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**PRESENTATION OF THE
PROFESSIONAL AND VOCATIONAL LICENSING DIVISION**

TO THE HOUSE COMMITTEE ON
HUMAN SERVICES

AND

TO THE HOUSE COMMITTEE
ON HEALTH

TWENTY-FIFTH LEGISLATURE
Regular Session of 2010

Thursday, February 4, 2010
9:00 a.m.

WRITTEN TESTIMONY ONLY

TESTIMONY ON HOUSE BILL NO. 2160, RELATING TO NURSE AIDES.

TO THE HONORABLE JOHN M. MIZUNO, CHAIR, AND
TO THE HONORABLE RYAN I. YAMANE, CHAIR,
AND MEMBERS OF THE COMMITTEES:

My name is Kathy Yokouchi and I am the Executive Officer of the Nurse Aide Program in the Department of Commerce and Consumer Affairs ("Department"). The Department appreciates the opportunity to testify on House Bill No. 2160.

This bill provides that biannual maintenance and continuing education hours required for nurse aides include a competency evaluation approved by the Department of Human Services ("DHS").

The purpose of the amendment in Section 346-46, HRS, in Section 1, page 1 (lines 17-18) to page 2 (lines 1-2) and Section 2, page 2 (lines 13-15) is to clarify that the competency evaluation is to be included as continuing education. Under Section 342-46(1), HRS, the DHS has authority over nurse aide training in this State. The Department recommends that the term "State-approved" be added to the competency evaluation ("State-approved competency evaluation") to clarify that only DHS approved competency evaluations are acceptable. Further, the Department is uncertain whether nurse aides who are employed by Medicare/Medicaid participating facilities ("MMPF") can be required to complete a State-approved competency evaluation in addition to the in-service training and annual performance reviews already required in accordance with 42 United States Code of Federal Regulations Section 483.152(b)(3). It is our understanding that the State-approved competency evaluation was developed by the DHS specifically for nurse aides who are employed in state-licensed or state-certified health care settings ("SL/SCHCS"). These nurse aides wished to have training and examinations that were comparable to MMPF-employed nurse aides and the State-approved competency evaluation was the solution. The Department respectfully recommends that Section 1 not require MMPF nurse aides to complete the State-approved competency evaluation until DHS obtains an opinion from the Office of the Attorney General ("AG") that adding this training is appropriate. If it is found not to be

appropriate, to the extent that it amends Section 346-46(4), HRS, we recommend that Section 1 be amended to read as follows:

- “(4) Require recertification not less than every two years. The number of continuing education hours required for recertification shall not exceed twenty-four hours, except as specified by federal law~~[-]; provided that the State-approved competency evaluation [required pursuant to section 457-7 and 457-8] shall be included as continuing education hours to meet certification maintenance requirements in Section 457A-8.~~”

The Department also recommends that Section 2, page 2 (lines 13-15) be amended to read as follows:

“(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; provided that recertification shall be required not less than every two years and the number of continuing education hours required for recertification shall not exceed twenty-four hours, except as specified by federal law; provided further that the **State-approved** competency evaluation required pursuant to section 457A-8 shall be included as continuing education hours; and
- (2) Disciplining of certified nurse aides employed in health care settings licensed or certified by the department of human services.”

Regarding Section 3, page 2 (line 22) to page 3 (line1), the Department further requests that if the AG determines that the MMPF-employed nurse aides can be

required to complete a State-approved competency evaluation in addition to the federal requirement for in-service training and annual performance review, that the AG opine whether MMPF-employed nurse aides can be assessed the cost for the evaluation. By federal¹ and state law², state agencies are prohibited from imposing any charges against MMPF-employed nurse aides for any registry related costs including the nurse aide certification examination. If the DHS determines that its State-approved competency evaluation can be required of the MMPF-employed nurse aides, but fees cannot be imposed for the evaluation, then perhaps there should be an appropriation made to cover DHS's costs.

In Section 3, page 3, line 1, the Department recommends that the phrase, "equivalent to that required under section 457A-8" be stricken as it implies that a separate competency evaluation that is equivalent to the state-approved competency evaluation would be acceptable. If the intent is to require the same state-approved competency evaluation, then the Department recommends that Section 457-7 (e) and (f) be added to the bill and amended as follows:

"(e) Maintenance requirements for the recertification process shall be on a biennial basis, and shall include a ~~equivalent to that required under section 457A-8~~ State-approved competency evaluation, an annual performance review and in-service training and employment in a medicare or medicaid facility as required by federal and state law.

¹ (42 United State Code of Federal Regulations, Subchapter G, Section 483.156 (4)) states, "4) The State may not impose any charges related to registration on individuals listed in the registry."

² Section 457A-7(f), HRS), states, "No charge shall be imposed on medicare or medicaid certified nurse aides for the maintenance of the nurse aide registry."

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

In conclusion, the Department recommends amendments to Sections 1, 2 and 3 as provided herein if this measure moves forward.

Thank you for this opportunity to testify on House Bill No. 2160.



STATE OF HAWAII
DEPARTMENT OF HUMAN SERVICES
P. O. Box 339
Honolulu, Hawaii 96809

February 4, 2010

MEMORANDUM

TO: Honorable John M. Mizuno, Chair
House Committee on Human Services

Honorable Ryan I. Yamane, Chair
House Committee on Health

FROM: Lillian B. Koller, Director

SUBJECT: H.B. 2160, RELATING TO Nurse Aides

Hearing: Thursday, February 4, 2010, 9:00 a.m.
Conference Room 329, State Capitol

PURPOSE: The purpose of H.B. 2160 is to provide biannual maintenance and continuing education hours required for nurse aides include a competency evaluation approved by the Department of Human Services.

DEPARTMENT'S POSITION: The Department of Human Services respectfully opposes H.B. 2160.

The new statutory language added to section 346-46(4) on page 1 and to section 457A-2(c)(1) on page 2 of the bill is confusing and unnecessary. The current HRS 457A-7 pertains to nurse aides employed in a Medicare or Medicaid facilities. The current HRS 457A-8 pertains to nurse aides employed in state licensed or certified health care settings. Both sections

require that nurse aides complete a competency evaluation, either through an annual performance review (for employees of Medicare or Medicaid facilities) or through a competency evaluation approved by DHS (for employees of state licensed or certified health care settings.) The completion of an annual performance review or a competency evaluation is not the same as completing hours of continuing education. These are separate issues that need to remain separate.

Section 483.75 of Title 42, Code of Federal Regulations, defines **competency** as "...demonstrated competence through satisfactory participation in a State-approved nurse aide training and competency evaluation program or competency evaluation program". An individual who has completed continuing education hours has not demonstrated his or her competence in performing a specific task until that person can execute the task in the presence of a registered nurse. This is the reason why Medicare and Medicaid facilities require annual performance reviews of their employees, and the reason why employees of state licensed or certified health care settings are required to complete competency evaluations.

Lastly, current state statutes require nurse aide recertification **biennially** which is once every two years. It is not **biannual** which occurs twice every year.

Thank you for this opportunity to testify.

From: FAJOTINACAREHOME@aol.com
Sent: Wednesday, February 03, 2010 3:34 PM
To: HUS testimony
Subject: testing

I strongly support the amended version of HB 2160 requiring CNA re-certification. The number of CEU hours required for re-certification shall not exceed 24 hours every two years. The competency evaluation required shall be included in the continuing education hours and maintenance requirement. This will enhance my knowledge base as a CNA.(certified nurse aide)

Thank you very much for your understanding.

Sincerely,
Lilia Fajotina
Care Home Operator
94-438 Hoaeae St.
Waipahu, Hi 96797
Tel. 676-7399

From: Medy Delara [medy_arch@yahoo.com]
Sent: Wednesday, February 03, 2010 3:34 PM
To: HUSTestimony

I SUPPORT THE AMENDED VERSION OF H.B. 2160 SECTION 346-46 HI REVISED STATUTES
RELATING TO NURSE AIDES TRAINING PROGRAM AND RECERTIFIATION IN ITS ENTIRETY.

MEDY DE LARA R.N.
ARCA 1ST V.P.

THE PRIMARY CARE PROVIDERS (TPCP)

98-1465 Hoomahie Loop
Pearl City, Hawaii 96782

February 3, 2009

Testimony Supporting Intent of HB 2160 – HUS/HLT - Feb. 4, 2009, 9:00 a.m., Rm. 329

Chairs Mizuno and Yamane, and Members of the Committees:

The Primary Care Providers (TPCP) **supports the intent of HB2160**. With minor modifications to the proposed changes, TPCP can unqualifiedly support this bill. TPCP proposes the following language instead of what is being proposed in the bill: “provided that candidates for recertification may elect between the competency evaluation required or continuing education and maintenance requirements provided herein.”

TPCP supports the intent to substitute CE training for recertification of CNA's in lieu of an examination and believes it in the best interest of both providers and recipients of CNA services. These 24 hours of CE training would be in lieu of the current departmental requirement of an examination lasting 24 hours. CE training would ensure the proficiency of each licensee with respect to all necessary skills and enable licensees to remain competent in providing care to the public.

TPCP submits that an examination lasting 24 hours gives insufficient credit for a caregiver's prior experience in the industry. Caregivers who have been providing excellent service for 20 years and who have no history of complaints are suddenly being forced to take a 24-hour examination over a period of several days with absolutely no regard for their years of experience or other circumstances.

TPCP further submits a 24-hour test fails to adequately measure a licensee's skills and imposes not only an onerous but unnecessary burden on licensees. Some licensees may become nervous when forced to perform a skill while under scrutiny of an examination. Many individuals perform poorly on tests while excelling in the application of their skills. The fact an individual cannot pass an examination does not necessarily mean that the individual does not possess the knowledge or skills being tested by the examination.

For these reasons, TPCP supports the intent of HB 2160 and requests amendments noted above.

Very truly yours,

Primary Care Providers

Maria Etrata, President

AFHA - ADULT FOSTER HOMECARE ASSOCIATION

P.O. Box 970092
Waipahu, Hawaii 96797

LATE
Testimony

February 3, 2009

Testimony Supporting Intent of HB 2160 – HUS/HLT - Feb. 4, 2009, 9:00 a.m., Rm. 329

Chairs Mizuno and Yamane, and Members of the Committees:

The Adult Foster Home Association (AFHA) **supports the intent of HB2160**. With minor modifications to the proposed changes, AFHA can unqualifiedly support this bill. AFHA proposes the following language instead of what is being proposed in the bill: "provided that the competency evaluation required . . . may be substituted with continuing education and maintenance requirements provided herein."

AFHA supports the intent to substitute CE training for recertification of CNA's in lieu of an examination and believes it in the best interest of both providers and recipients of CNA services. These 24 hours of CE training would be in lieu of the current departmental requirement of an examination lasting 24 hours. CE training would ensure the proficiency of each licensee with respect to all necessary skills and enable licensees to remain competent in providing care to the public.

AFHA submits that an examination lasting 24 hours gives insufficient credit for a caregiver's prior experience in the industry. Caregivers who have been providing excellent service for 20 years and who have no history of complaints are suddenly being forced to take a 24-hour examination over a period of several days with absolutely no regard for their years of experience or other circumstances.

AFHA further submits a 24-hour test fails to adequately measure a licensee's skills and imposes not only an onerous but unnecessary burden on licensees. Some licensees may become nervous when forced to perform a skill while under scrutiny of an examination. Many individuals perform poorly on tests while excelling in the application of their skills. The fact an individual cannot pass an examination does not necessarily mean that the individual does not possess the knowledge or skills being tested by the examination.

For these reasons, AFHA supports the intent of HB 2160 and requests amendments noted above.

Very truly yours,

Adult Foster Home Association

Lani Akee, President

Nancy Atmospera-Walch, RN, BSN, MPH, LNHA, CHES, CCHN, CMC
n.walch@yahoo.com

Testimony in Strong SUPPORTS of HB 2160 requiring that biannual maintenance and continuing education hours required for nurse aides include a competency evaluation approved by the Department of Human Services.

Chairman Mizuno, I request that it be amended to include the section from 457A-7 and 457A-8 which of the items shall be included as continuing education hours and maintenance requirements.

February 4, 2010
9:00 am, Thursday
Hawai'i State Capitol Conference Room 329

A Bill for an Act:

LATE
Testimony

COMMITTEE ON HUMAN SERVICES

Honorable Rep. John M. Mizuno, Chair
Honorable Rep. Tom Brower, Vice Chair
Honorable House Committee on Human Services Members
Rep. Della Au Belatti
Rep. Joe Beltram, III
Rep. Mele Carroll
Rep. Scott Y. Nishimoto
Rep. Maile S. L. Shimabakuro
Rep. Ryan Yamane
Rep. Gene Ward

Hon. Chair John M. Mizuno, Hon. Vice-Chair Tom Brower, Committee on Human Services Members, Good Morning and ALOHA!

I am Nancy Atmospera-Walch, a Master's Prepared Licensed Registered Nurse, a Certified Health Education Specialist and a Certified Case Manager. I am here this morning in Strong Support of HB 2160 as it relates to requiring the biennial maintenance and continuing education hours required for nurse aides include a competency evaluation approved by the Department of Human Services.

However, I am requesting that it be amended to specifically include the section from 457A-7 and 457A-8 to indicate which of the items shall be included as continuing education hours and maintenance requirements.

Honorable Chair and all members of the Committee, I am sure that you are aware that "Competency Skills and Continuing Education are two separate items. The best analogy that I could give to make my point is the "Safety Check" required by every car owners to submit when renewing their car registration.

The "Safety Check" is only checking the basic safety of the car in order that it can be driven safely on public road and they are the lights, breaks, mirrors, tire pressure, horn, turning signal lights, and break lights and these would be compared to the "Competency Skills Evaluation" of the Nurse Aide. These are the skills that every Certified Nurse Aide should know and possess to deliver the basic care to their patients.

On the other hand, the Service Station attendant is not checking how good is the paint of the car, if the upholstery are intact, the floors are clean or the dashboard are not crack for all of these items does not have anything to do with the safety of driving the car. Fixing these items will enhance the appearance of the car and therefore increase the value of the car. In comparison to the nurse aide requirements, this would be the "24 Continuing Education Units." Attending a conference for CEU will increase their knowledge and hopefully it will enhance the care that they will deliver to their patients.

Form DHS 1646 has 12 items, and as a Master's Prepared Registered Nurse, A Certified Health Education Specialist and a Certified Case Manager, I can tell you that only items 9, 10, 11 and 12 are proper for in-service for CEU credits. The rest of the items are basic skills that every nurse aide must already be competent in and if they are not, then they should not be allowed to care our frail and vulnerable elderly. Any of us who care for a patient should not be resistant to items that increase our knowledge or improve our skills if we are truly an advocate for patient and quality care.

Every Nurse that work in the hospital goes through an annual competency skills evaluation and these are professionals who have received college education for their professions, in addition to maintaining their CEUs for their specialty certifications. Therefore, I am really baffled that a Certified Nurse Aide is trying to combine her basic competency skills to her required Continuing Education when her or his training is only between two to six weeks but they are taking care of patients requiring Nursing Home Facility level of care with no nursing supervision on site.

Therefore, Honorable Chair, I request that you amend this bill for the sake and safety of our "Kupunas" and for the protection of our caregivers from incompetence, by indicating that only items 9, 10, 11 and 12 can be used to do an in-service for CEU credits. However, attending an in-service does not excuse the nurse aide to demonstrate or verbalize her competency on those items .have her competency

Honorable Chair and all members of the Committee, thank you for giving me the opportunity to testify!