



GOV. MSG. NO. 997

EXECUTIVE CHAMBERS
HONOLULU

LINDA LINGLE
GOVERNOR

June 28, 2007

The Honorable Colleen Hanabusa, President
and Members of the Senate
Twenty-Fourth State Legislature
State Capitol, Room 409
Honolulu, Hawaii 96813

Dear Madam President and Members of the Senate:

This is to inform you that on June 28, 2007, the following bill was signed into law:

HB71 HD2 SD2 CD1

A BILL FOR AN ACT RELATING TO NURSE AIDES.
(ACT 226)

Sincerely,

LINDA LINGLE

Approved by the Governor

on JUN 28 2007

HOUSE OF REPRESENTATIVES
TWENTY-FOURTH LEGISLATURE, 2007
STATE OF HAWAII

ACT 226

H.B. NO. 71
H.D. 2
S.D. 2
C.D. 1

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.

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

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

17 "§321- Certified nurse aides; enforcement. The
18 department shall adopt rules pursuant to chapter 91 relating to:

HB71 CD1 HMS 2007-4040



- 1 (1) The investigation of:
- 2 (A) Abuse or neglect by a certified nurse aide
- 3 working in a health care setting licensed or
- 4 certified by the department; and
- 5 (B) Misappropriation of an individual's property by a
- 6 certified nurse aide working in a health care
- 7 setting licensed or certified by the department;
- 8 and
- 9 (2) Action taken against a certified nurse aide as a
- 10 result of an investigation pursuant to paragraph (1)."

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

14 "§346-A Certified nurse aides; training programs and
15 recertification. The director shall:

- 16 (1) Approve training programs for nurse aides and ensure
- 17 that the training programs comply with all applicable
- 18 federal and state requirements;
- 19 (2) Approve and arrange for the recertification process
- 20 for nurse aides who work in medicare or medicaid
- 21 certified nursing facilities; and



1 (3) Approve and arrange for the recertification process
2 for nurse aides who work in state-licensed or
3 state-certified health care settings.

4 §346-B Certified nurse aides; enforcement. The department
5 shall adopt rules pursuant to chapter 91 relating to:

6 (1) The investigation of:

7 (A) Abuse or neglect by a certified nurse aide
8 working in a health care setting licensed or
9 certified by the department; and

10 (B) Misappropriation of an individual's property by a
11 certified nurse aide working in a health care
12 setting licensed or certified by the department;

13 and

14 (2) Action taken against a certified nurse aide as a
15 result of an investigation pursuant to paragraph (1)."

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

19 "§457A-A Definitions. As used in this chapter:

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



1 "Director" means the director of commerce and consumer
2 affairs.

3 "Medicare or medicaid certified nursing facility" means any
4 intermediate care facility or skilled nursing facility licensed
5 pursuant to section 321-11(10) and certified by the department
6 of health in accordance with 42 United States Code sections
7 1395i-3 and 1396r.

8 "Medicare or medicaid nurse aide" means a certified nurse
9 aide who works in a medicare or medicaid certified nursing
10 facility.

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

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



1 "Substantiated finding" means documentation of an
2 investigation by the State that leads the State to conclude that
3 an allegation is valid, including:

4 (1) The nature of the allegation and the evidence that led
5 to the conclusion;

6 (2) The date of the hearing, if the individual chose to
7 have one, and its outcome;

8 (3) A statement of the individual disputing the
9 allegation, if the individual chose to make one; or

10 (4) A criminal conviction.

11 §457A-B Certification required. Except as otherwise
12 provided in this chapter, no person shall:

13 (1) Represent one's self as a certified nurse aide;

14 (2) Imply, in any manner, that one's self is a certified
15 nurse aide; or

16 (3) Use the abbreviation "C.N.A." or any other words,
17 letters, signs, or devices to identify one's self as a
18 certified nurse aide;

19 without having first obtained certification as provided in this
20 chapter.



1 §457A-C Medicare or medicaid nurse aide certification.

2 (a) To be certified as a medicare or medicaid nurse aide, an
3 applicant shall successfully complete:

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

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

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

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

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

17 (e) Maintenance requirements for the recertification
18 process shall be on a biennial basis, and shall include an
19 annual performance review and in-service training and employment
20 in a medicare or medicaid facility as required by federal and
21 state law.



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

4 §457A-D Nurse aide certification for state-licensed or
5 state-certified health care settings. (a) This certification
6 applies to nurse aides working in state-licensed and
7 state-certified health care settings other than a medicare or
8 medicaid certified nursing facility.

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

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

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

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

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

19 (e) Maintenance requirements for the recertification
20 process shall be required on a biennial basis and shall include
21 a competency evaluation approved by the department of human



1 services, and employment in a state-licensed or state-certified
2 health care setting."

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

5 "**§457A-1 Findings and purpose.** (a) The legislature
6 recognizes that 42 United States Code [~~§1395i-3 and §1396R~~]
7 sections 1395i-3 and 1396r require nurse aides working in nursing
8 facilities participating in medicare and medicaid programs to be
9 certified.

10 (b) The legislature also recognizes that nurse aides who
11 work in state-licensed or state-certified health care settings
12 should be certified for the purpose of consumer safety and held to
13 similar standards of competency and evaluation appropriate for
14 these settings. This chapter implements 42 United States Code
15 [~~§1395i-3 and §1396R~~] sections 1395i-3 and 1396r with respect to:

- 16 (1) Establishing the State's regulatory scheme for
17 certifying nurse aides;
18 (2) Defining the scope of regulation;
19 (3) Establishing standards for certification and biennial
20 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, "nurse aide" means a person
5 who performs a variety of duties relating to patients and patient
6 care working under the supervision of a nurse, including but not
7 limited to assisting patients in all activities of daily living
8 such as serving and collecting food trays, and helping patients
9 get out of bed, bathe, and dress. A nurse aide may also assist a
10 nurse by changing bed linens, delivering messages, and sterilizing
11 instruments.] "~~

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

14 "**§457A-2 Implementation.** (a) The director [~~of commerce and
15 consumer affairs~~] shall implement the provisions of this chapter,
16 in accordance with 42 United States Code [~~§1395i-3 and §1396R as
17 they~~] sections 1395i-3 and 1396r, that relate [~~only~~] to
18 [~~establishing~~]:

19 (1) The minimum requirements and standards [~~necessary~~] for
20 certification as a nurse aide;

21 (2) Examination requirements, including the passing score;



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

3 (4) Implementation of a certified nurse aide registry.

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

8 (1) Nursing facilities participating in medicare and
9 medicaid programs; and

10 (2) Health care settings licensed or certified by the
11 department of health.

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

15 (1) Training programs for nurse aides and recertification;
16 and

17 (2) Disciplining of certified nurse aides employed in
18 health care settings licensed or certified by the
19 department of human services."

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



1 "**§457A-3 Power of director.** (a) The director, in
2 accordance with chapters 91 and 92, shall adopt rules [~~that may be~~
3 ~~necessary~~] to implement the provisions of this chapter in
4 accordance with 42 United States Code [§1395i-3 and §1396R, as
5 well as] sections 1395i-3 and 1396r and the federal regulations
6 adopted pursuant thereto, [~~as they~~] that relate [~~only~~] to
7 [~~establishing~~]:

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

19 (b) The director shall issue certificates to qualified nurse
20 aides and shall be responsible for maintenance of an up-to-date
21 nurse aide registry [~~which~~] that shall include the names of
22 certified nurse aides, their places of employment, and



1 ~~[disciplinary actions. Disciplinary actions]~~ all information that
2 is required to be reported by the department of health and the
3 department of human services. The director's role, with regard to
4 the disciplining of certified nurse aides, shall be limited to the
5 placement ~~[of substantiated findings from]~~ into the certified
6 nurse aide registry of all information and substantiated findings
7 from the department of health ~~[into the nurse aide registry within~~
8 ten working days of court settlement.] and the department of human
9 services, as required by 42 United States Code sections 1395i-3
10 and 1396r, within ten working days of the finding, which
11 information shall permanently remain in the registry except if:

- 12 (1) The finding was made in error;
13 (2) The individual is found not guilty in court; or
14 (3) The State receives notification of the individual's
15 death."

16 SECTION 8. Any nurse aide who is employed in a state-
17 licensed or state-certified health care setting and who is
18 recertified by July 1, 2007, may be recertified on a biennial
19 basis under chapter 457A, Hawaii Revised Statutes, if the nurse
20 aide passes, by December 31, 2008, a proficiency evaluation
21 approved by the department of human services. If the nurse aide
22 fails to pass the proficiency evaluation, the nurse aide shall



1 apply for certification as a new applicant and undergo
2 recertification under chapter 457A, Hawaii Revised Statutes.

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

7 SECTION 10. Statutory material to be repealed is bracketed
8 and stricken. New statutory material is underscored.

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

APPROVED this 28 day of JUN , 2007



GOVERNOR OF THE STATE OF HAWAII

