

## HB0142S02 compared with HB0142S01

~~text~~ shows text that was in HB0142S01 but was deleted in HB0142S02.

Inserted text shows text that was not in HB0142S01 but was inserted into HB0142S02.

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**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: \_\_\_\_\_

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#### 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;

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- ▶ requires a health care ~~{providers}~~provider who ~~{administer certain}~~administers sedation ~~{or anesthesia to a patient}~~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 sedation or anesthesia;
- ▶ provides whistle blower protections to a health care provider who reports an adverse event; and
- ▶ requires a health care provider who administers sedation or anesthesia intravenously to have access to a crash cart during the anesthesia procedure.

### Money Appropriated in this Bill:

None

### Other Special Clauses:

None

### Utah Code Sections Affected:

AMENDS:

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

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

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

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

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

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

ENACTS:

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

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

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

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

**(1) (a) Beginning January 1, 2018, the department shall create a database of deaths and**

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adverse events from the administration of sedation or anesthesia in outpatient settings [that are not emergency departments](#) in the state.

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

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

(a) the format of the reports; and

(b) what constitutes a reportable adverse event, which shall include at least the administration of intravenous sedation or anesthesia when there is:

(i) an escalation of care required for the patient; or

(ii) a rescue of a patient from a deeper level of sedation than was intended.

(3) (a) Information the department receives under this section that identifies a particular individual is subject to Title 63G, Chapter 2, Government Records Access and Management Act, and the federal Health Insurance Portability and Accountability Act of 1996.

(b) Beginning July 1, 2018, and on or before July 1 of each year thereafter, the department shall:

(i) publicly report:

(A) the number of deaths and adverse events reported under Subsection (1);

(B) the type of health care providers, by license category and specialty, who submitted reports under Subsection (1) and who administered the sedation or anesthesia that resulted in an adverse event; and

(C) the type of facility in which the death or adverse event took place; and

(ii) submit a report to the Health and Human Services Interim Committee with the information required by this Subsection (3).

(4) An employer of a health care provider who submits a report under this section may not take an adverse employment action against the reporting health care provider if the employment action is based on the provider submitting a report under this section.

(5) (a) This section sunsets in accordance with Section 63I-1-226.

(b) The sunset review of this section shall include an analysis of:

(i) the number and types of adverse events reported under this section;

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(ii) the types of health care providers and locations involved in the adverse events;

(iii) the adequacy of sedation and anesthesia requirements in Sections 58-5a-102, 58-31b-501, 58-67-501, 58-68-501, and 58-69-501 related to the adverse events reported under this section; and

(iv) the adequacy of the reporting requirements under this section and the need for additional protections for health care providers who report events under this section.

Section 2. Section **58-5a-102** is amended to read:

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

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

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

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

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

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

(5) "Unlawful conduct" includes:

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

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

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

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

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

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

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

(c) allowing the individual's name or license to be used by an individual who is not

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licensed to practice podiatry under this chapter;

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

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

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

(g) gross incompetency in the practice of podiatry;

(h) willfully and intentionally making a false statement or entry in hospital records, medical records, or reports;

(i) willfully making a false statement in reports or claim forms to governmental agencies or insurance companies with the intent to secure payment not rightfully due;

(j) willfully using false or fraudulent advertising; [~~and~~]

(k) conduct the division defines as unprofessional conduct by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act[-]; and

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

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

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

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

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

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

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

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

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

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

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

"Unlawful conduct" includes:

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

- (a) nurse;
- (b) licensed practical nurse, practical nurse, or L.P.N.;
- (c) medication aide certified, or M.A.C.;
- (d) registered nurse or R.N.;
- (e) registered nurse practitioner, N.P., or R.N.P.;
- (f) registered nurse specialist, N.S., or R.N.S.;
- (g) registered psychiatric mental health nurse specialist;
- (h) advanced practice registered nurse;
- (i) nurse anesthetist, certified nurse anesthetist, certified registered nurse anesthetist, or C.R.N.A.; or

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

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

(b) for purposes of Subsection (2)(a), it is unlawful conduct for a medication aide certified to use the term "nurse"; ~~and~~

(3) conducting a nursing education program in the state for the purpose of qualifying individuals to meet requirements for licensure under this chapter without the program having been approved under Section 58-31b-601[-]; ~~and~~

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

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

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

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

(C) the identity and training of the person who will be administering the sedation or

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anesthesia:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(B) the identity and training of the person who is performing the procedure for which

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the sedation or anesthesia will be administered:

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

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

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

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

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

(2) "Unlawful conduct" does not include:

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

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

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

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

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

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

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

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



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

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

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

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

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

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

(i) obtaining an investigational drug or investigational device;

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

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

or

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

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

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

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

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

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

(c) substantially interfering with a licensee's lawful and competent practice of medicine

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in accordance with this chapter by:

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

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

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

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

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

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

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

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

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

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

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

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

(2) "Unlawful conduct" does not include:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) obtaining an investigational drug or investigational device;

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- (ii) administering the investigational drug to an eligible patient; or
- (iii) treating an eligible patient with the investigational drug or investigational device;

or

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

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

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

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

- (1) administering anesthesia or analgesia in the practice of dentistry or dental hygiene

if:

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

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

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

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

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

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

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

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

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

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

(2) practice of dental hygiene by a licensed dental hygienist when not under the supervision of a dentist, or under a written agreement with a dentist who is licensed under this

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chapter and who is a Utah resident, in accordance with the provisions of this chapter; or

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

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

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

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

~~[(1)]~~ (2) Title 26, Chapter 9f, Utah Digital Health Service Commission Act, is repealed July 1, 2025.

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

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

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

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

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

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

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

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

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