

Representative Raymond P. Ward proposes the following substitute bill:

DELEGATION OF HEALTH CARE SERVICES AMENDMENTS

2020 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Raymond P. Ward

Senate Sponsor: _____

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; and
 - nursing tasks that a nurse may not delegate;
 - ▶ subject to certain requirements, allows an individual's caregiver to delegate the performance of routine medical care for the individual to an unlicensed individual;
- and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None



26 **Utah Code Sections Affected:**

27 AMENDS:

28 **58-31b-102**, as last amended by Laws of Utah 2019, Chapter 233

29 ENACTS:

30 **58-31b-104**, Utah Code Annotated 1953

31 **58-1-307.1**, Utah Code Annotated 1953

32 **58-31b-308.1**, Utah Code Annotated 1953

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

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

36 **58-1-307.1. Delegation of health care services -- Division duties.**

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

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

43 **58-31b-102. Definitions.**

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

45 (1) "Administrative penalty" means a monetary fine or citation imposed by the division
46 for acts or omissions determined to ~~constitute~~ be unprofessional or unlawful conduct in
47 accordance with a fine schedule established by division rule made in accordance with Title
48 63G, Chapter 3, Utah Administrative Rulemaking Act and as a result of an adjudicative
49 proceeding conducted in accordance with Title 63G, Chapter 4, Administrative Procedures Act.

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

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

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

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

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

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

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

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

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

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

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

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

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

87 (13) (a) "Practice as a medication aide certified" means the limited practice of nursing

88 under the supervision, as defined by the division by [administrative] rule made in accordance
89 with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, of a licensed nurse, involving
90 routine patient care that requires minimal or limited specialized or general knowledge,
91 judgment, and skill, to an individual who:

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

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

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

96 (i) includes:

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

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

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

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

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

112 (b) diagnosis, treatment, correction, consultation, and referral for common health
113 problems;

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

115 (i) local anesthesia;

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

117 (iii) Subject to Section 58-31b-803, Schedule II controlled substances; or

118 (d) the provision of preoperative, intraoperative, and postoperative anesthesia care and

119 related services upon the request of a licensed health care professional by an advanced practice
120 registered nurse specializing as a certified registered nurse anesthetist, including:

121 (i) preanesthesia preparation and evaluation including:

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

123 (B) ordering and evaluating appropriate lab and other studies to determine the health of
124 the patient; and

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

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

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

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

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

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

131 (A) evaluating the patient's response to anesthesia and implementing corrective
132 actions; and

133 (B) selecting, ordering, or administering the medications and studies listed in
134 Subsection (14)(d); and

135 (iv) other related services within the scope of practice of a certified registered nurse
136 anesthetist, including:

137 (A) emergency airway management;

138 (B) advanced cardiac life support; and

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

140 (v) for purposes of Subsection (14)(d), "upon the request of a licensed health care
141 professional":

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

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

148 (15) "Practice of nursing" means assisting individuals or groups to maintain or attain
149 optimal health, implementing a strategy of care to accomplish defined goals and evaluating

150 responses to care and treatment[~~-. The practice of nursing~~] and requires substantial specialized
151 or general knowledge, judgment, and skill based upon principles of the biological, physical,
152 behavioral, and social sciences[~~-, and~~]. "Practice of nursing" includes:

- 153 (a) initiating and maintaining comfort measures;
- 154 (b) promoting and supporting human functions and responses;
- 155 (c) establishing an environment conducive to well-being;
- 156 (d) providing health counseling and teaching;
- 157 (e) collaborating with health care professionals on aspects of the health care regimen;
- 158 (f) performing delegated procedures only within the education, knowledge, judgment,
159 and skill of the licensee;~~[-and]~~

160 (g) in accordance with Section 58-31b-104, delegating [~~nurse interventions~~] nursing
161 tasks that may be performed by others [~~and are not in conflict with this chapter.~~], including an
162 unlicensed assistive personnel; and

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

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

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

178 (17) "Practice of registered nursing" means performing acts of nursing as provided in
179 this Subsection (17) by [~~a person~~] an individual licensed under this chapter as a registered
180 nurse within the generally recognized scope of practice of registered nurses as defined by

181 division rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking

182 Act. Registered nursing acts include:

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

194 (18) "Routine medications":

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

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

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

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

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

216 (21) "Unprofessional conduct" means the same as that term is defined in Sections
217 58-1-501 and 58-31b-502 and as may be further defined by division rule made in accordance
218 with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

219 Section 3. Section **58-31b-104** is enacted to read:

220 **58-31b-104. Delegation of nursing tasks -- Division duties.**

221 (1) The division, in consultation with the Department of Health, shall identify by rule
222 made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, a list of
223 nursing tasks that a licensee engaging in the practice of nursing may not delegate to an
224 unlicensed assistive personnel.

225 (2) Nursing tasks that are not included in the list described in Subsection (1) or the list
226 described in Section 58-1-307.1 may be delegated by a licensee engaging in the practice of
227 nursing in a manner determined by the division by rule made in accordance with Title 63G,
228 Chapter 3, Utah Administrative Rulemaking Act.

229 Section 4. Section **58-31b-308.1** is enacted to read:

230 **58-31b-308.1. Delegation of medical care by a responsible caregiver.**

231 (1) As used in this section:

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

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

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

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

240 (2) A responsible caregiver may delegate to an unlicensed direct care worker the
241 performance of medical care that is provided to a patient in the responsible caregiver's
242 residence if:

- 243 (a) the patient's condition is stable;
244 (b) the responsible caregiver routinely provides the medical care for the patient;
245 (c) the medical care is considered routine care for the patient; and
246 (d) performance of the medical care:
247 (i) poses little potential hazard for the patient; and
248 (ii) is generally expected to produce a predictable outcome for the patient.
249 (3) Before an unlicensed direct care worker may perform medical care delegated under
250 Subsection (2), the responsible caregiver shall train the unlicensed direct care worker to
251 perform the medical care and verify the unlicensed direct care worker is able to competently
252 perform the medical care for the patient after training is complete.