

28 None

29 **Utah Code Sections Affected:**

30 AMENDS:

- 31 **58-31b-102**, as last amended by Chapter 247, Laws of Utah 2004
- 32 **58-31b-301**, as last amended by Chapter 247, Laws of Utah 2004
- 33 **58-31b-301.5**, as enacted by Chapter 247, Laws of Utah 2004
- 34 **58-31b-302**, as last amended by Chapters 15 and 247, Laws of Utah 2004
- 35 **58-31b-303**, as last amended by Chapter 247, Laws of Utah 2004
- 36 **58-31b-304**, as last amended by Chapter 247, Laws of Utah 2004
- 37 **58-31b-305**, as last amended by Chapter 268, Laws of Utah 2001
- 38 **58-31b-308**, as last amended by Chapter 219, Laws of Utah 2003
- 39 **58-31b-401**, as last amended by Chapter 247, Laws of Utah 2004
- 40 **58-31b-501**, as last amended by Chapter 247, Laws of Utah 2004
- 41 **58-31b-502**, as last amended by Chapter 247, Laws of Utah 2004
- 42 **58-31b-601**, as last amended by Chapter 247, Laws of Utah 2004
- 43 **58-31d-103**, as enacted by Chapter 15, Laws of Utah 2004
- 44 **63-55b-158**, as enacted by Chapter 247, Laws of Utah 2004

45 ENACTS:

- 46 **58-31b-301.6**, Utah Code Annotated 1953
- 47 **58-31b-301.7**, Utah Code Annotated 1953

48 REPEALS:

- 49 **58-31b-308.5**, as enacted by Chapter 290, Laws of Utah 2002



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

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

53 **58-31b-102. Definitions.**

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

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

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

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

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

66 (5) "Certified medication aide" means a certified nurse aide who has a minimum of
67 2,000 hours of experience working as a certified nurse aide and who has received a minimum
68 of 40 hours of classroom and 20 hours of practical training that is approved by the division in
69 collaboration with the board, in administering routine medications to patients or residents of
70 long-term care facilities and is certified by the division as a certified medication aide.

71 (6) "Certified nurse aide" means an individual who is certified by the division as
72 having completed a training and examination program for nurse aides established by the
73 division in collaboration with the board.

74 [~~(5)~~] (7) "Consultation and referral plan" means a written plan jointly developed by an
75 advanced practice registered nurse and a consulting physician that permits the advanced
76 practice registered nurse to prescribe schedule II-III controlled substances in consultation with
77 the consulting physician.

78 [~~(6)~~] (8) "Consulting physician" means a physician and surgeon or osteopathic
79 physician and surgeon licensed in accordance with this title who has agreed to consult with an
80 advanced practice registered nurse with a controlled substance license, a DEA registration
81 number, and who will be prescribing schedule II-III controlled substances.

82 [~~(7)~~] (9) "Diagnosis" means the identification of and discrimination between physical
83 and psychosocial signs and symptoms essential to the effective execution and management of
84 health care.

85 [~~(8)~~] (10) "Examinee" means a person who applies to take or does take any
86 examination required under this chapter for licensure.

87 [~~(9)~~] (11) "Health care assistant" means an individual who:

- 88 (a) engages in the practice of a health care assistant; and
89 (b) is subject to registration under this chapter and is not subject to registration,

90 licensure, or certification under any other chapter of this title.

91 ~~[(10)]~~ (12) "Geriatric care manager" means a licensed practical nurse who has had
92 additional training in long-term care nursing and holds a current, valid certificate of completion
93 from a training course approved by the division in collaboration with the board, and is certified
94 by the division as a Licensed Practical Nurse - Geriatric Care Manager.

95 ~~[(11)]~~ (13) "Licensee" means a person who is licensed, registered, or certified under
96 this chapter.

97 ~~[(12)]~~ (14) "Long-term care facility" means any of the following facilities licensed by
98 the Department of Health pursuant to Title 26, Chapter 21, Health Care Facility Licensing and
99 Inspection Act:

- 100 (a) a nursing care facility;
- 101 (b) a small health care facility;
- 102 (c) an intermediate care facility for the mentally retarded;
- 103 (d) an assisted living facility Type I or II; or
- 104 (e) a designated swing bed unit in a general hospital.

105 (15) (a) "Practice as a certified medication aide" means the limited practice of nursing
106 under the supervision, as defined by the division by administrative rule, of a licensed nurse,
107 involving routine patient care that requires minimal or limited specialized or general
108 knowledge, judgment, and skill, to an individual who is ill, injured, infirm, developmentally or
109 physically disabled, mentally disabled, or mentally retarded, and who is in a regulated
110 long-term care facility.

111 (b) Practice as a certified medication aide includes:
112 (i) providing direct personal assistance or care; and
113 (ii) administering routine medications to patients in accordance with a formulary and
114 protocols to be defined by the division by rule.

115 (16) (a) "Practice as a certified nurse aide" means the limited practice of nursing under
116 the supervision, as defined by the division by administrative rule, of a licensed nurse, involving
117 routine patient care that requires minimal or limited specialized or general knowledge,
118 judgment, and skill, to an individual who is ill, injured, infirm, developmentally or physically
119 disabled, mentally disabled, or mentally retarded, and who is in a private residence or regulated
120 facility under Title 26, Chapter 21, Health Care Facility Licensing and Inspection Act, or in a

121 long-term care facility.

122 (b) "Practice as a certified nurse aide" includes administering routine medications to
123 patients if the administration is done under the direct supervision of a licensed nurse.

124 [~~(13)~~] (17) "Practice as a health care assistant" means providing direct personal
125 assistance or care for compensation to an individual who is ill, injured, infirm, developmentally
126 or physically disabled, mentally disabled, or mentally retarded, and who is in a private
127 residence or regulated facility.

128 [~~(14)~~] (18) "Practice of geriatric care management":

129 (a) means a licensed practical nurse with specialized knowledge of geriatric and
130 chronically ill patients residing in a long-term care facility as provided in Subsection
131 58-31b-302[~~(2)~~](3); and

132 (b) includes an expanded scope of practice which may include:

133 (i) implementing a plan of care;

134 (ii) completing an assessment and evaluation of response to treatment; and

135 (iii) other tasks and skills as defined by division rule.

136 [~~(15)~~] (19) "Practice of nursing" means assisting individuals or groups to maintain or
137 attain optimal health, implementing a strategy of care to accomplish defined goals and
138 evaluating responses to care and treatment. The practice of nursing requires substantial
139 specialized or general knowledge, judgment, and skill based upon principles of the biological,
140 physical, behavioral, and social sciences, and includes:

141 (a) initiating and maintaining comfort measures;

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

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

144 (d) providing health counseling and teaching;

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

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

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

150 [~~(16)~~] (20) (a) "Practice of nurse anesthesia" means the practice of nursing related to
151 the provision of preoperative, intraoperative, and postoperative anesthesia care and related

152 services upon the request of a physician, surgeon, or other licensed professional, who is acting
153 within the scope of their practice, by a person licensed under this chapter as a certified
154 registered nurse anesthetist and includes:

155 (i) preanesthesia preparation and evaluation including:
156 (A) performing a preanesthetic assessment of the patient;
157 (B) ordering and evaluating appropriate lab and other studies to determine the health of
158 the patient; and

159 (C) selecting, ordering, or administering appropriate medications;

160 (ii) anesthesia induction, maintenance, and emergence, including:

161 (A) selecting and initiating the planned anesthetic technique;

162 (B) selecting and administering anesthetics and adjunct drugs and fluids; and

163 (C) administering general, regional, and local anesthesia;

164 (iii) postanesthesia follow-up care, including:

165 (A) evaluating the patient's response to anesthesia and implementing corrective
166 actions; and

167 (B) selecting, ordering, or administering the above medications and studies; and

168 (iv) other related services within the scope of practice of a certified registered nurse
169 anesthetist, including:

170 (A) emergency airway management;

171 (B) advanced cardiac life support; and

172 (C) the establishment of peripheral, central, and arterial invasive lines.

173 (b) Nothing in this section shall be construed as to require a certified registered nurse
174 anesthetist to obtain an advance practice registered nurse license in order to select, administer,
175 or provide preoperative, intraoperative, or postoperative anesthesia care and services.

176 ~~[(17)]~~ (21) "Practice of practical nursing" means the performance of nursing acts in the
177 generally recognized scope of practice of licensed practical nurses as defined by rule and as
178 provided in this Subsection ~~[(17)]~~ (21) by a person licensed under this chapter as a licensed
179 practical nurse and under the direction of a registered nurse, licensed physician, or other
180 specified health care professional as defined by rule. Practical nursing acts include:

181 (a) contributing to the assessment of the health status of individuals and groups;

182 (b) participating in the development and modification of the strategy of care;

- 183 (c) implementing appropriate aspects of the strategy of care;
- 184 (d) maintaining safe and effective nursing care rendered to a patient directly or
185 indirectly; and
- 186 (e) participating in the evaluation of responses to interventions.
- 187 ~~[(18)]~~ (22) "Practice of registered nursing" means performing acts of nursing as
188 provided in this Subsection ~~[(18)]~~ (22) by a person licensed under this chapter as a registered
189 nurse within the generally recognized scope of practice of registered nurses as defined by rule.
190 Registered nursing acts include:
- 191 (a) assessing the health status of individuals and groups;
- 192 (b) identifying health care needs;
- 193 (c) establishing goals to meet identified health care needs;
- 194 (d) planning a strategy of care;
- 195 (e) prescribing nursing interventions to implement the strategy of care;
- 196 (f) implementing the strategy of care;
- 197 (g) maintaining safe and effective nursing care that is rendered to a patient directly or
198 indirectly;
- 199 (h) evaluating responses to interventions;
- 200 (i) teaching the theory and practice of nursing; and
- 201 (j) managing and supervising the practice of nursing.
- 202 ~~[(19)]~~ (23) "Practice of advanced practice registered nursing" means the practice of
203 nursing within the generally recognized scope and standards of advanced practice registered
204 nursing as defined by rule and consistent with professionally recognized preparation and
205 education standards of an advanced practice registered nurse by a person licensed under this
206 chapter as an advanced practice registered nurse. Advanced practice registered nursing
207 includes:
- 208 (a) maintenance and promotion of health and prevention of disease;
- 209 (b) diagnosis, treatment, correction, consultation, and referral for common health
210 problems; and
- 211 (c) prescription or administration of prescription drugs or devices including:
- 212 (i) local anesthesia;
- 213 (ii) schedule IV-V controlled substances; and

214 (iii) schedule II-III controlled substances in accordance with a consultation and referral
215 plan.

216 ~~[(20)]~~ (24) "Regulated facility" means a health care facility subject to licensure under
217 Title 26, Chapter 21, Health Care Facility Licensing and Inspection Act and does not include:

218 (a) the Utah State Hospital or the Utah State Developmental Center;

219 (b) a residential treatment or residential support facility:

220 (i) subject to licensure under Title 62A, Chapter 2, Licensure of Programs and
221 Facilities; and

222 (ii) serving people with disabilities, as defined by Department of Human Services
223 rules; or

224 (c) a health care facility which is licensed or certified under Title 26, Chapter 21,
225 Health Care Facility Licensing and Inspection Act.

226 (25) "Routine medications" means established medications administered to a medically
227 stable individual as determined by a licensed health care practitioner or in consultation with a
228 licensed medical practitioner.

229 ~~[(21)]~~ (26) "Unlawful conduct" is as defined in Sections 58-1-501 and 58-31b-501.

230 ~~[(22)]~~ (27) "Unlicensed assistive personnel" means any unlicensed person, regardless
231 of title, to whom tasks are delegated by a licensed nurse as permitted by rule and in accordance
232 with the standards of the profession.

233 ~~[(23)]~~ (28) "Unprofessional conduct" is as defined in Sections 58-1-501 and
234 58-31b-502 and as may be further defined by rule.

235 Section 2. Section **58-31b-301** is amended to read:

236 **58-31b-301. License or certification required -- Classifications.**

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

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

241 (a) certified medication aide;

242 (b) certified nurse aide;

243 ~~[(a)]~~ (c) licensed practical nurse;

244 ~~[(b)]~~ (d) licensed practical nurse - geriatric care manager;

245 ~~[(e)]~~ (e) registered nurse;
246 ~~[(f)]~~ (f) advanced practice registered nurse intern;
247 ~~[(g)]~~ (g) advanced practice registered nurse; and
248 ~~[(h)]~~ (h) certified registered nurse anesthetist.

249 (3) An individual holding an advanced practice registered nurse license as of July 1,
250 1998, who cannot document the successful completion of advanced course work in patient
251 assessment, diagnosis and treatment, and pharmacotherapeutics, may not prescribe and shall be
252 issued an "APRN - without prescriptive practice" license.

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

256 (5) ~~[(a)]~~ An individual shall be registered under this chapter in order to engage in
257 practice as a health care assistant, except as provided in Sections 58-31b-308 and
258 58-31b-308.5.

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

261 Section 3. Section **58-31b-301.5** is amended to read:

262 **58-31b-301.5. Geriatric Care Manager Pilot Program.**

263 (1) (a) The division shall establish a licensed practical nurse - Geriatric Care Manager
264 Pilot Program to determine the safety and efficiency of expanding the scope of practice for a
265 licensed practical nurse who meets the requirements of Subsection 58-31b-302~~[(2)]~~(3).

266 (b) The pilot program shall begin on July 1, 2004 and sunset in accordance with
267 Section 63-55b-158.

268 (c) If the Legislature does not reauthorize the expanded scope of practice for geriatric
269 care managers after the sunset date in Section 63-55b-158, an individual licensed and certified
270 in good standing as a geriatric care manager may continue to practice as a licensed practical
271 nurse.

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

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

277 **58-31b-301.6. Certified medication aide pilot program.**

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

280 (b) The pilot program begins on January 1, 2006, and sunsets in accordance with
281 Section 63-55b-158.

282 (c) The division shall collect data regarding the safety and efficiency of certified
283 medication aides and shall make the data available to the public.

284 (d) If the Legislature does not reauthorize the certification of medication aides in
285 accordance with Section 63-55b-158, all certifications will automatically expire on the sunset
286 date.

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

291 Section 5. Section **58-31b-301.7** is enacted to read:

292 **58-31b-301.7. Certification of nurse aides.**

293 (1) The division shall, in collaboration with the board, certify nurse aides to practice in
294 the state.

295 (2) The Department of Health, which has the responsibility for the regulation of certain
296 medical facilities, shall, as necessary, assist the division in implementing this section, including
297 developing and enforcing any required criminal background check for a certified nurse aide in
298 accordance with health facility license rules promulgated under Title 26, Chapter 21, Health
299 Care Facility Licensing and Inspection Act.

300 (3) The division shall promulgate rules to carry out the purpose of this section and to
301 ensure compliance with federal laws and regulations relating to certified nurse aides.

302 (4) The division shall maintain a registry of all certified nurse aides as well as a record
303 of all final disciplinary action taken against persons under the provisions of this section. The
304 registry shall conform to all requirements of federal law and regulation.

305 (5) (a) Funding for the nurse aide certification program, as operated by the division,
306 shall be provided by the federal Medicaid and Medicare programs in accordance with

307 Subsection (5)(b).

308 (b) Medicaid and Medicare funding shall be:

309 (i) secured by the Department of Health; and

310 (ii) forwarded to the division for its use in operating the nurse aide certification

311 program.

312 (c) The Department of Health shall take all reasonable and necessary steps to secure

313 funding for the nurse aide certification program from the federal Medicaid and Medicare

314 programs.

315 Section 6. Section **58-31b-302** is amended to read:

316 **58-31b-302. Qualifications for licensure or certification -- Criminal background**
317 **checks.**

318 (1) An applicant for certification as a certified medication aide or a certified nurse aide

319 shall:

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

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

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

323 (d) for certification as a certified medication aide, have a current certification as a nurse

324 aide, in good standing, from the Department of Health;

325 (e) for certification as a certified medication aide, have a minimum of 2,000 hours of

326 experience within the two years prior to application, working as a certified nurse aide in a

327 long-term care facility;

328 (f) obtain letters of recommendation from a long-term care facility administrator and

329 one licensed nurse familiar with the applicant's work practices as a certified nurse aide;

330 (g) be in a condition of physical and mental health that will permit the applicant to

331 practice safely as a certified nurse aide or certified medication aide;

332 (h) have completed an approved education program or an equivalent as determined by

333 the division in collaboration with the board;

334 (i) have passed the examinations as required by division rule made in collaboration

335 with the board; and

336 (j) meet with the board, if requested, to determine the applicant's qualifications for

337 certification.

338 [~~(1)~~] (2) An applicant for licensure as a licensed practical nurse shall:
339 (a) submit to the division an application in a form prescribed by the division;
340 (b) pay to the division a fee determined under Section 63-38-3.2;
341 (c) have a high school diploma or its equivalent;
342 (d) be in a condition of physical and mental health that will permit the applicant to
343 practice safely as a licensed practical nurse;
344 (e) have completed an approved practical nursing education program or an equivalent
345 as determined by the board;
346 (f) have passed the examinations as required by division rule made in collaboration
347 with the board; and
348 (g) meet with the board, if requested, to determine the applicant's qualifications for
349 licensure.

350 [~~(2)~~] (3) An applicant for certification as a licensed practical nurse - geriatric care
351 manager shall:
352 (a) submit an application to the division on a form prescribed by the division;
353 (b) pay a fee to the division as determined under Section 63-38-3.2;
354 (c) have a current license, in good standing, as a licensed practical nurse;
355 (d) have one year experience in a long-term care facility;
356 (e) be in a condition of physical and mental health that will permit the applicant to
357 practice safely as a licensed practical nurse - geriatric care manager;
358 (f) have completed a division-approved geriatric care management education program
359 or an equivalent as determined by the division in collaboration with the board;
360 (g) have passed the examinations as required by division rule made in collaboration
361 with the board; and
362 (h) meet with the board, if requested, to determine the applicant's qualifications for
363 licensure.

364 [~~(3)~~] (4) An applicant for licensure as a registered nurse shall:
365 (a) submit to the division an application form prescribed by the division;
366 (b) pay to the division a fee determined under Section 63-38-3.2;
367 (c) have a high school diploma or its equivalent;
368 (d) be in a condition of physical and mental health that will allow the applicant to

369 practice safely as a registered nurse;

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

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

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

375 [~~(4)~~] (5) Applicants for licensure as an advanced practice registered nurse shall:

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

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

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

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

382 (e) have earned a graduate degree in an advanced practice registered nurse nursing
383 education program or a related area of specialized knowledge as determined appropriate by the
384 division in collaboration with the board;

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

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

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

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

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

398 [~~(5)~~] (6) An applicant for licensure as a certified registered nurse anesthetist shall:

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

- 400 (b) pay to the division a fee determined under Section 63-38-3.2;
- 401 (c) be in a condition of physical and mental health which will allow the applicant to
- 402 practice safely as a certified registered nurse anesthetist;
- 403 (d) hold a current registered nurse license in good standing issued by the state or be
- 404 qualified at the time for licensure as a registered nurse;
- 405 (e) complete a nurse anesthesia program which is approved by the Council on
- 406 Accreditation of Nurse Anesthesia Educational Programs;
- 407 (f) be currently certified by a program approved by the division in collaboration with
- 408 the board and submit evidence satisfactory to the division of the certification; and
- 409 (g) meet with the board, if requested, to determine the applicant's qualifications for
- 410 licensure.

411 [~~(6)~~] (7) An applicant for registration as a health care assistant shall:

- 412 (a) submit an application in a form prescribed by the division;
- 413 (b) pay a fee determined by the department under Section 63-38-3.2;
- 414 (c) certify in writing that he is free from any physical, mental, or emotional condition
- 415 that will or may reasonably be expected to prevent the applicant from practicing as a health
- 416 care assistant in compliance with this chapter; and
- 417 (d) may not, within five years immediately prior to application, have any substantiated
- 418 allegations of abuse, neglect, or misappropriation of client property listed against him on the
- 419 certified nurse assistant registry maintained by the State Office of Education or on a similar
- 420 registry maintained in another state in compliance with 42 CFR 483.156.

421 [~~(7)~~] (8) An applicant for licensure, registration, or certification under this chapter:

- 422 (a) (i) shall submit fingerprint cards in a form acceptable to the division at the time the
- 423 license application is filed and shall consent to a fingerprint background check by the Utah
- 424 Bureau of Criminal Identification and the Federal Bureau of Investigation regarding the
- 425 application; and
- 426 (ii) the division shall request the Department of Public Safety to complete a Federal
- 427 Bureau of Investigation criminal background check for each applicant through the national
- 428 criminal history system (NCIC) or any successor system; and
- 429 (b) if convicted of one or more felonies, must receive an absolute discharge from the
- 430 sentences for all felony convictions five or more years prior to the date of filing an application

431 for licensure or registration under this chapter.

432 ~~[(8)]~~ (9) For purposes of conducting the criminal background checks required in
433 Subsection (6), the division shall have direct access to criminal background information
434 maintained pursuant to Title 53, Chapter 10, Part 2, Bureau of Criminal Identification.

435 ~~[(9)]~~ (10) (a) (i) Any new nurse license ~~[or health care assistant]~~, registration, or
436 certification issued under this section shall be conditional, pending completion of the criminal
437 background check.

438 (ii) If the criminal background check discloses the applicant has failed to accurately
439 disclose a criminal history, the license ~~[or]~~, registration, or certification shall be immediately
440 and automatically revoked.

441 (b) (i) Any person whose conditional license ~~[or]~~, registration, or certification has been
442 revoked under Subsection ~~[(9)]~~ (10)(a) shall be entitled to a postrevocation hearing to challenge
443 the revocation.

444 (ii) The hearing shall be conducted in accordance with Title 63, Chapter 46b,
445 Administrative Procedures Act.

446 Section 7. Section **58-31b-303** is amended to read:

447 **58-31b-303. Qualifications for licensure -- Graduates of nonapproved nursing**
448 **programs.**

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

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

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

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

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

460 (a) meet all requirements of Subsection 58-31b-302~~[(3)]~~ (4), except Subsection ~~[(3)]~~
461 ~~(4)~~(e); and

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

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

467 Section 8. Section **58-31b-304** is amended to read:

468 **58-31b-304. Qualifications for admission to the examinations.**

469 (1) To be admitted to the examinations required for certification as a certified
470 medication aide or certified nurse aide, a person shall:

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

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

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

475 [~~1~~] (2) To be admitted to the examinations required for certification as a licensed
476 practical nurse - geriatric care manager, a person shall:

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

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

479 (c) meet all requirements of Subsection 58-31b-302[~~(2)~~] (3) except the passing of the
480 examination.

481 [~~2~~] (3) To be admitted to the examinations required for licensure as a practical nurse,
482 a person shall:

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

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

485 (c) meet all requirements of Subsection 58-31b-302[~~(1)~~] (2), except Subsection [~~(1)~~]
486 (2)(f).

487 [~~3~~] (4) To be admitted to the examinations required for licensure as a registered
488 nurse, a person shall:

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

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

491 (c) meet all the requirements of Subsection 58-31b-302[~~(3)~~] (4), except Subsection
492 [~~(3)~~] (4)(f).

493 Section 9. Section **58-31b-305** is amended to read:

494 **58-31b-305. Term of license or certification -- Expiration -- Renewal.**

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

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

500 (a) complete and submit an application for renewal in a form prescribed by the division
501 and pay the renewal fee determined under Section 63-38-3.2; and

502 (b) meet continuing competency requirements as established by rule.

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

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

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

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

514 **58-31b-308. Exemptions from licensure or registration.**

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

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

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

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

523 (d) after July 1, 2000, a person licensed to practice nursing by a jurisdiction that has

524 joined the Nurse Licensure Compact to the extent permitted by Section 58-31c-102.

525 (2) Notwithstanding Subsection (1)(d), the division may, in accordance with Section
526 58-31c-102, limit or revoke practice privileges in this state of a person licensed to practice
527 nursing by a jurisdiction that has joined the Nurse Licensing Compact.

528 (3) In addition to the exemptions from licensure under Section 58-1-307, the following
529 individuals may engage in acts or practices included in the practice of a health care assistant,
530 certified medication aide, or certified nurse aide, within the stated limitations, without being
531 registered or certified under this chapter:

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

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

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

536 (ii) at any [~~regulated~~] facility regulated by the Department of Health pursuant to Title
537 26, Chapter 21, Health Care Facility Licensing and Inspection Act, or in a similar long-term
538 care facility; and

539 (c) individuals providing:

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

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

546 (d) an individual employed on an intermittent basis to provide a specified limited
547 period of care for an adult or child with disabilities needing regular daily care, in order to allow
548 the relative or other person who is the adult or child's regular and unpaid caretaker respite from
549 his or her caregiver duties regarding the adult or child; or

550 (e) notwithstanding Subsection 58-31b-102[~~(+)~~] (13) an individual employed by
551 another person who is self directing his personal care in his private residence.

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

553 **58-31b-401. Grounds for denial of licensure or certification and disciplinary**
554 **proceedings.**

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

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

569 (3) (a) If the division and the majority of the board find reasonable cause to believe a
570 nurse [~~or health care assistant~~], certified nurse aide, or certified medication aide, who is not
571 determined judicially to be an incapacitated person or to be mentally ill, is incapable of
572 [~~practicing~~] the practice of nursing or the practice of a [~~health care assistant~~] certified nurse
573 aide or certified medication aide with reasonable skill regarding the safety of patients, because
574 of illness, excessive use of drugs or alcohol, or as a result of any mental or physical condition,
575 the board shall recommend that the director file a petition with the division, and cause the
576 petition to be served upon the nurse [~~or health care assistant~~], certified nurse aide, or certified
577 medication aide with a notice of hearing on the sole issue of the capacity of the nurse [~~or health~~
578 ~~care assistant~~], certified nurse aide, or certified medication aide to competently, safely engage
579 in the practice of nursing or the practice of a [~~health care assistant~~] certified nurse aide or
580 certified medication aide.

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

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

585 (i) submitting to an immediate mental or physical examination, at the nurse's [~~or health~~

586 ~~care assistant's~~], certified nurse aide's, or certified medication aide's expense and by a
587 division-approved practitioner selected by the nurse [~~or health care assistant~~], certified nurse
588 aide, or certified medication aide, when directed in writing by the division and a majority of the
589 board to do so; and

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

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

595 (i) the nurse [~~or health care assistant~~], certified nurse aide, or certified medication aide
596 is mentally ill or incapacitated or otherwise unable to continue the practice of nursing or [~~health~~
597 ~~care assistance~~] practice as a certified nurse aide or certified medication aide with reasonable
598 skill and safety; and

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

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

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

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

615 (b) The hearing held under this Subsection (5) shall be conducted in accordance with
616 Sections 58-1-108 and 58-1-109 for the sole purpose of determining if sufficient basis exists

617 for the continuance of the order of suspension in order to prevent harm to the nurse's [~~or health~~
618 ~~care assistant's~~], certified nurse aide's, or certified medication aide's patients or the general
619 public.

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

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

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

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

634 (8) For purposes of this section and Section 58-31b-402, "licensed" or "license"
635 includes "registered" or "registration" and "certified" or "certification" under this chapter.

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

637 **58-31b-501. Unlawful conduct.**

638 (1) "Unlawful conduct" includes:

639 (a) using the following titles, names or initials, if the user is not properly licensed
640 under this chapter:

641 (i) nurse;

642 (ii) licensed practical nurse, practical nurse, or L.P.N.;

643 (iii) registered nurse or R.N.;

644 (iv) registered nurse practitioner, N.P., or R.N.P.;

645 (v) registered nurse specialist, N.S., or R.N.S.;

646 (vi) registered psychiatric mental health nurse specialist;

647 (vii) advanced practice registered nurse;

648 (viii) nurse anesthetist, certified nurse anesthetist, certified registered nurse anesthetist,
649 or C.R.N.A.; or

650 (ix) other generally recognized names or titles used in the profession of nursing;

651 (b) using any other name, title, or initials that would cause a reasonable person to
652 believe the user is licensed under this chapter if the user is not properly licensed under this
653 chapter; and

654 (c) conducting a nursing education program in the state for the purpose of qualifying
655 individuals to meet requirements for licensure under this chapter without the program having
656 been approved under Section 58-31b-601.

657 ~~[(2) (a) An individual registered as a health care assistant under this chapter may use
658 any title in his practice as a health care assistant, and an employer may assign a title to health
659 care assistants it employs, if the title does not cause a reasonable person to believe the
660 registrant is a licensee in any other license classification under this chapter and Title 58,
661 Occupations and Professions.]~~

662 ~~[(b) If any issue is raised regarding a title under this section, the division shall
663 determine if the title may be used for health care assistants.]~~

664 (2) An individual certified as a certified medication aide under this chapter may use the
665 title "certified medication aide" or the initials "CMA" to designate the individual's training.

666 (3) An individual certified as a certified nurse aide under this chapter may use the title
667 "certified nurse aide" or the initials "CNA" to designate the individual's training.

668 ~~[(3)]~~ (4) An individual licensed as a practical nurse who is certified as a geriatric care
669 manager under this chapter, may use the title "licensed practical nurse - geriatric care manager"
670 or the initials "LPN-GCM" to designate the additional training and certification.

671 Section 13. Section **58-31b-502** is amended to read:

672 **58-31b-502. Unprofessional conduct.**

673 "Unprofessional conduct" includes:

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

678 (2) failure to provide nursing service in a manner that demonstrates respect for the

679 patient's human dignity and unique personal character and needs without regard to the patient's
680 race, religion, ethnic background, socioeconomic status, age, sex, or the nature of the patient's
681 health problem;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

709 (14) failure to pay a penalty imposed by the division;

710 (15) prescribing a schedule II-III controlled substance without a consulting physician or
711 outside of a consultation and referral plan;

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

713 (17) practicing as a licensed practical nurse - geriatric care manager in a setting other
714 than a long-term care facility[?]; and

715 (18) (a) administering medications as a certified medication aide that are not routine
716 medications; or

717 (b) administering medications as a certified medication aide to a patient that is not
718 medically stable.

719 Section 14. Section **58-31b-601** is amended to read:

720 **58-31b-601. Minimum standards for nursing programs and certification training**
721 **programs.**

722 (1) A nursing education program shall be affiliated with an accredited institution of
723 higher education in order to be approved by the division.

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

726 (3) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
727 division shall make rules defining the minimum standards a licensed practical nurse - geriatric
728 care manager training program must meet to qualify a person for certification under this
729 chapter as a licensed practical nurse - geriatric care manager.

730 (4) (a) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act,
731 the division shall make rules defining the minimum standards a certified medication aide
732 training program or certified nurse aide training program must meet to qualify a person for
733 certification under this chapter as a certified medication aide or certified nurse aide.

734 (b) A certified medication aide training program shall include a minimum of 40 hours
735 of classroom and 20 hours of practical training.

736 Section 15. Section **58-31d-103** is amended to read:

737 **58-31d-103. Rulemaking authority -- Enabling provisions.**

738 (1) The division may adopt rules necessary to implement Section 58-31d-102.

739 (2) As used in Article VIII (1) of the Advanced Practice Registered Nurse Compact,
740 "head of the licensing board" means the executive administrator of the Utah Board of Nursing.

741 (3) For purposes of the Advanced Practice Registered Nurse Compact, "APRN" as
 742 defined in Article II (1) of the compact includes an individual who is licensed to practice under
 743 ~~[Subsection]~~ Section 58-31b-302~~(2)(d)~~ as an advanced practice registered nurse.

744 (4) An APRN practicing in this state under a multistate licensure privilege may only be
 745 granted prescriptive authority if that individual can document completion of graduate level
 746 course work in the following areas:

- 747 (a) advanced health assessment;
- 748 (b) pharmacotherapeutics; and
- 749 (c) diagnosis and treatment.

750 (5) (a) An APRN practicing in this state under a multistate privilege who seeks to
 751 obtain prescriptive authority must:

- 752 (i) meet all the requirements of Subsection (4) and this Subsection (5); and
- 753 (ii) be placed on a registry with the division.

754 (b) To be placed on a registry under Subsection (5)(a)(ii), an APRN must:

- 755 (i) submit a form prescribed by the division;
- 756 (ii) pay a fee; and
- 757 (iii) if prescribing a controlled substance:

758 (A) obtain a controlled substance license as required under Section 58-37-6; and

759 (B) if prescribing a Schedule II or III controlled substance, have a consultation and
 760 referral plan with a physician licensed in Utah as required under ~~[Subsection]~~ Section
 761 58-31b-102~~(16)(c)(iii)~~.

762 Section 16. Section **63-55b-158** is amended to read:

763 **63-55b-158. Repeal dates - Title 58.**

764 (1) Section 58-31b-301.5, Geriatric Care Manager Pilot Program, is repealed July 1,
 765 2007.

766 (2) Section 58-31b-301.6, Certified medication aide pilot program, is repealed May 15,
 767 2009.

768 Section 17. **Repealer.**

769 This bill repeals:

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

Legislative Review Note

as of 2-15-05 2:50 PM

Based on a limited legal review, this legislation has not been determined to have a high probability of being held unconstitutional.

Office of Legislative Research and General Counsel

State Impact

Implementation of the bill would require an investigator and secretary at a cost of \$144,100 from the Commerce Service Fund. Spending from the Commerce Service Fund could affect revenue available to the General Fund. Also, the Attorney General will need \$54,100 from the General Fund for one-half of a mid-level attorney. The program would generate about \$25,000 in revenue to the Commerce Service Fund. Medicaid and Medicare funds are not available for this project.

	<u>FY 2006</u> <u>Approp.</u>	<u>FY 2007</u> <u>Approp.</u>	<u>FY 2006</u> <u>Revenue</u>	<u>FY 2007</u> <u>Revenue</u>
General Fund	\$54,100	\$52,300	\$0	\$0
Commerce Service Fund	\$144,100	\$104,700	\$25,000	\$1,000
TOTAL	\$198,200	\$157,000	\$25,000	\$1,000

Individual and Business Impact

Individuals certified to administer medications should get a dollar an hour or more raise. Institutions employing certified medication aides should be able to reduce costs as they can lower their dependence on LPNs and RNs.

Office of the Legislative Fiscal Analyst