

HEALTH CARE ASSISTANTS

2005 GENERAL SESSION

STATE OF UTAH

Sponsor: Rebecca D. Lockhart

LONG TITLE

General Description:

This bill repeals provisions related to health care assistants.

Highlighted Provisions:

This bill:

- ▶ repeals provisions in the Nurse Practice Act that requires the registration of health care assistants by the Division of Occupational and Professional Licensing;
- ▶ makes technical amendments; and
- ▶ makes conforming amendments in the Human Services Code.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

58-31b-102, as last amended by Chapter 247, Laws of Utah 2004

58-31b-201, as last amended by Chapter 247, Laws of Utah 2004

58-31b-301, as last amended by Chapter 247, Laws of Utah 2004

58-31b-302, as last amended by Chapters 15 and 247, Laws of Utah 2004

58-31b-308, as last amended by Chapter 219, Laws of Utah 2003

58-31b-401, as last amended by Chapter 247, Laws of Utah 2004

58-31b-501, as last amended by Chapter 247, Laws of Utah 2004



28 **58-31b-702**, as last amended by Chapter 290, Laws of Utah 2002

29 **58-31d-103**, as enacted by Chapter 15, Laws of Utah 2004

30 **62A-3-311.1**, as last amended by Chapter 108, Laws of Utah 2002

31 REPEALS:

32 **58-31b-308.5**, as enacted by Chapter 290, Laws of Utah 2002



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

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

36 **58-31b-102. Definitions.**

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

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

42 (2) "Applicant" means a person who applies for licensure or [~~registration~~] certification
43 under this chapter by submitting a completed application for licensure or [~~registration~~]
44 certification and the required fees to the department.

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

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

49 (5) "Consultation and referral plan" means a written plan jointly developed by an
50 advanced practice registered nurse and a consulting physician that permits the advanced
51 practice registered nurse to prescribe schedule II-III controlled substances in consultation with
52 the consulting physician.

53 (6) "Consulting physician" means a physician and surgeon or osteopathic physician and
54 surgeon licensed in accordance with this title who has agreed to consult with an advanced
55 practice registered nurse with a controlled substance license, a DEA registration number, and
56 who will be prescribing schedule II-III controlled substances.

57 (7) "Diagnosis" means the identification of and discrimination between physical and
58 psychosocial signs and symptoms essential to the effective execution and management of

59 health care.

60 (8) "Examinee" means a person who applies to take or does take any examination
61 required under this chapter for licensure.

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

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

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

66 [~~(10)~~ (9) "Geriatric care manager" means a licensed practical nurse who has had
67 additional training in long-term care nursing and holds a current, valid certificate of completion
68 from a training course approved by the division in collaboration with the board, and is certified
69 by the division as a Licensed Practical Nurse - Geriatric Care Manager.

70 [~~(11)~~ (10) "Licensee" means a person who is licensed~~[-registered,]~~ or certified under
71 this chapter.

72 [~~(12)~~ (11) "Long-term care facility" means any of the following facilities licensed by
73 the Department of Health pursuant to Title 26, Chapter 21, Health Care Facility Licensing and
74 Inspection Act:

75 (a) a nursing care facility;

76 (b) a small health care facility;

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

78 (d) an assisted living facility Type I or II; or

79 (e) a designated swing bed unit in a general hospital.

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

84 [~~(14)~~ (12) "Practice of geriatric care management":

85 (a) means a licensed practical nurse with specialized knowledge of geriatric and
86 chronically ill patients residing in a long-term care facility as provided in Subsection
87 58-31b-302(2); and

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

89 (i) implementing a plan of care;

- 90 (ii) completing an assessment and evaluation of response to treatment; and
- 91 (iii) other tasks and skills as defined by division rule.

92 [~~15~~] (13) "Practice of nursing" means assisting individuals or groups to maintain or
93 attain optimal health, implementing a strategy of care to accomplish defined goals and
94 evaluating responses to care and treatment. The practice of nursing requires substantial
95 specialized or general knowledge, judgment, and skill based upon principles of the biological,
96 physical, behavioral, and social sciences, and includes:

- 97 (a) initiating and maintaining comfort measures;
- 98 (b) promoting and supporting human functions and responses;
- 99 (c) establishing an environment conducive to well-being;
- 100 (d) providing health counseling and teaching;
- 101 (e) collaborating with health care professionals on aspects of the health care regimen;
- 102 (f) performing delegated procedures only within the education, knowledge, judgment,
103 and skill of the licensee; and
- 104 (g) delegating nurse interventions that may be performed by others and are not in
105 conflict with this chapter.

106 [~~16~~] (14) (a) "Practice of nurse anesthesia" means the practice of nursing related to
107 the provision of preoperative, intraoperative, and postoperative anesthesia care and related
108 services upon the request of a physician, surgeon, or other licensed professional, who is acting
109 within the scope of their practice, by a person licensed under this chapter as a certified
110 registered nurse anesthetist and includes:

- 111 (i) preanesthesia preparation and evaluation including:
 - 112 (A) performing a preanesthetic assessment of the patient;
 - 113 (B) ordering and evaluating appropriate lab and other studies to determine the health of
114 the patient; and
 - 115 (C) selecting, ordering, or administering appropriate medications;
- 116 (ii) anesthesia induction, maintenance, and emergence, including:
 - 117 (A) selecting and initiating the planned anesthetic technique;
 - 118 (B) selecting and administering anesthetics and adjunct drugs and fluids; and
 - 119 (C) administering general, regional, and local anesthesia;
- 120 (iii) postanesthesia follow-up care, including:

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

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

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

126 (A) emergency airway management;

127 (B) advanced cardiac life support; and

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

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

132 [~~(17)~~] (15) "Practice of practical nursing" means the performance of nursing acts in the
133 generally recognized scope of practice of licensed practical nurses as defined by rule and as
134 provided in this Subsection [~~(17)~~] (15) by a person licensed under this chapter as a licensed
135 practical nurse and under the direction of a registered nurse, licensed physician, or other
136 specified health care professional as defined by rule. Practical nursing acts include:

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

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

139 (c) implementing appropriate aspects of the strategy of care;

140 (d) maintaining safe and effective nursing care rendered to a patient directly or
141 indirectly; and

142 (e) participating in the evaluation of responses to interventions.

143 [~~(18)~~] (16) "Practice of registered nursing" means performing acts of nursing as
144 provided in this Subsection [~~(18)~~] (16) by a person licensed under this chapter as a registered
145 nurse within the generally recognized scope of practice of registered nurses as defined by rule.
146 Registered nursing acts include:

147 (a) assessing the health status of individuals and groups;

148 (b) identifying health care needs;

149 (c) establishing goals to meet identified health care needs;

150 (d) planning a strategy of care;

151 (e) prescribing nursing interventions to implement the strategy of care;

- 152 (f) implementing the strategy of care;
- 153 (g) maintaining safe and effective nursing care that is rendered to a patient directly or
- 154 indirectly;
- 155 (h) evaluating responses to interventions;
- 156 (i) teaching the theory and practice of nursing; and
- 157 (j) managing and supervising the practice of nursing.

158 ~~[(19)]~~ (17) "Practice of advanced practice registered nursing" means the practice of
 159 nursing within the generally recognized scope and standards of advanced practice registered
 160 nursing as defined by rule and consistent with professionally recognized preparation and
 161 education standards of an advanced practice registered nurse by a person licensed under this
 162 chapter as an advanced practice registered nurse. Advanced practice registered nursing
 163 includes:

- 164 (a) maintenance and promotion of health and prevention of disease;
- 165 (b) diagnosis, treatment, correction, consultation, and referral for common health
- 166 problems; and
- 167 (c) prescription or administration of prescription drugs or devices including:
 - 168 (i) local anesthesia;
 - 169 (ii) schedule IV-V controlled substances; and
 - 170 (iii) schedule II-III controlled substances in accordance with a consultation and referral
 - 171 plan.

172 ~~[(20) "Regulated facility" means a health care facility subject to licensure under Title~~
 173 ~~26, Chapter 21, Health Care Facility Licensing and Inspection Act and does not include:]~~

- 174 ~~[(a) the Utah State Hospital or the Utah State Developmental Center;]~~
- 175 ~~[(b) a residential treatment or residential support facility;]~~
- 176 ~~[(i) subject to licensure under Title 62A, Chapter 2, Licensure of Programs and~~
- 177 ~~Facilities; and]~~
- 178 ~~[(ii) serving people with disabilities, as defined by Department of Human Services~~
- 179 ~~rules; or]~~

180 ~~[(c) a health care facility which is licensed or certified under Title 26, Chapter 21.]~~

181 ~~[(21)]~~ (18) "Unlawful conduct" is as defined in Sections 58-1-501 and 58-31b-501.

182 ~~[(22)]~~ (19) "Unlicensed assistive personnel" means any unlicensed person, regardless

183 of title, to whom tasks are delegated by a licensed nurse as permitted by rule and in accordance
184 with the standards of the profession.

185 ~~[(23)]~~ (20) "Unprofessional conduct" is as defined in Sections 58-1-501 and
186 58-31b-502 and as may be further defined by rule.

187 Section 2. Section **58-31b-201** is amended to read:

188 **58-31b-201. Board.**

189 (1) There is created the Board of Nursing that consists of the following eleven
190 members:

191 (a) nine nurses in a manner as may be further defined in division rule; and

192 (b) two members of the public.

193 (2) The board shall be appointed and serve in accordance with Section 58-1-201.

194 (3) The board shall carry out the duties and responsibilities in Sections 58-1-202 and
195 58-1-203 and shall:

196 (a) (i) recommend to the division minimum standards for educational programs
197 qualifying a person for licensure~~[-registration,]~~ or certification under this chapter;

198 (ii) recommend to the division denial, approval, or withdrawal of approval regarding
199 educational programs that meet or fail to meet the established minimum standards; and

200 (iii) designate one of its members on a permanent or rotating basis to:

201 (A) assist the division in reviewing complaints concerning the unlawful or
202 unprofessional conduct of a licensee; and

203 (B) advise the division in its investigation of these complaints.

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

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

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

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

215 **58-31b-301. License or certification required -- Classifications.**

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

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

- 220 (a) licensed practical nurse;
- 221 (b) licensed practical nurse - geriatric care manager;
- 222 (c) registered nurse;
- 223 (d) advanced practice registered nurse intern;
- 224 (e) advanced practice registered nurse; and
- 225 (f) certified registered nurse anesthetist.

226 (3) An individual holding an advanced practice registered nurse license as of July 1,
227 1998, who cannot document the successful completion of advanced course work in patient
228 assessment, diagnosis and treatment, and pharmacotherapeutics, may not prescribe and shall be
229 issued an "APRN - without prescriptive practice" license.

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

233 [~~(5) (a) An individual shall be registered under this chapter in order to engage in
234 practice as a health care assistant, except as provided in Sections 58-31b-308 and
235 58-31b-308.5.]~~

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

238 Section 4. Section **58-31b-302** is amended to read:

239 **58-31b-302. Qualifications for licensure or certification -- Criminal background**
240 **checks.**

- 241 (1) An applicant for licensure as a licensed practical nurse shall:
 - 242 (a) submit to the division an application in a form prescribed by the division;
 - 243 (b) pay to the division a fee determined under Section 63-38-3.2;
 - 244 (c) have a high school diploma or its equivalent;

- 245 (d) be in a condition of physical and mental health that will permit the applicant to
246 practice safely as a licensed practical nurse;
- 247 (e) have completed an approved practical nursing education program or an equivalent
248 as determined by the board;
- 249 (f) have passed the examinations as required by division rule made in collaboration
250 with the board; and
- 251 (g) meet with the board, if requested, to determine the applicant's qualifications for
252 licensure.
- 253 (2) An applicant for certification as a licensed practical nurse - geriatric care manager
254 shall:
- 255 (a) submit an application to the division on a form prescribed by the division;
256 (b) pay a fee to the division as determined under Section 63-38-3.2;
257 (c) have a current license, in good standing, as a licensed practical nurse;
258 (d) have one year experience in a long-term care facility;
259 (e) be in a condition of physical and mental health that will permit the applicant to
260 practice safely as a licensed practical nurse - geriatric care manager;
- 261 (f) have completed a division-approved geriatric care management education program
262 or an equivalent as determined by the division in collaboration with the board;
- 263 (g) have passed the examinations as required by division rule made in collaboration
264 with the board; and
- 265 (h) meet with the board, if requested, to determine the applicant's qualifications for
266 licensure.
- 267 (3) An applicant for licensure as a registered nurse shall:
- 268 (a) submit to the division an application form prescribed by the division;
269 (b) pay to the division a fee determined under Section 63-38-3.2;
270 (c) have a high school diploma or its equivalent;
271 (d) be in a condition of physical and mental health that will allow the applicant to
272 practice safely as a registered nurse;
- 273 (e) have completed an approved registered nursing education program;
274 (f) have passed the examinations as required by division rule made in collaboration
275 with the board; and

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

278 (4) Applicants for licensure as an advanced practice registered nurse shall:

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

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

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

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

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

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

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

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

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

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

301 (5) An applicant for licensure as a certified registered nurse anesthetist 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 a certified registered nurse anesthetist;

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

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

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

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

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

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

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

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

324 [~~(7)~~] (6) An applicant for licensure[, registration,] or certification under this chapter:

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

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

332 (b) if convicted of one or more felonies, must receive an absolute discharge from the
333 sentences for all felony convictions five or more years prior to the date of filing an application
334 for licensure or [~~registration~~] certification under this chapter.

335 [~~(8)~~] (7) For purposes of conducting the criminal background checks required in
336 Subsection (6), the division shall have direct access to criminal background information
337 maintained pursuant to Title 53, Chapter 10, Part 2, Bureau of Criminal Identification.

338 ~~[(9)]~~ (8) (a) (i) Any new nurse license ~~[or health care assistant registration]~~ issued
339 under this section shall be conditional, pending completion of the criminal background check.

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

343 (b) (i) Any person whose conditional license or ~~[registration]~~ certification has been
344 revoked under Subsection ~~[(9)]~~ (8)(a) shall be entitled to a postrevocation hearing to challenge
345 the revocation.

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

348 Section 5. Section **58-31b-308** is amended to read:

349 **58-31b-308. Exemptions from licensure.**

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

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

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

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

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

360 (2) Notwithstanding Subsection (1)(d), the division may, in accordance with Section
361 58-31c-102, limit or revoke practice privileges in this state of a person licensed to practice
362 nursing by a jurisdiction that has joined the Nurse Licensing Compact.

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

366 ~~[(a) an individual providing gratuitous care for another individual;]~~

367 ~~[(b) a volunteer, whether or not he receives token compensation other than salary or
368 wages:]~~

369 ~~[(i) in programs sponsored or authorized by federal Public Law 93-113; or]~~

370 ~~[(ii) at any regulated facility; and]~~

371 ~~[(c) individuals providing:]~~

372 ~~[(i) services generally considered independent living activities such as preparing meals,~~
 373 ~~shopping for personal items or groceries, managing money, using the telephone, performing~~
 374 ~~housekeeping, and other similar activities not involving direct personal assistance and care as~~
 375 ~~the division may define by rule; and]~~

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

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

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

384 Section 6. Section **58-31b-401** is amended to read:

385 **58-31b-401. Grounds for denial of licensure or certification and disciplinary**
 386 **proceedings.**

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

391 (2) If a court of competent jurisdiction determines a nurse ~~[or health care assistant]~~ is
 392 an incapacitated person as defined in Section 75-1-201 or that he is mentally ill as defined in
 393 Section 62A-15-602, and unable to safely engage in the practice of nursing ~~[or the practice of a~~
 394 ~~health care assistant]~~, the director shall immediately suspend the license of the nurse ~~[or health~~
 395 ~~care assistant]~~ upon the entry of the judgment of the court, without further proceedings under
 396 Title 63, Chapter 46b, Administrative Procedures Act, regardless of whether an appeal from the
 397 court's ruling is pending. The director shall promptly notify the nurse ~~[or health care assistant,]~~
 398 in writing[;] of the suspension.

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

400 nurse [~~or health care assistant,~~] who is not determined judicially to be an incapacitated person
401 or to be mentally ill, is incapable of practicing nursing [~~or the practice of a health care~~
402 ~~assistant~~] with reasonable skill regarding the safety of patients, because of illness, excessive
403 use of drugs or alcohol, or as a result of any mental or physical condition, the board shall
404 recommend that the director file a petition with the division, and cause the petition to be served
405 upon the nurse [~~or health care assistant~~] with a notice of hearing on the sole issue of the
406 capacity of the nurse [~~or health care assistant~~] to competently, safely engage in the practice of
407 nursing [~~or the practice of a health care assistant~~].

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

410 (4) (a) Every nurse [~~or health care assistant~~] who accepts the privilege of being
411 licensed under this chapter gives consent to:

412 (i) submitting to an immediate mental or physical examination, at the nurse's [~~or health~~
413 ~~care assistant's~~] expense and by a division-approved practitioner selected by the nurse [~~or~~
414 ~~health care assistant,~~] when directed in writing by the division and a majority of the board to do
415 so; and

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

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

421 (i) the nurse [~~or health care assistant~~] is mentally ill or incapacitated or otherwise
422 unable to practice nursing [~~or health care assistance~~] with reasonable skill and safety; and

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

425 (c) (i) Failure of a nurse [~~or health care assistant~~] to submit to the examination ordered
426 under this section is a ground for the division's immediate suspension of the nurse's [~~or health~~
427 ~~care assistant's~~] license by written order of the director.

428 (ii) The division may enter the order of suspension without further compliance with
429 Title 63, Chapter 46b, Administrative Procedures Act, unless the division finds the failure to
430 submit to the examination ordered under this section was due to circumstances beyond the

431 control of the nurse [~~or health care assistant~~] and was not related directly to the illness or
432 incapacity of the nurse [~~or health care assistant~~].

433 (5) (a) A nurse [~~or health care assistant~~] whose license is suspended under Subsection
434 (2), (3), or (4)(c) has the right to a hearing to appeal the suspension within ten days after the
435 license is suspended.

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

440 (6) A nurse [~~or health care assistant~~] whose license is revoked, suspended, or in any
441 way restricted under this section may request the division and the board to consider, at
442 reasonable intervals, evidence presented by the nurse [~~or health care assistant~~], under
443 procedures established by division rule, regarding any change in the nurse's [~~or health care
444 assistant's~~] condition, to determine whether:

445 (a) he is or is not able to safely and competently engage in the practice of nursing [~~or
446 the practice of a health care assistant~~]; and

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

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

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

455 Section 7. Section **58-31b-501** is amended to read:

456 **58-31b-501. Unlawful conduct.**

457 (1) "Unlawful conduct" includes:

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

460 (i) nurse;

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

- 462 (iii) registered nurse or R.N.;
- 463 (iv) registered nurse practitioner, N.P., or R.N.P.;
- 464 (v) registered nurse specialist, N.S., or R.N.S.;
- 465 (vi) registered psychiatric mental health nurse specialist;
- 466 (vii) advanced practice registered nurse;
- 467 (viii) nurse anesthetist, certified nurse anesthetist, certified registered nurse anesthetist,
- 468 or C.R.N.A.; or
- 469 (ix) other generally recognized names or titles used in the profession of nursing;
- 470 (b) using any other name, title, or initials that would cause a reasonable person to
- 471 believe the user is licensed under this chapter if the user is not properly licensed under this
- 472 chapter; and
- 473 (c) conducting a nursing education program in the state for the purpose of qualifying
- 474 individuals to meet requirements for licensure under this chapter without the program having
- 475 been approved under Section 58-31b-601.

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

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

483 ~~[(3)]~~ (2) An individual licensed as a practical nurse who is certified as a geriatric care
 484 manager under this chapter, may use the title "licensed practical nurse - geriatric care manager"
 485 or the initials "LPN-GCM" to designate the additional training and certification.

486 Section 8. Section **58-31b-702** is amended to read:

487 **58-31b-702. Reporting of disciplinary action -- Immunity from liability.**

488 (1) A licensed health care facility or organization or a professional society of nurses in
 489 the state that takes disciplinary action against a person licensed under this chapter relating to
 490 any of the following shall report the action in writing to the division within 30 days after the
 491 action is taken:

- 492 (a) that person's professional acts or omissions as a licensed nurse ~~[or registered health~~

493 ~~care assistant~~];

494 (b) that person's nursing competence or ability to practice nursing safely; or

495 (c) that person's use of alcohol or drugs in an unlawful manner or to the extent the
496 person is impaired in his ability to practice nursing [~~or health care assistance~~] safely.

497 (2) Any person or organization furnishing information in accordance with this section
498 is immune from liability to the extent that the information is furnished in good faith and
499 without malice.

500 Section 9. Section **58-31d-103** is amended to read:

501 **58-31d-103. Rulemaking authority -- Enabling provisions.**

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

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

505 (3) For purposes of the Advanced Practice Registered Nurse Compact, "APRN" as
506 defined in Article II (1) of the compact includes an individual who is licensed to practice under
507 Subsection [~~58-31b-302(2)(d)~~] 58-31b-301(2)(e) as an advanced practice registered nurse.

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

511 (a) advanced health assessment;

512 (b) pharmacotherapeutics; and

513 (c) diagnosis and treatment.

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

516 (i) meet all the requirements of Subsection (4) and this Subsection (5); and

517 (ii) be placed on a registry with the division.

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

519 (i) submit a form prescribed by the division;

520 (ii) pay a fee; and

521 (iii) if prescribing a controlled substance:

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

523 (B) if prescribing a Schedule II or III controlled substance, have a consultation and

524 referral plan with a physician licensed in Utah as required under Subsection
525 58-31b-102[(16)](17)(c)(iii).

526 Section 10. Section **62A-3-311.1** is amended to read:

527 **62A-3-311.1. Statewide data base -- Restricted use and access.**

528 (1) The division shall maintain a data base for reports of vulnerable adult abuse,
529 neglect, or exploitation made pursuant to this part.

530 (2) The data base shall include:

531 (a) the names and identifying data of the abused, neglected, or exploited adult and the
532 reported abuser;

533 (b) information regarding whether or not the abuse, neglect, or exploitation was
534 substantiated or unsubstantiated; and

535 (c) any other information that may be helpful in furthering the purposes of this part, as
536 determined by the division, subject to the restrictions of Section 62A-3-306.

537 (3) Information obtained from the data base may be used only for:

538 (a) compiling statistical summaries that do not include names or other identifying data;

539 (b) granting or denying licenses or other grants of privilege by the department where
540 identification as a possible adult abuser may be relevant to the privilege in question, in
541 accordance with Subsection (4); and

542 [~~(c) investigation and action by the Division of Occupational and Professional
543 Licensing regarding registration of a health care assistant under Title 58, Chapter 62, Health
544 Care Assistant Registration Act; and]~~

545 [(~~(d)~~) (c) licensing purposes by the Bureau of Licensing within the Department of
546 Health, as provided for in Section 26-21-9.5, in determining whether a person associated with a
547 covered health care facility who provides direct care to vulnerable adults has a substantiated
548 finding of vulnerable adult abuse, neglect, or exploitation if identification as a possible
549 perpetrator is relevant to the employment activities of that person.

550 (4) (a) A license or privilege may not be denied under Subsection (3) solely on the
551 basis of information in the data base.

552 (b) Before a license or privilege may be denied under Subsection (3), the department
553 taking the action shall conduct a review and provide the person making application for the
554 license or privilege with notice and an opportunity to be heard in accordance with Title 63,

555 Chapter 46b, Administrative Procedures Act.

556 Section 11. **Repealer.**

557 This bill repeals:

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

Legislative Review Note
as of 11-27-04 2:28 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

Interim Committee Note
as of 12-07-04 1:59 PM

The Health and Human Services Interim Committee recommended this bill.

State Impact

This bill eliminates the regulation of Health Care Assistants by the state. This means the state will see a reduction in revenues of \$3,000 to the Commerce Service Fund. Revenue to the Commerce Service Fund could affect revenue available to the General Fund.

	<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>
Commerce Service Fund	\$0	\$0	(\$3,000)	(\$3,000)
TOTAL	\$0	\$0	(\$3,000)	(\$3,000)

Individual and Business Impact

Health Care Assistants will no longer be required to register which will save them \$30.
