

1 **DELEGATION OF HEALTH CARE SERVICES AMENDMENTS**

2 2020 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Raymond P. Ward**

5 Senate Sponsor: \_\_\_\_\_

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**LONG TITLE**

7 **General Description:**

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

9 **Highlighted Provisions:**

10 This bill:

11 ▶ defines terms and modifies definitions;

12 ▶ requires the Division of Occupational and Professional Licensing, in consultation  
13 with the Department of Health, to identify by administrative rule health care  
14 services that a health care provider is not required to delegate before an unlicensed  
15 individual may perform the services;

16 ▶ subject to certain requirements, allows an individual's caregiver to delegate the  
17 performance of routine medical care for the individual to an unlicensed individual;

18 and

19 ▶ makes technical changes.

20 **Money Appropriated in this Bill:**

21 None

22 **Other Special Clauses:**

23 None

24 **Utah Code Sections Affected:**

25 AMENDS:

26 **58-31b-102**, as last amended by Laws of Utah 2019, Chapter 233



28 ENACTS:

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

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

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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](#).

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

40 **58-31b-102. Definitions.**

41 In addition to the definitions in Section [58-1-102](#), as used in this chapter:

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

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

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

53 (4) "Board" means the Board of Nursing created in Section [58-31b-201](#).

54 (5) "Consultation and referral plan" means a written plan jointly developed by an  
55 advanced practice registered nurse and, except as provided in Subsection [58-31b-803\(4\)](#), a  
56 consulting physician that permits the advanced practice registered nurse to prescribe Schedule  
57 II controlled substances in consultation with the consulting physician.

58 (6) "Consulting physician" means a physician and surgeon or osteopathic physician and

59 surgeon licensed in accordance with this title who has agreed to consult with an advanced  
60 practice registered nurse with a controlled substance license, a DEA registration number, and  
61 who will be prescribing Schedule II controlled substances.

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

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

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

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

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

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

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

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

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

- 89 (i) is ill, injured, infirm, has a physical, mental, developmental, or intellectual

90 disability; and

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

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

93 (i) includes:

94 (A) providing direct personal assistance or care; and

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

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

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

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

109 (b) diagnosis, treatment, correction, consultation, and referral for common health  
110 problems;

111 (c) prescription or administration of prescription drugs or devices including:

112 (i) local anesthesia;

113 (ii) Schedule III-V controlled substances; and

114 (iii) Subject to Section [58-31b-803](#), Schedule II controlled substances; or

115 (d) the provision of preoperative, intraoperative, and postoperative anesthesia care and  
116 related services upon the request of a licensed health care professional by an advanced practice  
117 registered nurse specializing as a certified registered nurse anesthetist, including:

118 (i) preanesthesia preparation and evaluation including:

119 (A) performing a preanesthetic assessment of the patient;

120 (B) ordering and evaluating appropriate lab and other studies to determine the health of

121 the patient; and

122 (C) selecting, ordering, or administering appropriate medications;

123 (ii) anesthesia induction, maintenance, and emergence, including:

124 (A) selecting and initiating the planned anesthetic technique;

125 (B) selecting and administering anesthetics and adjunct drugs and fluids; and

126 (C) administering general, regional, and local anesthesia;

127 (iii) postanesthesia follow-up care, including:

128 (A) evaluating the patient's response to anesthesia and implementing corrective

129 actions; and

130 (B) selecting, ordering, or administering the medications and studies listed in

131 Subsection (14)(d); and

132 (iv) other related services within the scope of practice of a certified registered nurse

133 anesthetist, including:

134 (A) emergency airway management;

135 (B) advanced cardiac life support; and

136 (C) the establishment of peripheral, central, and arterial invasive lines; and

137 (v) for purposes of Subsection (14)(d), "upon the request of a licensed health care

138 professional":

139 (A) means a health care professional practicing within the scope of the health care

140 professional's license, requests anesthesia services for a specific patient; and

141 (B) does not require an advanced practice registered nurse specializing as a certified

142 registered nurse anesthetist to enter into a consultation and referral plan or obtain additional

143 authority to select, administer, or provide preoperative, intraoperative, or postoperative

144 anesthesia care and services.

145 (15) "Practice of nursing" means assisting individuals or groups to maintain or attain

146 optimal health, implementing a strategy of care to accomplish defined goals and evaluating

147 responses to care and treatment[~~—The practice of nursing~~] and requires substantial specialized

148 or general knowledge, judgment, and skill based upon principles of the biological, physical,

149 behavioral, and social sciences[~~—and~~]. "Practice of nursing" includes:

150 (a) initiating and maintaining comfort measures;

151 (b) promoting and supporting human functions and responses;

- 152 (c) establishing an environment conducive to well-being;  
153 (d) providing health counseling and teaching;  
154 (e) collaborating with health care professionals on aspects of the health care regimen;  
155 (f) performing delegated procedures only within the education, knowledge, judgment,

156 and skill of the licensee; ~~and~~

- 157 (g) delegating ~~[nurse interventions]~~ nursing tasks that may be performed by others ~~[and~~  
158 ~~are not in conflict with this chapter]~~, including an unlicensed assistive personnel; and

- 159 (h) supervising an individual to whom a task is delegated under Subsection (15)(g) as  
160 the individual performs the task.

161 (16) "Practice of practical nursing" means the performance of nursing acts in the  
162 generally recognized scope of practice of licensed practical nurses as defined by division rule  
163 made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, and as  
164 provided in this Subsection (16) by ~~[a person]~~ an individual licensed under this chapter as a  
165 licensed practical nurse and under the direction of a registered nurse, licensed physician, or  
166 other specified health care professional as defined by division rule made in accordance with  
167 Title 63G, Chapter 3, Utah Administrative Rulemaking Act. Practical nursing acts include:

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

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

- 179 (a) assessing the health status of individuals and groups;  
180 (b) identifying health care needs;  
181 (c) establishing goals to meet identified health care needs;  
182 (d) planning a strategy of care;

- 183 (e) prescribing nursing interventions to implement the strategy of care;
- 184 (f) implementing the strategy of care;
- 185 (g) maintaining safe and effective nursing care that is rendered to a patient directly or
- 186 indirectly;
- 187 (h) evaluating responses to interventions;
- 188 (i) teaching the theory and practice of nursing; and
- 189 (j) managing and supervising the practice of nursing.

190 (18) "Routine medications":

191 (a) means established medications administered to a medically stable individual as

192 determined by a licensed health care practitioner or in consultation with a licensed medical

193 practitioner; and

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

- 195 (i) oral;
- 196 (ii) sublingual;
- 197 (iii) buccal;
- 198 (iv) eye;
- 199 (v) ear;
- 200 (vi) nasal;
- 201 (vii) rectal;
- 202 (viii) vaginal;
- 203 (ix) skin ointments, topical including patches and transdermal;
- 204 (x) premeasured medication delivered by aerosol/nebulizer; and
- 205 (xi) medications delivered by metered hand-held inhalers.

206 (19) "Unlawful conduct" means the same as that term is defined in Sections [58-1-501](#)

207 and [58-31b-501](#).

208 (20) "Unlicensed assistive personnel" means any unlicensed ~~[person]~~ individual,

209 regardless of title, ~~[to whom tasks are]~~ who is delegated a task by a licensed nurse as permitted

210 by division rule made in accordance with Title 63G, Chapter 3, Utah Administrative

211 Rulemaking Act, and ~~[in accordance with]~~ the standards of the profession.

212 (21) "Unprofessional conduct" means the same as that term is defined in Sections

213 [58-1-501](#) and [58-31b-502](#) and as may be further defined by division rule made in accordance

214 with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

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

216 **58-31b-308.1. Delegation of medical care by a responsible caregiver.**

217 (1) As used in this section:

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

220 (b) (i) "Residence" means the location that an individual regularly resides.

221 (ii) "Residence" does not include a health care facility licensed under Title 26, Chapter  
222 21, Health Care Facility Licensing and Inspection Act.

223 (c) "Responsible caregiver" means a patient's parent, foster parent, or legal guardian  
224 who is primarily responsible for providing medical care to the patient in the patient's residence.

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

228 (2) A responsible caregiver may delegate the performance of medical care for a patient  
229 in the patient's residence to an unlicensed direct care worker if:

230 (a) the patient's condition is stable;

231 (b) the responsible caregiver routinely provides the medical care for the patient;

232 (c) the medical care is considered routine care for the patient; and

233 (d) performance of the medical care:

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

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

236 (3) Before an unlicensed direct care worker may perform medical care delegated under  
237 Subsection (2), the primary caregiver shall:

238 (a) train the unlicensed direct care worker to perform the medical care and verify the  
239 unlicensed direct care worker is able to competently perform the medical care for the patient  
240 after training is complete; and

241 (b) provide the unlicensed direct care worker:

242 (i) written instructions detailing how to perform the medical care; and

243 (ii) a written delegation plan that includes:

244 (A) an explanation of risks that may be associated with performance of the medical

245 care; and

246 (B) an emergency plan to be followed if providing the medical care results in an

247 unforeseeable outcome.