

HB0384S02 compared with HB0384

~~text~~ shows text that was in HB0384 but was deleted in HB0384S02.

text shows text that was not in HB0384 but was inserted into HB0384S02.

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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;

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- ▶ gives authority to the Division of Occupational and Professional Licensing (division) to establish safety standards for sedation and anesthesia;
- ▶ ~~{eliminates repeal dates}~~ prohibits an employer from taking adverse action against an individual who notifies the division of a violation related to anesthesia and sedation ~~{administration and reporting}~~; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

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

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

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

ENACTS:

58-1-510, Utah Code Annotated 1953

REPEALS:

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

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

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

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

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

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

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

26-1-40. Reports of anesthesia adverse events -- ~~{Whistle blower}~~ Whistleblower protections.

(1) (a) [~~Beginning January 1, 2018, the~~] The department shall create a database of deaths and adverse events from the administration of sedation or anesthesia in outpatient

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settings that are not emergency departments in the state.

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

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

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

~~[(b) what constitutes a reportable adverse event, which shall include at least the administration of intravenous sedation or anesthesia when there is:]~~

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

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

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

(ii) there is:

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

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

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

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

(i) publicly report:

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

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

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

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

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

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

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

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

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

~~[(iii) the adequacy of sedation and anesthesia requirements in Sections 58-5a-502, 58-31b-502.5, 58-67-502.5, 58-68-502.5, and 58-69-502.5 related to the adverse events reported under this section; and]~~

~~[(iv) the adequacy of the reporting requirements under this section and the need for additional protections for health care providers who report events under this section.]~~

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

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

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

Whistleblower protections.

(1) As used in this section:

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

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

(ii) under Subsection 58-31b-301(2)(e);

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

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

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

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

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(i) cannot be easily aroused;

(ii) responds purposefully following repeated or painful stimulation;

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

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

(v) usually maintains cardiovascular function.

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

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

(ii) is often unable to maintain ventilatory function;

(iii) often requires assistance in maintaining a patent airway and positive pressure ventilation may be required because of depressed spontaneous ventilation or drug-induced depression of neuromuscular function; and

(iv) may not be able to maintain cardiovascular function.

(d) "General anesthetic" means a drug identified as a general anesthetic by the federal Food and Drug Administration.

(e) "Minimal sedation" means a drug-induced state where an individual:

(i) responds normally to verbal commands;

(ii) may have reduced cognitive function and physical coordination; and

(iii) maintains airway reflexes, ventilatory function, and cardiovascular function.

(f) "Moderate sedation" means a drug-induced depression of consciousness where an individual:

(i) responds purposefully to verbal commands, either alone or accompanied by light tactile stimulation;

(ii) maintains a patent airway;

(iii) maintains spontaneous ventilation; and

(iv) usually maintains cardiovascular function.

(2) An anesthesia or sedation provider may not cause a patient to undergo moderate sedation, deep sedation, or general anesthesia, in an outpatient setting that is not an emergency department without:

(a) first providing the following information in writing and verbally:

(i) the level of anesthesia or sedation being administered;

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(ii) the identity, type of license, and training of the provider who is performing the procedure for which the anesthesia or sedation will be administered;

(iii) the identity, type of license, and a description of the training described in Subsection (4) of the anesthesia or sedation provider who will be administering the anesthesia or sedation; and

(iv) a description of the monitoring that will occur during the sedation or anesthesia, including descriptions related to the monitoring of the patient's oxygenation, ventilation, and circulation;

(b) after complying with Subsection (2)(a), obtaining the patient's written and verbal consent regarding the procedure;

(c) having the training described in Subsection (4);

(d) directly supervising the patient;

(e) if the patient is a minor, having a current pediatric advanced life support certification;

(f) if the patient is an adult, having a current advanced cardiovascular life support certification;

(g) having at least one individual in the procedure room who has advanced airway training and the knowledge and skills to recognize and treat airway complications and rescue a patient who entered a deeper than intended level of sedation;

(h) having access during the procedure to an advanced cardiac life support crash cart in the office with equipment that:

(i) is regularly maintained according to guidelines established by the American Heart Association; and

(ii) includes:

(A) a defibrillator;

(B) administrable oxygen;

(C) age appropriate airway equipment;

(D) positive pressure ventilation equipment; and

(E) unexpired emergency and reversal medications including naloxone for opioid sedation and flumazenil for benzodiazepine sedation;

(i) using monitors that meet basic standards set by the American Society of

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Anesthesiologists and continually monitoring ventilatory function with capnography unless precluded or invalidated by the nature of the patient, procedure, or equipment;

(j) entering appropriate information into the patient's chart or medical record, which shall include:

(i) the patient's name;

(ii) route and site the anesthesia or sedation was administered;

(iii) the time of anesthesia or sedation administration and the dosage;

(iv) the patient's periodic vital signs during the procedure; and

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

and

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

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

(~~3~~b) An individual commits unprofessional conduct if the individual administers anesthesia or sedation for which the individual is not appropriately trained.

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

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

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

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

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

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

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

(a) the employee notifies the division of:

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(i) a perceived violation of this section; or

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

and

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

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

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

(1) Subsection 26-1-7(1)(f), related to the Residential Child Care Licensing Advisory Committee, is repealed July 1, 2024.

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

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

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

~~(5)~~ ~~(4)~~ Section 26-1-41 is repealed July 1, 2026.

~~(6)~~ ~~(5)~~ Section 26-7-10 is repealed July 1, 2025.

~~(7)~~ ~~(6)~~ Subsection 26-7-11(5), regarding reports to the Legislature, is repealed July 1, 2028.

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

~~(9)~~ ~~(8)~~ Title 26, Chapter 9f, Utah Digital Health Service Commission Act, is repealed July 1, 2025.

~~(10)~~ ~~(9)~~ Subsection 26-10-6(5), which creates the Newborn Hearing Screening Committee, is repealed July 1, 2026.

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

~~(12)~~ ~~(11)~~ Subsection 26-15c-104(3), relating to a limitation on the number of microenterprise home kitchen permits that may be issued, is repealed on July 1, 2022.

~~(13)~~ ~~(12)~~ Subsection 26-18-2.6(9), which addresses reimbursement for dental hygienists, is repealed July 1, 2028.

~~(14)~~ ~~(13)~~ Section 26-18-27 is repealed July 1, 2025.

~~(15)~~ ~~(14)~~ Title 26, Chapter 18, Part 2, Drug Utilization Review Board, is

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repealed July 1, 2027.

~~(16)~~~~(15)~~ Subsection 26-18-418(2), the language that states "and the Behavioral Health Crisis Response Commission created in Section 63C-18-202" is repealed July 1, 2023.

~~(17)~~~~(16)~~ Section 26-33a-117 is repealed on December 31, 2023.

~~(18)~~~~(17)~~ Title 26, Chapter 33a, Utah Health Data Authority Act, is repealed July 1, 2024.

~~(19)~~~~(18)~~ Title 26, Chapter 36b, Inpatient Hospital Assessment Act, is repealed July 1, 2024.

~~(20)~~~~(19)~~ Title 26, Chapter 36c, Medicaid Expansion Hospital Assessment Act, is repealed July 1, 2024.

~~(21)~~~~(20)~~ Title 26, Chapter 36d, Hospital Provider Assessment Act, is repealed July 1, 2024.

~~(22)~~~~(21)~~ Section 26-39-201, which creates the Residential Child Care Licensing Advisory Committee, is repealed July 1, 2024.

~~(23)~~~~(22)~~ Section 26-40-104, which creates the Utah Children's Health Insurance Program Advisory Council, is repealed July 1, 2025.

~~(24)~~~~(23)~~ Section 26-50-202, which creates the Traumatic Brain Injury Advisory Committee, is repealed July 1, 2025.

~~(25)~~~~(24)~~ Title 26, Chapter 54, Spinal Cord and Brain Injury Rehabilitation Fund and Pediatric Neuro-Rehabilitation Fund, is repealed January 1, 2025.

~~(26)~~~~(25)~~ Title 26, Chapter 63, Nurse Home Visiting Pay-for-Success Program, is repealed July 1, 2026.

~~(27)~~~~(26)~~ Title 26, Chapter 66, Early Childhood Utah Advisory Council, is repealed July 1, 2026.

~~(28)~~~~(27)~~ Title 26, Chapter 68, COVID-19 Vaccine Restrictions Act, is repealed July 1, 2024.

Section 4. Section **63I-1-258** is amended to read:

63I-1-258. Repeal dates, Title 58.

(1) Section 58-3a-201, which creates the Architects Licensing Board, is repealed July 1, 2026.

(2) Section 58-11a-302.5 is repealed July 1, 2022.

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(3) Title 58, Chapter 13, Health Care Providers Immunity from Liability Act, is repealed July 1, 2026.

(4) Title 58, Chapter 15, Health Facility Administrator Act, is repealed July 1, 2025.

(5) Title 58, Chapter 20b, Environmental Health Scientist Act, is repealed July 1, 2028.

(6) Subsection 58-37-6(7)(f)(iii) is repealed July 1, 2022, and the Office of Legislative Research and General Counsel is authorized to renumber the remaining subsections accordingly.

(7) Title 58, Chapter 40, Recreational Therapy Practice Act, is repealed July 1, 2023.

(8) Title 58, Chapter 41, Speech-Language Pathology and Audiology Licensing Act, is repealed July 1, 2029.

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 5. **Repealer.**

This bill repeals:

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

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

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

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

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