

Senator Michael S. Kennedy proposes the following substitute bill:

ANESTHESIA AND SEDATION AMENDMENTS

2022 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Suzanne Harrison

Senate Sponsor: Michael S. Kennedy

LONG TITLE

General Description:

This bill amends and enacts provisions related to anesthesia and sedation.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ modifies reporting requirements for anesthesia or sedation adverse events;
- ▶ requires the Department of Health to have a health care provider provide information after an emergency medical provider responds to an anesthesia or sedation adverse event;
- ▶ consolidates and modifies requirements that an anesthesia or sedation provider must perform before, during, and after a patient undergoes anesthesia or sedation in outpatient settings;
- ▶ gives authority to the Division of Occupational and Professional Licensing (division) to establish safety standards for sedation and anesthesia;
- ▶ prohibits an employer from taking adverse action against an individual who notifies the division of a violation related to anesthesia and sedation; and
- ▶ makes technical changes.

Money Appropriated in this Bill:



26 None

27 **Other Special Clauses:**

28 None

29 **Utah Code Sections Affected:**

30 AMENDS:

31 **26-1-40**, as enacted by Laws of Utah 2017, Chapter 177

32 **63I-1-226**, as last amended by Laws of Utah 2021, Chapters 13, 50, 64, 163, 182, 234,
33 and 417

34 **63I-1-258**, as last amended by Laws of Utah 2021, Chapter 32

35 ENACTS:

36 **58-1-510**, Utah Code Annotated 1953

37 REPEALS:

38 **58-5a-502**, as enacted by Laws of Utah 2017, Chapter 177

39 **58-31b-502.5**, as enacted by Laws of Utah 2017, Chapter 177

40 **58-67-502.5**, as enacted by Laws of Utah 2017, Chapter 177

41 **58-68-502.5**, as enacted by Laws of Utah 2017, Chapter 177

42 **58-69-502.5**, as enacted by Laws of Utah 2017, Chapter 177



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

45 Section 1. Section **26-1-40** is amended to read:

46 **26-1-40. Reports of anesthesia adverse events -- Whistleblower protections.**

47 (1) (a) [~~Beginning January 1, 2018, the~~] The department shall create a database of
48 deaths and adverse events from the administration of sedation or anesthesia in outpatient
49 settings that are not emergency departments in the state.

50 (b) The database required by Subsection (1)(a) shall include reports submitted by
51 health care providers under [~~Sections 58-5a-502, 58-31b-502.5, 58-67-502.5, 58-68-502.5, and~~
52 **58-69-502.5**] Section 58-1-510.

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

55 [(a)] (i) the format of the reports; and

56 [(b) ~~what constitutes a reportable adverse event, which shall include at least the~~

57 ~~administration of intravenous sedation or anesthesia when there is:]~~

58 (ii) the circumstances that constitute a reportable adverse event.

59 (b) In addition to any other circumstances established by rule as constituting a
60 reportable adverse event, a reportable adverse event shall include a situation where:

61 (i) an individual is under moderate sedation, deep sedation, or general anesthesia, as
62 those terms are defined in Section 58-1-510; and

63 (ii) there is:

64 [(i)] (A) an escalation of care required for the patient, including contacting an
65 emergency medical service provider as defined in Section 26-8a-102, transferring the patient to
66 an emergency room or hospital, or administering to the patient a vasopressor or an inotrope; or

67 [(i)] (B) a rescue of a patient from a deeper level of sedation than was intended, which
68 resulted in an unplanned invasive airway procedure.

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

72 (b) ~~[Beginning July 1, 2018, and on]~~ On or before July 1 of each year ~~[thereafter]~~, the
73 department shall:

74 (i) publicly report:

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

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

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

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

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

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

86 ~~[(b) The sunset review of this section shall include an analysis of:]~~

87 ~~[(i) the number and types of adverse events reported under this section;]~~

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

89 ~~[(iii) the adequacy of sedation and anesthesia requirements in Sections [58-5a-502](#);~~

90 ~~[58-31b-502.5](#), [58-67-502.5](#), [58-68-502.5](#), and [58-69-502.5](#) related to the adverse events~~

91 ~~reported under this section; and]~~

92 ~~[(iv) the adequacy of the reporting requirements under this section and the need for~~

93 ~~additional protections for health care providers who report events under this section.]~~

94 (5) If the department identifies that an emergency medical service provider as defined
95 in Section [26-8a-102](#) responds to an event that meets the criteria for a reportable adverse event,
96 the department shall require the individual who administered the sedation or anesthesia that led
97 to the adverse event to report on the adverse event.

98 Section 2. Section **58-1-510** is enacted to read:

99 **58-1-510. Anesthesia and sedation requirements -- Unprofessional conduct --**

100 **Whistleblower protections.**

101 (1) As used in this section:

102 (a) "Anesthesia or sedation provider" means an individual who is licensed:

103 (i) under Chapter 5a, Podiatric Physician Licensing Act;

104 (ii) under Subsection [58-31b-301\(2\)\(e\)](#);

105 (iii) under Chapter 67, Utah Medical Practice Act;

106 (iv) under Chapter 68, Utah Osteopathic Medical Practice Act; or

107 (v) as a dentist under Chapter 69, Dentist and Dental Hygienist Practice Act, and who
108 has obtained the appropriate permit established by the division under Subsection [58-69-301\(4\)](#).

109 (b) "Deep sedation" means a drug-induced depression of consciousness where an
110 individual:

111 (i) cannot be easily aroused;

112 (ii) responds purposefully following repeated or painful stimulation;

113 (iii) may not be able to independently maintain ventilatory function;

114 (iv) may require assistance in maintaining a patent airway; and

115 (v) usually maintains cardiovascular function.

116 (c) "General anesthesia" means a drug-induced loss of consciousness where an
117 individual:

118 (i) cannot be aroused, even by painful stimulation;

- 119 (ii) is often unable to maintain ventilatory function;
120 (iii) often requires assistance in maintaining a patent airway and positive pressure
121 ventilation may be required because of depressed spontaneous ventilation or drug-induced
122 depression of neuromuscular function; and
123 (iv) may not be able to maintain cardiovascular function.
124 (d) "General anesthetic" means a drug identified as a general anesthetic by the federal
125 Food and Drug Administration.
126 (e) "Minimal sedation" means a drug-induced state where an individual:
127 (i) responds normally to verbal commands;
128 (ii) may have reduced cognitive function and physical coordination; and
129 (iii) maintains airway reflexes, ventilatory function, and cardiovascular function.
130 (f) "Moderate sedation" means a drug-induced depression of consciousness where an
131 individual:
132 (i) responds purposefully to verbal commands, either alone or accompanied by light
133 tactile stimulation;
134 (ii) maintains a patent airway;
135 (iii) maintains spontaneous ventilation; and
136 (iv) usually maintains cardiovascular function.
137 (2) An anesthesia or sedation provider may not cause a patient to undergo moderate
138 sedation, deep sedation, or general anesthesia, in an outpatient setting that is not an emergency
139 department without:
140 (a) first providing the following information in writing and verbally:
141 (i) the level of anesthesia or sedation being administered;
142 (ii) the identity, type of license, and training of the provider who is performing the
143 procedure for which the anesthesia or sedation will be administered;
144 (iii) the identity, type of license, and a description of the training described in
145 Subsection (4) of the anesthesia or sedation provider who will be administering the anesthesia
146 or sedation; and
147 (iv) a description of the monitoring that will occur during the sedation or anesthesia,
148 including descriptions related to the monitoring of the patient's oxygenation, ventilation, and
149 circulation;

- 150 (b) after complying with Subsection (2)(a), obtaining the patient's written and verbal
- 151 consent regarding the procedure;
- 152 (c) having the training described in Subsection (4);
- 153 (d) directly supervising the patient;
- 154 (e) if the patient is a minor, having a current pediatric advanced life support
- 155 certification;
- 156 (f) if the patient is an adult, having a current advanced cardiovascular life support
- 157 certification;
- 158 (g) having at least one individual in the procedure room who has advanced airway
- 159 training and the knowledge and skills to recognize and treat airway complications and rescue a
- 160 patient who entered a deeper than intended level of sedation;
- 161 (h) having access during the procedure to an advanced cardiac life support crash cart in
- 162 the office with equipment that:
- 163 (i) is regularly maintained according to guidelines established by the American Heart
- 164 Association; and
- 165 (ii) includes:
- 166 (A) a defibrillator;
- 167 (B) administrable oxygen;
- 168 (C) age appropriate airway equipment;
- 169 (D) positive pressure ventilation equipment; and
- 170 (E) unexpired emergency and reversal medications including naloxone for opioid
- 171 sedation and flumazenil for benzodiazepine sedation;
- 172 (i) using monitors that meet basic standards set by the American Society of
- 173 Anesthesiologists and continually monitoring ventilatory function with capnography unless
- 174 precluded or invalidated by the nature of the patient, procedure, or equipment;
- 175 (j) entering appropriate information into the patient's chart or medical record, which
- 176 shall include:
- 177 (i) the patient's name;
- 178 (ii) route and site the anesthesia or sedation was administered;
- 179 (iii) the time of anesthesia or sedation administration and the dosage;
- 180 (iv) the patient's periodic vital signs during the procedure; and

181 (v) the name of the individual who monitored the patient's oxygenation and ventilation;
182 and

183 (k) reporting any adverse event under Section 26-1-40.

184 (3) (a) An anesthesia or sedation provider who violates Subsection (2) or any rule
185 created by the division to implement this section commits unprofessional conduct.

186 (b) An individual commits unprofessional conduct if the individual administers
187 anesthesia or sedation for which the individual is not appropriately trained.

188 (4) (a) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,
189 the division shall make rules to create training and safety standards regarding the inducing of
190 general anesthesia, deep sedation, and moderate sedation:

191 (i) for each license described in Subsection (1)(a);

192 (ii) that are based on standards created by nationally recognized organizations, such as
193 the American Society of Anesthesiologists, the American Dental Association, or the American
194 Association of Oral and Maxillofacial Surgeons; and

195 (iii) that include safety standards for general anesthetic use that are consistent with
196 federal Food and Drug Administration guidance.

197 (b) For making rules described in Subsection (4)(a), the division shall consult with the
198 applicable licensing boards and a board described in Section 58-67-201, 58-68-201, and
199 58-69-201.

200 (5) The requirements of Subsection (2) do not apply to the practice of inducing
201 minimal sedation.

202 (6) An employer may not take an adverse employment action against an employee if:

203 (a) the employee notifies the division of:

204 (i) a perceived violation of this section; or

205 (ii) a perceived violation of any rule created by the division to implement this section;

206 and

207 (b) the employment action is based on the individual notifying the division of the
208 violation.

209 Section 3. Section **63I-1-226** is amended to read:

210 **63I-1-226. Repeal dates, Title 26.**

211 (1) Subsection 26-1-7(1)(f), related to the Residential Child Care Licensing Advisory

212 Committee, is repealed July 1, 2024.

213 (2) Subsection 26-1-7(1)(h), related to the Primary Care Grant Committee, is repealed
214 July 1, 2025.

215 (3) Section 26-1-7.5, which creates the Utah Health Advisory Council, is repealed July
216 1, 2025.

217 (4) Section 26-1-40 is repealed July 1, [~~2022~~] 2027.

218 (5) Section 26-1-41 is repealed July 1, 2026.

219 (6) Section 26-7-10 is repealed July 1, 2025.

220 (7) Subsection 26-7-11(5), regarding reports to the Legislature, is repealed July 1,
221 2028.

222 (8) Section 26-7-14 is repealed December 31, 2027.

223 (9) Title 26, Chapter 9f, Utah Digital Health Service Commission Act, is repealed July
224 1, 2025.

225 (10) Subsection 26-10-6(5), which creates the Newborn Hearing Screening Committee,
226 is repealed July 1, 2026.

227 (11) Section 26-10b-106, which creates the Primary Care Grant Committee, is repealed
228 July 1, 2025.

229 (12) Subsection 26-15c-104(3), relating to a limitation on the number of
230 microenterprise home kitchen permits that may be issued, is repealed on July 1, 2022.

231 (13) Subsection 26-18-2.6(9), which addresses reimbursement for dental hygienists, is
232 repealed July 1, 2028.

233 (14) Section 26-18-27 is repealed July 1, 2025.

234 (15) Title 26, Chapter 18, Part 2, Drug Utilization Review Board, is repealed July 1,
235 2027.

236 (16) Subsection 26-18-418(2), the language that states "and the Behavioral Health
237 Crisis Response Commission created in Section 63C-18-202" is repealed July 1, 2023.

238 (17) Section 26-33a-117 is repealed on December 31, 2023.

239 (18) Title 26, Chapter 33a, Utah Health Data Authority Act, is repealed July 1, 2024.

240 (19) Title 26, Chapter 36b, Inpatient Hospital Assessment Act, is repealed July 1,
241 2024.

242 (20) Title 26, Chapter 36c, Medicaid Expansion Hospital Assessment Act, is repealed

- 243 July 1, 2024.
- 244 (21) Title 26, Chapter 36d, Hospital Provider Assessment Act, is repealed July 1, 2024.
- 245 (22) Section 26-39-201, which creates the Residential Child Care Licensing Advisory
- 246 Committee, is repealed July 1, 2024.
- 247 (23) Section 26-40-104, which creates the Utah Children's Health Insurance Program
- 248 Advisory Council, is repealed July 1, 2025.
- 249 (24) Section 26-50-202, which creates the Traumatic Brain Injury Advisory
- 250 Committee, is repealed July 1, 2025.
- 251 (25) Title 26, Chapter 54, Spinal Cord and Brain Injury Rehabilitation Fund and
- 252 Pediatric Neuro-Rehabilitation Fund, is repealed January 1, 2025.
- 253 (26) Title 26, Chapter 63, Nurse Home Visiting Pay-for-Success Program, is repealed
- 254 July 1, 2026.
- 255 (27) Title 26, Chapter 66, Early Childhood Utah Advisory Council, is repealed July 1,
- 256 2026.
- 257 (28) Title 26, Chapter 68, COVID-19 Vaccine Restrictions Act, is repealed July 1,
- 258 2024.
- 259 Section 4. Section **63I-1-258** is amended to read:
- 260 **63I-1-258. Repeal dates, Title 58.**
- 261 (1) Section 58-3a-201, which creates the Architects Licensing Board, is repealed July
- 262 1, 2026.
- 263 (2) Section 58-11a-302.5 is repealed July 1, 2022.
- 264 (3) Title 58, Chapter 13, Health Care Providers Immunity from Liability Act, is
- 265 repealed July 1, 2026.
- 266 (4) Title 58, Chapter 15, Health Facility Administrator Act, is repealed July 1, 2025.
- 267 (5) Title 58, Chapter 20b, Environmental Health Scientist Act, is repealed July 1, 2028.
- 268 (6) Subsection 58-37-6(7)(f)(iii) is repealed July 1, 2022, and the Office of Legislative
- 269 Research and General Counsel is authorized to renumber the remaining subsections
- 270 accordingly.
- 271 (7) Title 58, Chapter 40, Recreational Therapy Practice Act, is repealed July 1, 2023.
- 272 (8) Title 58, Chapter 41, Speech-Language Pathology and Audiology Licensing Act, is
- 273 repealed July 1, 2029.

274 (9) Title 58, Chapter 42a, Occupational Therapy Practice Act, is repealed July 1, 2025.

275 (10) Title 58, Chapter 46a, Hearing Instrument Specialist Licensing Act, is repealed
276 July 1, 2023.

277 (11) Title 58, Chapter 47b, Massage Therapy Practice Act, is repealed July 1, 2024.

278 (12) Subsection 58-55-201(2), which creates the Alarm System and Security Licensing
279 Advisory Board, is repealed July 1, 2027.

280 (13) Subsection 58-60-405(3), regarding certain educational qualifications for licensure
281 and reporting, is repealed July 1, 2022.

282 (14) Title 58, Chapter 61, Part 7, Behavior Analyst Licensing Act, is repealed July 1,
283 2026.

284 (15) Title 58, Chapter 72, Acupuncture Licensing Act, is repealed July 1, 2027.

285 [~~(16) The following sections are repealed on July 1, 2022:~~]

286 [~~(a) Section 58-5a-502;~~]

287 [~~(b) Section 58-31b-502.5;~~]

288 [~~(c) Section 58-67-502.5;~~]

289 [~~(d) Section 58-68-502.5; and~~]

290 [~~(e) Section 58-69-502.5.~~]

291 Section 5. **Repealer.**

292 This bill repeals:

293 Section 58-5a-502, **Unprofessional conduct.**

294 Section 58-31b-502.5, **Anesthesia and sedation -- Unprofessional conduct.**

295 Section 58-67-502.5, **Anesthesia and sedation -- Unprofessional conduct.**

296 Section 58-68-502.5, **Anesthesia and sedation -- Unprofessional conduct.**

297 Section 58-69-502.5, **Anesthesia and sedation -- Unprofessional conduct.**