

Testimony of Coralie Giles, RN
President, Maine State Nurses Association
Vice-President, National Nurses United

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”

Before the Joint Standing Committee on Health Coverage, Insurance, and Financial Services

Hearing: February 27, 2025 at 1:00 p.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 patient care in our state, the **Maine State Nurses Association/National Nurses Organizing Committee/National Nurses United (MSNA)** urges the **Committee to reject 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. MSNA urges the Committee to recommend that the final adoption of the rule be disapproved by the Legislature.

The proposed rule overreaches the law and endangers patients by allowing unrestricted delegation of tasks to unlicensed assistive personnel (UAP). UAP are staff without any license, certification, or legally-required training. Maine’s statutory definition of professional nursing allows the “delegation of specific nursing activities and tasks” to UAP, following rules to be adopted by the State Board of Nursing. The proposed rule contains no list of tasks that are, or are not, appropriate to be delegated to UAPs. In contrast, the rules for certified nursing assistants (CNAs) limit which tasks can be delegated based on CNA training curriculum and expressly prohibit delegation of certain high-risk tasks based on setting. The list of tasks for UAP, who have no required training, should be *more* restrictive than the list for CNAs, not less.

The proposed rule shifts employer obligations onto nurses. Under the proposed rule, nurses are responsible for ensuring that UAP meet the competency requirements of the UAP's employing facility. Nurses have no control over who their employers hire or how their employers verify competence. Employers, not nurses, should be responsible for verifying UAP competence.

The proposed rule fails to protect nurses from retaliation for exercising their right to refuse unsafe delegation. The statute protects the right of a registered nurse to refuse to delegate in the exercise of their professional judgment.¹ Yet the proposed rule fails to incorporate any anti-coercion and anti-retaliation protections. To ensure nurses can effectively exercise their authority, the final rule must include protections against retaliation as it relates to delegation. Otherwise, the lack of protection under the proposed rule may chill nurses' exercise of their professional judgment and leave employers free to pressure nurses to delegate more, without regard for safety.

The proposed rule endangers patients by allowing delegation by telephone. Substituting in-person nursing care via telephone and telecommunications increases the risk of medical error.² Letting employers pressure nurses to only be available by telephone—as opposed to in person—to UAP performing delegated tasks, puts patients at risk and puts both nurses and UAP in an untenable situation.

We strongly urge the Committee to reject LD 90 and to recommend that the final adoption of the rule be disapproved by the Legislature. Our position statement, below, explains our objections in greater detail.

Sincerely,



Coralie (Cokie) Giles, RN
President, Maine State Nurses Association
Vice-President, National Nurses United

¹ 32 M.R.S. sec. 2102(2)(H) as amended by P.L. 2024, ch. 592 (effective August 9, 2024).

² Valdes W, Utter G. Mar 31, 2021. "Delayed Diagnosis in the Setting of Virtual Care: Remembering the Physical Examination." WebM&M: Case Studies. <https://psnet.ahrq.gov/web-mm/delayed-diagnosis-setting-virtual-care-remembering-physical-examination>

RE: Legislative Review of Maine State Board of Nursing's Proposed Rule, Ch. 6, Delegation of Nursing Activities and Tasks to Unlicensed Assistive Personnel by Registered Professional Nurses, Proposed Rule Number: 2024-P199

Position: Disapprove the final adoption of the rule.

The Maine State Nurses Association/National Nurses Organizing Committee/National Nurses United urges the Legislature to disapprove the final adoption of the Maine State Board of Nursing's (Board) proposed rule,³ Ch. 6, Delegation of Nursing Activities and Tasks to Unlicensed Assistive Personnel by Registered Professional Nurses".

1. **The Board exceeded the scope of its statutory authority in the proposed rule on delegation to unlicensed assistive personnel (UAP).** 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."⁴ The Board exceeded the scope of its statutory authority by:
 - Shifting employer obligations onto nurses, such as ensuring UAP meet the competency requirements of the facility.⁵ This responsibility rightfully falls on employers as the hiring entity under the delegation rules for certified nursing assistants (CNAs).⁶ Nothing in the plain text of the statute authorizes holding nurses responsible for employer obligations of ensuring the competencies of personnel.
 - Creating permissive delegation rules with no limitations for UAP regardless of training or experience. Nothing in the plain text of the statute authorizes unrestricted delegation.
 - Allowing delegation to occur via telephone or other telecommunications.⁷ Nothing in the plain text of the statute authorizes delegation via telephone and telecommunications.
2. **The Board's rules do not conform with the legislative intent of the statute.**
 - Failure to specify delegable tasks as intended by the statute.

³ 02-380 C.M.R. ch.6 as proposed.

⁴ 32 M.R.S. §2102(2)(H) as amended by P.L. 2024, ch. 592 (effective August 9, 2024), emphasis added.

⁵ 02-380 C.M.R. ch.6, sec.2(1)(A) as proposed.

⁶ 02-380 C.M.R. ch.5, sec.1(A)(2).

⁷ 02-380 C.M.R. ch.6, sec.2(1)(B)(5) as proposed.

- By a plain reading of the statutory text, the intent was to allow nurses to delegate “specific nursing activities and tasks” to UAP,⁸ except CNAs who are unlicensed but are already allowed to perform delegated tasks. A separate chapter governs the rules on delegation to CNAs.⁹
- Despite the plain text of the statute, the rule fails to specify which nursing activities and tasks that nurses may delegate. Because of this failure, there are technically no limits on which delegated tasks that UAP can perform. In contrast, the CNA rules limit which tasks can be delegated based on CNA training curriculum¹⁰ and expressly prohibit delegation of certain high-risk tasks based on setting.¹¹
- The result of this disparity is a rule that allows UAP to perform *more* delegated tasks than CNAs, even though CNAs have more training and have obtained certification. For example, the rules for CNAs explicitly prohibit delegation for certain high-risk nursing tasks like administering medication,¹² whereas the rules for UAP are silent on any prohibitions and thus would technically allow delegation of high-risk tasks.
- 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.”¹³ Yet the proposed rule fails to incorporate these protections.

3. The rule conflicts with the Board’s rules under Chapter 5 governing delegation to CNAs.

⁸ 32 M.R.S. §2102(2)(H) as amended by P.L. 2024, ch. 592 (effective August 9, 2024), emphasis added.

⁹ 02-380 C.M.R. ch.5.

¹⁰ 02-380 C.M.R. ch.5, sec.1(A)(1).

¹¹ 02-380 C.M.R. ch.5, sec.1(B)(3).

¹² See 02-380 C.M.R. ch.5, sec.1(B)(3) “Medication that may not be delegated include PRN medication and those administered via intrathecal, intravenous, intramuscular, subcutaneous (except insulin) routes nor any other invasive methods.”

¹³ 32 M.R.S. sec. 2102(2)(H) as amended by P.L. 2024, ch. 592 (effective August 9, 2024).

- The rule wrongfully holds nurses responsible for ensuring UAP meet the competency requirements of the facility—in conflict with Chapter 5 which holds *employers* responsible for ensuring CNAs meet competency requirements of their facilities.¹⁴
4. **The failure to specify or limit delegable tasks is unreasonable** and creates an absurd result such that UAP can perform more tasks than CNAs—but with no training requirements and no certification.
- Unlike CNAs who must complete certain education and training requirements to obtain their certification, there are no formal education and training requirements for UAP. The rule has created a disparity by failing to limit the scope of delegable tasks for UAP.

¹⁴ See 02-380 C.M.R. ch.5, sec.1(A)(2).