

DEAF AND HARD OF HEARING AMENDMENTS

2017 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Norman K Thurston

Senate Sponsor: _____

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



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

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

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

34A-2-501. Definitions.

(1) "Harmful industrial noise" means:

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

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

Sound level	Duration
90	8
92	6
95	4
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

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

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

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

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

"I acknowledge that:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) until the student graduates from high school; or

(ii) if the student does not graduate from high school, until the student is age 22.

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

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

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

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

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

(i) be provided no later than 30 days after the student initially qualifies for an IEP;

(ii) be provided annually no later than February 1 to all students who have an IEP; and

(iii) include the address of the Internet website maintained by the board that provides prospective applicants with detailed program information and application forms for the Carson Smith Scholarship Program.

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

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

53A-25b-102. Definitions.

As used in this chapter:

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

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

(3) "Associate superintendent" means:

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

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

(4) "Blind" means:

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

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

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

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

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

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

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

(a) that:

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

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

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

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

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

(8) "Deaf" means:

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

(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;

(E) an occupational therapist;

(F) a social worker; or

(G) a low vision specialist.

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

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

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

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

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

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

(b) an individualized family service plan developed:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) The appropriation is nonlapsing.

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

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

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

(1) As used in this section:

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

(i) is so certified by:

(A) a licensed physician;

(B) an otolaryngologist;

(C) a speech language pathologist;

(D) an audiologist; or

(E) a qualified state agency; and

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

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

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

(ii) "Telecommunication device" includes:

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

(B) telephone amplifiers;

(C) telephone signal devices;

(D) artificial larynxes; and

(E) adaptive equipment for TDD keyboard access.

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

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

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

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

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

(ii) payments made under Subsection (5).

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

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

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

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

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

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

(b) These dedicated credits may be used only:

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

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

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

(iv) for the general administration of the program;

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

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

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

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

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

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

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

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

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

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

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

58-41-2. Definitions.

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

(1) "ASHA" means the American Speech ~~H~~→ **[and] -Language-** ←~~H~~ Hearing Association.

(2) "Association" means the Utah Speech ~~H~~→ **[and] -Language-** ←~~H~~ Hearing Association.

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

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

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

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

(a) meets the minimum qualifications established by the board for audiology aides. Those qualifications shall be substantial but less than those established by this chapter for licensing an audiologist;

(b) does not act independently; and

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

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

(7) "CCC" means the certificate of clinical competence awarded by the American Speech ~~↗~~ **[and]** ~~-Language-~~ ~~↖~~ Hearing Association.

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

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

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

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

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

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

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

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

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

(16) "Prescribe" means to:

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

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

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

(18) "Speech-language pathologist" means:

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

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

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

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

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

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

(b) does not act independently; and

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

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

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

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

(b) utilizing substandard or inappropriate facilities or equipment;

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

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

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

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

(1) As used in this section:

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

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

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

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

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

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

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

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

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

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

58-46a-102. Definitions.

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

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

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

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

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

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

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

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

(a) establishing a place of business to practice as a hearing instrument specialist;
(b) testing the hearing of a human patient over the age of 17 for the sole purpose of determining whether a hearing loss will be sufficiently improved by the use of a hearing instrument to justify prescribing and selling the hearing instrument and whether that hearing instrument will be in the best interest of the patient;

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

(d) prescribing an appropriate hearing instrument;

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

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

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

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

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

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

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

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

and

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

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

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

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

62A-5-101. Definitions.

As used in this chapter:

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

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

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

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

(4) "Designated intellectual disability professional" means:

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

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

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

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

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

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

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

(5) "Deteriorating disease" includes:

(a) multiple sclerosis;

(b) muscular dystrophy;

(c) Huntington's chorea;

(d) Alzheimer's disease;

(e) ataxia; or

(f) cancer.

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

~~[(8)]~~ (7) "Director" means the director of the Division of Services for People with Disabilities.

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

(a) when the services are rendered in:

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

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

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

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

(iii) as an employee of the division.

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

(i) is attributable to:

(A) an intellectual disability;

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

(C) a physical disability; or

(D) a brain injury;

(ii) is likely to continue indefinitely;

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

(I) self-care;

(II) receptive and expressive language;

(III) learning;

(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:

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

(13) "Licensed physician" means:
(a) an individual licensed to practice medicine under:
(i) Title 58, Chapter 67, Utah Medical Practice Act; or
(ii) Title 58, Chapter 68, Utah Osteopathic Medical Practice Act; or
(b) a medical officer of the United States Government while in this state in the performance of official duties.

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

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

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

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

77-7-6. Manner of making arrest.

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

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

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

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

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

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

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

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

78B-1-201. Definitions.

As used in this part:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

78B-1-210. Privileged communications.

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

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

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

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