

Notice of Agency Rulemaking Proposal

AGENCY: 02-380 State Board of Nursing

CHAPTER NUMBER AND TITLE: Chapter 6 Delegation of Nursing Activities and Tasks to Unlicensed Assistive Personnel by Registered Professional Nurses

TYPE OF RULE (*check one*): Routine Technical Major Substantive

PROPOSED RULE NUMBER (*leave blank; to be assigned by Secretary of State*):

BRIEF SUMMARY: The proposed rule will replace Chapter 6 of the Board of Nursing’s rules, “Regulations Relating to Coordination and Oversight of Patient Care Services by Unlicensed Assistive Personnel.” The updated rule defines delegation and identifies the responsibilities of a registered professional nurse when delegating nursing activities and tasks to unlicensed assistive personnel. The Board of Nursing is required under 32 M.R.S. § 2102(2)(H), as amended by Public Law 2024, ch. 592 (effective August 9, 2024), to adopt major substantive rules to implement § 2102(2)(H) and (11).

Date, time and location of PUBLIC HEARING (*if any*): AUGUST 7, 2024 at 9:00 am to be held at Maine State Board of Nursing 161 Capitol Street, Augusta, ME 04333.

Members of the public will also have the opportunity to attend and participate via remote means. Instructions on remote access and a link will be posted on the board’s webpage in advance of the hearing at <https://www.maine.gov/boardofnursing/index.html>

COMMENT DEADLINE: AUGUST 19th, 2024 @ 4:30 PM

Written comments may be submitted to the contact person for this filing. For a copy of the proposed rule and rulemaking documents, please visit <https://www.maine.gov/boardofnursing/index.html> and scroll down to Laws/Rules Updates.

CONTACT PERSON FOR THIS FILING (*include name, mailing address, telephone, fax, TTY, email*):
Amanda Boulay, Assistant Executive Director State Board of Nursing, 158 State House Station, Augusta, ME tel. (207) 287-1147, fax (207) 287-1149, TTY users call Maine Relay 711, Amanda.Boulay@maine.gov

CONTACT PERSON FOR SMALL BUSINESS IMPACT STATEMENT (*if different*):

FINANCIAL IMPACT ON MUNICIPALITIES OR COUNTIES (*if any*):

STATUTORY AUTHORITY FOR THIS RULE: 32 M.R.S. § 2102(2)(H) and (11), as amended by P.L. 2024, ch. 592 (effective August 9, 2024), and 32 M.R.S. § 2153-A(1)

SUBSTANTIVE STATE OR FEDERAL LAW BEING IMPLEMENTED (*if different*):

AGENCY WEBSITE: <http://www.maine.gov/boardofnursing>

EMAIL FOR OVERALL AGENCY RULEMAKING LIAISON: Amanda.Boulay@maine.gov

* Check one of the following two boxes.

The summary provided above is for publication in both the newspaper and website notices.

The summary provided above is for the newspaper notice only. Title 5 §8053, sub-§5 & sub-§7, ¶D. A more detailed summary is attached for inclusion in the rulemaking notice posted on the Secretary of State’s website. Title 5 §8053, sub-§3, ¶D & sub-§6.

Please approve bottom portion of this form and assign appropriate AdvantageME number.

APPROVED FOR PAYMENT _____ DATE: _____

(authorized signature)

FUND	AGENCY	ORG	APP	OBJ	PROGRAM	FUNDING Profile JVC	FUND Pri JVC	FUND Line JVC
014	02N	1310	01					

Rulemaking Fact Sheet

(5 MRS §8057-A)

AGENCY: 02-380 State Board of Nursing

NAME, ADDRESS, PHONE NUMBER, EMAIL OF AGENCY CONTACT PERSON:

Amanda Boulay, MSN, RN Assistant Executive Director, Board of Nursing, 158 State House Station, Augusta, ME 04333-0158, email, amanda.boulay@maine.gov, tel. (207)287-1147

CHAPTER NUMBER AND RULE TITLE: Chapter 6 Delegation of Nursing Activities and Tasks to Unlicensed Assistive Personnel by Registered Professional Nurses

TYPE OF RULE (*check one*): Routine Technical Major Substantive

STATUTORY AUTHORITY: 32 M.R.S. § 2102(2)(H) and (11), as amended by P.L. 2024, ch. 592 (effective August 9, 2024), and 32 M.R.S. § 2153-A(1)

DATE, TIME AND PLACE OF PUBLIC HEARING: AUGUST 7, 2024 at 9:00 am to be held at Maine State Board of Nursing, 161 Capitol Street, Augusta, ME 04333.

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PRINCIPAL REASON(S) OR PURPOSE FOR PROPOSING THIS RULE: [*see* §8057-A(1)(A)&(C)]
On April 2, 2024, the Governor approved Public Law 2024, Chapter 592, "An Act Relating to Delegation of Nursing Activities and Tasks to Unlicensed Assistive Personnel by Registered Professional Nurses." The act amends 32 M.R.S. § 2102(2)(H) and (11) of the Board's statute, authorizing registered professional nurses to delegate nursing activities and tasks to unlicensed assistive personnel. The proposed rule will replace the existing Chapter 6 of the Board of Nursing's rules, "Regulations Relating to Coordination and Oversight of Patient Care Services by Unlicensed Assistive Personnel." The Board of Nursing is required under 32 M.R.S. § 2102(2)(H) to adopt major substantive rules to implement § 2102(2)(H) and (11).

IS MATERIAL INCORPORATED BY REFERENCE IN THE RULE? ___ YES X NO [§8056(1)(B)]

ANALYSIS AND EXPECTED OPERATION OF THE RULE: [*see* §8057-A(1)(B)&(D)]

BRIEF SUMMARY OF RELEVANT INFORMATION CONSIDERED DURING DEVELOPMENT OF THE RULE (including up to 3 primary sources relied upon) [*see* §§8057-A(1)(E) & 8063-B]
The rule was developed using the professional judgment of the State Board of Nursing; research conducted on rules in other jurisdictions; and a workgroup with representatives from Board staff and interested parties.

ESTIMATED FISCAL IMPACT OF THE RULE: [*see* §8057-A(1)(C)] Minimal

FOR EXISTING RULES WITH FISCAL IMPACT OF \$1 MILLION OR MORE, ALSO INCLUDE:

ECONOMIC IMPACT, WHETHER OR NOT QUANTIFIABLE IN MONETARY TERMS:
[see §8057-A(2)(A)]

INDIVIDUALS, MAJOR INTEREST GROUPS AND TYPES OF BUSINESSES AFFECTED
AND HOW THEY WILL BE AFFECTED: [see §8057-A(2)(B)]

BENEFITS OF THE RULE: [see §8057-A(2)(C)]

Note: If necessary, additional pages may be used.

Economic Impact Statement

(5 M.R.S. § 8052(5-A))

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NAME, ADDRESS, PHONE NUMBER OF AGENCY CONTACT PERSON:

Amanda Boulay, MSN, RN Assistant Executive Director, Board of Nursing, 158 State House Station, Augusta, ME 04333-0158, email, amanda.boulay@maine.gov, tel. (207)287-1147

CHAPTER NUMBER AND RULE TITLE: Chapter 6 Delegation of Nursing Activities and Tasks to Unlicensed Assistive Personnel by Registered Professional Nurses

TYPES AND NUMBER OF SMALL BUSINESSES SUBJECT TO THE RULE: Title 5 M.R.S. § 8052(5-A) defines “small business” as businesses that have 20 or fewer employees. The program does not collect sufficient information to reliably estimate the number of licensees that are small businesses as defined in 5 M.R.S. § 8052(5-A). The State Board of Nursing licenses about 34,924 registered professional nurses.

PROJECTED REPORTING, RECORD-KEEPING AND OTHER ADMINISTRATIVE COSTS REQUIRED FOR COMPLIANCE WITH THE PROPOSED RULE, INCLUDING THE TYPE OF PROFESSIONAL SKILLS NECESSARY FOR PREPARATION OF THE REPORT OR RECORD: The proposed rule will not incur any reporting, record-keeping, or other compliance costs that licensees do not currently bear.

PROBABLE IMPACT ON AFFECTED SMALL BUSINESSES: None

LESS INTRUSIVE OR LESS COSTLY, REASONABLE ALTERNATIVE METHODS OF ACHIEVING THE PURPOSES OF THE PROPOSED RULE: None

SUMMARY: This rule defines delegation and identifies the responsibilities of a registered professional nurse when delegating nursing activities and tasks to unlicensed assistive personnel.

SECTION 1. DEFINITIONS

1. **Delegation.** “Delegation” means the transfer of authority from a registered professional nurse to unlicensed assistive personnel to perform nursing activities or tasks in situations deemed appropriate by the registered professional nurse.
2. **Delegating nurse.** “Delegating nurse” means a registered professional nurse who delegates nursing activities or tasks.
3. **Supervision.** “Supervision” means the provision of guidance or oversight by a registered professional nurse concerning the performance of nursing tasks or activities by unlicensed assistive personnel, including, but not limited to, initial direction regarding the tasks or activities and periodic inspection of the performance of the delegated tasks or activities.
4. **Unlicensed assistive personnel.** "Unlicensed assistive personnel" means individuals trained to function in a supportive role, regardless of job title, to whom a specific nursing activity or task may be delegated, including, but not limited to, the direct care workers listed in 22 M.R.S. §1812-G(2-A).

"Unlicensed assistive personnel" does not include licensed practical nurses or certified nursing assistants as defined in 32 M.R.S. § 2102(6) and (8).

"Unlicensed assistive personnel" does not include unpaid individuals performing tasks at the direction of a patient.

SECTION 2. RESPONSIBILITIES OF REGISTERED PROFESSIONAL NURSES

1. The registered professional nurse is responsible for the nature and quality of all nursing care that a patient receives. Assessment of the nursing needs of a patient, the plan of

nursing actions, implementation of the plan, and evaluation are essential components of professional nursing practice and are the functions of the registered professional nurse. Although other personnel may be employed to assist the registered professional nurse in the performance of these functions, such personnel cannot be used as a substitute for the responsibility of the registered professional nurse.

- A. Regardless of setting, the registered professional nurse who delegates nursing activities or tasks to unlicensed assistive personnel must comply with the provisions of this rule and is responsible for exercising the judgment and knowledge ordinarily expected of a registered professional nurse. The registered professional nurse shall ensure that the unlicensed assistive personnel to whom activities and tasks are delegated meet the competency requirements of the unlicensed assistive personnel's employing facility or organization. Unlicensed assistive personnel may not reassign a delegated activity or task. For unlicensed assistive personnel not employed by a facility or organization, the registered professional nurse shall ensure that the unlicensed assistive personnel to whom activities and tasks are delegated possess the appropriate skills and knowledge to perform the delegated activity or task.
- B. The delegating nurse must provide adequate supervision of all nursing activities or tasks delegated to unlicensed assistive personnel. The degree of supervision required is determined by the delegating nurse after an evaluation of appropriate factors involved, including, but not limited to:
- (1) The right task: The activity falls within the job description and is included as part of the established written policies and procedures of the practice setting.
 - (2) The right circumstance: The health condition of the patient is stable.
 - (3) The right person: The unlicensed assistive personnel have the training, capability, and continued demonstrated skills and knowledge to perform the delegated activities or tasks.
 - (4) The right direction and communication: The delegating nurse must communicate specific instructions for the delegated activities or tasks and ascertain that the unlicensed assistive personnel understand what is expected and agree to the delegation.
 - (5) The right supervision and evaluation: The registered professional nurse must be readily available to the unlicensed assistive personnel performing the delegated nursing activity or task, either in-person, by telephone, or through another form of telecommunication.
- C. In addition to the unlicensed assistive personnel's skills and knowledge of the delegated nursing activities or tasks, other competencies to be considered include, but are not limited to, the unlicensed assistive personnel's ability to effectively collaborate, communicate, and cooperate, as appropriate, with the delegating nurse, other health care professionals, and the patient.

D. The delegating nurse can determine at any time that nursing activities or tasks can no longer be delegated based on a change in the health status of the patient, the unlicensed assistive personnel's performance of the activities or tasks, or other reason the delegating nurse determines may jeopardize patient health or safety.

STATUTORY AUTHORITY: 32 M.R.S. § 2102(2)(H) and (11), amended by P.L. 2024, ch. 592 (effective Aug. 9, 2024), and 32 M.R.S. § 2153-A(1).

EFFECTIVE DATE: