

JAN 25 2006

A BILL FOR AN ACT

RELATING TO NURSE AIDES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature recognizes that 42 United
2 States Code sections 1395I-3 and 1396r require nurse aides
3 working in nursing facilities participating in medicare and
4 medicaid programs to be certified. A nurse aide working at a
5 place other than a medicare and medicaid certified nursing
6 facility may practice without certification.

7 The purpose of this Act is to require all practicing nurse
8 aides, regardless of their place of employment, to be certified.
9 Certifying all nurse aides will allow the department of commerce
10 and consumer affairs and the department of health to monitor and
11 evaluate the quality and competency of all nurse aides
12 practicing in the State.

13 SECTION 2. Chapter 321, Hawaii Revised Statutes, is
14 amended by adding a new section to be appropriately designated
15 and to read as follows:

16 "§321- Enforcement. (a) The director of health shall
17 investigate allegations of abuse, neglect, and exploitation by
18 nurse aides pursuant to chapter 91, and shall provide that



1 information to the department of commerce and consumer affairs
2 for the purposes of consideration in the recertification
3 process.

4 (b) The director of health, after notice and hearing, may
5 make recommendations to the director of commerce and consumer
6 affairs to suspend or revoke any certification, impose fines, or
7 deny recertification for:

8 (1) Abuse, neglect, or exploitation of a patient by the
9 nurse aide;

10 (2) Use of fraud, deceit, or misrepresentation in
11 obtaining or attempting to obtain certification or
12 recertification;

13 (3) Unprofessional conduct as defined by the director in
14 rules adopted pursuant to chapter 91;

15 (4) Revocation, suspension, limitation, or other
16 disciplinary action by another state for an action
17 that would be grounds for disciplinary action under
18 this section; or

19 (5) Violation of the conditions or limitations upon which
20 any license is issued.

1 (c) Any fine imposed by the director after a hearing in
2 accordance with chapter 91 shall be no less than \$100 and no
3 more than \$1,000 for each violation.

4 (d) The remedies or penalties provided by this chapter are
5 cumulative to each other and to the remedies or penalties
6 available under all other laws of this State."

7 SECTION 3. Chapter 346, Hawaii Revised Statutes, is
8 amended by adding a new section to be appropriately designated
9 and to read as follows:

10 "§346- Training programs. The director of human
11 services shall be responsible for:

12 (1) Approving certification training programs for nurse
13 aides and ensuring that they comply with all
14 applicable state and federal requirements; and

15 (2) Approving and arranging for the recertification
16 examinations for nurse aides who work in
17 medicare/medicaid certified nursing facilities."

18 SECTION 4. Chapter 457A, Hawaii Revised Statutes, is
19 amended by adding a new part to be appropriately designated and
20 to read as follows:

1 "PART

2 STATE-CERTIFIED NURSE AIDE PROGRAM FOR NURSE AIDES WORKING IN
3 SETTING OTHER THAN MEDICARE/MEDICAID CERTIFIED NURSING
4 FACILITIES

5 §457A- Definitions. As used in this chapter, unless the
6 context clearly indicates otherwise:

7 "Director" means the director of commerce and consumer
8 affairs.

9 "Nurse aide" means a person who performs a variety of
10 duties relating to patients and patient care working under the
11 supervision of a nurse, including but not limited to assisting
12 patients in all activities of daily living such as serving and
13 collecting food trays, and helping patients get out of bed,
14 bathe, and dress. A nurse aide may also assist a nurse by
15 changing bed linens, delivering messages, and sterilizing
16 instruments.

17 §457A- Implementation. (a) The director shall adopted
18 rules under chapter 91 establishing:

- 19 (1) The minimum requirements and standards necessary for
20 certification as a nurse aide;
- 21 (2) Examination requirements, including the passing score,
22 provided that:



1 (A) No person shall be permitted to take the
2 examination who has not complied with the
3 training requirements established by the
4 department of human services; and

5 (B) The examination shall have both a theoretical and
6 clinical evaluation component;

7 (3) Maintenance requirements for recertification on a
8 biennial basis, including a recertification
9 examination as approved by the department of human
10 services;

11 (4) Implementation of a nurse aide registry; and

12 (5) Fees for services rendered to carry out the purposes
13 of this part.

14 (b) Reciprocity shall be granted to nurse aides who have
15 completed a state approved program where the requirements of
16 that program are comparable or acceptable to the department.

17 **§457A- Contract for administrative services.** The
18 director may contract with a professional testing service that
19 is qualified to test the competency of nurse aides. The
20 department may require that fees for services be paid directly
21 to the professional testing service.

1 **§457A- Registry.** The director shall issue certificates
2 to qualified nurse aides and shall be responsible for
3 maintenance of an up-to-date nurse aide registry which shall
4 include the names of certified nurse aides, their places of
5 employment, and disciplinary actions. Disciplinary actions
6 taken against certified nurse aides shall be placed into the
7 nurse aide registry."

8 SECTION 5. Chapter 457A, Hawaii Revised Statutes, is
9 amended to read as follows:

10 "PART I

11 MEDICARE/MEDICAID NURSE AIDE CERTIFICATION

12 **§457A-1 Findings and purpose.** (a) The legislature
13 recognizes that 42 United States Code §1395I-3 and §1396R
14 require nurse aides working in nursing facilities participating
15 in medicare and medicaid programs to be certified. This chapter
16 implements 42 United States Code §1395I-3 and §1396R with
17 respect to:

- 18 (1) Establishing the State's regulatory scheme for
19 certifying medicare/medicaid nurse aides;
20 (2) Defining the scope of regulation;
21 (3) Establishing standards for certification and biennial
22 recertification; and



1 (4) Establishing an interagency agreement between the
2 state agencies responsible for various aspects of the
3 program.

4 (b) As used in this chapter, "medicare/medicaid nurse
5 aide" means a person who performs a variety of duties relating
6 to patients and patient care working under the supervision of a
7 nurse, in a facility participating in a medicare or medicaid
8 program, including but not limited to assisting patients in all
9 activities of daily living such as serving and collecting food
10 trays, and helping patients get out of bed, bathe, and dress. A
11 nurse aide may also assist a nurse by changing bed linens,
12 delivering messages, and sterilizing instruments.

13 **§457A-2 Implementation.** (a) The director of commerce and
14 consumer affairs shall implement the provisions of 42 United
15 States Code §1395I-3 and §1396R as they relate only to
16 establishing:

17 (1) The minimum requirements and standards necessary for
18 certification as a medicare/medicaid nurse aide;

19 (2) Examination requirements, including the passing score,
20 provided that no person shall be permitted to take the
21 examination who has not complied with the training
22 requirements established by the director;



1 (3) Training requirements;

2 (4) Maintenance requirements for continued certification
3 on a biennial basis; and

4 [~~4~~] (5) Implementation of a medicare/medicaid nurse aide
5 registry.

6 (b) Reciprocity shall be granted to nurse aides who have
7 completed a state approved program where the requirements of
8 that program are comparable or acceptable to the department.

9 (c) For certified medicare/medicaid nurse aides employed
10 in medicare/medicaid certified nursing facilities, both federal
11 and state requirements shall be met. No charge shall be imposed
12 on these nurse aides for the maintenance of the nurse aide
13 registry.

14 **§457A-3 Power of director.** (a) The director, in
15 accordance with chapters 91 and 92, shall adopt rules that may
16 be necessary to implement the provisions of 42 United States
17 Code §1395I-3 and §1396R, as well as the federal regulations
18 adopted pursuant thereto, as they relate only to establishing:

19 (1) The minimum requirements necessary for certification
20 as a medicare/medicaid nurse aide;

21 (2) Examination requirements, including the passing score
22 and provisions for contesting examination results;



- 1 (3) Maintenance requirements for continued certification;
- 2 and
- 3 (4) Implementation and maintenance of a medicare/medicaid
- 4 nurse aide registry.

5 (b) The director shall issue certificates to qualified
 6 medicare/medicaid nurse aides and shall be responsible for
 7 maintenance of an up-to-date medicare/medicaid nurse aide
 8 registry which shall include the names of certified
 9 medicare/medicaid nurse aides, their places of employment, and
 10 disciplinary actions. Disciplinary actions shall be limited to
 11 the placement of substantiated findings from the department of
 12 health into the medicare/medicaid nurse aide registry within ten
 13 working days of court settlement.

14 ~~§457A-4~~ **Contract for administrative services.** The
 15 director may contract with a professional testing service that
 16 is qualified to test the competency of medicare/medicaid nurse
 17 aides. The department may require that fees for services be
 18 paid directly to the professional testing service.

19 ~~§457A-5~~ **Fees.** The director may establish fees for
 20 services rendered to carry out the purposes of this ~~chapter.~~
 21 part."

1 SECTION 6. Any nurse aide not employed in a
 2 medicare/medicaid facility and who has been recertified by
 3 June 30, 2006 may continue to be recertified on a biennial basis
 4 under part I of chapter 457A if the nurse aide passes, by
 5 December 31, 2007, a proficiency evaluation approved by the
 6 department of human services. If the nurse aide fails to pass
 7 the evaluation, the nurse aide is no longer eligible to become
 8 recertified under part I of chapter 457A, and shall apply for
 9 certification and recertification under the new part added to
 10 that chapter by this Act instead.

11 SECTION 7. Statutory material to be repealed is bracketed
 12 and stricken. New statutory material is underscored.

13 SECTION 8. This Act shall take effect on July 1, 2006.
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INTRODUCED BY: Rosely de Baker
G.S.T.
Shiranne Chun @ deland
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Report Title:

Nurse Aides; Certification

Description:

Establishes certification procedures for nurse aides employed in facilities other than medicare/medicaid facilities.

