

Representative Michael S. Kennedy proposes the following substitute bill:

ADMINISTRATION OF ANESTHESIA AMENDMENTS

2017 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Michael S. Kennedy

Senate Sponsor: _____

LONG TITLE

General Description:

This bill amends professional licensing acts in the Division of Occupational and Professional Licensing Act to require informed consent and certain patient monitoring of patients who are sedated and establishes a database for adverse events.

Highlighted Provisions:

This bill:

- ▶ requires the Department of Health to:
 - create a database of adverse events from the administration of sedation or anesthesia in outpatient settings; and
 - publish a report regarding the number of adverse events by types of provider and facility and submit a yearly report to the Health and Human Services Interim Committee;
- ▶ requires a health care provider who administers sedation intravenously to a patient in an outpatient setting that is not an emergency department:
 - to obtain informed consent from the patient; and
 - to report adverse events from the sedation or anesthesia to the Department of Health;
- ▶ makes it unprofessional conduct to fail to report an adverse event from outpatient



26 sedation or anesthesia;

27 ▶ provides whistle blower protections to a health care provider who reports an
28 adverse event; and

29 ▶ requires a health care provider who administers sedation or anesthesia intravenously
30 to have access to a crash cart during the anesthesia procedure.

31 **Money Appropriated in this Bill:**

32 None

33 **Other Special Clauses:**

34 None

35 **Utah Code Sections Affected:**

36 AMENDS:

37 **58-5a-102**, as last amended by Laws of Utah 2015, Chapter 230

38 **58-31b-501**, as last amended by Laws of Utah 2006, Chapter 291

39 **58-67-501**, as last amended by Laws of Utah 2015, Chapter 110

40 **58-68-501**, as last amended by Laws of Utah 2015, Chapter 110

41 **58-69-501**, as last amended by Laws of Utah 2015, Chapter 343

42 **63I-1-226**, as last amended by Laws of Utah 2016, Chapters 89, 170, 279, and 327

43 ENACTS:

44 **26-1-40**, Utah Code Annotated 1953



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

47 Section 1. Section **26-1-40** is enacted to read:

48 **26-1-40. Reports of anesthesia adverse events- whistle blower protections.**

49 (1) (a) Beginning January 1, 2018, the department shall create a database of deaths and
50 adverse events from the administration of sedation or anesthesia in outpatient settings that are
51 not emergency departments in the state.

52 (b) The database required by Subsection (1)(a) shall include reports submitted by
53 health care providers under Sections [58-5a-102](#), [58-31b-501](#), [58-67-501](#), [58-68-501](#), and
54 [58-69-501](#).

55 (2) The department shall adopt administrative rules under Title 63G, Chapter 3, Utah
56 Administrative Rulemaking Act, regarding:

- 57 (a) the format of the reports; and
- 58 (b) what constitutes a reportable adverse event, which shall include at least the
- 59 administration of intravenous sedation or anesthesia when there is:
- 60 (i) an escalation of care required for the patient; or
- 61 (ii) a rescue of a patient from a deeper level of sedation than was intended.
- 62 (3) (a) Information the department receives under this section that identifies a
- 63 particular individual is subject to Title 63G, Chapter 2, Government Records Access and
- 64 Management Act, and the federal Health Insurance Portability and Accountability Act of 1996.
- 65 (b) Beginning July 1, 2018, and on or before July 1 of each year thereafter, the
- 66 department shall:
- 67 (i) publicly report:
- 68 (A) the number of deaths and adverse events reported under Subsection (1);
- 69 (B) the type of health care providers, by license category and specialty, who submitted
- 70 reports under Subsection (1) and who administered the sedation or anesthesia that resulted in
- 71 an adverse event; and
- 72 (C) the type of facility in which the death or adverse event took place; and
- 73 (ii) submit a report to the Health and Human Services Interim Committee with the
- 74 information required by this Subsection (3).
- 75 (4) An employer of a health care provider who submits a report under this section may
- 76 not take an adverse employment action against the reporting health care provider if the
- 77 employment action is based on the provider submitting a report under this section.
- 78 (5) (a) This section sunsets in accordance with Section [63I-1-226](#).
- 79 (b) The sunset review of this section shall include an analysis of:
- 80 (i) the number and types of adverse events reported under this section;
- 81 (ii) the types of health care providers and locations involved in the adverse events;
- 82 (iii) the adequacy of sedation and anesthesia requirements in Sections [58-5a-102](#),
- 83 [58-31b-501](#), [58-67-501](#), [58-68-501](#), and [58-69-501](#) related to the adverse events reported under
- 84 this section; and
- 85 (iv) the adequacy of the reporting requirements under this section and the need for
- 86 additional protections for health care providers who report events under this section.
- 87 Section 2. Section **58-5a-102** is amended to read:

88 **58-5a-102. Definitions.**

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

90 (1) "Board" means the Podiatric Physician Board created in Section 58-5a-201.

91 (2) "Indirect supervision" means the same as that term is defined by the division by
92 rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

93 (3) "Medical assistant" means an unlicensed individual working under the indirect
94 supervision of a licensed podiatric physician and engaging in specific tasks assigned by the
95 licensed podiatric physician in accordance with the standards and ethics of the podiatry
96 profession.

97 (4) "Practice of podiatry" means the diagnosis and treatment of conditions affecting the
98 human foot and ankle and their manifestations of systemic conditions by all appropriate and
99 lawful means, subject to Section 58-5a-103.

100 (5) "Unlawful conduct" includes:

101 (a) the conduct that constitutes unlawful conduct under Section 58-1-501; and

102 (b) for an individual who is not licensed under this chapter:

103 (i) using the title or name podiatric physician, podiatrist, podiatric surgeon, foot doctor,
104 foot specialist, or D.P.M.; or

105 (ii) implying or representing that the individual is qualified to practice podiatry.

106 (6) "Unprofessional conduct" includes, for an individual licensed under this chapter:

107 (a) the conduct that constitutes unprofessional conduct under Section 58-1-501;

108 (b) communicating to a third party, without the consent of the patient, information the
109 individual acquires in treating the patient, except as necessary for professional consultation
110 regarding treatment of the patient;

111 (c) allowing the individual's name or license to be used by an individual who is not
112 licensed to practice podiatry under this chapter;

113 (d) except as described in Section 58-5a-306, employing, directly or indirectly, any
114 unlicensed individual to practice podiatry;

115 (e) using alcohol or drugs, to the extent the individual's use of alcohol or drugs impairs
116 the individual's ability to practice podiatry;

117 (f) unlawfully prescribing, selling, or giving away any prescription drug, including
118 controlled substances, as defined in Section 58-37-2;

- 119 (g) gross incompetency in the practice of podiatry;
- 120 (h) willfully and intentionally making a false statement or entry in hospital records,
- 121 medical records, or reports;
- 122 (i) willfully making a false statement in reports or claim forms to governmental
- 123 agencies or insurance companies with the intent to secure payment not rightfully due;
- 124 (j) willfully using false or fraudulent advertising; ~~and~~
- 125 (k) conduct the division defines as unprofessional conduct by rule made in accordance
- 126 with Title 63G, Chapter 3, Utah Administrative Rulemaking Act[-]; and
- 127 (l) administering sedation or anesthesia intravenously to a patient in an outpatient
- 128 setting that is not an emergency department, without:
- 129 (i) first obtaining consent from the patient in writing, which shall include:
- 130 (A) the type of sedation or anesthesia being administered;
- 131 (B) the identity and training of the person who is performing the procedure for which
- 132 the sedation or anesthesia will be administered;
- 133 (C) the identity and training of the person who will be administering the sedation or
- 134 anesthesia;
- 135 (D) a list of all responsibilities during the procedure of the person who will be
- 136 administering the sedation or anesthesia; and
- 137 (E) patient monitoring that will occur during the sedation or anesthesia, including
- 138 monitoring equipment that will be used;
- 139 (ii) reporting any adverse event under Section [26-1-40](#); and
- 140 (iii) having access during the procedure to an advanced cardiac life support crash cart
- 141 with equipment that is regularly maintained according to guidelines established by the
- 142 American Hospital Association.

143 Section 3. Section **58-31b-501** is amended to read:

144 **58-31b-501. Unlawful conduct.**

145 "Unlawful conduct" includes:

- 146 (1) using the following titles, names or initials, if the user is not properly licensed or
- 147 certified under this chapter:
- 148 (a) nurse;
- 149 (b) licensed practical nurse, practical nurse, or L.P.N.;

- 150 (c) medication aide certified, or M.A.C.;
- 151 (d) registered nurse or R.N.;
- 152 (e) registered nurse practitioner, N.P., or R.N.P.;
- 153 (f) registered nurse specialist, N.S., or R.N.S.;
- 154 (g) registered psychiatric mental health nurse specialist;
- 155 (h) advanced practice registered nurse;
- 156 (i) nurse anesthetist, certified nurse anesthetist, certified registered nurse anesthetist, or
- 157 C.R.N.A.; or
- 158 (j) other generally recognized names or titles used in the profession of nursing;
- 159 (2) (a) using any other name, title, or initials that would cause a reasonable person to
- 160 believe the user is licensed or certified under this chapter if the user is not properly licensed or
- 161 certified under this chapter; and
- 162 (b) for purposes of Subsection (2)(a), it is unlawful conduct for a medication aide
- 163 certified to use the term "nurse"; ~~and~~
- 164 (3) conducting a nursing education program in the state for the purpose of qualifying
- 165 individuals to meet requirements for licensure under this chapter without the program having
- 166 been approved under Section [58-31b-601](#)~~[-]~~; and
- 167 (4) administering sedation or anesthesia intravenously to a patient in an outpatient
- 168 setting that is not an emergency department, without:
- 169 (i) first obtaining consent from the patient in writing, which shall include:
- 170 (A) the type of sedation or anesthesia being administered;
- 171 (B) the identity and training of the person who is performing the procedure for which
- 172 the sedation or anesthesia will be administered;
- 173 (C) the identity and training of the person who will be administering the sedation or
- 174 anesthesia;
- 175 (D) a list of all responsibilities during the procedure of the person who will be
- 176 administering the sedation or anesthesia; and
- 177 (E) patient monitoring that will occur during the sedation or anesthesia, including
- 178 monitoring equipment that will be used;
- 179 (ii) reporting any adverse event under Section [26-1-40](#); and
- 180 (iii) having access during the procedure to an advanced cardiac life support crash cart

181 with equipment that is regularly maintained according to guidelines established by the
182 American Hospital Association.

183 Section 4. Section **58-67-501** is amended to read:

184 **58-67-501. Unlawful conduct.**

185 (1) "Unlawful conduct" includes, in addition to the definition in Section **58-1-501**:

186 (a) buying, selling, or fraudulently obtaining, any medical diploma, license, certificate,
187 or registration;

188 (b) aiding or abetting the buying, selling, or fraudulently obtaining of any medical
189 diploma, license, certificate, or registration;

190 (c) substantially interfering with a licensee's lawful and competent practice of medicine
191 in accordance with this chapter by:

192 (i) any person or entity that manages, owns, operates, or conducts a business having a
193 direct or indirect financial interest in the licensee's professional practice; or

194 (ii) anyone other than another physician licensed under this title, who is engaged in
195 direct clinical care or consultation with the licensee in accordance with the standards and ethics
196 of the profession of medicine; [~~or~~]

197 (d) entering into a contract that limits a licensee's ability to advise the licensee's
198 patients fully about treatment options or other issues that affect the health care of the licensee's
199 patients[~~;~~]; or

200 (e) administering sedation or anesthesia intravenously to a patient in an outpatient
201 setting that is not an emergency department, without:

202 (i) first obtaining consent from the patient in writing, which shall include:

203 (A) the type of sedation or anesthesia being administered;

204 (B) the identity and training of the person who is performing the procedure for which
205 the sedation or anesthesia will be administered;

206 (C) the identity and training of the person who will be administering the sedation or
207 anesthesia;

208 (D) a list of all responsibilities during the procedure of the person who will be
209 administering the sedation or anesthesia; and

210 (E) patient monitoring that will occur during the sedation or anesthesia, including
211 monitoring equipment that will be used;

212 (ii) reporting any adverse event under Section 26-1-40; and
213 (iii) having access during the procedure to an advanced cardiac life support crash cart
214 with equipment that is regularly maintained according to guidelines established by the
215 American Hospital Association.

216 (2) "Unlawful conduct" does not include:

217 (a) establishing, administering, or enforcing the provisions of a policy of accident and
218 health insurance by an insurer doing business in this state in accordance with Title 31A,
219 Insurance Code;

220 (b) adopting, implementing, or enforcing utilization management standards related to
221 payment for a licensee's services, provided that:

222 (i) utilization management standards adopted, implemented, and enforced by the payer
223 have been approved by a physician or by a committee that contains one or more physicians; and

224 (ii) the utilization management standards does not preclude a licensee from exercising
225 independent professional judgment on behalf of the licensee's patients in a manner that is
226 independent of payment considerations;

227 (c) developing and implementing clinical practice standards that are intended to reduce
228 morbidity and mortality or developing and implementing other medical or surgical practice
229 standards related to the standardization of effective health care practices, provided that:

230 (i) the practice standards and recommendations have been approved by a physician or
231 by a committee that contains one or more physicians; and

232 (ii) the practice standards do not preclude a licensee from exercising independent
233 professional judgment on behalf of the licensee's patients in a manner that is independent of
234 payment considerations;

235 (d) requesting or recommending that a patient obtain a second opinion from a licensee;

236 (e) conducting peer review, quality evaluation, quality improvement, risk management,
237 or similar activities designed to identify and address practice deficiencies with health care
238 providers, health care facilities, or the delivery of health care;

239 (f) providing employment supervision or adopting employment requirements that do
240 not interfere with the licensee's ability to exercise independent professional judgment on behalf
241 of the licensee's patients, provided that employment requirements that may not be considered to
242 interfere with an employed licensee's exercise of independent professional judgment include:

243 (i) an employment requirement that restricts the licensee's access to patients with
244 whom the licensee's employer does not have a contractual relationship, either directly or
245 through contracts with one or more third-party payers; or

246 (ii) providing compensation incentives that are not related to the treatment of any
247 particular patient;

248 (g) providing benefit coverage information, giving advice, or expressing opinions to a
249 patient or to a family member of a patient to assist the patient or family member in making a
250 decision about health care that has been recommended by a licensee;

251 (h) in compliance with Section 58-85-103:

252 (i) obtaining an investigational drug or investigational device;

253 (ii) administering the investigational drug to an eligible patient; or

254 (iii) treating an eligible patient with the investigational drug or investigational device;

255 or

256 (i) any otherwise lawful conduct that does not substantially interfere with the licensee's
257 ability to exercise independent professional judgment on behalf of the licensee's patients and
258 that does not constitute the practice of medicine as defined in this chapter.

259 Section 5. Section 58-68-501 is amended to read:

260 **58-68-501. Unlawful conduct.**

261 (1) "Unlawful conduct" includes, in addition to the definition in Section 58-1-501:

262 (a) buying, selling, or fraudulently obtaining any osteopathic medical diploma, license,
263 certificate, or registration; and

264 (b) aiding or abetting the buying, selling, or fraudulently obtaining of any osteopathic
265 medical diploma, license, certificate, or registration;

266 (c) substantially interfering with a licensee's lawful and competent practice of medicine
267 in accordance with this chapter by:

268 (i) any person or entity that manages, owns, operates, or conducts a business having a
269 direct or indirect financial interest in the licensee's professional practice; or

270 (ii) anyone other than another physician licensed under this title, who is engaged in
271 direct clinical care or consultation with the licensee in accordance with the standards and ethics
272 of the profession of medicine; [or]

273 (d) entering into a contract that limits a licensee's ability to advise the licensee's

274 patients fully about treatment options or other issues that affect the health care of the licensee's
275 patients[-]; or

276 (e) administering sedation or anesthesia intravenously to a patient in an outpatient
277 setting that is not an emergency department, without:

278 (i) first obtaining consent from the patient in writing, which shall include:

279 (A) the type of sedation or anesthesia being administered;

280 (B) the identity and training of the person who is performing the procedure for which
281 the sedation or anesthesia will be administered;

282 (C) the identity and training of the person who will be administering the sedation or
283 anesthesia;

284 (D) a list of all responsibilities during the procedure of the person who will be
285 administering the sedation or anesthesia; and

286 (E) patient monitoring that will occur during the sedation or anesthesia, including
287 monitoring equipment that will be used;

288 (ii) reporting any adverse event under Section [26-1-40](#); and

289 (iii) having access during the procedure to an advanced cardiac life support crash cart
290 with equipment that is regularly maintained according to guidelines established by the
291 American Hospital Association.

292 (2) "Unlawful conduct" does not include:

293 (a) establishing, administering, or enforcing the provisions of a policy of accident and
294 health insurance by an insurer doing business in this state in accordance with Title 31A,
295 Insurance Code;

296 (b) adopting, implementing, or enforcing utilization management standards related to
297 payment for a licensee's services, provided that:

298 (i) utilization management standards adopted, implemented, and enforced by the payer
299 have been approved by a physician or by a committee that contains one or more physicians; and

300 (ii) the utilization management standards does not preclude a licensee from exercising
301 independent professional judgment on behalf of the licensee's patients in a manner that is
302 independent of payment considerations;

303 (c) developing and implementing clinical practice standards that are intended to reduce
304 morbidity and mortality or developing and implementing other medical or surgical practice

305 standards related to the standardization of effective health care practices, provided that:

306 (i) the practice standards and recommendations have been approved by a physician or
307 by a committee that contains one or more physicians; and

308 (ii) the practice standards do not preclude a licensee from exercising independent
309 professional judgment on behalf of the licensee's patients in a manner that is independent of
310 payment considerations;

311 (d) requesting or recommending that a patient obtain a second opinion from a licensee;

312 (e) conducting peer review, quality evaluation, quality improvement, risk management,
313 or similar activities designed to identify and address practice deficiencies with health care
314 providers, health care facilities, or the delivery of health care;

315 (f) providing employment supervision or adopting employment requirements that do
316 not interfere with the licensee's ability to exercise independent professional judgment on behalf
317 of the licensee's patients, provided that employment requirements that may not be considered to
318 interfere with an employed licensee's exercise of independent professional judgment include:

319 (i) an employment requirement that restricts the licensee's access to patients with
320 whom the licensee's employer does not have a contractual relationship, either directly or
321 through contracts with one or more third-party payers; or

322 (ii) providing compensation incentives that are not related to the treatment of any
323 particular patient;

324 (g) providing benefit coverage information, giving advice, or expressing opinions to a
325 patient or to a family member of a patient to assist the patient or family member in making a
326 decision about health care that has been recommended by a licensee;

327 (h) in compliance with Section [58-85-103](#):

328 (i) obtaining an investigational drug or investigational device;

329 (ii) administering the investigational drug to an eligible patient; or

330 (iii) treating an eligible patient with the investigational drug or investigational device;

331 or

332 (i) any otherwise lawful conduct that does not substantially interfere with the licensee's
333 ability to exercise independent professional judgment on behalf of the licensee's patients and
334 that does not constitute the practice of medicine as defined in this chapter.

335 Section 6. Section **58-69-501** is amended to read:

336 **58-69-501. Unlawful conduct.**

337 "Unlawful conduct" includes, in addition to the definition in Section 58-1-501:

338 (1) administering anesthesia or analgesia in the practice of dentistry or dental hygiene
339 if:

340 (a) the individual does not hold a current permit issued by the division authorizing that
341 individual to administer the type of anesthesia or analgesia used; or

342 (b) administering sedation or anesthesia intravenously to a patient in an outpatient
343 setting that is not an emergency department, without:

344 (i) first obtaining consent from the patient in writing, which shall include:

345 (A) the type of sedation or anesthesia being administered;

346 (B) the identity and training of the person who is performing the procedure for which
347 the sedation or anesthesia will be administered;

348 (C) the identity and training of the person who will be administering the sedation or
349 anesthesia;

350 (D) a list of all responsibilities during the procedure of the person who will be
351 administering the sedation or anesthesia; and

352 (E) patient monitoring that will occur during the anesthesia, including monitoring
353 equipment that will be used;

354 (ii) reporting any adverse event under Section 26-1-40; and

355 (iii) having access during the procedure to an advanced cardiac life support crash cart
356 with equipment that is regularly maintained according to guidelines established by the
357 American Hospital Association.

358 (2) practice of dental hygiene by a licensed dental hygienist when not under the
359 supervision of a dentist, or under a written agreement with a dentist who is licensed under this
360 chapter and who is a Utah resident, in accordance with the provisions of this chapter; or

361 (3) directing or interfering with a licensed dentist's judgment and competent practice of
362 dentistry.

363 Section 7. Section 63I-1-226 is amended to read:

364 **63I-1-226. Repeal dates, Title 26.**

365 (1) Section 26-1-40 is repealed July 1, 2021.

366 [(+)] (2) Title 26, Chapter 9f, Utah Digital Health Service Commission Act, is repealed

367 July 1, 2025.

368 [~~(2)~~] (3) Section 26-10-11 is repealed July 1, 2020.

369 [~~(3)~~] (4) Section 26-21-23, Licensing of non-Medicaid nursing care facility beds, is
370 repealed July 1, 2018.

371 [~~(4)~~] (5) Title 26, Chapter 33a, Utah Health Data Authority Act, is repealed July 1,
372 2024.

373 [~~(5)~~] (6) Title 26, Chapter 36a, Hospital Provider Assessment Act, is repealed July 1,
374 2019.

375 [~~(6)~~] (7) Title 26, Chapter 36b, Inpatient Hospital Assessment Act, is repealed July 1,
376 2021.

377 [~~(7)~~] (8) Section 26-38-2.5 is repealed July 1, 2017.

378 [~~(8)~~] (9) Section 26-38-2.6 is repealed July 1, 2017.

379 [~~(9) Title 26, Chapter 52, Autism Treatment Account, is repealed July 1, 2016.;~~]

380 (10) Title 26, Chapter 56, Hemp Extract Registration Act, is repealed July 1, 2021.