

DELEGATION OF HEALTH CARE SERVICES AMENDMENTS

2020 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Raymond P. Ward

Senate Sponsor: Kirk A. Cullimore

LONG TITLE

General Description:

This bill addresses delegation of the performance of health care services.

Highlighted Provisions:

This bill:

- defines terms and modifies definitions;
- requires the Division of Occupational and Professional Licensing, in consultation with the Department of Health, to identify by administrative rule health care services that a health care provider is not required to delegate before an unlicensed individual may perform the services;
- subject to certain requirements, allows an individual's caregiver to delegate the performance of routine nursing care for the individual to an unlicensed individual;
- and
- makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

58-31b-102, as last amended by Laws of Utah 2019, Chapter 233

ENACTS:

29 **58-1-307.1**, Utah Code Annotated 1953

30 **58-31b-308.1**, Utah Code Annotated 1953

31

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

33 Section 1. Section **58-1-307.1** is enacted to read:

34 **58-1-307.1. Delegation of health care services -- Division duties.**

35 The division, in consultation with the Department of Health, shall identify by rule made
36 in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, a list of health
37 care services that an unlicensed individual may perform without delegation by a health care
38 provider, as defined in Section **78B-3-403**, regardless of the setting or licensing of the facility
39 in which the health care services are performed.

40 Section 2. Section **58-31b-102** is amended to read:

41 **58-31b-102. Definitions.**

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

43 (1) "Administrative penalty" means a monetary fine or citation imposed by the division
44 for acts or omissions determined to ~~constitute~~ be unprofessional or unlawful conduct in
45 accordance with a fine schedule established by division rule made in accordance with Title
46 63G, Chapter 3, Utah Administrative Rulemaking Act, and as a result of an adjudicative
47 proceeding conducted in accordance with Title 63G, Chapter 4, Administrative Procedures Act.

48 (2) "Applicant" means ~~a person~~ an individual who applies for licensure or
49 certification under this chapter by submitting a completed application for licensure or
50 certification and the required fees to the department.

51 (3) "Approved education program" means a nursing education program that is
52 accredited by an accrediting body for nursing education that is approved by the United States
53 Department of Education.

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

55 (5) "Consultation and referral plan" means a written plan jointly developed by an

advanced practice registered nurse and, except as provided in Subsection 58-31b-803(4), a consulting physician that permits the advanced practice registered nurse to prescribe Schedule II controlled substances in consultation with the consulting physician.

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

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

(8) "Examinee" means ~~[a person]~~ an individual who applies to take or does take any examination required under this chapter for licensure.

(9) "Licensee" means ~~[a person]~~ an individual who is licensed or certified under this chapter.

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

- (a) a nursing care facility;
- (b) a small health care facility;
- (c) an intermediate care facility for people with an intellectual disability;
- (d) an assisted living facility Type I or II; or
- (e) a designated swing bed unit in a general hospital.

(11) "Medication aide certified" means a certified nurse aide who:

- (a) has a minimum of 2,000 hours experience working as a certified nurse aide;
- (b) has received a minimum of 60 hours of classroom and 40 hours of practical training that is approved by the division in collaboration with the board, in administering routine medications to patients or residents of long-term care facilities; and

(c) is certified by the division as a medication aide certified.

(12) "Pain clinic" means the same as that term is defined in Section 58-1-102.

(13) (a) "Practice as a medication aide certified" means the limited practice of nursing under the supervision, as defined by the division by [administrative] rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, of a licensed nurse, involving routine patient care that requires minimal or limited specialized or general knowledge, judgment, and skill, to an individual who:

(i) is ill, injured, infirm, has a physical, mental, developmental, or intellectual disability; and

(ii) is in a regulated long-term care facility.

(b) "Practice as a medication aide certified":

(i) includes:

(A) providing direct personal assistance or care; and

(B) administering routine medications to patients in accordance with a formulary and protocols to be defined by the division by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act; and

(ii) does not include assisting a resident of an assisted living facility, a long term care facility, or an intermediate care facility for people with an intellectual disability to self administer a medication, as regulated by the Department of Health by [administrative] rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

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

(a) maintenance and promotion of health and prevention of disease;

- 110 (b) diagnosis, treatment, correction, consultation, and referral for common health
111 problems;
- 112 (c) prescription or administration of prescription drugs or devices including:
113 (i) local anesthesia;
114 (ii) Schedule III-V controlled substances; and
115 (iii) Subject to Section 58-31b-803, Schedule II controlled substances; or
- 116 (d) the provision of preoperative, intraoperative, and postoperative anesthesia care and
117 related services upon the request of a licensed health care professional by an advanced practice
118 registered nurse specializing as a certified registered nurse anesthetist, including:
- 119 (i) preanesthesia preparation and evaluation including:
120 (A) performing a preanesthetic assessment of the patient;
121 (B) ordering and evaluating appropriate lab and other studies to determine the health of
122 the patient; and
- 123 (C) selecting, ordering, or administering appropriate medications;
- 124 (ii) anesthesia induction, maintenance, and emergence, including:
125 (A) selecting and initiating the planned anesthetic technique;
126 (B) selecting and administering anesthetics and adjunct drugs and fluids; and
127 (C) administering general, regional, and local anesthesia;
- 128 (iii) postanesthesia follow-up care, including:
129 (A) evaluating the patient's response to anesthesia and implementing corrective
130 actions; and
- 131 (B) selecting, ordering, or administering the medications and studies listed in
132 Subsection (14)(d); and
- 133 (iv) other related services within the scope of practice of a certified registered nurse
134 anesthetist, including:
135 (A) emergency airway management;
136 (B) advanced cardiac life support; and

(C) the establishment of peripheral, central, and arterial invasive lines; and
(v) for purposes of Subsection (14)(d), "upon the request of a licensed health care professional":

(A) means a health care professional practicing within the scope of the health care professional's license, requests anesthesia services for a specific patient; and

(B) does not require an advanced practice registered nurse specializing as a certified registered nurse anesthetist to enter into a consultation and referral plan or obtain additional authority to select, administer, or provide preoperative, intraoperative, or postoperative anesthesia care and services.

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

- (a) initiating and maintaining comfort measures;
- (b) promoting and supporting human functions and responses;
- (c) establishing an environment conducive to well-being;
- (d) providing health counseling and teaching;
- (e) collaborating with health care professionals on aspects of the health care regimen;
- (f) performing delegated procedures only within the education, knowledge, judgment, and skill of the licensee;~~[- and]~~
- (g) delegating ~~[nurse interventions]~~ nursing tasks that may be performed by others ~~[and are not in conflict with this chapter.]~~, including an unlicensed assistive personnel; and
- (h) supervising an individual to whom a task is delegated under Subsection (15)(g) as the individual performs the task.

(16) "Practice of practical nursing" means the performance of nursing acts in the generally recognized scope of practice of licensed practical nurses as defined by division rule

made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, and as provided in this Subsection (16) by [~~a person~~] an individual licensed under this chapter as a licensed practical nurse and under the direction of a registered nurse, licensed physician, or other specified health care professional as defined by division rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act. Practical nursing acts include:

- (a) contributing to the assessment of the health status of individuals and groups;
- (b) participating in the development and modification of the strategy of care;
- (c) implementing appropriate aspects of the strategy of care;
- (d) maintaining safe and effective nursing care rendered to a patient directly or indirectly; and
- (e) participating in the evaluation of responses to interventions.

(17) "Practice of registered nursing" means performing acts of nursing as provided in this Subsection (17) by [~~a person~~] an individual licensed under this chapter as a registered nurse within the generally recognized scope of practice of registered nurses as defined by division rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act. Registered nursing acts include:

- (a) assessing the health status of individuals and groups;
- (b) identifying health care needs;
- (c) establishing goals to meet identified health care needs;
- (d) planning a strategy of care;
- (e) prescribing nursing interventions to implement the strategy of care;
- (f) implementing the strategy of care;
- (g) maintaining safe and effective nursing care that is rendered to a patient directly or indirectly;
- (h) evaluating responses to interventions;
- (i) teaching the theory and practice of nursing; and
- (j) managing and supervising the practice of nursing.

(18) "Routine medications":

(a) means established medications administered to a medically stable individual as determined by a licensed health care practitioner or in consultation with a licensed medical practitioner; and

(b) is limited to medications that are administered by the following routes:

(i) oral;

(ii) sublingual;

(iii) buccal;

(iv) eye;

(v) ear;

(vi) nasal;

(vii) rectal;

(viii) vaginal;

(ix) skin ointments, topical including patches and transdermal;

(x) premeasured medication delivered by aerosol/nebulizer; and

(xi) medications delivered by metered hand-held inhalers.

(19) "Unlawful conduct" means the same as that term is defined in Sections 58-1-501 and 58-31b-501.

(20) "Unlicensed assistive personnel" means any unlicensed ~~[person]~~ individual, regardless of title, ~~[to whom tasks are]~~ who is delegated a task by a licensed nurse as permitted by division rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, and ~~[in accordance with]~~ the standards of the profession.

(21) "Unprofessional conduct" means the same as that term is defined in Sections 58-1-501 and 58-31b-502 and as may be further defined by division rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

Section 3. Section 58-31b-308.1 is enacted to read:

58-31b-308.1. Delegation of nursing care by a responsible caregiver.

(1) As used in this section:

(a) "Patient" means an individual who is receiving nursing care from a responsible caregiver.

(b) "Responsible caregiver" means a patient's spouse, adult child, parent, foster parent, or legal guardian who is primarily responsible for providing nursing care to the patient.

(c) "Unlicensed direct care worker" means any unlicensed individual, regardless of title, who is 18 years of age or older and to whom a responsible caregiver delegates under this section.

(2) A responsible caregiver may delegate to an unlicensed direct care worker the performance of nursing care for a patient if:

(a) the nursing care is provided to the patient at the residence in which the patient and responsible caregiver regularly reside;

(b) the patient's condition is stable;

(c) the responsible caregiver routinely provides the nursing care for the patient;

(d) the nursing care is considered routine care for the patient; and

(e) performance of the nursing care:

(i) poses little potential hazard for the patient; and

(ii) is generally expected to produce a predictable outcome for the patient.

(3) Before an unlicensed direct care worker may perform nursing care delegated under Subsection (2), the responsible caregiver shall train the unlicensed direct care worker to perform the nursing care and verify the unlicensed direct care worker is able to competently perform the nursing care for the patient after training is complete.