

DEAF AND HARD OF HEARING AMENDMENTS

2017 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Norman K Thurston

Senate Sponsor: Peter C. Knudson

LONG TITLE

General Description:

This bill modifies terminology throughout the Utah Code related to individuals who are deaf or hard of hearing.

Highlighted Provisions:

This bill:

- ▶ changes "hearing impairment" to "deaf or hard of hearing" throughout the Utah Code; and
- ▶ makes "deaf or hard of hearing" and "hearing loss" consistent throughout the Utah Code.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

34A-2-501, as renumbered and amended by Laws of Utah 1997, Chapter 375

34A-2-504, as renumbered and amended by Laws of Utah 1997, Chapter 375

53A-1a-704, as last amended by Laws of Utah 2015, Chapter 374

53A-25b-102, as enacted by Laws of Utah 2009, Chapter 294

53A-25b-307, as enacted by Laws of Utah 2009, Chapter 294



- 28 **53B-6-104**, as last amended by Laws of Utah 2016, Chapter 144
- 29 **54-8b-10**, as last amended by Laws of Utah 2016, Chapter 271
- 30 **58-41-2**, as last amended by Laws of Utah 1998, Chapter 249
- 31 **58-41-17**, as last amended by Laws of Utah 2015, Chapter 252
- 32 **58-46a-102**, as enacted by Laws of Utah 1994, Chapter 28
- 33 **62A-5-101**, as last amended by Laws of Utah 2016, Chapter 300
- 34 **77-7-6**, as last amended by Laws of Utah 2008, Chapter 3
- 35 **78B-1-201**, as renumbered and amended by Laws of Utah 2008, Chapter 3
- 36 **78B-1-202**, as renumbered and amended by Laws of Utah 2008, Chapter 3
- 37 **78B-1-203**, as last amended by Laws of Utah 2016, Chapter 271
- 38 **78B-1-205**, as renumbered and amended by Laws of Utah 2008, Chapter 3
- 39 **78B-1-206**, as last amended by Laws of Utah 2016, Chapter 271
- 40 **78B-1-209**, as renumbered and amended by Laws of Utah 2008, Chapter 3
- 41 **78B-1-210**, as renumbered and amended by Laws of Utah 2008, Chapter 3
- 42 **78B-1-211**, as renumbered and amended by Laws of Utah 2008, Chapter 3

43

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

45 Section 1. Section **34A-2-501** is amended to read:

46 **34A-2-501. Definitions.**

47 (1) "Harmful industrial noise" means:

48 (a) sound that results in acoustic trauma such as sudden instantaneous temporary noise
49 or impulsive or impact noise exceeding 140 dB peak sound pressure levels; or

50 (b) the sound emanating from equipment and machines during employment exceeding
51 the following permissible sound levels, dBA slow response, and corresponding durations per
52 day, in hours:

53	Sound level	Duration
54	90	8
55	92	6
56	95	4
57	97	3

58	100	2
59	102	1.5
60	105	1.0
61	110	0.5
62	115	0.25 or less

63 (2) "Loss of hearing" means binaural hearing loss measured in decibels with
64 frequencies of 500, 1,000, 2,000, and 3,000 cycles per second (Hertz). If the average decibel
65 loss at 500, 1,000, 2,000, and 3,000 cycles per second (Hertz) is 25 decibels or less, usually no
66 ~~[hearing impairment]~~ loss of hearing exists.

67 Section 2. Section **34A-2-504** is amended to read:

68 **34A-2-504. Hearing loss -- Extent of employer's liability.**

69 (1) An employer is liable only for the hearing loss of an employee that arises out of and
70 in the course of the employee's employment for that employer.

71 (2) If previous occupational hearing loss or nonoccupational hearing ~~[impairment]~~ loss
72 is established by competent evidence, the employer may not be liable for the prior hearing loss
73 so established, whether or not compensation has previously been paid or awarded. The
74 employer is liable only for the difference between the percentage of hearing loss presently
75 established and that percentage of prior hearing loss established by preemployment audiogram
76 or other competent evidence.

77 (3) The date for compensation for occupational hearing loss shall be determined by the
78 date of direct head injury or the last date when harmful industrial noise contributed
79 substantially in causing the hearing loss.

80 Section 3. Section **53A-1a-704** is amended to read:

81 **53A-1a-704. Scholarship program created -- Qualifications.**

82 (1) The Carson Smith Scholarship Program is created to award scholarships to students
83 with disabilities to attend a private school.

84 (2) To qualify for a scholarship:

85 (a) the student's custodial parent or legal guardian shall reside within Utah;

86 (b) the student shall have one or more of the following disabilities:

87 (i) an intellectual disability;

- 88 (ii) [~~a hearing impairment~~] deafness or being hard of hearing;
- 89 (iii) a speech or language impairment;
- 90 (iv) a visual impairment;
- 91 (v) a serious emotional disturbance;
- 92 (vi) an orthopedic impairment;
- 93 (vii) autism;
- 94 (viii) traumatic brain injury;
- 95 (ix) other health impairment;
- 96 (x) specific learning disabilities; or
- 97 (xi) a developmental delay, provided the student is at least three years of age, pursuant
- 98 to Subsection (2)(c), and is younger than eight years of age;

99 (c) the student shall be at least three years of age before September 2 of the year in
100 which admission to a private school is sought and under 19 years of age on the last day of the
101 school year as determined by the private school, or, if the individual has not graduated from
102 high school, will be under 22 years of age on the last day of the school year as determined by
103 the private school; and

104 (d) except as provided in Subsection (3), the student shall:

- 105 (i) be enrolled in a Utah public school in the school year prior to the school year the
- 106 student will be enrolled in a private school;
- 107 (ii) have an IEP; and
- 108 (iii) have obtained acceptance for admission to an eligible private school.

109 (3) The requirements of Subsection (2)(d) do not apply in the following circumstances:

- 110 (a) the student is enrolled or has obtained acceptance for admission to an eligible
- 111 private school that has previously served students with disabilities; and
- 112 (b) an assessment team is able to readily determine with reasonable certainty:
 - 113 (i) that the student has a disability listed in Subsection (2)(b) and would qualify for
 - 114 special education services, if enrolled in a public school; and

- 115 (ii) for the purpose of establishing the scholarship amount, the appropriate level of
- 116 special education services which should be provided to the student.

117 (4) (a) To receive a full-year scholarship under this part, a parent of a student shall

118 submit to the LEA where the student is enrolled an application on or before the August 15

119 immediately preceding the first day of the school year for which the student would receive the
120 scholarship.

121 (b) The board may waive the full-year scholarship deadline described in Subsection
122 (4)(a).

123 (c) An application for a scholarship shall contain an acknowledgment by the parent that
124 the selected school is qualified and capable of providing the level of special education services
125 required for the student.

126 (5) (a) The scholarship application form shall contain the following statement:

127 "I acknowledge that:

128 (1) A private school may not provide the same level of special education services that
129 are provided in a public school;

130 (2) I will assume full financial responsibility for the education of my scholarship
131 student if I accept this scholarship;

132 (3) Acceptance of this scholarship has the same effect as a parental refusal to consent
133 to services pursuant to Section 614(a)(1) of the Individuals with Disabilities Education Act, 20
134 U.S.C. Sec. 1400 et seq.; and

135 (4) My child may return to a public school at any time."

136 (b) Upon acceptance of the scholarship, the parent assumes full financial responsibility
137 for the education of the scholarship student.

138 (c) Acceptance of a scholarship has the same effect as a parental refusal to consent to
139 services pursuant to Section 614(a)(1) of the Individuals with Disabilities Education Act, 20
140 U.S.C. Sec. 1400 et seq.

141 (d) The creation of the scholarship program or granting of a scholarship does not:

142 (i) imply that a public school did not provide a free and appropriate public education
143 for a student; or

144 (ii) constitute a waiver or admission by the state.

145 (6) (a) A scholarship shall remain in force for three years.

146 (b) A scholarship shall be extended for an additional three years, if:

147 (i) the student is evaluated by an assessment team; and

148 (ii) the assessment team determines that the student would qualify for special education
149 services, if enrolled in a public school.

150 (c) The assessment team shall determine the appropriate level of special education
151 services which should be provided to the student for the purpose of setting the scholarship
152 amount.

153 (d) A scholarship shall be extended for successive three-year periods as provided in
154 Subsections (6)(a) and (b):

- 155 (i) until the student graduates from high school; or
- 156 (ii) if the student does not graduate from high school, until the student is age 22.

157 (7) A student's parent, at any time, may remove the student from a private school and
158 place the student in another eligible private school and retain the scholarship.

159 (8) A scholarship student may not participate in a dual enrollment program pursuant to
160 Section [53A-11-102.5](#).

161 (9) The parents or guardians of a scholarship student have the authority to choose the
162 private school that will best serve the interests and educational needs of that student, which
163 may be a sectarian or nonsectarian school, and to direct the scholarship resources available for
164 that student solely as a result of their genuine and independent private choices.

165 (10) (a) An LEA shall notify in writing the parents or guardians of students enrolled in
166 the LEA who have an IEP of the availability of a scholarship to attend a private school through
167 the Carson Smith Scholarship Program.

168 (b) The notice described under Subsection (10)(a) shall:

- 169 (i) be provided no later than 30 days after the student initially qualifies for an IEP;
- 170 (ii) be provided annually no later than February 1 to all students who have an IEP; and
- 171 (iii) include the address of the Internet website maintained by the board that provides
172 prospective applicants with detailed program information and application forms for the Carson
173 Smith Scholarship Program.

174 (c) An LEA or school within an LEA that has an enrolled student who has an IEP shall
175 post the address of the Internet website maintained by the board that provides prospective
176 applicants with detailed program information and application forms for the Carson Smith
177 Scholarship Program on the LEA's or school's website, if the LEA or school has one.

178 Section 4. Section **53A-25b-102** is amended to read:

179 **53A-25b-102. Definitions.**

180 As used in this chapter:

181 (1) "Advisory council" means the Advisory Council for the Utah Schools for the Deaf
182 and the Blind.

183 (2) "Alternate format" includes braille, audio, or digital text, or large print.

184 (3) "Associate superintendent" means:

185 (a) the associate superintendent of the Utah School for the Deaf; or

186 (b) the associate superintendent of the Utah School for the Blind.

187 (4) "Blind" means:

188 (a) if the person is three years of age or older but younger than 22 years of age, having
189 a visual impairment that, even with correction, adversely affects educational performance or
190 substantially limits one or more major life activities; and

191 (b) if the person is younger than three years of age, having a visual impairment.

192 (5) "Blindness" means an impairment in vision in which central visual acuity:

193 (a) does not exceed 20/200 in the better eye with correcting lenses; or

194 (b) is accompanied by a limit to the field of vision in the better eye to such a degree
195 that its widest diameter subtends an angle of no greater than 20 degrees.

196 (6) "Board" means the State Board of Education.

197 (7) "Cortical visual impairment" means a neurological visual disorder:

198 (a) that:

199 (i) affects the visual cortex or visual tracts of the brain;

200 (ii) is caused by damage to the visual pathways to the brain;

201 (iii) affects a person's visual discrimination, acuity, processing, and interpretation; and

202 (iv) is often present in conjunction with other disabilities or eye conditions that cause
203 visual impairment; and

204 (b) in which the eyes and optic nerves of the affected person appear normal and the
205 person's pupil responses are normal.

206 (8) "Deaf" means:

207 (a) if the person is three years of age or older but younger than 22 years of age, having
208 [~~a hearing impairment~~] hearing loss, whether permanent or fluctuating, that, even with
209 amplification, adversely affects educational performance or substantially limits one or more
210 major life activities; and

211 (b) if the person is younger than three years of age, having [~~a hearing impairment~~]

212 hearing loss.

213 (9) "Deafblind" means:

214 (a) if the person is three years of age or older but younger than 22 years of age:

215 (i) deaf;

216 (ii) blind; and

217 (iii) having hearing loss and visual impairments that cause such severe communication

218 and other developmental and educational needs that the person cannot be accommodated in

219 special education programs solely for students who are deaf or blind; or

220 (b) if the person is younger than three years of age, having both hearing loss and vision
221 impairments that are diagnosed as provided in Section [53A-25b-301](#).

222 (10) "Deafness" means a hearing loss so severe that the person is impaired in
223 processing linguistic information through hearing, with or without amplification.

224 (11) "Educator" means a person who holds:

225 (a) (i) a license issued under Title 53A, Chapter 6, Educator Licensing and Professional
226 Practices Act; and

227 (ii) a position as:

228 (A) a teacher;

229 (B) a speech pathologist;

230 (C) a librarian or media specialist;

231 (D) a preschool teacher;

232 (E) a guidance counselor;

233 (F) a school psychologist;

234 (G) an audiologist; or

235 (H) an orientation and mobility specialist; or

236 (b) (i) a bachelor's degree or higher;

237 (ii) credentials from the governing body of the professional's area of practice; and

238 (iii) a position as:

239 (A) a Parent Infant Program consultant;

240 (B) a deafblind consultant;

241 (C) a school nurse;

242 (D) a physical therapist;

243 (E) an occupational therapist;

244 (F) a social worker; or

245 (G) a low vision specialist.

246 (12) "Functional blindness" means a disorder in which the physical structures of the
247 eye may be functioning, but the person does not attend to, examine, utilize, or accurately
248 process visual information.

249 (13) "Functional hearing loss" means a central nervous system impairment that results
250 in abnormal auditory perception, including an auditory processing disorder or auditory
251 neuropathy/dys-synchrony, in which parts of the auditory system may be functioning, but the
252 person does not attend to, respond to, localize, utilize, or accurately process auditory
253 information.

254 (14) "Hard of hearing" means having a hearing loss, excluding deafness.

255 [~~(15) "Hearing impairment" includes hard of hearing, deafness, or functional hearing~~
256 ~~loss.~~]

257 [~~(16)~~ (15) "Individualized education program" or "IEP" means:

258 (a) a written statement for a student with a disability that is developed, reviewed, and
259 revised in accordance with the Individuals with Disabilities Education Act, 20 U.S.C. Sec.
260 1400 et seq.; or

261 (b) an individualized family service plan developed:

262 (i) for a child with a disability who is younger than three years of age; and

263 (ii) in accordance with the Individuals with Disabilities Education Act, 20 U.S.C. Sec.
264 1400 et seq.

265 [~~(17)~~ (16) "LEA" means a local education agency that has administrative control and
266 direction for public education.

267 [~~(18)~~ (17) "LEA of record" means the school district of residence of a student as
268 determined under Section [53A-2-201](#).

269 [~~(19)~~ (18) "Low vision" means an impairment in vision in which:

270 (a) visual acuity is at 20/70 or worse; or

271 (b) the visual field is reduced to less than 20 degrees.

272 [~~(20)~~ (19) "Parent Infant Program" means a program at the Utah Schools for the Deaf
273 and the Blind that provides services:

274 (a) through an interagency agreement with the Department of Health to children
275 younger than three years of age who are deaf, blind, or deafblind; and

276 (b) to children younger than three years of age who are deafblind through Deafblind
277 Services of the Utah Schools for the Deaf and the Blind.

278 [~~(21)~~] (20) "Section 504" means Section 504 of the Rehabilitation Act of 1973.

279 [~~(22)~~] (21) "Section 504 accommodation plan" means a plan developed pursuant to
280 Section 504 of the Rehabilitation Act of 1973, as amended, to provide appropriate
281 accommodations to an individual with a disability to ensure access to major life activities.

282 [~~(23)~~] (22) "Superintendent" means the superintendent of the Utah Schools for the Deaf
283 and the Blind.

284 [~~(24)~~] (23) "Visual impairment" includes partial sightedness, low vision, blindness,
285 cortical visual impairment, functional blindness, and degenerative conditions that lead to
286 blindness or severe loss of vision.

287 Section 5. Section **53A-25b-307** is amended to read:

288 **53A-25b-307. Educational Enrichment Program for Deaf, Hard of Hearing, and**
289 **Visually Impaired Students -- Funding for the program.**

290 (1) There is established the Educational Enrichment Program for [~~Hearing~~] Deaf, Hard
291 of Hearing, and Visually Impaired Students.

292 (2) The purpose of the program is to provide opportunities that will, in a family
293 friendly environment, enhance the educational services required for deaf, hard of hearing,
294 blind, or deafblind students.

295 (3) The advisory council shall design and implement the program, subject to the
296 approval by the board.

297 (4) The program shall be funded from the interest and dividends derived from the
298 permanent funds created for the Utah Schools for the Deaf and the Blind pursuant to Section 12
299 of the Utah Enabling Act and distributed by the director of the School and Institutional Trust
300 Lands Administration under Section **53C-3-103**.

301 Section 6. Section **53B-6-104** is amended to read:

302 **53B-6-104. Multi-University Consortium for Teacher Training in Sensory**
303 **Impairments -- Purposes -- Appropriation.**

304 (1) (a) In conjunction with the State Board of Regents' master plan for higher

305 education, there is established a Multi-University Consortium for Teacher Training in Sensory
306 Impairments which is an outgrowth of a consortium established by the federal government.

307 (b) The consortium shall include within its membership the University of Utah, Utah
308 State University, Brigham Young University, the Utah Schools for the Deaf and the Blind, the
309 Services for At-Risk Students section under the State Board of Education, and local school
310 districts.

311 (2) The consortium, in collaboration with the State Board of Regents and the State
312 Board of Education, shall develop and implement teacher preparation programs that qualify
313 and certify instructors to work with students who are visually impaired, [~~hearing impaired~~]
314 deaf, or hard of hearing, or both visually impaired and [~~hearing impaired~~] deaf or hard of
315 hearing.

316 (3) (a) There is appropriated from the General Fund for fiscal year 1994-95, \$200,000
317 to the State Board of Regents to fund the consortium's teacher preparation programs referred to
318 in Subsection (2).

319 (b) The appropriation is nonlapsing.

320 (c) The State Board of Regents shall consider including within its annual budget
321 recommendations a line item appropriation to provide ongoing funding for the programs
322 provided pursuant to this section.

323 Section 7. Section **54-8b-10** is amended to read:

324 **54-8b-10. Imposing a surcharge to provide deaf, hard of hearing, and speech**
325 **impaired persons with telecommunication devices -- Definitions -- Procedures for**
326 **establishing program -- Surcharge -- Administration and disposition of surcharge money.**

327 (1) As used in this section:

328 (a) "~~Certified deaf [or severely hearing or speech impaired person]~~, hard of hearing, or
329 severely speech impaired individual" means any state resident who:

330 (i) is so certified by:

331 (A) a licensed physician;

332 (B) an otolaryngologist;

333 (C) a speech language pathologist;

334 (D) an audiologist; or

335 (E) a qualified state agency; and

336 (ii) qualifies for assistance under any low income public assistance program
337 administered by a state agency.

338 (b) "Certified interpreter" means a person who is a certified interpreter under Title
339 35A, Chapter 13, Part 6, Interpreter Services for the Deaf and Hard of Hearing Act.

340 (c) (i) "Telecommunication device" means any mechanical adaptation device that
341 enables a deaf [~~or severely hearing or speech impaired person~~], hard of hearing, or severely
342 speech impaired individual to use the telephone.

343 (ii) "Telecommunication device" includes:

344 (A) telecommunication devices for the deaf (TDD);

345 (B) telephone amplifiers;

346 (C) telephone signal devices;

347 (D) artificial larynxes; and

348 (E) adaptive equipment for TDD keyboard access.

349 (2) The commission shall hold hearings to establish a program whereby a certified deaf
350 [~~or severely hearing or speech impaired~~], hard of hearing, or severely speech impaired
351 customer of a telecommunications corporation that provides service through a local exchange
352 or of a wireless telecommunications provider may obtain a telecommunication device capable
353 of serving the customer at no charge to the customer beyond the rate for basic service.

354 (3) (a) The program described in Subsection (2) shall provide a dual party relay system
355 using third party intervention to connect a certified deaf [~~or severely hearing or speech~~
356 ~~impaired person~~], hard of hearing, or severely speech impaired individual with a normal
357 hearing [~~person~~] individual by way of telecommunication devices designed for that purpose.

358 (b) The commission may, by rule, establish the type of telecommunications device to
359 be provided to ensure functional equivalence.

360 (4) (a) The commission shall impose a surcharge on each residential and business
361 access line of each customer of local-exchange telephone service in this state, and each
362 residential and business telephone number of each customer of mobile telephone service in this
363 state, not including a telephone number used exclusively to transfer data to and from a mobile
364 device, which shall be collected by the telecommunications corporation providing public
365 telecommunications service to the customer, to cover the costs of:

366 (i) the program described in Subsection (2); and

367 (ii) payments made under Subsection (5).

368 (b) The commission shall establish by rule the amount to be charged under this section,
369 provided that:

370 (i) the surcharge does not exceed 20 cents per month for each residential and business
371 access line for local-exchange telephone service, and for each residential and business
372 telephone number for mobile telephone service, not including a telephone number used
373 exclusively to transfer data to and from a mobile device; and

374 (ii) if the surcharge is related to a mobile telecommunications service, the surcharge
375 may be imposed, billed, and collected only to the extent permitted by the Mobile
376 Telecommunications Sourcing Act, 4 U.S.C. Sec. 116 et seq.

377 (c) The telecommunications corporation shall collect the surcharge from its customers
378 and transfer the money collected to the commission under rules adopted by the commission.

379 (d) The surcharge shall be separately identified on each bill to a customer.

380 (5) (a) Money collected from the surcharge imposed under Subsection (4) shall be
381 deposited in the state treasury as dedicated credits to be administered as determined by the
382 commission.

383 (b) These dedicated credits may be used only:

384 (i) for the purchase, maintenance, repair, and distribution of telecommunication
385 devices;

386 (ii) for the acquisition, operation, maintenance, and repair of a dual party relay system;

387 (iii) to reimburse telephone corporations for the expenses incurred in collecting and
388 transferring to the commission the surcharge imposed by the commission;

389 (iv) for the general administration of the program;

390 (v) to train persons in the use of telecommunications devices; and

391 (vi) by the commission to contract, in compliance with Title 63G, Chapter 6a, Utah
392 Procurement Code, with:

393 (A) an institution within the state system of higher education listed in Section
394 [53B-1-102](#) for a program approved by the Board of Regents that trains persons to qualify as
395 certified interpreters; or

396 (B) the Utah State Office of Rehabilitation created in Section [35A-1-202](#) for a program
397 that trains persons to qualify as certified interpreters.

398 (c) (i) The commission shall make rules under Title 63G, Chapter 3, Utah
399 Administrative Rulemaking Act, for the administration of money under Subsection (5)(b)(vi).

400 (ii) In the initial rulemaking to determine the administration of money under
401 Subsection (5)(b)(vi), the commission shall give notice and hold a public hearing.

402 (d) Money received by the commission under Subsection (4) is nonlapsing.

403 (6) (a) The telephone surcharge need not be collected by a telecommunications
404 corporation if the amount collected would be less than the actual administrative costs of the
405 collection.

406 (b) If Subsection (6)(a) applies, the telecommunications corporation shall submit to the
407 commission, in lieu of the revenue from the surcharge collection, a breakdown of the
408 anticipated costs and the expected revenue from the collection, showing that the costs exceed
409 the revenue.

410 (7) The commission shall solicit the advice, counsel, and physical assistance of
411 ~~[severely hearing or speech impaired persons]~~ deaf, hard of hearing, or severely speech
412 impaired individuals and the organizations serving them in the design and implementation of
413 the program.

414 Section 8. Section **58-41-2** is amended to read:

415 **58-41-2. Definitions.**

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

417 (1) "ASHA" means the American Speech and Hearing Association.

418 (2) "Association" means the Utah Speech and Hearing Association.

419 (3) "Audiologist" means a person who practices audiology or who holds himself out to
420 the public directly or indirectly by any means, act, title, identification, performance, method, or
421 procedure as one who nonmedically examines, measures, tests, interprets, evaluates, assesses,
422 diagnoses, directs, instructs, treats, counsels, prescribes, and recommends for persons affected
423 by or suspected of having disorders of or conditions of ~~[impaired]~~ hearing loss, or assists
424 persons in achieving the reception, communication, and perception of sound and determines
425 the range, nature, and degree of hearing function related to communication needs, or provides
426 audiology services and uses audio electronic equipment and provides audiology services and
427 consultation regarding noise control and hearing conservation, conducts tests and interpretation
428 of vestibular function and nystagmus, prepares ear impressions and provides ear molds, aids,

429 accessories, prescriptions, and prostheses for hearing, evaluates sound environment and
430 equipment, and calibrates instruments used in testing and supplementing auditory function. A
431 person is deemed to be an audiologist if he directly or indirectly provides or offers to provide
432 these services or functions set forth in Subsection (4) or any related function.

433 (4) "Audiology" means the application of principles, methods, and procedures, and
434 measuring, testing, examining, interpreting, diagnosing, predicting, evaluating, prescribing,
435 consulting, treating, instructing, and researching, which is related to hearing, vestibular
436 function, and the disorders of hearing, to related language and speech disorders and to aberrant
437 behavior related to [~~loss of~~] hearing loss or vestibular function, for the purpose of preventing
438 and modifying disorders related to [~~loss of~~] hearing loss or vestibular function, and planning,
439 directing, managing, conducting, and participating in hearing conservation, evoked potentials
440 evaluation, nonmedical tinnitus evaluation or treatment, noise control, habilitation, and
441 rehabilitation programs, including hearing aid evaluation, assistive listening device evaluation,
442 prescription, preparation, and dispensing, and auditory training and lip reading.

443 (5) "Audiology aide" means an individual who:

444 (a) meets the minimum qualifications established by the board for audiology aides.

445 Those qualifications shall be substantial but less than those established by this chapter for
446 licensing an audiologist;

447 (b) does not act independently; and

448 (c) works under the personal direction and direct supervision of a licensed audiologist
449 who accepts responsibility for the acts and performance of that audiology aide under this
450 chapter.

451 (6) "Board" means the Speech-language Pathology and Audiology Licensing Board
452 created under Section [58-41-6](#).

453 (7) "CCC" means the certificate of clinical competence awarded by the American
454 Speech and Hearing Association.

455 (8) "CFY" means the clinical fellowship year prescribed by ASHA.

456 (9) "Disorder" means the condition of decreased, absent, or impaired auditory, speech,
457 voice, or language function.

458 (10) "Hearing aid dealer" means one who sells, repairs, and adjusts hearing aids.

459 (11) "Licensed audiologist" means any individual to whom a license has been issued

460 under this chapter if that license is in force and has not been suspended or revoked.

461 (12) "Licensed speech-language pathologist" means any individual licensed under this
462 chapter whose license is in force and has not been suspended or revoked.

463 (13) "Person" means any individual, group, organization, partnership, or corporate
464 body, except that only an individual may be licensed under this chapter.

465 (14) "Practice of audiology" means rendering or offering to render to individuals,
466 groups, agencies, organizations, industries, or the public any performance or service in
467 audiology.

468 (15) "Practice of speech-language pathology" means rendering, prescribing, or offering
469 to render to individuals, groups, agencies, organizations, industries or the public any service in
470 speech-language pathology.

471 (16) "Prescribe" means to:

472 (a) determine, specify, and give the directions, procedures, or rules for a person to
473 follow in determining and ordering the preparation, delivery, and use of specific mechanical,
474 acoustic, or electronic aids to hearing or speech; and

475 (b) determine or designate a remedy for a person.

476 (17) "Prescription" means a written or oral order for the delivery or execution of that
477 which has been prescribed.

478 (18) "Speech-language pathologist" means:

479 (a) a person who practices speech-language pathology or who holds himself out to the
480 public by any means, or by any service or function he performs, directly or indirectly, or by
481 using the terms "speech-language pathologist," "speech-language therapist," "language
482 disability specialist," or any variation, derivation, synonym, coinage, or whatever expresses,
483 employs, or implies these terms, names, or functions; or

484 (b) a person who performs any of the functions described in Subsection (19) or any
485 related functions.

486 (19) "Speech-language pathology" means the application of principles, methods, and
487 procedures for the examination, measurement, prevention, testing, identification, evaluation,
488 diagnosis, treatment, instruction, modification, prescription, restoration, counseling,
489 habilitation, prediction, management, and research related to the development and the disorders
490 or disabilities of human communication, speech, voice, language, cognitive communication, or

491 oral, pharyngeal, or laryngeal sensorimotor competencies, for the purpose of identifying,
492 evaluating, diagnosing, prescribing, preventing, managing, correcting, ameliorating, or
493 modifying those disorders and their effects in individuals or groups of individuals.

494 (20) "Speech-language pathology aide" means an individual who:

495 (a) meets the minimum qualifications established by the board for speech-language
496 pathology aides. Those qualifications shall be substantial but less than those established by this
497 chapter for licensing a speech-language pathologist;

498 (b) does not act independently; and

499 (c) works under the personal direction and direct supervision of a licensed
500 speech-language pathologist who accepts the responsibility for the acts and performances of
501 that speech-language pathology aide while working under this chapter.

502 (21) "Treatment" means the services of a speech-language pathologist or audiologist to
503 examine, diagnose, correct, or ameliorate speech or hearing disorders, abnormalities, behavior,
504 or their effects.

505 (22) "Unprofessional conduct" as defined in Section 58-1-501 and as may be further
506 defined by rule includes:

507 (a) failing to maintain a level of professional practice consistent with all initial and
508 subsequent requirements by which a license is achieved or maintained under this chapter;

509 (b) utilizing substandard or inappropriate facilities or equipment;

510 (c) treating any disorder for which the licensee has not had the necessary training and
511 experience; or

512 (d) failing to comply with the requirements of Section 58-41-17.

513 Section 9. Section 58-41-17 is amended to read:

514 **58-41-17. Requirements for selling hearing aids.**

515 (1) As used in this section:

516 (a) "Hearing aid" means a wearable instrument or device designed or offered for the
517 purpose of aiding or compensating for [~~impaired human hearing~~] human hearing loss, including
518 its parts, attachments, or accessories.

519 (b) "Hearing aid" does not include a device that is surgically implanted in the cochlea
520 or under the skin near the ear.

521 (2) A person licensed under this chapter who offers to sell a hearing aid to a consumer

522 shall inform the consumer about hearing aids that work with assistive listening systems that are
523 compliant with the ADA Standards for Accessible Design adopted by the United States
524 Department of Justice in accordance with the Americans with Disabilities Act, 42 U.S.C. Sec.
525 12101 et seq.

526 (3) A person licensed under this chapter who sells a hearing aid to a consumer shall
527 provide a written receipt or written contract to the consumer that provides the consumer with a
528 30-day right to cancel the purchase and to obtain a refund if the consumer returns the hearing
529 aid to the seller in the same condition as when purchased, excluding ordinary wear and tear.

530 (4) The written receipt or contract shall notify the consumer of the 30-day right to
531 cancel in at least 12-point font.

532 (5) The 30-day right to cancel shall commence from the date the hearing aid is
533 originally delivered to the consumer or the date the written receipt or contract is delivered to
534 the consumer, whichever is later.

535 (6) The 30-day period shall be tolled for any period during which the hearing aid seller,
536 dealer, or fitter has possession or control of the hearing aid after its original delivery.

537 (7) Upon exercise of the 30-day right to cancel a hearing aid purchase, the seller of the
538 hearing aid is entitled to a cancellation fee equal to the actual cost that will be incurred by the
539 seller in order to return the hearing aid to the manufacturer, provided that the written receipt or
540 contract states the exact amount that will be retained by the seller as a cancellation fee.

541 Section 10. Section **58-46a-102** is amended to read:

542 **58-46a-102. Definitions.**

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

544 (1) "Board" means the Hearing Instrument Specialist Licensing Board created in
545 Section **58-46a-201**.

546 (2) "Direct supervision" means that the supervising hearing instrument specialist is
547 present in the same facility as is the person being supervised and is available for immediate in
548 person consultation.

549 ~~(4)~~ (3) "Hearing instrument" or "hearing aid" means any device designed or offered to
550 be worn on or by an individual to enhance ~~[impaired human hearing]~~ human hearing, including
551 the device's specialized parts, attachments, or accessories.

552 ~~(3)~~ (4) "Hearing instrument intern" means a person licensed under this chapter who is

553 obtaining education and experience in the practice of a hearing instrument specialist under the
554 supervision of a supervising hearing instrument specialist.

555 (5) "Indirect supervision" means that the supervising hearing instrument specialist is
556 not required to be present in the same facility as is the person being supervised, but is available
557 for voice to voice contact by telephone, radio, or other means at the initiation of the person
558 being supervised.

559 (6) "Practice of a hearing instrument specialist" means:

560 (a) establishing a place of business to practice as a hearing instrument specialist;

561 (b) testing the hearing of a human patient over the age of 17 for the sole purpose of
562 determining whether a hearing loss will be sufficiently improved by the use of a hearing
563 instrument to justify prescribing and selling the hearing instrument and whether that hearing
564 instrument will be in the best interest of the patient;

565 (c) providing the patient a written statement of prognosis regarding the need for or
566 usefulness of a hearing instrument for the patient's condition;

567 (d) prescribing an appropriate hearing instrument;

568 (e) making impressions or earmolds for the fitting of a hearing instrument;

569 (f) sale and professional placement of the hearing instrument on a patient;

570 (g) evaluating the hearing loss overcome by the installation of the hearing instrument
571 and evaluating the hearing recovery against the representations made to the patient by the
572 hearing instrument specialist;

573 (h) necessary intervention to produce satisfactory hearing recovery results from a
574 hearing instrument; or

575 (i) instructing the patient on the use and care of the hearing instrument.

576 (7) "Supervising hearing instrument specialist" means a hearing instrument specialist
577 who:

578 (a) is licensed by and in good standing with the division;

579 (b) has practiced full-time as a hearing instrument specialist for not less than two years;

580 and

581 (c) is approved as a supervisor by the division in collaboration with the board.

582 (8) "Unlawful conduct" [~~is as~~] means the same as that term is defined in Section
583 58-1-501.

584 (9) "Unprofessional conduct" [~~is as~~] means the same as that term is defined in Sections
585 58-1-501 and 58-46a-501.

586 Section 11. Section **62A-5-101** is amended to read:

587 **62A-5-101. Definitions.**

588 As used in this chapter:

589 (1) "Approved provider" means a person approved by the division to provide
590 home-based services.

591 (2) "Board" means the Utah State Developmental Center Board created under Section
592 62A-5-202.5.

593 (3) (a) "Brain injury" means an acquired injury to the brain that is neurological in
594 nature, including a cerebral vascular accident.

595 (b) "Brain injury" does not include a deteriorating disease.

596 (4) "Designated intellectual disability professional" means:

597 (a) a psychologist licensed under Title 58, Chapter 61, Psychologist Licensing Act,
598 who:

599 (i) (A) has at least one year of specialized training in working with persons with an
600 intellectual disability; or

601 (B) has at least one year of clinical experience with persons with an intellectual
602 disability; and

603 (ii) is designated by the division as specially qualified, by training and experience, in
604 the treatment of an intellectual disability; or

605 (b) a clinical social worker, certified social worker, marriage and family therapist, or
606 professional counselor, licensed under Title 58, Chapter 60, Mental Health Professional
607 Practice Act, who:

608 (i) has at least two years of clinical experience with persons with an intellectual
609 disability; and

610 (ii) is designated by the division as specially qualified, by training and experience, in
611 the treatment of an intellectual disability.

612 (5) "Deteriorating disease" includes:

613 (a) multiple sclerosis;

614 (b) muscular dystrophy;

615 (c) Huntington's chorea;

616 (d) Alzheimer's disease;

617 (e) ataxia; or

618 (f) cancer.

619 (6) "Developmental center" means the Utah State Developmental Center, established in
620 accordance with Part 2, Utah State Developmental Center.

621 [~~(7)~~] (7) "Director" means the director of the Division of Services for People with
622 Disabilities.

623 [~~(7)~~] (8) "Direct service worker" means a person who provides services to a person
624 with a disability:

625 (a) when the services are rendered in:

626 (i) the physical presence of the person with a disability; or

627 (ii) a location where the person rendering the services has access to the physical
628 presence of the person with a disability; and

629 (b) (i) under a contract with the division;

630 (ii) under a grant agreement with the division; or

631 (iii) as an employee of the division.

632 (9) (a) "Disability" means a severe, chronic disability that:

633 (i) is attributable to:

634 (A) an intellectual disability;

635 (B) a condition that qualifies a person as a person with a related condition, as defined
636 in 42 C.F.R. 435.1009;

637 (C) a physical disability; or

638 (D) a brain injury;

639 (ii) is likely to continue indefinitely;

640 (iii) (A) for a condition described in Subsection (9)(a)(i)(A), (B), or (C), results in a
641 substantial functional limitation in three or more of the following areas of major life activity:

642 (I) self-care;

643 (II) receptive and expressive language;

644 (III) learning;

645 (IV) mobility;

- 646 (V) self-direction;
- 647 (VI) capacity for independent living; or
- 648 (VII) economic self-sufficiency; or
- 649 (B) for a condition described in Subsection (9)(a)(i)(D), results in a substantial
- 650 limitation in three or more of the following areas:
 - 651 (I) memory or cognition;
 - 652 (II) activities of daily life;
 - 653 (III) judgment and self-protection;
 - 654 (IV) control of emotions;
 - 655 (V) communication;
 - 656 (VI) physical health; or
 - 657 (VII) employment; and
 - 658 (iv) requires a combination or sequence of special interdisciplinary or generic care,
 - 659 treatment, or other services that:
 - 660 (A) may continue throughout life; and
 - 661 (B) must be individually planned and coordinated.
 - 662 (b) "Disability" does not include a condition due solely to:
 - 663 (i) mental illness;
 - 664 (ii) personality disorder;
 - 665 (iii) ~~hearing impairment~~ deafness or being hard of hearing;
 - 666 (iv) visual impairment;
 - 667 (v) learning disability;
 - 668 (vi) behavior disorder;
 - 669 (vii) substance abuse; or
 - 670 (viii) the aging process.
 - 671 (10) "Division" means the Division of Services for People with Disabilities.
 - 672 (11) "Eligible to receive division services" or "eligibility" means qualification, based
 - 673 on criteria established by the division in accordance with Subsection [62A-5-102\(4\)](#), to receive
 - 674 services that are administered by the division.
 - 675 (12) "Endorsed program" means a facility or program that:
 - 676 (a) is operated:

677 (i) by the division; or
678 (ii) under contract with the division; or
679 (b) provides services to a person committed to the division under Part 3, Admission to
680 an Intermediate Care Facility for People with an Intellectual Disability.

681 (13) "Licensed physician" means:

682 (a) an individual licensed to practice medicine under:

683 (i) Title 58, Chapter 67, Utah Medical Practice Act; or

684 (ii) Title 58, Chapter 68, Utah Osteopathic Medical Practice Act; or

685 (b) a medical officer of the United States Government while in this state in the
686 performance of official duties.

687 (14) "Physical disability" means a medically determinable physical impairment that has
688 resulted in the functional loss of two or more of a person's limbs.

689 (15) "Public funds" means state or federal funds that are disbursed by the division.

690 (16) "Resident" means an individual under observation, care, or treatment in an
691 intermediate care facility for people with an intellectual disability.

692 Section 12. Section **77-7-6** is amended to read:

693 **77-7-6. Manner of making arrest.**

694 (1) The person making the arrest shall inform the person being arrested of his intention,
695 cause, and authority to arrest him. Such notice shall not be required when:

696 (a) there is reason to believe the notice will endanger the life or safety of the officer or
697 another person or will likely enable the party being arrested to escape;

698 (b) the person being arrested is actually engaged in the commission of, or an attempt to
699 commit, an offense; or

700 (c) the person being arrested is pursued immediately after the commission of an offense
701 or an escape.

702 (2) (a) If a [~~hearing-impaired~~] deaf or hard of hearing person, as defined in Subsection
703 **78B-1-201**(2), is arrested for an alleged violation of a criminal law, including a local ordinance,
704 the arresting officer shall assess the communicative abilities of the [~~hearing-impaired~~] deaf or
705 hard of hearing person and conduct this notification, and any further notifications of rights,
706 warnings, interrogations, or taking of statements, in a manner that accurately and effectively
707 communicates with the [~~hearing-impaired~~] deaf or hard of hearing person, including qualified

708 interpreters, lip reading, pen and paper, typewriters, computers with print-out capability, and
709 telecommunications devices for the deaf.

710 (b) Compliance with this ~~[subsection]~~ Subsection (2) is a factor to be considered by
711 any court when evaluating whether statements of a ~~[hearing-impaired]~~ deaf or hard of hearing
712 person were made knowingly, voluntarily, and intelligently.

713 Section 13. Section **78B-1-201** is amended to read:

714 **78B-1-201. Definitions.**

715 As used in this part:

716 (1) "Appointing authority" means the presiding officer or similar official of any court,
717 board, commission, authority, department, agency, legislative body, or of any proceeding of
718 any nature where a qualified interpreter is required under this part.

719 (2) "~~[Hearing-impaired]~~ Deaf or hard of hearing person" and "~~[hearing-impaired]~~ deaf
720 or hard of hearing parent" means a deaf or hard of hearing person who, because of sensory or
721 environmental conditions, requires the assistance of a qualified interpreter or other special
722 assistance for communicative purposes.

723 (3) "Necessary steps" or "necessary services" include provisions of qualified
724 interpreters, lip reading, pen and paper, typewriters, closed-circuit television with
725 closed-caption translations, computers with print-out capability, and telecommunications
726 devices for the deaf or similar devices.

727 (4) "Qualified interpreter" means a sign language or oral interpreter as provided in
728 Sections **78B-1-203** and **78B-1-206** of this part.

729 Section 14. Section **78B-1-202** is amended to read:

730 **78B-1-202. Proceedings at which interpreter is to be provided for the deaf or**
731 **hard of hearing.**

732 (1) If a ~~[hearing-impaired]~~ deaf or hard of hearing person is a party or witness at any
733 stage of any judicial or quasi-judicial proceeding in this state or in its political subdivisions,
734 including civil and criminal court proceedings, grand jury proceedings, proceedings before a
735 magistrate, juvenile proceedings, adoption proceedings, mental health commitment
736 proceedings, and any proceeding in which a ~~[hearing-impaired]~~ deaf or hard of hearing person
737 may be subjected to confinement or criminal sanction, the appointing authority shall appoint
738 and pay for a qualified interpreter to interpret the proceedings to the ~~[hearing-impaired]~~ deaf or

739 hard of hearing person and to interpret the [~~hearing-impaired~~] deaf or hard of hearing person's
740 testimony. If the [~~hearing-impaired~~] deaf or hard of hearing person does not understand sign
741 language, the appointing authority shall take necessary steps to ensure that the
742 [~~hearing-impaired~~] deaf or hard of hearing person may effectively and accurately communicate
743 in the proceeding.

744 (2) If a juvenile whose parent or parents are [~~hearing-impaired~~] deaf or hard of hearing
745 is brought before a court for any reason whatsoever, the court shall appoint and pay for a
746 qualified interpreter to interpret the proceedings to the [~~hearing-impaired~~] deaf or hard of
747 hearing parent and to interpret the [~~hearing-impaired~~] deaf or hard of hearing parent's
748 testimony. If the [~~hearing-impaired~~] deaf or hard of hearing parent or parents do not
749 understand sign language, the appointing authority shall take any reasonable, necessary steps to
750 ensure that the [~~hearing-impaired person~~] deaf or hard of hearing parent may effectively and
751 accurately communicate in the proceeding.

752 (3) In any hearing, proceeding, or other program or activity of any department, board,
753 licensing authority, commission, or administrative agency of the state or of its political
754 subdivisions, the appointing authority shall appoint and pay for a qualified interpreter for the
755 [~~hearing-impaired~~] deaf or hard of hearing participants if the interpreter is not otherwise
756 compensated for those services. If the [~~hearing-impaired~~] deaf or hard of hearing participants
757 do not understand sign language, the appointing authority shall take any reasonable, necessary
758 steps to ensure that [~~hearing-impaired persons~~] the deaf or hard of hearing participant may
759 effectively and accurately communicate in the proceeding.

760 (4) If a [~~hearing-impaired~~] deaf or hard of hearing person is a witness before any
761 legislative committee or subcommittee, or legislative research or interim committee or
762 subcommittee or commission authorized by the state Legislature or by the legislative body of
763 any political subdivision of the state, the appointing authority shall appoint and pay for a
764 qualified interpreter to interpret the proceedings to the [~~hearing-impaired person~~] deaf or hard
765 of hearing witness and to interpret the [~~hearing-impaired person's~~] deaf or hard of hearing
766 witness's testimony. If the [~~hearing-impaired~~] deaf or hard of hearing witness does not
767 understand sign language, the appointing authority shall take any reasonable, necessary steps to
768 ensure that [~~hearing-impaired~~] the deaf or hard of hearing witness may effectively and
769 accurately communicate in the proceeding.

770 (5) If it is the policy and practice of a court of this state or of its political subdivisions
771 to appoint counsel for indigent people, the appointing authority shall appoint and pay for a
772 qualified interpreter or other necessary services for [~~hearing-impaired~~] deaf or hard of hearing,
773 indigent people to assist in communication with counsel in all phases of the preparation and
774 presentation of the case.

775 (6) If a [~~hearing-impaired~~] deaf or hard of hearing person is involved in administrative,
776 legislative, or judicial proceedings, the appointing authority shall recognize that family
777 relationship between the particular [~~hearing-impaired~~] deaf or hard of hearing person and an
778 interpreter may constitute a possible conflict of interest and select a qualified interpreter who
779 will be impartial in the proceedings.

780 Section 15. Section **78B-1-203** is amended to read:

781 **78B-1-203. Effectiveness of interpreter determined.**

782 (1) Before appointing an interpreter, the appointing authority shall make a preliminary
783 determination, on the basis of the proficiency level established by the Utah State Office of
784 Rehabilitation created in Section **35A-1-202** and on the basis of the [~~hearing-impaired~~] deaf or
785 hard of hearing person's testimony, that the interpreter is able to accurately communicate with
786 and translate information to and from the hearing-impaired person involved.

787 (2) If the interpreter is not able to provide effective communication with the
788 [~~hearing-impaired~~] deaf or hard of hearing person, the appointing authority shall appoint
789 another qualified interpreter.

790 Section 16. Section **78B-1-205** is amended to read:

791 **78B-1-205. Readiness of interpreter prerequisite to commencement of**
792 **proceeding.**

793 If an interpreter is required to be appointed under this part, the appointing authority may
794 not commence proceedings until the appointed interpreter is in full view of and spatially
795 situated to assure effective communication with the [~~hearing-impaired~~] deaf or hard of hearing
796 participants.

797 Section 17. Section **78B-1-206** is amended to read:

798 **78B-1-206. List of qualified interpreters -- Use -- Appointment of another.**

799 (1) The Utah State Office of Rehabilitation created in Section **35A-1-202** shall
800 establish, maintain, update, and distribute a list of qualified interpreters.

801 (2) (a) When an interpreter is required under this part, the appointing authority shall
802 use one of the interpreters on the list provided by the Utah State Office of Rehabilitation.

803 (b) If none of the listed interpreters are available or are able to provide effective
804 interpreting with the particular [~~hearing-impaired~~] deaf or hard of hearing person, then the
805 appointing authority shall appoint another qualified interpreter who is able to accurately and
806 simultaneously communicate with and translate information to and from the particular
807 [~~hearing-impaired~~] deaf or hard of hearing person involved.

808 Section 18. Section **78B-1-209** is amended to read:

809 **78B-1-209. Waiver of right to interpreter.**

810 The right of a [~~hearing-impaired~~] deaf or hard of hearing person to an interpreter may
811 not be waived, except by a [~~hearing-impaired~~] deaf or hard of hearing person who requests a
812 waiver in writing. The waiver is subject to the approval of counsel to the [~~hearing-impaired~~]
813 deaf or hard of hearing person, if existent, and is subject to the approval of the appointing
814 authority. In no event may the failure of the [~~hearing-impaired~~] deaf or hard of hearing person
815 to request an interpreter be considered a waiver of that right.

816 Section 19. Section **78B-1-210** is amended to read:

817 **78B-1-210. Privileged communications.**

818 If a [~~hearing-impaired~~] deaf or hard of hearing person communicates through an
819 interpreter to any person under such circumstances that the communication would be privileged
820 and the person could not be compelled to testify as to the communications, this privilege shall
821 apply to the interpreter as well.

822 Section 20. Section **78B-1-211** is amended to read:

823 **78B-1-211. Video recording of testimony of deaf or hard of hearing person.**

824 The appointing authority, on his or her own motion or on the motion of a party to the
825 proceedings, may order that the testimony of the [~~hearing-impaired~~] deaf or hard of hearing
826 person and its interpretation be electronically recorded by a video recording device for use in
827 verification of the official transcript of the proceedings.