
259 emergency rules to place the certification program in abeyance until the next legislative
260 session.

261 Section 5. Section **58-31b-302** is amended to read:

262 **58-31b-302. Qualifications for licensure or certification -- Criminal background**
263 **checks.**

264 (1) An applicant for certification as a certified medication aide shall:

265 (a) submit an application to the division on a form prescribed by the division;

266 (b) pay a fee to the division as determined under Section 63-38-3.2;

267 (c) have a high school diploma or its equivalent;

268 (d) have a current certification as a nurse assistant, in good standing, from the

269 Department of Health;

270 (e) be in a condition of physical and mental health that will permit the applicant to
271 practice safely as a certified medication aide;

272 (f) have completed an approved education program or an equivalent as determined by
273 the division in collaboration with the board;

274 (g) have passed the examinations as required by division rule made in collaboration
275 with the board; and

276 (h) meet with the board, if requested, to determine the applicant's qualifications for
277 certification.

278 [~~(1)~~] (2) An applicant for licensure as a licensed practical nurse shall:

279 (a) submit to the division an application in a form prescribed by the division;

280 (b) pay to the division a fee determined under Section 63-38-3.2;

281 (c) have a high school diploma or its equivalent;

282 (d) be in a condition of physical and mental health that will permit the applicant to
283 practice safely as a licensed practical nurse;

284 (e) have completed an approved practical nursing education program or an equivalent
285 as determined by the board;

286 (f) have passed the examinations as required by division rule made in collaboration
287 with the board; and

288 (g) meet with the board, if requested, to determine the applicant's qualifications for
289 licensure.

290 [~~(2)~~] (3) An applicant for licensure as a registered nurse shall:

291 (a) submit to the division an application form prescribed by the division;

292 (b) pay to the division a fee determined under Section 63-38-3.2;

293 (c) have a high school diploma or its equivalent;

294 (d) be in a condition of physical and mental health that will allow the applicant to
295 practice safely as a registered nurse;

296 (e) have completed an approved registered nursing education program;

297 (f) have passed the examinations as required by division rule made in collaboration
298 with the board; and

299 (g) meet with the board, if requested, to determine the applicant's qualifications for
300 licensure.

301 [~~(3)~~] (4) Applicants for licensure as an advanced practice registered nurse shall:

302 (a) submit to the division an application on a form prescribed by the division;

303 (b) pay to the division a fee determined under Section 63-38-3.2;

304 (c) be in a condition of physical and mental health which will allow the applicant to
305 practice safely as an advanced practice registered nurse;

306 (d) hold a current registered nurse license in good standing issued by the state or be

307 qualified at the time for licensure as a registered nurse;

308 (e) have earned a graduate degree in nursing or a related area of specialized knowledge
309 as determined appropriate by the division in collaboration with the board;

310 (f) have completed course work in patient assessment, diagnosis and treatment, and
311 pharmacotherapeutics from an education program approved by the division in collaboration
312 with the board;

313 (g) have successfully completed clinical practice in psychiatric and mental health
314 nursing, including psychotherapy as defined by division rule, after completion of the masters
315 degree required for licensure, to practice within the psychiatric and mental health nursing
316 specialty;

317 (h) have passed the examinations as required by division rule made in collaboration
318 with the board;

319 (i) be currently certified by a program approved by the division in collaboration with
320 the board and submit evidence satisfactory to the division of the certification; and

321 (j) meet with the board, if requested, to determine the applicant's qualifications for
322 licensure.

323 [~~(4)~~] (5) An applicant for licensure as a certified registered nurse anesthetist shall:

324 (a) submit to the division an application on a form prescribed by the division;

325 (b) pay to the division a fee determined under Section 63-38-3.2;

326 (c) be in a condition of physical and mental health which will allow the applicant to
327 practice safely as a certified registered nurse anesthetist;

328 (d) hold a current registered nurse license in good standing issued by the state or be
329 qualified at the time for licensure as a registered nurse;

330 (e) complete a nurse anesthesia program which is approved by the Council on
331 Accreditation of Nurse Anesthesia Educational Programs;

332 (f) be currently certified by a program approved by the division in collaboration with
333 the board and submit evidence satisfactory to the division of the certification; and

334 (g) meet with the board, if requested, to determine the applicant's qualifications for
335 licensure.

336 [~~(5) An applicant for registration as a health care assistant shall:]~~

337 [~~(a) submit an application in a form prescribed by the division;]~~

338 ~~[(b) pay a fee determined by the department under Section 63-38-3.2;]~~

339 ~~[(c) certify in writing that he is free from any physical, mental, or emotional condition~~
340 ~~that will or may reasonably be expected to prevent the applicant from practicing as a health~~
341 ~~care assistant in compliance with this chapter; and]~~

342 ~~[(d) may not, within five years immediately prior to application, have any substantiated~~
343 ~~allegations of abuse, neglect, or misappropriation of client property listed against him on the~~
344 ~~certified nurse assistant registry maintained by the State Office of Education or on a similar~~
345 ~~registry maintained in another state in compliance with 42 CFR 483.156.]~~

346 (6) An applicant for licensure or ~~[registration]~~ certification under this chapter:

347 (a) (i) shall submit fingerprint cards in a form acceptable to the division at the time the
348 license application is filed and shall consent to a fingerprint background check by the Utah
349 Bureau of Criminal Identification and the Federal Bureau of Investigation regarding the
350 application; and

351 (ii) the division shall request the Department of Public Safety to complete a Federal
352 Bureau of Investigation criminal background check for each applicant through the national
353 criminal history system (NCIC) or any successor system; and

354 (b) if convicted of one or more felonies, must receive an absolute discharge from the
355 sentences for all felony convictions five or more years prior to the date of filing an application
356 for licensure or registration under this chapter.

357 (7) For purposes of conducting the criminal background checks required in Subsection
358 (6), the division shall have direct access to criminal background information maintained
359 pursuant to Title 53, Chapter 10, Part 2, Bureau of Criminal Identification.

360 (8) (a) Any new nurse license or ~~[health care assistant registration]~~ medication aide
361 certification issued under this section shall be conditional, pending completion of the criminal
362 background check. If the criminal background check discloses the applicant has failed to
363 accurately disclose a criminal history, the license or ~~[registration]~~ certification shall be
364 immediately and automatically revoked.

365 (b) Any person whose conditional license or ~~[registration]~~ certification has been
366 revoked under Subsection (8)(a) shall be entitled to a postrevocation hearing to challenge the
367 revocation. The hearing shall be conducted in accordance with Title 63, Chapter 46b,
368 Administrative Procedures Act.

369 Section 6. Section **58-31b-303** is amended to read:

370 **58-31b-303. Qualifications for licensure -- Graduates of nonapproved nursing**
371 **programs.**

372 An applicant for licensure as a practical nurse or registered nurse who is a graduate of a
373 nursing education program not approved by the division in collaboration with the board must
374 comply with the requirements of this section.

375 (1) An applicant for licensure as a licensed practical nurse shall:

376 (a) meet all requirements of Subsection 58-31b-302[~~(1)~~] (2), except Subsection [~~(1)~~]
377 (2)(e); and

378 (b) produce evidence acceptable to the division and the board that the nursing
379 education program completed by the applicant is equivalent to the minimum standards
380 established by the division in collaboration with the board for an approved licensed practical
381 nursing education program.

382 (2) An applicant for licensure as a registered nurse shall:

383 (a) meet all requirements of Subsection 58-31b-302[~~(2)~~] (3), except Subsection [~~(2)~~]
384 (3)(e); and

385 (b) (i) pass the Commission on Graduates of Foreign Nursing Schools (CGFNS)
386 Examination; or

387 (ii) produce evidence acceptable to the division and the board that the applicant is
388 currently licensed as a registered nurse in one of the states, territories, or the District of
389 Columbia of the United States and has passed the NCLEX-RN examination.

390 Section 7. Section **58-31b-304** is amended to read:

391 **58-31b-304. Qualifications for admission to the examinations.**

392 (1) To be admitted to the examinations required for certification as a certified
393 medication aide, a person shall:

394 (a) submit an application on a form prescribed by the division;

395 (b) pay a fee as determined by the division under Section 63-38-3.2; and

396 (c) meet all requirements of Subsection 58-31b-302(1) except the passing of the
397 examination.

398 [~~(1)~~] (2) To be admitted to the examinations required for licensure as a practical nurse,
399 a person shall:

- 400 (a) submit an application form prescribed by the division;
- 401 (b) pay a fee as determined by the division under Section 63-38-3.2; and
- 402 (c) meet all requirements of Subsection 58-31b-302~~[(1)]~~(2), except Subsection ~~[(1)]~~
- 403 ~~(2)~~(f).

404 ~~[(2)]~~ (3) To be admitted to the examinations required for licensure as a registered
405 nurse, a person shall:

- 406 (a) submit an application form prescribed by the division;
- 407 (b) pay a fee as determined by the division under Section 63-38-3.2; and
- 408 (c) meet all the requirements of Subsection 58-31b-302~~[(2)]~~(3), except Subsection ~~[(2)]~~
- 409 ~~(3)~~(f).

410 Section 8. Section **58-31b-305** is amended to read:

411 **58-31b-305. Term of license -- Expiration -- Renewal.**

412 (1) The division shall issue each license or certification under this chapter in
413 accordance with a two-year renewal cycle established by rule. The division may by rule extend
414 or shorten a renewal period by as much as one year to stagger the renewal cycles it administers.

415 (2) At the time of renewal, the licensee shall show satisfactory evidence of each of the
416 following renewal requirements:

- 417 (a) complete and submit an application for renewal in a form prescribed by the division
418 and pay the renewal fee determined under Section 63-38-3.2; and
- 419 (b) meet continuing competency requirements as established by rule.

420 (3) In addition to the renewal requirements under Subsection (2), a person licensed as a
421 advanced practice registered nurse shall be currently certified by a program approved by the
422 division in collaboration with the board and submit evidence satisfactory to the division of that
423 qualification or if licensed prior to July 1, 1992, meet the requirements established by rule.

424 (4) In addition to the renewal requirements under Subsection (2), a person licensed as a
425 certified registered nurse anesthetist shall be currently certified in anesthesia by a program
426 approved by the division in collaboration with the board and submit evidence satisfactory to
427 the division of the certification.

428 (5) Each license automatically expires on the expiration date shown on the license
429 unless renewed in accordance with Section 58-1-308.

430 Section 9. Section **58-31b-307** is amended to read:

431 **58-31b-307. Licensure by endorsement.**

432 An applicant for licensure by endorsement as an advanced practice registered nurse
433 under the provisions of Section 58-1-302 shall also:

434 (1) demonstrate that the applicant has successfully engaged in active practice as an
435 advanced practice registered nurse for not less than 1,500 hours per year in not less than three
436 of the past five years immediately preceding the application for licensure; and

437 (2) demonstrate that the applicant has completed course work as required in Subsection
438 58-31b-302[~~(3)~~] (4)(f).

439 Section 10. Section **58-31b-308** is amended to read:

440 **58-31b-308. Exemptions from licensure or certification.**

441 (1) In addition to the exemptions from licensure in Section 58-1-307, the following
442 persons may engage in acts included within the definition of the practice of nursing, subject to
443 the stated circumstances and limitations, without being licensed under this chapter:

444 (a) friends, family members, foster parents, or legal guardians of a patient performing
445 gratuitous nursing care for the patient;

446 (b) persons providing care in a medical emergency;

447 (c) persons engaged in the practice of religious tenets of a church or religious
448 denomination; and

449 (d) after July 1, 2000, a person licensed to practice nursing by a jurisdiction that has
450 joined the Nurse Licensure Compact to the extent permitted by Section 58-31c-102.

451 (2) Notwithstanding Subsection (1)(d), the division may, in accordance with Section
452 58-31c-102, limit or revoke practice privileges in this state of a person licensed to practice
453 nursing by a jurisdiction that has joined the Nurse Licensing Compact.

454 (3) In addition to the exemptions from licensure under Section 58-1-307, the following
455 individuals may engage in acts or practices included in the practice of a [~~health care assistant~~]
456 certified medication aide, within the stated limitations, without being [~~registered~~] certified
457 under this chapter:

458 (a) an individual providing gratuitous care for another individual;

459 (b) a volunteer, whether or not he receives token compensation other than salary or
460 wages:

461 (i) in programs sponsored or authorized by federal Public Law 93-113; or

462 (ii) at any ~~[regulated facility]~~ long-term care facility; and

463 (c) individuals providing:

464 (i) services generally considered independent living activities such as preparing meals,
465 shopping for personal items or groceries, managing money, using the telephone, performing
466 housekeeping, and other similar activities not involving direct personal assistance and care as
467 the division may define by rule; and

468 (ii) child day care or baby-sitting, whether or not the services are subject to licensure
469 under Title 26, Chapter 39, Utah Child Care Licensing Act; or

470 (d) an individual employed on an intermittent basis to provide a specified limited
471 period of care for an adult or child with disabilities needing regular daily care, in order to allow
472 the relative or other person who is the adult or child's regular and unpaid caretaker respite from
473 his or her caregiver duties regarding the adult or child~~[-or].~~

474 ~~[(e) notwithstanding Subsection 58-31b-102(11) an individual employed by another~~
475 ~~person who is self directing his personal care in his private residence.]~~

476 Section 11. Section **58-31b-401** is amended to read:

477 **58-31b-401. Grounds for denial of licensure or certification and disciplinary**
478 **proceedings.**

479 (1) Grounds for refusal to issue a license to an applicant, for refusal to renew the
480 license of a licensee, to revoke, suspend, restrict, or place on probation the license of a licensee,
481 to issue a public or private reprimand to a licensee, and to issue cease and desist orders shall be
482 in accordance with Section 58-1-401.

483 (2) If a court of competent jurisdiction determines a nurse or ~~[health care assistant]~~
484 certified medication aide is an incapacitated person as defined in Section 75-1-201 or that he is
485 mentally ill as defined in Section 62A-15-602, and unable to safely engage in the practice of
486 nursing or the practice of a ~~[health care assistant]~~ certified medication aide, the director shall
487 immediately suspend the license of the nurse or ~~[health care assistant]~~ certified medication aide
488 upon the entry of the judgment of the court, without further proceedings under Title 63,
489 Chapter 46b, Administrative Procedures Act, regardless of whether an appeal from the court's
490 ruling is pending. The director shall promptly notify the nurse or ~~[health care assistant]~~
491 certified medication aide, in writing, of the suspension.

492 (3) (a) If the division and the majority of the board find reasonable cause to believe a

493 nurse or [~~health care assistant~~] certified medication aide, who is not determined judicially to be
494 an incapacitated person or to be mentally ill, is incapable of practicing nursing or [~~the practice~~
495 ~~of a health care assistant~~] certified medication aide with reasonable skill regarding the safety of
496 patients, because of illness, excessive use of drugs or alcohol, or as a result of any mental or
497 physical condition, the board shall recommend that the director file a petition with the division,
498 and cause the petition to be served upon the nurse or [~~health care assistant~~] certified medication
499 aide with a notice of hearing on the sole issue of the capacity of the nurse or [~~health care~~
500 ~~assistant~~] certified medication aide to competently, safely engage in the practice of nursing or
501 the practice of a [~~health care assistant~~] certified medication aide.

502 (b) The hearing shall be conducted under Section 58-1-109 and Title 63, Chapter 46b,
503 Administrative Procedures Act, except as provided in Subsection (4).

504 (4) (a) Every nurse or [~~health care assistant~~] certified medication aide who accepts the
505 privilege of being licensed under this chapter gives consent to:

506 (i) submitting to an immediate mental or physical examination, at the nurse's or [~~health~~
507 ~~care assistant's~~] certified medication aide's expense and by a division-approved practitioner
508 selected by the nurse or [~~health care assistant~~] certified medication aide, when directed in
509 writing by the division and a majority of the board to do so; and

510 (ii) the admissibility of the reports of the examining practitioner's testimony or
511 examination, and waives all objections on the ground the reports constitute a privileged
512 communication.

513 (b) The examination may be ordered by the division, with the consent of a majority of
514 the board, only upon a finding of reasonable cause to believe:

515 (i) the nurse or [~~health care assistant~~] certified medication aide is mentally ill or
516 incapacitated or otherwise unable to practice nursing or [~~health care assistance~~] certified
517 medication aide with reasonable skill and safety; and

518 (ii) immediate action by the division and the board is necessary to prevent harm to the
519 nurse's or [~~health care assistant's~~] certified medication aide's patients or the general public.

520 (c) (i) Failure of a nurse or [~~health care assistant~~] certified medication aide to submit to
521 the examination ordered under this section is a ground for the division's immediate suspension
522 of the nurse's or [~~health care assistant's~~] certified medication aide's license by written order of
523 the director.

524 (ii) The division may enter the order of suspension without further compliance with
525 Title 63, Chapter 46b, Administrative Procedures Act, unless the division finds the failure to
526 submit to the examination ordered under this section was due to circumstances beyond the
527 control of the nurse or ~~[health care assistant]~~ certified medication aide and was not related
528 directly to the illness or incapacity of the nurse or ~~[health care assistant]~~ certified medication
529 aide.

530 (5) (a) A nurse or ~~[health care assistant]~~ certified medication aide whose license is
531 suspended under Subsection (2), (3), or (4)(c) has the right to a hearing to appeal the
532 suspension within ten days after the license is suspended.

533 (b) The hearing held under this Subsection (5) shall be conducted in accordance with
534 Sections 58-1-108 and 58-1-109 for the sole purpose of determining if sufficient basis exists
535 for the continuance of the order of suspension in order to prevent harm to the nurse's or ~~[health~~
536 ~~care assistant's]~~ certified medication aide's patients or the general public.

537 (6) A nurse or ~~[health care assistant]~~ certified medication aide whose license is
538 revoked, suspended, or in any way restricted under this section may request the division and the
539 board to consider, at reasonable intervals, evidence presented by the nurse or ~~[health care~~
540 ~~assistant]~~ certified medication aide, under procedures established by division rule, regarding
541 any change in the nurse's or ~~[health care assistant's]~~ certified medication aide's condition, to
542 determine whether:

543 (a) he is or is not able to safely and competently engage in the practice of nursing or the
544 practice of a ~~[health care assistant]~~ certified medication aide; and

545 (b) he is qualified to have his license to practice under this chapter restored completely
546 or in part.

547 (7) Nothing in Section 63-2-206 may be construed as limiting the authority of the
548 division to report current significant investigative information to the coordinated licensure
549 information system for transmission to party states as required of the division by Article VII of
550 the Nurse Licensure Compact in Section 58-31c-102.

551 (8) For purposes of this section and Section 58-31b-402, "licensed" or "license"
552 includes [~~"registered" and "registration"~~] a certification under this chapter.

553 Section 12. Section **58-31b-501** is amended to read:

554 **58-31b-501. Unlawful conduct.**

- 555 (1) "Unlawful conduct" includes:
556 (a) using the following titles, names or initials, if the user is not properly licensed
557 under this chapter:
558 (i) nurse;
559 (ii) licensed practical nurse, practical nurse, or L.P.N.;
560 (iii) registered nurse or R.N.;
561 (iv) registered nurse practitioner, N.P., or R.N.P.;
562 (v) registered nurse specialist, N.S., or R.N.S.;
563 (vi) registered psychiatric mental health nurse specialist;
564 (vii) advanced practice registered nurse;
565 (viii) nurse anesthetist, certified nurse anesthetist, certified registered nurse anesthetist,
566 or C.R.N.A.; or
567 (ix) other generally recognized names or titles used in the profession of nursing;
568 (b) using any other name, title, or initials that would cause a reasonable person to
569 believe the user is licensed under this chapter if the user is not properly licensed under this
570 chapter; and
571 (c) conducting a nursing education program in the state for the purpose of qualifying
572 individuals to meet requirements for licensure under this chapter without the program having
573 been approved under Section 58-31b-601.
- 574 ~~[(2) (a) An individual registered as a health care assistant under this chapter may use
575 any title in his practice as a health care assistant, and an employer may assign a title to health
576 care assistants it employs, if the title does not cause a reasonable person to believe the
577 registrant is a licensee in any other license classification under this chapter and Title 58,
578 Occupations and Professions.]~~
- 579 ~~[(b) If any issue is raised regarding a title under this section, the division shall
580 determine if the title may be used for health care assistants.]~~
- 581 (2) An individual certified as a certified medication aide under this chapter may use the
582 title "certified medication aide" or the initials "CMA" to designate his training.
- 583 Section 13. Section **58-31b-502** is amended to read:
584 **58-31b-502. Unprofessional conduct.**
585 "Unprofessional conduct" includes:

586 (1) failure to safeguard a patient's right to privacy as to the patient's person, condition,
587 diagnosis, personal effects, or any other matter about which the licensee is privileged to know
588 because of the licensee's position or practice as a nurse or certified medication aide;

589 (2) failure to provide nursing service in a manner that demonstrates respect for the
590 patient's human dignity and unique personal character and needs without regard to the patient's
591 race, religion, ethnic background, socioeconomic status, age, sex, or the nature of the patient's
592 health problem;

593 (3) engaging in sexual relations with a patient during any:

594 (a) period when a generally recognized professional relationship exists between the
595 nurse or care provider and the patient; or

596 (b) extended period when a patient has reasonable cause to believe a professional
597 relationship exists between the nurse or care provider and the patient;

598 (4) (a) as a result of any circumstance under Subsection (3), exploiting or using
599 information about a patient or exploiting the licensee's professional relationship between the
600 licensee and the patient; or

601 (b) exploiting the patient by use of the licensee's knowledge of the patient obtained
602 while acting as a nurse or certified medication aide;

603 (5) unlawfully obtaining, possessing, or using any prescription drug or illicit drug;

604 (6) unauthorized taking or personal use of nursing supplies from an employer;

605 (7) unauthorized taking or personal use of a patient's personal property;

606 (8) knowingly entering into any medical record any false or misleading information or
607 altering a medical record in any way for the purpose of concealing an act, omission, or record
608 of events, medical condition, or any other circumstance related to the patient and the medical or
609 nursing care provided;

610 (9) unlawful or inappropriate delegation of nursing care;

611 (10) failure to exercise appropriate supervision of persons providing patient care
612 services under supervision of the licensed nurse;

613 (11) employing or aiding and abetting the employment of an unqualified or unlicensed
614 person to practice as a nurse;

615 (12) failure to file or record any medical report as required by law, impeding or
616 obstructing the filing or recording of such a report, or inducing another to fail to file or record

617 such a report;

618 (13) breach of a statutory, common law, regulatory, or ethical requirement of
619 confidentiality with respect to a person who is a patient, unless ordered by a court;

620 (14) failure to pay a penalty imposed by the division; [~~and~~]

621 (15) prescribing a schedule II-III controlled substance without a consulting physician or
622 outside of a consultation and referral plan; [~~and~~]

623 (16) violating Section 58-31b-801[-]; and

624 (17) administering medications as a certified medication aide that are not allowed by
625 formulary or protocol to be administered by a certified medication aide.

626 Section 14. Section **58-31b-503** is amended to read:

627 **58-31b-503. Penalty for unlawful conduct.**

628 (1) Any person who violates the unlawful conduct provision specifically defined in
629 Subsection 58-1-501(1)(a)(i) is guilty of a third degree felony.

630 (2) Any person who violates any of the unlawful conduct provisions specifically
631 defined in Subsections 58-1-501(1)(a)[~~(ii)~~] through [~~(v)~~] (e) and 58-31b-501(1)(c) is guilty of a
632 class A misdemeanor.

633 (3) Any person who violates any of the unlawful conduct provisions specifically
634 defined in this chapter and not set forth in Subsection (1) or (2) is guilty of a class B
635 misdemeanor.

636 (4) Subject to Subsection (5), the division may assess administrative penalties in
637 accordance with the provisions of Section 58-31b-402 for acts of unprofessional or unlawful
638 conduct or any other appropriate administrative action in accordance with the provisions of
639 Section 58-31b-401.

640 (5) If a licensee or certified medication aide has been convicted of violating Section
641 58-31b-501 prior to an administrative finding of a violation of the same section, the [~~licensee~~]
642 person may not be assessed an administrative penalty under this chapter for the same offense
643 for which the conviction was obtained.

644 Section 15. Section **58-31b-601** is amended to read:

645 **58-31b-601. Minimum standards for nursing programs and certification training**
646 **programs.**

647 (1) A nursing education program shall be affiliated with an accredited institution of

648 higher education in order to be approved by the division.

649 (2) The minimum standards a nursing program shall meet to qualify graduates for
650 licensure under this chapter shall be defined by division rule.

651 (3) The division shall establish by rule the minimum standards a certified medication
652 aide training program must meet to qualify a person for certification under this chapter as a
653 certified medication aide.

654 Section 16. Section **58-31b-701** is amended to read:

655 **58-31b-701. Immunity from liability.**

656 A person licensed or [~~registered~~] certified under this chapter:

657 (1) who provides emergency care in accordance with Section 78-11-22 is entitled to the
658 immunity from civil liability provided under that section; and

659 (2) is considered a health care provider under Chapter 13, Health Care Providers
660 Immunity from Liability Act, and is entitled to the immunity from civil liability provided under
661 that chapter.

662 Section 17. Section **63-55b-158** is enacted to read:

663 **63-55b-158. Repeal dates - Title 58.**

664 Section 58-31b-301.6, Certified Medication Aide Pilot Program, is repealed May 15,
665 2008.

666 Section 18. **Repealer.**

667 This bill repeals:

668 Section **58-31b-308.5, Health care assistant registration -- Temporary employment**
669 **prior to registration.**

Legislative Review Note
as of 1-5-04 7:47 AM

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel

State Impact

This bill will need the services of one-half FTE at a first year cost of \$26,500 from the General Fund Restricted - Commerce Service Fund. Deregulation of Health Care Assistants will result in a loss of \$238,200 to the Commerce Service Fund. Regulation of Certified Medication Aides will generate an additional \$25,000 to the Commerce Service Fund in the first year. Spending from the Commerce Service Fund could affect revenue available to the General Fund.

| | <u>FY 2005</u> <u>Approp.</u> | <u>FY 2006</u> <u>Approp.</u> | <u>FY 2005</u> <u>Revenue</u> | <u>FY 2006</u> <u>Revenue</u> |
|-----------------------|----------------------------------|----------------------------------|----------------------------------|----------------------------------|
| Commerce Service Fund | \$0 | \$0 | \$25,000 | \$1,000 |
| Commerce Service Fund | \$26,500 | \$19,200 | (\$238,200) | (\$52,600) |
| TOTAL | \$26,500 | \$19,200 | (\$213,200) | (\$51,600) |

Individual and Business Impact

Qualified individuals will pay a \$50 initial application fee and a \$40 bi-annual renewal fee. Individuals will probably receive raises. Training and examination costs will probably be born by employing facilities.
