

Testimony of Brynne O'Neal
Regulatory Policy Specialist, Maine State Nurses Association / National Nurses United

LD 2166 - Support if amended

Before the Joint Standing Committee on Health Coverage, Insurance and Financial Services
Hearing: February 11, 2026, 10:00 a.m.

Dear Chair Bailey, Chair Mathieson, and distinguished members of the Committee on Health Coverage, Insurance and Financial Services,

On behalf of more than 4,000 registered nurses and health care professionals providing direct patient care in our state, **the Maine State Nurses Association/National Nurses United (MSNA) urges the Committee to act on LD 2166 to only approve the Board of Nursing's proposed rule with the changes discussed below.**

MSNA is grateful to the members of this committee for requiring improvements to last year's version of this rule and to the Board of Nursing (Board) for all their work incorporating the feedback of the committee and working with us and other stakeholders to improve the rule. We engaged with the Board at every opportunity. However, we are seeking additional changes to protect patient safety and to avoid making nurses responsible for behavior they cannot effectively control.

I. Delegation should be limited to unlicensed assistive personnel with employer-verified competence.

The provisions allowing a licensed registered professional nurse (RN) to delegate to unlicensed assistive personnel without employer-verified competence should be removed. If there is no facility or organization responsible for documenting the competencies and skills of an unlicensed person, the delegation framework lacks the structural safeguards necessary for safe implementation. The delegating nurse must have access to documented competencies and skills of unlicensed assistive personnel to ensure that both parties operate under a shared understanding of policies and procedures.

In most cases, the proposed rule appropriately establishes that it is the responsibility of the employer to ensure that unlicensed assistive personnel receive training and are competent to the tasks within their job descriptions. The RN is then responsible for verifying that the unlicensed assistive person is competent to provide the care needed by a specific patient under specific circumstances.

However, there are two exceptions to this principle.

- Firstly, the proposed rule makes RNs responsible for ensuring the competence of unlicensed assistive personnel who are not employed by a facility or organization (Section 3(1)(F)).
- Secondly, the definition of unlicensed assistive personnel excludes individuals performing tasks at the direction of a patient only when they are unpaid (Section 2(5)).

These exceptions should be removed. The proposed rule should prohibit RNs from delegating tasks to unlicensed assistive personnel who are being directed by a patient regardless of whether or not they are paid. An RN should not be responsible for the actions or errors of an unlicensed person being directed by a patient or family member.

II. The list of non-delegable tasks should include tasks that require CNA training.

Secondly, MSNA appreciates that the BON has added lists of delegable and non-delegable tasks to the new proposed rule. Examples provide much needed clarity to nurses determining what is appropriate to delegate and standing up for their determinations to their employers. We recognize and appreciate that the list of non-delegable tasks is given as a set of examples and is not exhaustive. To further improve these lists, we recommend adding a list of tasks that require certified nursing assistant training and therefore are not appropriate for delegation to an unlicensed person without that training. We pulled the list from the CNA training materials and the Board of Nursing rule on delegation to CNAs,¹ and it is included as an attachment to these comments.

III. Delegation by telephone should not be permitted.

Lastly, MSNA strongly recommends eliminating delegation by telephone. Before delegating, an RN must conduct a thorough nursing assessment, provide a nursing care plan, and assess whether delegation is appropriate. This assessment can only be safely completed in person. An RN needs to be in the same physical location to effectively supervise and intervene if the patient's condition deteriorates or the task is done improperly.

Although care needs often vary by setting, emerging care models such as hospital-at-home and remote patient monitoring are increasingly bringing complex medical care into home and community settings. Additionally, even when patients are considered medically stable, their conditions can change rapidly and unexpectedly. For these reasons, we urge you to not allow supervision by telephone or telecommunication device.

¹ 02-380 C.M.R. ch. 5, § 1 - General Regulations Relating to Delegation of Selected Nursing Tasks by Licensed Nurses; Maine State Board of Nursing, "Prescribed Generalist Curriculum of Nursing Assistant Training Programs," June 5, 2019, <https://www.maine.gov/boardofnursing/docs/9-6-2021-%20New%20CNA%20Curriculum.pdf>.

IV. Conclusion

This proposed rule has several strengths. It will help nurses understand and stand up for their right to refuse unsafe delegation. Nurses often face pressure from employers to delegate care unsafely to unlicensed staff as a cost cutting measure, so support and education from the BON on the nurse's right and responsibility to refuse unsafe delegation is essential. The proposed rule includes a clear statement that a nurse may not be coerced into delegation, a requirement that employer policies acknowledge that the final decision must be made by the nurse, and a prohibition on employer use of contractual language to compel delegation. The rule also includes essential details on criteria for delegation and when delegation is appropriate.

We are also recommending additional changes. My testimony includes brief appendices showing how these changes would be integrated into the text of the rule as well as our letter to the Board of Nursing suggesting these changes during the rulemaking process. We deeply appreciate the Committee's effective intervention to improve this rule and the Board of Nursing's subsequent work. We are pleased that we were able to work together to create a rule that better protects nurses and patients. We urge you to approve this proposed rule with the changes we have outlined.

Sincerely,



Brynne O'Neal

Regulatory Policy Specialist

Maine State Nurses Association/National Nurses United

Appendices

1. MSNA Recommended Changes to 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
2. MSNA letter to Amanda Boulay, Assistant Executive Director State Board of Nursing, RE: Rulemaking Proposal "Regulations Relating to Coordination and Oversight of Patient Care Services by Unlicensed Assistive Personnel" (November 19, 2025).

MSNA Recommended Changes to 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

Section 2(5): *Strike “unpaid”*

Unlicensed assistive personnel or unlicensed assistive person. The terms "unlicensed assistive personnel" and “unlicensed assistive person” mean 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" and “unlicensed assistive person” do not include licensed practical nurses or certified nursing assistants as defined in 32 M.R.S. § 2102(6) and (8).

"Unlicensed assistive personnel" and “unlicensed assistive person” do not include **unpaid** individuals performing tasks at the direction of a patient.

Section 3(1)(F): *Strike “For unlicensed assistive personnel not employed by a facility or organization, the licensed 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.” Add “A licensed registered professional nurse shall not delegate to unlicensed assistive personnel without competency verified by an employing facility or organization.”*

F. The unlicensed assistive person must have on file within the employing facility or organization current documentation of the unlicensed assistive personnel’s competencies for the proper performance of each of the nursing activities and tasks identified within the unlicensed assistive person’s job description. Such documentation must demonstrate that the unlicensed assistive person’s competency for each nursing activity and task has been periodically evaluated, and that an administratively designated nurse has communicated the unlicensed assistive person’s job functions and competencies to the licensed registered professional nurse(s) who will be delegating nursing activities and tasks to the unlicensed assistive person. Uniform training and certification may be used a basis to presume baseline competencies of an unlicensed assistive person. **For unlicensed assistive personnel not employed by a facility or organization, the licensed 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.** A licensed registered professional nurse shall not delegate to unlicensed assistive personnel without competency verified by an employing facility or organization.

Section 3(2)(E) *Strike phrases allowing telephone and telecommunication supervision.*

E. The right supervision and evaluation: The delegating nurse must be readily available in person to the unlicensed assistive personnel performing the delegated nursing activity or task, **either in person, by telephone, or through another form of telecommunication in compliance with 02-380 C.M.R. ch. 11, “Joint Rule Regarding Standards of Telehealth Practice.”**

Section 5. *Add the following tasks to the prohibited list.*

1. Nursing Activities and Tasks Prohibited from Delegation. By way of example, and not in limitation, the following are nursing activities and tasks that are not within the scope of sound professional nursing judgment to delegate:

- A. Physical, psychological, and social assessment that requires professional nursing judgment, intervention, referral, or follow-up;
- B. Formulation of the nursing care plan and evaluation of the patient's response to the care rendered;
- C. Specific tasks involved in the implementation of the care plan that require professional nursing judgment or intervention;
- D. Activities that may lead to an unpredictable outcome;
- E. Patient health teaching and health counseling that promotes patient education and involves significant others in accomplishing health goals; and
- F. Administration of medications, including intravenous fluids, except by unlicensed assistive personnel in accordance with 20-A M.R.S. § 254(5) and 05-071 C.M.R. ch. 40, "Rule for Medication Administration in Maine Schools;" and unlicensed assistive personnel employed in facilities or agencies listed in Title 22 §42.

2. Specific Nursing Activities and Tasks Prohibited from Delegation to Unlicensed Assistive Personnel. By way of example, and not in limitation, the following nursing activities and tasks are not within the scope of sound professional nursing judgment to delegate to unlicensed assistive personnel, as they require either Certified Nursing Assistant training or specialized additional skills Certified Nursing Assistant training.

- A. Invasive or sterile procedures
- B. Ostomy care
- C. Feeding patient with dysphagia
- D. Care of respiratory system (pulse oximeter; oxygen tank; adjust O2 flow; assist with exercise breathing devices)
- E. Catheter care
- F. Electrocardiogram (EKG).
- G. Venipuncture for blood collection purposes.
- H. Catheter procedure.
- I. Gastrointestinal-tube (G-tube) and percutaneous gastronomy (PEG) gravity tube feeding
- J. Assist a patient with eye drops.
- K. Perform a bladder scan.
- L. Obtain a swab for surveillance culture.
- M. Assist with Continuous Positive Airway Pressure (CPAP) and Bilevel Positive Airway Pressure (BIPAP).

November 19, 2025

Amanda Boulay
Assistant Executive Director State Board of Nursing
158 State House Station
Augusta, ME
Amanda.Boulay@maine.gov

RE: Rulemaking Proposal “Regulations Relating to Coordination and Oversight of Patient Care Services by Unlicensed Assistive Personnel”

Dear Assistant Executive Director Boulay,

The Maine State Nurses Association/National Nurses Organizing Committee (MSNA), representing more than 4,000 registered nurses and health care professionals providing patient care in our state, submits these comments on the Maine State Board of Nursing’s rulemaking proposal on “Regulations Relating to Coordination and Oversight of Patient Care Services by Unlicensed Assistive Personnel.”

MSNA appreciates the work the Board of Nursing (BON) has put into revising this rule. The current draft has many strengths that we urge you to retain. In particular, the rule includes a clear statement that a nurse may not be coerced into delegation, a requirement that employer policies acknowledge that the final decision must be made by the nurse, and a prohibition on employer use of contractual language to compel delegation. Nurses often face pressure from employers to delegate care unsafely to unlicensed staff as a cost cutting measure, so support and education from the BON on the nurse’s right and responsibility to avoid unsafe delegation is essential. The rule also includes essential details on criteria for delegation and when delegation is appropriate.

We would like to comment on a few specific areas that could be further improved.

1. Delegation is only appropriate when an employer has verified competence and manages the unlicensed assistive personnel.

The proposed rule appropriately establishes in section 3(1)(F) that it is the responsibility of the employer to ensure that unlicensed assistive personnel (UAP) receive appropriate training and are competent to the tasks within their job descriptions. However, this portion of the rule has an exception that makes licensed registered professional nurses responsible for ensuring the competence of unlicensed assistive personnel not employed by a facility or organization. We urge you to prohibit licensed registered professional nurse delegation to unlicensed assistive personnel who are not employed by a facility or organization. If there is no facility or organization responsible for documenting the competencies and skills of an unlicensed person, the delegation framework lacks the structural safeguards necessary for safe implementation. The delegating nurse must have access to documented competencies and skills of unlicensed assistive personnel to ensure that both parties operate under a shared understanding of policies and procedures.

Similarly, we ask you to modify the definition of unlicensed assistive personnel to exclude all individuals performing tasks at the direction of a patient. Section 2, Definition 5 currently excludes “unpaid individuals performing tasks at the direction of a patient.” This definition should encompass both paid and unpaid persons receiving direction from a patient. The exclusion of personnel paid and managed by the patient creates potential gaps in clarity and oversight that could impact patient safety, regardless of whether the individual is compensated for their assistance. Licensed registered professional nurses should not be taking responsibility under their licenses for the actions of unlicensed persons who do not have their competency verified by an organization and who are not operating under a shared set of policies and procedures.

2. BON should retain the lists of delegable and non-delegable tasks, but tasks that are limited for CNAs should be explicitly prohibited for UAPs.

MSNA appreciates that the BON has added lists of delegable and non-delegable tasks to the new proposed rule. Examples provide much needed clarity to nurses determining what is appropriate to delegate and standing up for their determinations to their employers. We appreciate the removal of vaginal irrigations and cleansing enemas from the delegable list following the stakeholder meeting this summer. We recognize and appreciate that the list of non-delegable tasks is given as examples and not limitations.

To further improve these lists, we suggest adding the following to the list of non-delegable tasks to improve clarity and consistency with certified nursing assistant training materials:

- A. Invasive or sterile procedures
- B. Tasks that are part of CNA training and should not be delegated by nurses to UAP without that training:
 - i. Ostomy care
 - ii. Feeding patient with dysphagia
 - iii. Care of respiratory system (pulse oximeter; oxygen tank; adjust O2 flow; assist with exercise breathing devices)
 - iv. Catheter care
- C. Tasks that are on the Certified Nursing Assistant Additional Skills List, which even CNA’s cannot perform without specific training and documentation of ability to perform the skill:
 - i. Perform an electrocardiogram (EKG).
 - ii. Perform venipuncture for blood collection purposes.
 - iii. Perform a straight catheter procedure on an adult patient 18 years or older.
 - iv. Provide gastrointestinal-tube (G-tube) and percutaneous gastronomy (PEG) gravity tube feeding only to an established G-Tube, G-J Tube or PEG Tube.
 - v. Assist a patient with eye drops.
 - vi. Perform a bladder scan.
 - vii. Obtain a swab for surveillance culture.
 - viii. Assist with Continuous Positive Airway Pressure (CPAP) and Bilevel Positive Airway Pressure (BIPAP) for patients with chronic respiratory conditions such as sleep apnea.

3. Supervision by telephone should not be permitted.

MSNA strongly recommends eliminating delegation by telephone. Delegation must be preceded by a nursing assessment of the patient and provision of a nursing plan of care by the registered professional nurse. To create a plan and assess whether delegation is safe, a nurse must be able to perform a thorough assessment of both the patient and the care conditions. This assessment can only be safely completed in person. The oversight that a nurse is required to perform over delegated tasks is also best done in the same physical location, so the nurse can intervene if the task goes awry.

Although care needs often vary by setting, emerging care models such as hospital-at-home and remote patient monitoring— are increasingly bringing complex medical care into home and community settings. Additionally, even when patients are considered medically stable, their conditions can change rapidly and unexpectedly. For these reasons, we urge you to not allow supervision by telephone or telecommunication device.

We appreciate your work on this rule and look forward to continuing to work together to ensure the safety of nursing practice in the state of Maine.

Sincerely,

A handwritten signature in black ink that reads "Michelle Grisat". The signature is written in a cursive, flowing style.

Michelle Grisat
National Director of Health and Regulatory Policy
Maine State Nurses Association/National Nurses Organizing Committee