



MAINE AFL-CIO

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Testimony of Adam Goode, Maine AFL-CIO Legislative & Political Director, In Opposition to LD 90 "Resolve, Regarding Legislative Review of Chapter 6: Delegation of Nursing Activities and Tasks to Unlicensed Assistive Personnel by Registered Professional Nurses, a Major Substantive Rule of the Department of Professional and Financial Regulation, State Board of Nursing"

Senator Bailey, Representative Mathieson and members of the Health Coverage, Insurance and Financial Services Committee, my name is Adam Goode. I am the Legislative and Political Director of the Maine AFL-CIO. We represent 40,000 working people in the state of Maine. We work to improve the lives and working conditions of our members and all working people.

We testify in opposition to LD 90 to support the more than 4,000 registered nurses and health care professionals who are members of the Maine State Nurses Association (MSNA). This resolve would result in nurses delegating patient care to unlicensed personnel whether or not the nurse deems it safe.

Nurses that are a part of MSNA believe that the changes in this resolve are not consistent with the standards of safe patient care and could undermine the role RNs play in protecting the life and health of patients. The labor movement believes in the dignity of work, and to that end we respect the work of all healthcare workers who help nurses deliver safe care. Unlicensed assistive personnel are there to assist and support RNs and should not be caring for patients without the close oversight of an RN.

We testified against LD 2126 in the 131st Legislature and MSNA submitted detailed concerns during the rulemaking process, which we believe these rules did not sufficiently address.

The Board exceeded the scope of its statutory authority in the proposed rule on delegation to unlicensed assistive personnel. The statute provided that the Board "shall adopt such rules concerning delegation as it considers necessary to ensure access to quality health care for the patient." The rules shift employer obligations onto nurses, such as ensuring unlicensed assistive personnel meet the competency requirements of the facility. This responsibility rightfully falls on employers as the hiring entity under the delegation rules for certified nursing assistants (CNAs).

The rules create permissive delegation rules with no limitations for unlicensed assistive personnel, regardless of training or experience. We are particularly concerned about the failure of the rules to state which specific tasks that unlicensed assistive personnel can perform. We also remain concerned about allowing delegation to occur over telephone or other telecommunications. Nothing in the plain text of the statute authorizes holding nurses responsible for employer obligations of ensuring the competencies of personnel, unrestricted delegation or delegation via telephone and telecommunications.

The rules also do not conform with the legislative intent of the statute. The statute clearly intended that the delegable tasks be specified. In Maine, CNAs are certified and are already allowed to perform delegated tasks under a separate chapter. Adopting these rules would mean there are technically no limits on which delegated tasks that unlicensed assistive personnel can perform. In contrast, the CNA rules limit which tasks can be delegated based on CNA training curriculum and expressly prohibit delegation of certain high-risk tasks based on setting.

The failure to specify or limit delegable tasks is unreasonable and allows unlicensed assistive personnel to perform more delegated tasks than CNAs, even though CNAs have more training and have obtained certification. The silence of the rules on specific tasks means that unlicensed assistive personnel could technically perform high-risk tasks that cannot currently be delegated to CNAs, creating an absurd result where unlicensed assistive personnel can perform more tasks than CNAs, but with less training and no certification.

The rule also conflicts with the rules under Chapter 5 governing delegation to CNAs by wrongfully holding nurses responsible for ensuring unlicensed assistive personnel meet the competency requirements of the facility. Chapter 5 already holds employers responsible for ensuring CNAs meet competency requirements of their facilities.

Lastly, we are very concerned about the failure to include nurses' right to refuse delegation as intended by the statute. The statute contains anti-coercion and anti-retaliation protections by providing that nothing shall be construed "to require a nurse to delegate, or permit a person to coerce a nurse into delegating [...] against the nurse's professional judgment or to prohibit a nurse in exercise of the nurse's professional judgment from refusing to delegate specific nursing activities and tasks in any care setting." Yet the proposed rule fails to incorporate these protections.

CNAs must complete certain education and training requirements to obtain their certification. In contrast, unlicensed assistive personnel have no formal education and training requirements. Adopting this rule would create a disparity by failing to limit the scope of delegable tasks for unlicensed assistive personnel. This would be dangerous and we advise taking every precaution to safeguard against this approach as it would result in unlicensed workers performing work that should be done by nurses or other licensed caregivers. This puts patients at risk as there are reasons why registered professional nurses all receive years of nursing education, pass a standardized and demanding exam and keep their license updated. We respect the work that unlicensed assistive personnel do, but the fact remains that the experience and capabilities of these staff vary greatly.

We strongly urge you to reject LD 90.