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**TESTIMONY OF KIM ESQUIBEL
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STATE BOARD OF NURSING
DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION**

FOR L.D. 2166

**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
Presented by Representative Mathieson**

**BEFORE THE JOINT STANDING COMMITTEE ON
HEALTH COVERAGE, INSURANCE AND FINANCIAL SERVICES
Public Hearing: February 11, 2026 at 10:00 am**

Senator Bailey, Representative Mathieson, and members of the Committee. I am Kim Esquibel, Executive Director for the State Board of Nursing (BON). I am pleased to offer the following comments in support of LD 2166.

The Maine Legislature did not authorize the BON's final adoption of the prior version of the rule (Resolve 2025, Chapter 21). The BON has thoughtfully reviewed Committee feedback and included additional detail in the repropoed rule. A stakeholder group met on August 5, 2025, to review the additions to the repropoed rule. Following the stakeholder group meeting, the BON published the repropoed rule for public comment on October 17, 2025. A public hearing was held on November 6, 2025. The deadline for submitting comments regarding the rule was November 20, 2025. The BON received verbal and written comments from 15 individuals and organizations regarding the repropoed rule. There was no testimony in opposition or neither for nor against.

The BON considered the verbal testimony during the hearing and the written comments submitted after the hearing and made no substantive changes to the repropoed rule. On December 4, 2025, the BON provisionally adopted the repropoed rule.

The provisionally adopted rule was promulgated based on feedback from the HCIFS Committee and stakeholders; specifically, the amendments include the following:



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- Adding a “Purpose” section which includes that delegation is permitted, but not required, nor can it be coerced.
- Adding a clarifying statement that the scope of delegation and the level of supervision may vary upon type of setting and the patient’s condition.
- Included “Activities of Daily Living” in the definitions section.
- Included language regarding liability of the nurse – “In the event the qualified unlicensed assistive personnel deviates from the instruction, nursing plan of care or other delegating nurse directive, the delegating nurse does not bear responsibility and accountability for the outcome of the delegated activity or task performed by the unlicensed assistive personnel.”
- Included language that employer policy or contractual language cannot mandate the licensed registered professional nurse to delegate, nor mandate any components of the delegation process.
- Included a section on Nursing Activities and Tasks That Are Most Commonly Delegated and Nursing Activities and Tasks Prohibited from Delegation.

The BON maintained language allowing the delegating nurse to 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. The Board reviewed and considered Committee feedback regarding the use of telecommunication within the repropose delegation rule and determined it should remain consistent with registered professional nurses delegating to licensed practical nurses, certified nursing assistants and certified nursing assistant – medication aides. The delegating nurse does not always have to be physically onsite when delegating, but they are required to be readily available for supervision, either in person or through telecommunication. The registered professional nurse must use clinical judgment to determine if the situation allows for delegation either in person, by telephone, or through another form of telecommunication, with the primary goal of ensuring patient safety. The level of supervision required depends on the stability of the patient, the setting, the complexity of the task and the demonstrated ability of the unlicensed assistive person’s to perform the task.

Chapter 11 Joint Rule Regarding Telehealth Standards of Practice clearly indicates if a licensee who uses telehealth in providing health care relies upon or delegates to non-clinician health care personnel, the licensee shall ensure that: (1) systems are in place to ensure that the non-clinician health care personnel are qualified, trained, and authorized to provide that service; and (2) the licensee is available in person or electronically to consult with the non-clinician health care personnel.

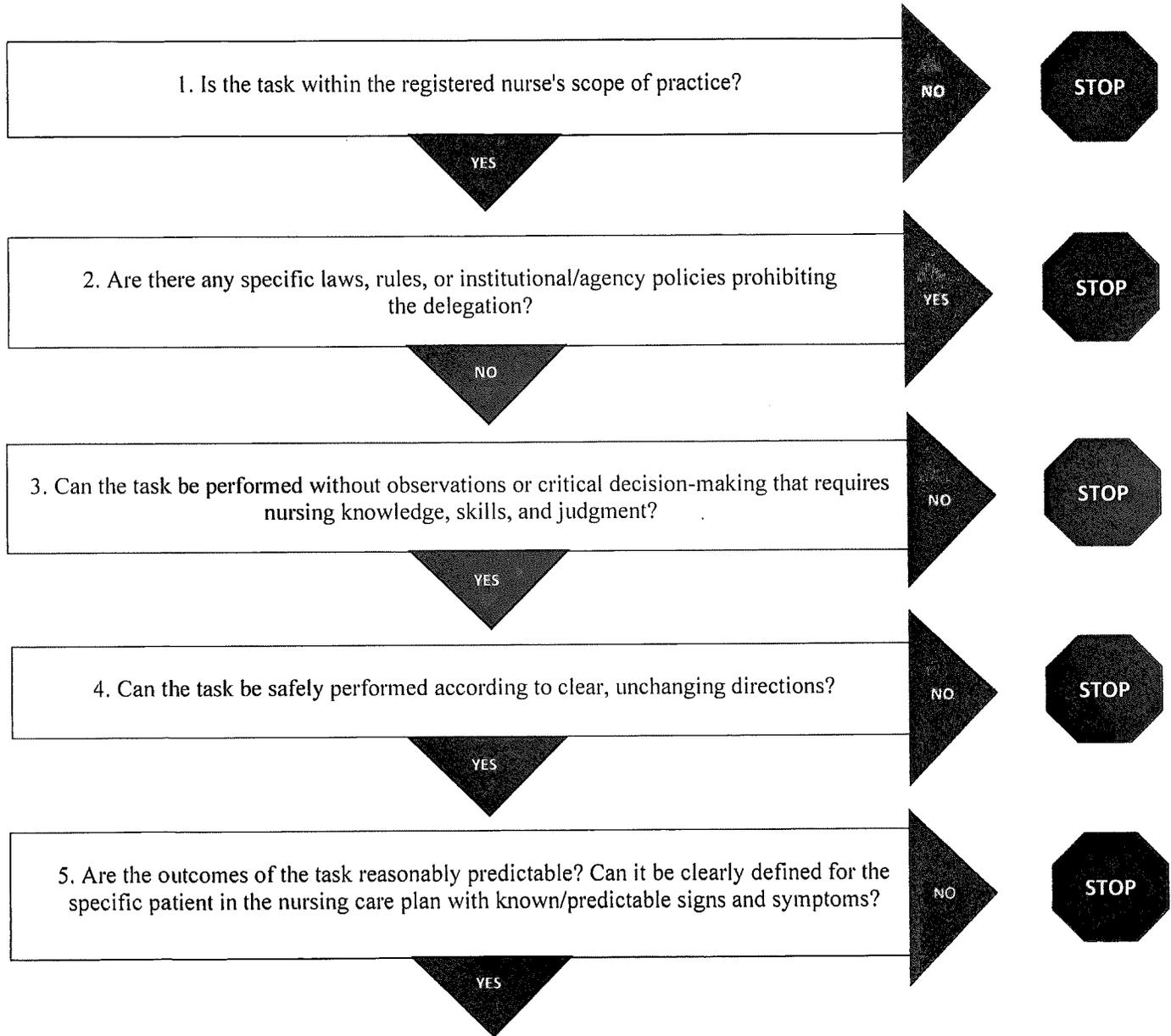
The BON believes it has addressed the concerns and recommendations of the Committee and respectfully urges the Committee to authorize final adoption of the rule.

Thank you for the opportunity to provide these comments on LD 2166. I am happy to answer any questions now or at the work session.

DECISION TREE FOR RN DELEGATION TO UAP

This decision tree is to assist Registered Nurses in determining if it is appropriate to delegate a specific nursing activity and task in a particular setting.

It is assumed that a nurse has assessed the patient and situation completely and created an individual nursing care plan in order to answer the questions in this decision tree.



Task itself is generally appropriate for the registered nurse to delegate. Follow Maine BON Rules, Chapter 6 Delegation of Nursing Activities and Tasks to Unlicensed Assistive Personnel (UAP) by Registered Professional Nurses (RN)

“Provisionally Adopted”

02 **DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION**

380 **STATE BOARD OF NURSING**

Chapter 6 **DELEGATION OF NURSING ACTIVITIES AND TASKS TO UNLICENSED ASSISTIVE PERSONNEL BY REGISTERED PROFESSIONAL NURSES**

SUMMARY: This rule establishes standards for the delegation of nursing activities and tasks to unlicensed assistive personnel in order to protect the public health and welfare in the area of nursing service.

SECTION 1. PURPOSE

In 2024 the State Board of Nursing (Board) statute was amended to allow registered professional nurses to delegate specific nursing activities and tasks to be provided to patients by unlicensed assistive personnel. Significantly, the amended law specifically provides that such delegation is permitted but not required nor can it be coerced:

This paragraph may not be construed to require a nurse to delegate, or permit a person to coerce a nurse into delegating specific nursing activities and tasks in any care setting against the nurse’s professional judgment or to prohibit a nurse in the exercise of the nurse’s professional judgment from refusing to delegate specific nursing activities and tasks in any care setting.

32 M.R.S. § 2102(2)(H).

This rule may not be construed to require a nurse to delegate any activities or tasks in contravention of the language of the law identified above.

The law also directed the Board to adopt rules concerning delegation of nursing activities and tasks to unlicensed assistive personnel that the Board considered necessary to ensure access to quality health care for Maine patients.

The purpose of this rule is to establish standards for the delegation of nursing activities and tasks to unlicensed assistive personnel in order to protect the public health and welfare in the area of nursing service. The Board believes that the licensed registered professional nurse is in a unique position to develop and implement a nursing plan of care that incorporates a professional relationship between the licensed registered professional nurse and the patient. The Board recognizes that the licensed registered professional nurses’ responsibility may vary from that of the nurse providing care at the bedside of an acutely ill patient to that of the licensed registered

professional nurse managing health care delivery in institutional and community settings. Assessment of the nursing needs of the patient, the plan of nursing actions, implementation of the plan, and evaluation are essential components of professional nursing practice and are the responsibilities of the licensed registered professional nurses. The full utilization of the services of a licensed registered professional nurse may require delegation of selected nursing activities and tasks to unlicensed assistive personnel based on initial and periodic assessment. The scope of delegation and the level of supervision by the licensed registered professional nurse may vary depending on the setting, the complexity of the task, the skills and experience of the unlicensed assistive personnel, and the patient's physical and mental status. The appropriateness of delegating nursing activities and tasks will vary upon the type of setting and the patient's condition. For example, delegation in acute-care settings with medically unstable patients will differ from delegation in a non-acute care setting with medically stable patients. Regardless of the setting, the delegating licensed registered professional nurse is responsible for following this rule. The following sections govern the RN in delegating nursing activities and tasks to unlicensed assistive personnel across a variety of settings where nursing care services are delivered.

SECTION 2. DEFINITIONS

1. **Activities of daily living.** “**Activities of daily living (ADLs)**” means basic self-care tasks that people perform daily to maintain their health and well-being and are limited to the following activities: bathing, dressing, grooming, routine hair and skin care, meal preparation, feeding, exercising, toileting, transfer/ambulation, positioning, and range of motion.
2. **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.
3. **Delegating nurse.** “Delegating nurse” means a registered professional nurse who delegates nursing activities or tasks.
4. **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.
5. **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. GENERAL CRITERIA FOR DELEGATION

1. Regardless of setting, the registered professional nurse who delegates nursing activities and tasks to unlicensed assistive personnel must comply with the following requirements:
 - A. The delegating nurse is directly responsible for the nature and quality of all nursing care rendered under the delegating nurse's direction. However, in the event the qualified unlicensed assistive personnel deviates from the instruction, nursing plan of care or other delegating nurse directive, the delegating nurse does not bear responsibility and accountability for the outcome of the delegated activity or task performed by the unlicensed assistive personnel.
 - B. The final decision as to what can be safely delegated in any specific situation is within the scope of the delegating nurse's judgment. Although other personnel may be employed to assist the licensed registered professional nurse in the performance of these functions, such personnel cannot be used as a substitute for the responsibility of the licensed registered professional nurse.
 - C. Prior to delegating a nursing activity or task, the delegating nurse must make an assessment of the patient's nursing care needs and care delivery setting to ensure the activity or task can be safely delegated to the unlicensed assistive personnel.
 - D. The nursing activity or task to be delegated must be one that a reasonable and prudent licensed registered professional nurse would determine to be delegable within the nurse's scope of nursing judgment and would not require the unlicensed assistive personnel to systematically assess, analyze, interpret, plan and or evaluate patient data. The delegated activity or task must be one that can be properly performed by the unlicensed assistive personnel without jeopardizing the patient's safety and welfare.
 - E. Said delegation must occur within the job description of the unlicensed assistive person and the unlicensed assistive person's employing facility's or organization's policies and procedures. Such employer policies and procedures must include acknowledgment that the final decision to delegate is made by the delegating nurse only, in compliance with 32 M.R.S § 2102(2)(H). Employer policy or contractual language cannot mandate the licensed registered professional nurse to delegate, nor mandate any components of the delegation process.
 - 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.

- G. In addition to the unlicensed assistive person's competence to perform selected nursing activities and tasks, other competencies to be considered include, but are limited to, the unlicensed assistive person's ability to effectively collaborate, communicate and cooperate, as appropriate, with other health care providers and with the patient. Unlicensed assistive personnel may not reassign a delegated activity or task.
 - H. The delegating nurse must provide the unlicensed assistive person with a nursing plan of care that includes, but is not limited to, the desired effect of the nursing activity or task, the sequence of steps to perform the activity, adverse side effects to be reported to the delegating nurse, and the need to report to the delegating nurse those activities or tasks that do not produce the desired effect.
 - I. The delegating nurse must adequately supervise the performance of the delegated nursing activity or task in accordance with the requirements of supervision as found in section 3(2) of this rule.
 - J. 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 circumstance that may jeopardize patient health or safety.
2. Supervision. 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:
- A. The right task: The activity or task falls within the job description and is included as part of the established written policies and procedures of the practice setting.
 - B. The right circumstance: The health condition of the patient is stable and predictable.

- C. The right person: The unlicensed assistive personnel have the training, capability, and continued demonstrated skills and knowledge to perform the delegated activities or tasks.
- D. 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.
- E. The right supervision and evaluation: The delegating 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 in compliance with 02-380 C.M.R. ch. 11, "Joint Rule Regarding Standards of Telehealth Practice."

SECTION 4. NURSING ACTIVITIES AND TASKS THAT MAY BE DELEGATED

1. **Nursing Activities and Tasks That Are Most Commonly Delegated.** By way of example, and not in limitation, the following nursing activities and tasks are ones that, with appropriate training and competency, may fall within the scope of sound professional nursing practice to be considered for delegation, regardless of the setting. The delegating nurse determines the level of supervision required, provided the delegation is in compliance with Section 3 of this rule. Those commonly delegated activities and tasks include, but are not limited to:
 - A. Non-invasive and non-sterile treatments;
 - B. The collecting, reporting, and documentation of data including, but not limited to:
 - (1) vital signs, height, weight, intake and output, capillary blood test, and urine test;
 - (2) environmental situations;
 - (3) patient or family comments relating to the patient's care; and
 - (4) behaviors related to the plan of care;
 - C. Ambulation, positioning, and turning;
 - D. Transportation of the patient within a facility;
 - E. Personal hygiene and elimination;
 - F. Feeding, cutting up of food, or placing of meal trays;
 - G. Socialization activities;
 - H. Activities of daily living; and

- I. Reinforcement of health teaching planned and/or provided by the registered nurse.

SECTION 5. NURSING ACTIVITIES AND TASKS THAT MAY NOT BE DELEGATED

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.

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:

§254. Educational duties

The commissioner shall have the following educational duties. [PL 1983, c. 693, §§5, 8 (NEW).]

1. General duty. The commissioner may inspect and have general supervision over all public schools and shall advise and direct superintendents and school boards in the discharge of their duties, by circular letters and personal conferences.

[PL 1983, c. 693, §§5, 8 (NEW).]

2. Training and development. The commissioner shall promote the importance of ongoing training and development and encourage initiatives that prepare school personnel to fully implement the system of learning results as established in section 6209.

[PL 2001, c. 454, §4 (AMD).]

3. Contracts for career and technical educational programs. The commissioner may:

A. Contract with a private school for the conduct of career and technical education courses in accordance with section 3002; and [PL 2011, c. 679, §1 (AMD).]

B. Reimburse the private schools for part of the cost of conducting approved career and technical education courses from funds available from the Federal Government for the purpose of career and technical education. [PL 2011, c. 679, §1 (AMD).]

[PL 2011, c. 679, §1 (AMD).]

4. Superintendent conference. Annually the commissioner shall hold a conference for the instruction of superintendents.

[PL 1983, c. 693, §§5, 8 (NEW).]

5. Medication. The commissioner shall provide for the administration of medication within schools as follows.

A. The commissioner shall adopt rules for the administration of medication in public or approved private schools, including the training of unlicensed personnel to administer medication. The rules for training must describe how the department will provide training at the local level directly to unlicensed personnel in each school administrative unit or approved private school in the State. Rules adopted pursuant to this section are major substantive rules pursuant to Title 5, chapter 375, subchapter II-A. [PL 2001, c. 451, §1 (AMD).]

B. Any public or approved private school shall have a written local policy and procedure for administering medication. The written local policy must include the requirement that all unlicensed personnel who administer medication receive training before receiving authorization to do so. Compliance with the provisions of this subsection is a requirement for basic school approval pursuant to sections 2902 and 4502. [PL 1999, c. 669, §1 (NEW).]

C. A public school or a private school approved pursuant to section 2902 must have a written local policy authorizing students to possess and self-administer emergency medication from an asthma inhaler or an epinephrine autoinjector as defined in section 6305, subsection 1, paragraph C. The written local policy must include the following requirements.

(1) A student who self-administers an asthma inhaler or an epinephrine autoinjector must have the prior written approval of the student's primary health care provider and, if the student is a minor, the prior written approval of the student's parent or guardian.

(2) The student's parent or guardian must submit written verification to the school from the student's primary health care provider confirming that the student has the knowledge and the skills to safely possess and use an asthma inhaler or an epinephrine autoinjector in school.

(3) The school nurse shall evaluate the student's technique to ensure proper and effective use of an asthma inhaler or an epinephrine autoinjector in school. [PL 2019, c. 560, §1 (AMD).]

D. Rules adopted by the commissioner under this subsection must authorize students who attend public school to possess and use a topical sunscreen product while on school property or at a school-sponsored event without a note or prescription from a licensed health care professional if the product is regulated by the federal Food and Drug Administration for over-the-counter use for the purpose of limiting skin damage from ultraviolet radiation. [PL 2019, c. 32, §1 (NEW).]

[PL 2019, c. 560, §1 (AMD).]

6. Other duties. The commissioner shall carry out all other duties assigned in this Title. [PL 1983, c. 693, §§5, 8 (NEW).]

7. Clearinghouse for information on nuclear usage.

[PL 2013, c. 506, §2 (RP).]

8. Model hiring procedure.

[PL 2013, c. 506, §3 (RP).]

9. Statewide goal.

[PL 2013, c. 506, §3 (RP).]

10. Gender equity.

[PL 2013, c. 506, §4 (RP).]

11. Statewide standards for behavior. In consultation with organizations representing school boards, school administrators, teachers, parents and other interested local officials and community members, the commissioner shall develop statewide standards for responsible and ethical student behavior. The standards must require annual reporting of incidents of violent and harmful behavior by or against students to the department by school administrative units. The department shall provide forms for reporting.

[PL 1999, c. 351, §1 (NEW).]

11-A. Model policy; reporting. By January 1, 2013, the commissioner shall develop a model policy to address bullying and cyberbullying for use by school administrative units pursuant to section 6554. A copy of the model policy must be sent to each school administrative unit in the State and posted on the publicly accessible portion of the department's website along with any training and instructional materials related to the policy that the commissioner determines necessary.

A. The commissioner shall create a procedure by which school administrative units report substantiated incidents of bullying and cyberbullying to the department on at least an annual basis. These reports may not contain personally identifying information about students or other involved persons, but must delineate the specific nature of the incidents, the consequences and the actions taken. [PL 2011, c. 659, §1 (NEW).]

B. The commissioner may update or revise the model policy and shall post the update or revision on the publicly accessible portion of the department's website and send a copy of the update or revision to each school administrative unit. [PL 2011, c. 659, §1 (NEW).]

[PL 2011, c. 659, §1 (NEW).]

12. Technical assistance and statewide standards for reintegration planning. In consultation with juvenile correctional officials, juvenile community corrections officers, organizations representing school boards, school administrators, teachers and parents and other interested local officials and community members, the commissioner shall develop a program of technical assistance and establish statewide standards for reintegration planning and transition services for juvenile offenders who are discharged from juvenile correctional facilities in the State, who have been enrolled in educational programs or schools for juveniles located in or operated by correctional facilities and who are transferring to schools located within local school administrative units in the State. The technical assistance and standards must include, but may not be limited to:

§42. Rules and regulations

1. General. The department shall issue rules and regulations considered necessary and proper for the protection of life, health and welfare, and the successful operation of the health and welfare laws. The rules and regulations shall be adopted pursuant to the requirements of the Maine Administrative Procedure Act.

[PL 1977, c. 694, §331 (AMD).]

1-A. Administration of medication. The administration of medication in assisted housing programs, residential care facilities, drug treatment centers, day care facilities, children's homes and nursery schools and nonnursing level intermediate care facilities for persons with intellectual disabilities must be in accordance with rules established by the department. In other facilities licensed or approved by the department, excluding those facilities licensed under section 1811, other than nonnursing level intermediate care facilities for persons with intellectual disabilities, the department may establish rules for the administration of medication as it considers necessary. In establishing rules for each type of facility, the department shall consider, among other factors, the general health of the persons likely to receive medication, the number of persons served by the facility and the number of persons employed at the facility who might be involved in the administration of medication. Any rules for the administration of medication must be established in accordance with Title 5, chapter 375.

[PL 2025, c. 237, §1 (AMD).]

2. Department records. The department shall make and enforce reasonable rules and regulations governing the custody, use and preservation of the records, papers, files and communications of the department, and especially those which pertain to the granting of public assistance. The use of such records, papers, files and communications by any other agency or department of government to which they may be furnished shall be limited to the purposes for which they are furnished and by the law under which they may be furnished. It shall be unlawful for any person, except for purposes directly connected with the administration of the public assistance and in accordance with the rules and regulations of the department, to solicit, disclose, receive, make use of or authorize, knowingly permit, participate in or acquiesce in the use of, any list of or names of, or any information concerning, persons applying for or receiving such assistance, directly or indirectly, derived from the records, papers, files or communications of the State or subdivisions or agencies thereof, or acquired in the course of the performance of official duties. Any person violating any provision of this subsection shall be punished by a fine of not more than \$500 or by imprisonment for not more than 11 months, or by both.

[PL 1973, c. 521, §1 (RPR).]

3. Subsurface sewage disposal. The department shall adopt minimum rules relating to subsurface sewage disposal systems. All rules, including installation and inspection rules, must be consistent with Title 30-A, chapter 185, subchapter III and Title 32, chapter 49, but this does not preempt the authority of municipalities under Title 30-A, section 3001 to adopt more restrictive ordinances. These rules may regulate the location of water supply wells to provide minimum separation distances from subsurface sewage disposal systems. The department may require a deed covenant or deed restriction when determined necessary.

Any person who violates the rules adopted under this subsection, or who violates a municipal ordinance adopted pursuant to Title 30-A, sections 4201 and 4211 or uses a subsurface waste water disposal system not in compliance with rules applicable at the time of installation or modification must be penalized in accordance with Title 30-A, section 4452. Enforcement of the rules is the responsibility of the municipalities rather than the department. The department or a municipality may seek to enjoin violations of the rules or municipal ordinances. In the prosecution of a violation by a municipality, the court shall award reasonable attorney's fees to a municipality if that municipality is the prevailing party, unless the court finds that special circumstances make the award of these fees unjust.

[PL 1997, c. 727, Pt. C, §4 (AMD).]