
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 or medicaid programs and in
8 other state-licensed or state-certified health care settings.
9 Certifying these nurse aides will allow the department of
10 commerce and consumer affairs, the department of human services,
11 and the department of health to monitor and evaluate the quality
12 and competency of these nurse aides 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- Certified nurse aides; enforcement. (a) The
17 department of health shall adopt rules pursuant to chapter 91
18 related to investigations of abuse, neglect, and



1 misappropriation of an individual's property by certified nurse
2 aides working in health care settings licensed or certified by
3 the department of health, and actions to be taken against
4 certified nurse aides as a result of these investigations.

5 (b) For the purposes of this section:

6 "Abuse" means actual or imminent physical injury,
7 psychological abuse or neglect, sexual abuse, financial
8 exploitation, negligent treatment, or maltreatment.

9 "Neglect" means the reckless disregard for the health,
10 safety, or welfare of another that results in injury, loss, or
11 damage."

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

15 **"§346- _____ Certified nurse aides; training programs and**
16 **testing requirements.** The director shall be responsible for
17 approving:

18 (1) Training programs for nurse aides, and ensuring that
19 these programs comply with all applicable federal and
20 state requirements;



1 (2) The recertification process for nurse aides who work
2 in state-licensed or state-certified health care
3 settings; and

4 (3) Recertification examinations for nurse aides who work
5 in state-licensed or state-certified health care
6 settings and arranging for the examinations.

7 **§346- Certified nurse aides; enforcement.** (a) The
8 department shall adopt rules pursuant to chapter 91 related to
9 investigations of abuse, neglect, and misappropriation of an
10 individual's property by certified nurse aides working in health
11 care settings licensed or certified by the department, and
12 actions to be taken against certified nurse aides as a result of
13 these investigations.

14 (b) For the purposes of this section:

15 "Abuse" means actual or imminent physical injury,
16 psychological abuse or neglect, sexual abuse, financial
17 exploitation, negligent treatment, or maltreatment.

18 "Neglect" means the reckless disregard for the health,
19 safety, or welfare of another that results in injury, loss, or
20 damage."



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

4 "§457A-A Definitions. As used in this chapter, unless the
5 context clearly indicates otherwise:

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

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

10 "Medicare or medicaid certified nursing facility" means an
11 intermediate care facility or skilled nursing facility licensed
12 pursuant to the provisions of section 321-11(10) and certified
13 by the department of health in accordance with 42 United States
14 Code Sections 1395i-3 and 1396r.

15 "Medicare or medicaid nurse aide" means a certified nurse
16 aide who works in a medicare or medicaid certified nursing
17 facility.

18 "Nurse aide" means a person who performs a variety of
19 duties relating to patients and patient care working under the
20 supervision of a nurse, including but not limited to assisting
21 patients in all activities of daily living such as serving and
22 collecting food trays, helping patients get out of bed, bathe,



1 and dress. A nurse aide may also assist a nurse by changing bed
2 linens, delivering messages, and sterilizing instruments.

3 "State-licensed or state-certified health care settings"
4 means settings, other than medicare or medicaid certified
5 nursing facilities, that are regulated by the department of
6 health or the department of human services.

7 "Substantiated findings" means the documentation of an
8 investigation by the State that leads the State to conclude that
9 an allegation against an individual is valid, including:

- 10 (1) The nature of the allegation and the evidence
11 supporting the conclusion;
12 (2) The date and outcome of any hearing of the allegation
13 requested by the individual;
14 (3) Any statement of the individual disputing the
15 allegation; or
16 (4) A criminal conviction for the alleged act.

17 **§457A-B Certification required.** Except as otherwise
18 provided in this chapter, it shall be unlawful to:

- 19 (1) Represent one's self as a certified nurse aide;
20 (2) In any manner imply that one's self is a certified
21 nurse aide; or



1 (3) Use the abbreviation "C.N.A." or any other words,
2 letters, signs, or devices,
3 to identify one's self as a certified nurse aide, without having
4 first obtained certification as provided in this chapter.

5 **§457A-C Medicare or medicaid nurse aide certification.**

6 (a) To be certified as a medicare or medicaid nurse aide, an
7 applicant shall successfully complete a training program and
8 nurse aide examination approved by the director.

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

13 (c) Reciprocity shall be granted to nurse aides who have
14 completed a state-approved training program where the
15 requirements of that program meet both federal and state nurse
16 aide training requirements.

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

20 (e) Persons certified as a medicare or medicaid nurse aide
21 shall be recertified on a biennial basis. Recertification
22 requirements shall include in-service training and employment in



1 a medicare or medicaid certified nursing facility as required by
2 federal and state law.

3 **§457A-D Certification for nurse aides working in state-**
4 **licensed or state-certified facilities.** (a) Nurse aides
5 working in state-licensed and state-certified health care
6 settings shall be certified under this section.

7 (b) Applicants for certification under this section shall
8 successfully complete:

9 (1) A training program approved under section 346- ;
10 and

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

12 (c) The director may impose fees for services provided
13 under this section.

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

17 (e) Persons certified under this section shall be
18 recertified on a biennial basis. Recertification requirements
19 shall include a competency evaluation approved by the director
20 of human services and employment in a state-licensed or state-
21 certified health care setting."



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

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

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

- 14 (1) Establishing the State's regulatory scheme for
15 certifying nurse aides;
- 16 (2) Defining the scope of regulation;
- 17 (3) Establishing standards for certification and biennial
18 recertification; and
- 19 (4) Establishing an interagency agreement between the
20 state agencies responsible for various aspects of the
21 program.



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

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

11 "**§457A-2 Implementation.** (a) The director ~~[of commerce and~~
12 ~~consumer affairs]~~ shall implement the provisions of 42 United
13 States Code ~~[\$1395i-3 and §1396R]~~ Sections 1395i-3 and 1396r and
14 this chapter, as they relate only to establishing:

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

21 (b) The director of health shall implement the provisions of
22 42 United States Code Sections 1395i-3 and 1396r and this chapter,



1 as they relate to disciplining of nurse aides certified under this
2 chapter, who are employed in health care settings licensed or
3 certified by the department of health.

4 (c) The director of human services shall implement the
5 provisions of 42 United States Code Sections 1395i-3 and 1396r and
6 this chapter, as they relate to training programs for nurse aides
7 and recertification, and to disciplining of certified nurse aides
8 who are certified under this chapter and employed in health care
9 settings licensed or certified by the department of human
10 services."

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

13 "**§457A-3 Power of director.** (a) The director, in
14 accordance with chapters 91 and 92, shall adopt rules that may be
15 necessary to implement the provisions of this chapter and 42
16 United States Code [~~§1395i-3 and §1396R~~] Sections 1395i-3 and
17 1396r, as well as the federal regulations adopted pursuant
18 thereto, as they relate only to establishing:

- 19 (1) The minimum requirements necessary for certification
- 20 as a 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 [~~nurse aide~~]
4 registry[-] of certified nurse aides employed in
5 medicare or medicaid certified nursing facilities and
6 certified nurse aides employed in other state-licensed
7 and state-certified health care settings.

8 (b) The director shall issue certificates to qualified nurse
9 aides and shall be responsible for maintenance of an up-to-date
10 nurse aide registry which shall include the names of certified
11 nurse aides, their places of employment, and [~~disciplinary~~
12 ~~actions. Disciplinary actions~~] all information that is required
13 to be reported by the department of health and the department of
14 human services. The director shall [be limited to the placement
15 of substantiated findings from the department of health] place
16 into the nurse aide registry [within ten working days of court
17 settlement.] all substantiated findings from the department of
18 health and department of human services, as required by 42 United
19 States Code Sections 1395i-3 and 1396r within ten working days of
20 the substantiated findings and shall remain in the registry
21 permanently, unless the findings were made in error, the
22 individual was found not guilty in a court of law, or the State is



1 notified of the individual's death. No charge shall be imposed on
2 nurse aides for the maintenance of the nurse aide registry."

3 SECTION 8. Any nurse aide employed in a state-licensed or
4 state-certified health care setting and who has been recertified
5 before July 1, 2007, may be recertified on a biennial basis
6 under chapter 457A, Hawaii Revised Statutes, if the nurse aide
7 passes, by December 31, 2008, a proficiency evaluation approved
8 by the department of human services. If the nurse aide fails to
9 pass the evaluation, the nurse aide shall instead apply for
10 certification as a new applicant and undergo certification as
11 required under chapter 457A, Hawaii Revised Statutes.

12 SECTION 9. In codifying the new sections added by section
13 4 of this Act, the revisor of statutes shall substitute
14 appropriate section numbers for the letters used in designating
15 the new sections in this Act.

16 SECTION 10. Statutory material to be repealed is bracketed
17 and stricken. New statutory material is underscored.

18 SECTION 11. This Act shall take effect upon its approval.



Report Title:

Nurse Aides; Certification

Description:

Establishes certification procedures for nurse aides employed in state-licensed or state-certified health care settings and medicare or medicaid facilities. (HB71 HD2)

