

ACT 226

H.B. NO. 71

A Bill for an Act Relating to Nurse Aides.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature recognizes that 42 United States Code sections 1395i-3 and 1396r require nurse aides working in nursing facilities participating in medicare and medicaid programs to be certified.

The purpose of this Act is to provide for the certification and recertification of nurse aides who work in nursing facilities participating in medicare and medicaid programs and in other state-licensed and state-certified health care settings. Certifying these nurse aides will allow the department of commerce and consumer affairs, the department of human services, and the department of health to monitor and evaluate the quality and competency of the nurse aides practicing in the state.

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

**“§321- Certified nurse aides; enforcement.** The department shall adopt rules pursuant to chapter 91 relating to:

- (1) The investigation of:
  - (A) Abuse or neglect by a certified nurse aide working in a health care setting licensed or certified by the department; and
  - (B) Misappropriation of an individual’s property by a certified nurse aide working in a health care setting licensed or certified by the department; and
- (2) Action taken against a certified nurse aide as a result of an investigation pursuant to paragraph (1).”

SECTION 3. Chapter 346, Hawaii Revised Statutes, is amended by adding two new sections to be appropriately designated and to read as follows:

**“§346-A Certified nurse aides; training programs and recertification.** The director shall:

- (1) Approve training programs for nurse aides and ensure that the training programs comply with all applicable federal and state requirements;
- (2) Approve and arrange for the recertification process for nurse aides who work in medicare or medicaid certified nursing facilities; and
- (3) Approve and arrange for the recertification process for nurse aides who work in state-licensed or state-certified health care settings.

**§346-B Certified nurse aides; enforcement.** The department shall adopt rules pursuant to chapter 91 relating to:

- (1) The investigation of:
  - (A) Abuse or neglect by a certified nurse aide working in a health care setting licensed or certified by the department; and
  - (B) Misappropriation of an individual’s property by a certified nurse aide working in a health care setting licensed or certified by the department; and
- (2) Action taken against a certified nurse aide as a result of an investigation pursuant to paragraph (1).”

SECTION 4. Chapter 457A, Hawaii Revised Statutes, is amended by adding four new sections to be appropriately designated and to read as follows:

**“§457A-A Definitions.** As used in this chapter:

“Certified nurse aide” means a nurse aide who has met the requirements for certification under section 457A-C or 457A-D.

“Director” means the director of commerce and consumer affairs.

“Medicare or medicaid certified nursing facility” means any intermediate care facility or skilled nursing facility licensed pursuant to section 321-11(10) and certified by the department of health in accordance with 42 United States Code sections 1395i-3 and 1396r.

“Medicare or medicaid nurse aide” means a certified nurse aide who works in a medicare or medicaid certified nursing facility.

“Nurse aide” means a person who performs a variety of duties relating to patients and patient care while working under the supervision of a nurse, including assisting patients in all activities of daily living such as serving and collecting food trays, and helping patients get out of bed, bathe, and dress. A nurse aide may also assist a nurse by changing bed linens, delivering messages, and sterilizing instruments.

“State-licensed or state-certified health care settings” means health care settings, other than a medicare or medicaid certified nursing facilities, which are regulated by the department of health or the department of human services.

“Substantiated finding” means documentation of an investigation by the State that leads the State to conclude that an allegation is valid, including:

- (1) The nature of the allegation and the evidence that led to the conclusion;
- (2) The date of the hearing, if the individual chose to have one, and its outcome;
- (3) A statement of the individual disputing the allegation, if the individual chose to make one; or
- (4) A criminal conviction.

**§457A-B Certification required.** Except as otherwise provided in this chapter, no person shall:

- (1) Represent one’s self as a certified nurse aide;
- (2) Imply, in any manner, that one’s self is a certified nurse aide; or
- (3) Use the abbreviation “C.N.A.” or any other words, letters, signs, or devices to identify one’s self as a certified nurse aide;

without having first obtained certification as provided in this chapter.

**§457A-C Medicare or medicaid nurse aide certification.** (a) To be certified as a medicare or medicaid nurse aide, an applicant shall successfully complete:

- (1) Training in a training program approved by the director of human services under section 346-A; and
- (2) A nurse aide examination approved by the director.

(b) No person shall be permitted to take the examination who has not complied with the training requirements established by the director of human services in accordance with 42 United States Code sections 1395i-3 and 1396r.

(c) Reciprocity shall be granted to nurse aides who have completed a state-approved program that meets both federal and state requirements.

(d) Nurse aides employed in medicare or medicaid certified nursing facilities shall meet both federal and state requirements.

(e) Maintenance requirements for the recertification process shall be on a biennial basis, and shall include an annual performance review and in-service

training and employment in a medicare or medicaid facility as required by federal and state law.

(f) No charge shall be imposed on medicare or medicaid certified nurse aides for the maintenance of the nurse aide registry.

**§457A-D Nurse aide certification for state-licensed or state-certified health care settings.** (a) This certification applies to nurse aides working in state-licensed and state-certified health care settings other than a medicare or medicaid certified nursing facility.

(b) To be certified, an applicant shall successfully complete:

(1) Training in a training program approved by the director of human services under section 346-A; and

(2) A nurse aide examination approved by the director.

(c) Fees may be imposed for services rendered to carry out the purposes of this section.

(d) Reciprocity shall be granted to qualified nurse aides who have completed a state-approved program, the requirements of which are comparable to the requirements of this chapter.

(e) Maintenance requirements for the recertification process shall be required on a biennial basis and shall include a competency evaluation approved by the department of human services, and employment in a state-licensed or state-certified health care setting.”

SECTION 5. Section 457A-1, Hawaii Revised Statutes, is amended to read as follows:

**“§457A-1 Findings and purpose.** (a) The legislature recognizes that 42 United States Code [~~§1395i-3 and §1396R~~] sections 1395i-3 and 1396r require nurse aides working in nursing facilities participating in medicare and medicaid programs to be certified.

(b) The legislature also recognizes that nurse aides who work in state-licensed or state-certified health care settings should be certified for the purpose of consumer safety and held to similar standards of competency and evaluation appropriate for these settings. This chapter implements 42 United States Code [~~§1395i-3 and §1396R~~] sections 1395i-3 and 1396r with respect to:

(1) Establishing the State’s regulatory scheme for certifying nurse aides;

(2) Defining the scope of regulation;

(3) Establishing standards for certification and biennial recertification; and

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

~~[(b) As used in this chapter, “nurse aide” means a person who performs a variety of duties relating to patients and patient care working under the supervision of a nurse, including but not limited to assisting patients in all activities of daily living such as serving and collecting food trays, and helping patients get out of bed, bathe, and dress. A nurse aide may also assist a nurse by changing bed linens, delivering messages, and sterilizing instruments.]”~~

SECTION 6. Section 457A-2, Hawaii Revised Statutes, is amended to read as follows:

**“§457A-2 Implementation.** (a) The director [~~of commerce and consumer affairs~~] shall implement the provisions of this chapter, in accordance with 42 United States Code [~~§1395i-3 and §1396R as they~~] sections 1395i-3 and 1396r, that relate [only] to [establishing]:

- (1) The minimum requirements and standards [necessary] for certification as a nurse aide;
- (2) Examination requirements, including the passing score;
- (3) Maintenance requirements for continued certification on a biennial basis; and
- (4) Implementation of a certified nurse aide registry.

(b) The director of health shall implement this chapter in accordance with 42 United States Code sections 1395i-3 and 1396r, that relate to disciplining certified nurse aides who are employed in:

- (1) Nursing facilities participating in medicare and medicaid programs; and
- (2) Health care settings licensed or certified by the department of health.

(c) The director of human services shall implement this chapter in accordance with 42 United States Code sections 1395i-3 and 1396r, that relate to:

- (1) Training programs for nurse aides and recertification; and
- (2) Disciplining of certified nurse aides employed in health care settings licensed or certified by the department of human services.”

SECTION 7. Section 457A-3, Hawaii Revised Statutes, is amended to read as follows:

**“§457A-3 Power of director.** (a) The director, in accordance with chapters 91 and 92, shall adopt rules [that may be necessary] to implement the provisions of this chapter in accordance with 42 United States Code [§1395i-3 and §1396R, as well as] sections 1395i-3 and 1396r and the federal regulations adopted pursuant thereto, [as they] that relate [only] to [establishing]:

- (1) The minimum requirements necessary for certification as a nurse aide;
- (2) Examination requirements, including the passing score and provisions for contesting examination results;
- (3) Maintenance requirements for continued certification; and
- (4) Implementation and maintenance of a nurse aide registry[.] of certified nurse aides employed in medicare or medicaid certified nursing facilities and certified nurse aides in other state-licensed and state-certified health care settings.

(b) The director shall issue certificates to qualified nurse aides and shall be responsible for maintenance of an up-to-date nurse aide registry [which] that shall include the names of certified nurse aides, their places of employment, and [disciplinary actions. Disciplinary actions] all information that is required to be reported by the department of health and the department of human services. The director’s role, with regard to the disciplining of certified nurse aides, shall be limited to the placement [of substantiated findings from] into the certified nurse aide registry of all information and substantiated findings from the department of health [into the nurse aide registry within ten working days of court settlement.] and the department of human services, as required by 42 United States Code sections 1395i-3 and 1396r, within ten working days of the finding, which information shall permanently remain in the registry except if:

- (1) The finding was made in error;
- (2) The individual is found not guilty in court; or
- (3) The State receives notification of the individual’s death.”

SECTION 8. Any nurse aide who is employed in a state-licensed or state-certified health care setting and who is recertified by July 1, 2007, may be recertified on a biennial basis under chapter 457A, Hawaii Revised Statutes, if the nurse aide passes, by December 31, 2008, a proficiency evaluation approved by the department

of human services. If the nurse aide fails to pass the proficiency evaluation, the nurse aide shall apply for certification as a new applicant and undergo recertification under chapter 457A, Hawaii Revised Statutes.

**SECTION 9.** In codifying the new sections added by sections 3 and 4 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in designating the new sections in this Act.

**SECTION 10.** Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.<sup>2</sup>

**SECTION 11.** This Act shall take effect upon approval.

(Approved June 28, 2007.)

**Notes**

1. So in original.
2. Edited pursuant to HRS §23G-16.5.