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# 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 require all practicing nurse  
6 aides working in state-licensed or state-certified health care  
7 settings to be certified. Certifying these nurse aides will  
8 allow the department of commerce and consumer affairs, the  
9 department of human services, and the department of health to  
10 monitor and evaluate the quality and competency of these nurse  
11 aides practicing in the state.

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

15           "§321-           Enforcement of certified nurse aides. The  
16 department of health shall adopt rules pursuant to chapter 91  
17 related to investigations of abuse, neglect, and  
18 misappropriation of an individual's property by certified nurse



1 aides working in health care settings licensed or certified by  
2 the department, and actions taken against certified nurse aides  
3 as a result of these investigations."

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

7 "**§346- Training programs and testing requirements.**

8 The director shall be responsible for approving:

9 (1) Training programs for nurse aides and ensuring that  
10 they comply with all applicable federal and state  
11 requirements;

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

15 (3) Recertification examinations for nurse aides who work  
16 in state-licensed or state-certified health care  
17 settings and arranging for the examinations.

18 **§346- Enforcement of certified nurse aides.** The  
19 department shall adopt rules pursuant to chapter 91 related to  
20 investigations of abuse, neglect, and misappropriation of an  
21 individual's property by certified nurse aides working in health  
22 care settings licensed or certified by the department, and



1 actions taken against certified nurse aides as a result of these  
2 investigations."

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

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

8 "Certified nurse aide" means a nurse aide who has met the  
9 requirements of this chapter.

10 "Director" means the director of commerce and consumer  
11 affairs.

12 "Substantiated findings" means documentation of the State's  
13 investigation, including:

14 (1) The nature of the allegation and the evidence that led  
15 the State to conclude that the allegation was valid;

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

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

20 (4) A criminal conviction.

21 "Medicare or medicaid certified nursing facility" means an  
22 intermediate care facility or skilled nursing facility licensed



1 pursuant to the provisions of section 321-11(10) and certified  
2 by the department of health in accordance with 42 United States  
3 Code Sections 1395i-3 and 1396r.

4 "Medicare or medicaid nurse aide" means a certified nurse  
5 aide who works in a medicare or medicaid certified nursing  
6 facility.

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

14 **§457A-B Certification required.** Except as otherwise  
15 provided in this chapter, it shall be unlawful to:

16 (1) Represent one's self as a certified nurse aide;  
17 (2) In any manner imply that one's self is a certified  
18 nurse aide; or

19 (3) Use the abbreviation "C.N.A." or any other words,  
20 letters, signs, or devices,

21 to identify one's self as a certified nurse aide, without having  
22 first obtained certification as provided in this chapter.



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

2        (a) To be certified, an applicant shall successfully complete a  
3        training program and nurse aide examination approved by the  
4        director.

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

9        (c) Reciprocity shall be granted to nurse aides who have  
10       completed a state-approved training program where the  
11       requirements of that program meet both federal and state  
12       requirements.

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

16       (e) Maintenance requirements for recertification shall be  
17       on a biennial basis, including employment in a medicare or  
18       Medicaid-certified nursing facility as required by federal and  
19       state law.

20       (f) No charge shall be imposed on nurse aides for the  
21       maintenance of the nurse aide registry.



1        §457A-D Nurse aide certification for state-licensed or  
 2 state-certified facilities. (a) The certification provided  
 3 under this section applies to nurse aides working in state-  
 4 licensed and state-certified health settings other than a  
 5 medicare or Medicaid-certified nursing facility.

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

- 8        (1) A state-approved training program; and
- 9        (2) A nurse aide examination approved by the director.

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

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

15       (e) Maintenance requirements for recertification shall be  
 16 on a biennial basis, including a recertification examination as  
 17 approved by the director of human services."

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

20       **"§457A-1 Findings and purpose.** (a) The legislature  
 21 recognizes that 42 United States Code [~~§1395i-3 and §1396R~~]  
 22 Sections 1395i-3 and 1396r require nurse aides working in



1 certified nursing facilities participating in medicare and  
2 medicaid programs to be certified.

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

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

17 [~~(b) As used in this chapter, "nurse aide" means a person~~  
18 ~~who performs a variety of duties relating to patients and patient~~  
19 ~~care working under the supervision of a nurse, including but not~~  
20 ~~limited to assisting patients in all activities of daily living~~  
21 ~~such as serving and collecting food trays, and helping patients~~  
22 ~~get out of bed, bathe, and dress. A nurse aide may also assist a~~



1 ~~nurse by changing bed linens, delivering messages, and sterilizing~~  
2 ~~instruments.]"~~

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

5 "**§457A-2 Implementation.** (a) The director [~~of commerce and~~  
6 ~~consumer affairs]~~ shall implement the provisions of 42 United  
7 States Code [~~§1395i-3 and §1396R]~~ Sections 1395i-3 and 1396r and  
8 this chapter, as they relate only to establishing:

- 9 (1) The minimum requirements and standards necessary for
- 10 certification as a nurse aide;
- 11 (2) Examination requirements, including the passing score;
- 12 (3) Maintenance requirements for continued certification
- 13 on a biennial basis; and
- 14 (4) Implementation of a nurse aide registry.

15 (b) The director of health shall implement the provisions of  
16 42 United States Code Sections 1395i-3 and 1396r and this chapter,  
17 as they relate to disciplining of nurse aides certified under this  
18 chapter, who are employed in health care settings licensed or  
19 certified by the department of health.

20 (c) The director of human services shall implement the  
21 provisions of 42 United States Code Sections 1395i-3 and 1396r and  
22 this chapter, as they relate to training programs for nurse aides



1 and recertification, and to disciplining of nurse aides who are  
2 certified under this chapter and employed in health care settings  
3 licensed or certified by the department of human services."

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

6 "**§457A-3 Power of director.** (a) The director, in  
7 accordance with chapters 91 and 92, shall adopt rules that may be  
8 necessary to implement the provisions of this chapter and 42  
9 United States Code [~~§1395i-3 and §1396R~~] Sections 1395i-3 and  
10 1396r, as well as the federal regulations adopted pursuant  
11 thereto, as they relate only to establishing:

- 12 (1) The minimum requirements necessary for certification
- 13 as a nurse aide;
- 14 (2) Examination requirements, including the passing score
- 15 and provisions for contesting examination results;
- 16 (3) Maintenance requirements for continued certification;
- 17 and
- 18 (4) Implementation and maintenance of a nurse aide
- 19 registry containing nurse aides in medicare or
- 20 Medicaid-certified nursing facilities and nurse aides
- 21 in other state-licensed and state-certified health
- 22 care settings.



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

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



1 pass the evaluation, the nurse aide shall instead apply for  
2 certification as a new applicant and undergo recertification as  
3 required under chapter 457A, Hawaii Revised Statutes.

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

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

10 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 HD1)

