

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: 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:



26 AMENDS:

27 **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

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
56 advanced practice registered nurse and, except as provided in Subsection **58-31b-803(4)**, a

57 consulting physician that permits the advanced practice registered nurse to prescribe Schedule
58 II controlled substances in consultation with the consulting physician.

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

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

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

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

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

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

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

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

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

85 (13) (a) "Practice as a medication aide certified" means the limited practice of nursing
86 under the supervision, as defined by the division by [~~administrative~~] rule made in accordance
87 with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, of a licensed nurse, involving

88 routine patient care that requires minimal or limited specialized or general knowledge,
89 judgment, and skill, to an individual who:

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

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

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

94 (i) includes:

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

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

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

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

109 (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
137 (C) the establishment of peripheral, central, and arterial invasive lines; and
138 (v) for purposes of Subsection (14)(d), "upon the request of a licensed health care
139 professional":
140 (A) means a health care professional practicing within the scope of the health care
141 professional's license, requests anesthesia services for a specific patient; and
142 (B) does not require an advanced practice registered nurse specializing as a certified
143 registered nurse anesthetist to enter into a consultation and referral plan or obtain additional
144 authority to select, administer, or provide preoperative, intraoperative, or postoperative
145 anesthesia care and services.
146 (15) "Practice of nursing" means assisting individuals or groups to maintain or attain
147 optimal health, implementing a strategy of care to accomplish defined goals and evaluating
148 responses to care and treatment[~~—The practice of nursing~~] and requires substantial specialized
149 or general knowledge, judgment, and skill based upon principles of the biological, physical,

150 behavioral, and social sciences~~[-and]~~. "Practice of nursing" includes:

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

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

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

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

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

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

- 180 (a) assessing the health status of individuals and groups;

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

191 (18) "Routine medications":

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

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

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

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

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

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

213 (21) "Unprofessional conduct" means the same as that term is defined in Sections
214 58-1-501 and 58-31b-502 and as may be further defined by division rule made in accordance
215 with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

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

217 **58-31b-308.1. Delegation of nursing care by a responsible caregiver.**

218 (1) As used in this section:

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

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

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

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

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

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

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

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

233 (e) performance of the nursing 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 nursing care delegated under
237 Subsection (2), the responsible caregiver shall train the unlicensed direct care worker to
238 perform the nursing care and verify the unlicensed direct care worker is able to competently
239 perform the nursing care for the patient after training is complete.