
Sunset Evaluation Report: Nurse Aides

A Report to the
Governor
and the
Legislature of
the State of
Hawaii



THE AUDITOR
STATE OF HAWAII

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Submitted by

THE AUDITOR
STATE OF HAWAII

Report No. 93-4
September 1993

Foreword

The Sunset Law, or the Hawaii Regulatory Licensing Reform Act of 1977, schedules regulatory programs for termination on a periodic cycle. Unless specifically reestablished by the Legislature, the programs are repealed. The State Auditor is responsible for evaluating each program for the Legislature prior to its date of repeal.

This report evaluates the regulation of nurse aides under Chapter 457A, Hawaii Revised Statutes. It presents our findings as to whether the program complies with policies in the Sunset Law and whether there is a reasonable need to regulate nurse aides to protect the health, safety, and welfare of the public. It includes our recommendation on whether the program should be continued, modified, or repealed. In accordance with Section 26H-5, HRS, the report incorporates in the Appendix the draft legislation to improve the regulatory program.

We acknowledge the cooperation of the Department of Commerce and Consumer Affairs and others whom we contacted during the course of our evaluation. We appreciate the assistance of the Legislative Reference Bureau, which drafted the recommended legislation.

Marion M. Higa
State Auditor

Table of Contents

Chapter 1 Introduction

Background on Nurse Aides	1
Objectives of the Evaluation	2
Scope and Methodology	2

Chapter 2 Findings and Recommendations

Summary of Findings	3
Regulation Should Continue	3
Certification Program Operates With Little Guidance ...	4
Program Responsibilities Are Fragmented	6
Recommendations	8

Notes	9
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Response of the Affected Agency	11
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List of Exhibits

Exhibit 2.1 Chapter 457A, Nurse Aides, Hawaii Revised Statutes	5
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Appendix: Proposed Legislation	19
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Chapter 1

Introduction

The Sunset Law, or the Hawaii Regulatory Licensing Reform Act, Chapter 26H, Hawaii Revised Statutes, establishes policies for occupational licensing and schedules the repeal of licensing statutes according to a timetable. The law directs the State Auditor to evaluate each licensing statute prior to the repeal date and determine whether the health, safety, and welfare of the public are best served by reenactment, modification, or repeal.

This report evaluates whether the regulation of nurse aides under Chapter 457A, HRS, complies with policies in the Sunset Law.

Background on Nurse Aides

Nurse aides work under the supervision of nurses and medical staff. Duties vary depending on the work setting. They typically include serving and collecting food trays, helping patients to get out of bed, giving back rubs, bathing and dressing patients, and answering patients' bell calls. Nurse aides may also sterilize instruments, clean rooms, change bed linens, deliver messages, and assist in all activities of daily living.

According to records at the Department of Commerce and Consumer Affairs, there are about 2,700 nurse aides certified in Hawaii.¹

Regulatory program

Act 271, 1990 (codified as Chapter 457A, HRS) established a certification program for nurse aides in Hawaii that complies with federal laws in 42 U.S.C. Sections 1395i-3 and 1396R. These federal regulations require certification of nurse aides who work in nursing facilities that participate in Medicare and Medicaid programs.

The purpose of the certification program is to ensure that nurse aides have a minimum level of competency to perform their duties at these facilities. Nurse aides must be recertified biennially. To be eligible for recertification, they must have worked at least seven hours at a nursing facility as a nurse aide within the last two-year period. The program also requires a nurse aide registry that lists the names and places of employment of certified nurse aides.

The director of the Department of Commerce and Consumer Affairs is responsible for administering the certification program and maintaining the nurse aide registry. The director has the authority to adopt rules, set

fees, contract with a professional testing service to test the competency of nurse aides, and do all things necessary to implement the regulatory program.

Objectives of the Evaluation

This evaluation sought to determine whether the regulation of nurse aides complies with policies in the Sunset Law. Specifically, the objectives were to:

1. Determine whether there is a reasonable need to regulate nurse aides to protect the health, safety, and welfare of the public;
2. Determine whether current regulatory requirements are appropriate for protecting the public;
3. Establish whether the regulatory program is being implemented effectively and efficiently; and
4. Make recommendations based on findings in these areas.

Scope and Methodology

To accomplish these objectives, we reviewed the literature on nurse aides and their regulation. We reviewed statutes and rules on nurse aides in Hawaii and the implementation of the certification program since its inception in 1990.

We interviewed agency personnel from the Departments of Commerce and Consumer Affairs, Health, and Human Services. We obtained information issued by the Health Care Financing Administration of the U.S. Department of Health and Human Services, and also from the Educational Testing Service. Finally, we reviewed minutes from the task force created in 1990 to investigate the feasibility of regulating nurse aides.

Our work was performed from December 1992 through August 1993 in accordance with generally accepted government auditing standards.

Chapter 2

Findings and Recommendations

In this chapter we examine the regulatory program for the certification of nurse aides and make recommendations for improvements. These improvements should result in greater program accountability by the Department of Commerce and Consumer Affairs (DCCA).

Summary of Findings

1. Nurse aides should continue to be regulated because of their potential to cause harm and the need to meet federal regulatory requirements.
2. The certification program lacks sufficient statutory guidance and needs administrative rules.
3. Responsibility for the program is fragmented among three state departments and two private agencies. This has resulted in questions about the reliability of the registry and accountability for the program.

Regulation Should Continue

Nurse aides should continue to be regulated because they give direct patient care and could cause harm. In addition, the State must certify nurse aides in order to participate in the Medicare and Medicaid programs.

Potential for harm

Under the supervision of nursing and medical staffs, nurse aides are often the principal caregivers, providing up to 90 percent of the care for residents at nursing homes.¹ Most residents need ongoing assistance and support with basic needs. Nurse aides must be skilled in caring for the residents' physical needs and communicating with them to meet their emotional and social needs. Certifying nurse aides ensures a minimum level of competency to deal with these needs and helps reduce the potential for harm.

Requirements for Medicare and Medicaid assistance

The federal government requires that all nurse aides who work in nursing facilities that participate in Medicare and/or Medicaid be certified at minimum competency. In Hawaii, about 42 state-licensed facilities currently participate in the Medicare and Medicaid programs.

Uncertified nurse aides may be employed by Medicare and Medicaid participating facilities, but they must enroll in, and successfully complete, a nurse aide training and competency evaluation program within four months after their date of employment. The training program is designed to enable nurse aides to pass the certification examinations.

Federal regulations also require the State to establish and maintain a registry of certified nurse aides. The nurse aide registry is a public document that contains the names of certified nurse aides, their places of employment, disciplinary actions taken, and other federally required information. The purpose of the registry is to provide prospective employers, as well as the public, with an easy means to determine the status of certified nurse aides.

Certification Program Operates With Little Guidance

To comply with federal requirements affecting nursing facilities, Chapter 457A, HRS, was enacted in 1990. It is a skeletal statute that does not define the scope of regulation or establish standards for certification or responsibilities of state agencies for various aspects of the program. Exhibit 2.1 presents the statute in its entirety.

Changes are needed to clarify the scope of regulation and to establish accountability for the certification of nurse aides and maintenance of the nurse aide registry. The program is further handicapped by the absence of rules. Since the certification of nurse aides is a state responsibility, the State should enact a clear statute and adopt rules governing the program.

Insufficient guidance from statute

The statute provides no clear scope, specific criteria, or standards for the certification of nurse aides. Instead, the statute refers to federal regulations and authorizes the director of DCCA to implement a certification program in Hawaii that meets those requirements. However, the federal regulations are cumbersome and complicated. Only by wading through them can one establish the occupational characteristics of a certified nurse aide and the requirements of a nurse aide registry.

The statute should be amended to clarify the scope of regulation, the minimum requirements, and certification practices. These essential components of a regulatory program should not be identified only by reference to the applicable federal regulations as is currently done.

Exhibit 2.1
Chapter 457A, Nurse Aides, Hawaii Revised Statutes

[CHAPTER 457A]
NURSE AIDES

SECTION

- 457A-1 FINDINGS AND PURPOSE
- 457A-2 IMPLEMENTATION
- 457A-3 POWER OF DIRECTOR
- 457A-4 CONTRACT FOR ADMINISTRATIVE SERVICES
- 457A-5 FEES

Note

Subject to reassessment, this chapter is repealed effective December 31, 1994. Chapter 26H.

[§457A-1] Findings and purpose. The legislature recognizes that 42 United States Code §1395i-3 and §1396R requires nurse aides working in nursing facilities participating in medicare and medicaid programs to be certified. This chapter implements the provisions of 42 United States Code §1395i-3 and §1396R with respect to establishing the State's regulatory scheme for certifying nurse aides. [L 1990, c 271, pt of §1]

[§457A-2] Implementation. The director of commerce and consumer affairs shall implement the provisions of 42 United States Code §1395i-3 and §1396R as it relates only to establishing the minimum requirements necessary for certification as a nurse aide, examination requirements, maintenance requirements for continued certification, and implementation of a nurse aide registry. [L 1990, c 271, pt of §1]

[§457A-3] Power of director. The director, in accordance with the provisions of chapters 91 and 92, shall adopt such rules as may be necessary to implement the provisions of 42 United States Code §1395i-3 and §1396R, as well as the federal regulations adopted pursuant thereto as it relates only to establishing the minimum requirements necessary for certification as a nurse aide, examination requirements, maintenance requirements for continued certification, and implementation of a nurse aide registry. [L 1990, c 271, pt of §1]

[§457A-4] Contract for administrative services. The director may contract with a professional testing service that is qualified to test the competency of nurse aides. The department may require that fees for services be paid directly to the professional testing service. [L 1990, c 271, pt of §1]

[§457A-5] Fees. The director may establish fees for services rendered to carry out the purposes of this chapter. [L 1990, c 271, pt of §1]

No rules adopted

The statute states that the director of DCCA shall adopt rules as may be necessary to implement the certification program. The department contends that rules are not needed because the State meets the minimum requirements under the federal regulations. While rules may not be necessary to comply with federal requirements, rules are needed to give clear guidance to nurse aide applicants and the public—particularly in light of the brevity of the statute and the difficulty of wading through federal laws and regulations.

We note, for example, that there are no rules on the certification process. The department has developed a four-page document generally outlining the certification process which is inadequate. The document does not delineate minimum requirements for passing the examinations, provisions for contesting examination results, or other avenues of redress.

Program Responsibilities Are Fragmented

Two private agencies and three state departments are involved in the nurse aide certification program. The program operates informally without clearly defined roles and responsibilities for the agencies and departments. As a result, accountability for nurse aide certification is unclear, responsibilities are not being carried out, and the nurse aide registry is unreliable because no one is in charge.

Certification responsibilities inappropriately delegated

DCCA has not assumed responsibility for the testing program and the registry. The statute authorizes the director of DCCA to contract with a professional testing service to test competency. It also requires the department to implement a nurse aide registry.

The department has taken this to mean that it can contract for certification of nurse aides and the maintenance of the nurse aide registry. It has contracted with the Educational Testing Service (ETS), a professional testing service, to perform the testing. The contract gives ETS the authority to determine passing scores, issue certificates, and maintain the nurse aide registry.

ETS has also subcontracted with the American Red Cross (ARC) for testing. DCCA refers applicants to ARC for information on testing, then ARC administers the written examination developed and graded by the Educational Testing Service (ETS). It also administers the clinical examination and forwards those results to ETS. ETS then compiles all scores, determines whether applicants have passed, and issues certificates to nurse aides based upon passing scores.

ETS issues certificates in the name of the State of Hawaii without review or approval by the department. Further, ETS, not the department, maintains the nurse aide registry, updating it every six months for the department.

DCCA does not review the information contained in the registry for accuracy or completeness. The department takes no responsibility for evaluating examination scores, issuing certificates, or making changes to the nurse aide registry.

The department believes it is meeting its statutory obligations under this arrangement. But as the state regulator, the department is responsible for accurate certification and maintenance of the nurse aide registry. It should establish the passing score, issue the certificates based on testing results from ETS, and maintain the registry.

Informal departmental roles and responsibilities

The Department of Health and the Department Human Services are also involved in the nurse aide certification program. The two departments have drafted a memorandum of agreement that defines their respective responsibilities for long term care facilities and approval of training programs for the certification of nurse aides who work at these facilities.² There is no such agreement between these departments and DCCA. Because of the lack of a working agreement between the Department of Health and DCCA, the required information for the registry has yet to be recorded.

The Department of Health is to establish policies and procedures to review and investigate all allegations of abuse, neglect, and misappropriation of funds of residents of nursing facilities. The department is also responsible for placing in and/or removing from the nurse aide registry all substantiated findings.

Federal law permits only the state survey agency, the Department of Health, to place substantiated findings in the registry. However, DCCA actually implements the registry. Without a working agreement, the departments are unsure of who enters and updates these findings.

Three cases are pending inclusion in the nurse aide registry. Two involve physical abuse of a resident by nurse aides in 1991 and another involves neglect of a resident by a nurse aide in 1990. These cases have been adjudicated in court and the nurse aides involved have been informed of the outcomes.

Federal regulations require that findings be included in the registry within 10 working days of court settlement.³ This has not been done yet because of the lack of rules and procedures that describe and direct the lead agency to take action.

Recommendations

1. The Legislature should reenact Chapter 457A to continue the regulation of nurse aides. In reenacting the statute, the Legislature should consider amending it to:
 - a. Define the occupation of nurse aides, minimum certification requirements, the certification process, and the nurse aide registry.
 - b. Require the director of commerce and consumer affairs to set minimum standards, issue certificates, and maintain the nurse aide registry.
2. The Department of Commerce and Consumer Affairs should develop a working agreement with the Department of Health and the Department of Human Services that delineates their respective roles and responsibilities.
3. The director of commerce and consumer affairs should issue rules governing the entire certification program including rules specifying the logistics of updating the nurse aide registry.

Notes

Chapter 1

1. Facsimile transmission to Office of the Auditor staff from the Department of Commerce and Consumer Affairs, February 10, 1993.

Chapter 2

1. Colorado, Department of Regulatory Agencies, Report to the Sunrise and Sunset Review Committee on the Nurse Aide Program under the Colorado Board of Nursing, Colorado Legislature, June 25, 1992.
2. Revised draft of the Interagency Agreement - General Programs, March 1, 1993.
3. U.S., 42 Code of Federal Regulations, Section 483.156(c)(1)(iv)(D).

Response of the Affected Agency

Comments on Agency Response

We transmitted a draft of this report to the Department of Commerce and Consumer Affairs on July 26, 1993. A copy of the transmittal letter is included as Attachment 1. The response from the department is included as Attachment 2.

The department agrees with our recommendation that Chapter 457A be reenacted to continue the regulation of nurse aides. The department also agrees that administrative rules are needed and states that it “intends to promulgate rules to codify current practices and federal regulations.” It believes that no change is needed in the statute and that the adoption of administrative rules would be sufficient to clarify the scope of practice and the standards for certification. We believe that the statute should be amended to give substantive authority and guidance for the administrative rules the department plans to adopt.

The department does not agree with our recommendation that the department should control the issuance of certificates and maintain the nurse aide registry. It says this would require its staff to process documents and will result in additional costs. Our recommendation does not mean that the department should physically handle documents. Our concern is that applicants are issued certificates with the State’s seal without any review or approval by the department. In addition, the department does not maintain a current nurse aide registry. It merely gets a copy about every six months of the registry maintained by the Educational Testing Service. As the state’s regulatory body responsible for certifying nurse aides, the department should, at a minimum, approve the certificates and maintain a current nurse aide registry.

With respect to our recommendation on developing a working agreement with the Department of Health and the Department of Human Services, the department informs us that it will soon have in place a means of recording substantiated cases in the nurse aide registry and that it is not opposed to developing a working agreement among the agencies.

ATTACHMENT 1

STATE OF HAWAII
OFFICE OF THE AUDITOR
465 S. King Street, Room 500
Honolulu, Hawaii 96813-2917



MARION M. HIGA
State Auditor

(808) 587-0800
FAX: (808) 587-0830

July 26, 1993

C O P Y

The Honorable Clifford K. Higa, Director
Department of Commerce and Consumer Affairs
1010 Richards Street
Honolulu, Hawaii 96813

Dear Mr. Higa:

Enclosed for your information are three copies, numbered 6 to 8 of our draft report, *Sunset Evaluation Report: Nurse Aides*. We ask that you telephone us by Wednesday, July 28, 1993, on whether you intend to comment on our recommendations. If you wish your comments to be included in the report, please submit them no later than Wednesday, August 25, 1993.

The Governor and presiding officers of the two houses of the Legislature have also been provided copies of this draft report.

Since this report is not in final form and changes may be made to it, access to the report should be restricted to those assisting you in preparing your response. Public release of the report will be made solely by our office and only after the report is published in its final form.

Sincerely,

Marion M. Higa
State Auditor

Enclosures

JOHN WAIHEE
GOVERNOR



ATTACHMENT 2

CLIFFORD K. HIGA
DIRECTOR

SUSAN DOYLE
DEPUTY DIRECTOR

STATE OF HAWAII
OFFICE OF THE DIRECTOR
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

1010 RICHARDS STREET
P. O. BOX 541
HONOLULU, HAWAII 96809

August 25, 1993

RECEIVED

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OFFICE OF THE AUDITOR
STATE OF HAWAII

The Honorable Marion M. Higa, State Auditor
Office of the Auditor
State of Hawaii
465 S. King Street, Room 500
Honolulu, Hawaii 96813-2917

Dear Mrs. Higa:

Thank you for providing the Department of Commerce and Consumer Affairs ("Department") the opportunity to comment on the Sunset Evaluation Update on Nurse Aides. The Department will comment on the recommendations as they appear on page 8 of the report, as well as on statements in the report relative to those recommendations.

- 1a. "The Legislature should reenact Chapter 457A to continue the regulation of nurse aides."

The Department agrees that Chapter 457A, HRS, should be reenacted to continue the regulation of nurse aides. The Department acknowledges the support of the Department of Health, the Department of Human Services, and the Office of the Attorney General who worked together to ensure that the provisions of Chapter 457A, HRS, and applicable federal requirements, are implemented and complied with.

- 1b. "The Legislature should consider amending the statute by defining the occupation of nurse aides, minimum certification requirements, the certification process, and the nurse aide registry."

The Department is not opposed to codifying for clarification purposes, definitions relating to the above. However, the Department believes that the most efficacious method of accomplishing this is through promulgating administrative rules, rather than through statutory amendments. This is because amendments to, or interpretations of, the federal requirements has since its inception, changed and will continue to change. The fact that Chapter 457A, HRS is written the way it is, allows us to immediately implement current federal regulations.

Setting forth matters in HRS could restrain implementation. When HRS is not consistent with federal regulations the State law would have to be amended. The delay to implement (until the legislative amendment is achieved) could have severe implications on this State (i.e. medicaid reimbursement could be affected). Considering the consequences, it would be more prudent to codify the issues you raise in rules. Further, rule amendments can be done more expeditiously. We therefore disagree with amending the statute, but support creating rules on the subject matter named.

- 1c. The Legislature should consider amending the statute by requiring the director of commerce and consumer affairs to: (a) "set minimum standards".

We find this recommendation similar to that of 1b., reflecting your desire that federal regulations be codified in HRS. Federal requirements are very explicit in defining the minimum standards. This State has and will continue to follow federal requirements. We'd be agreeable to codifying these standards in administrative rules, but oppose it being codified in HRS for the same reasons expressed above.

- 1d. The Legislature should consider amending the statute by requiring the director of the commerce and consumer affairs to: (b) "issue certificates and maintain the nurse aide registry".

We gather from your report that there is a concern with our delegation to an agent to carry out activities which you feel should be handled directly by DCCA staff. You find the delegation "inappropriate." There is implication we have not assumed responsibility because of such delegation. You recommend the statute mandate DCCA staff handle document process (and thusly not delegate).

While it is not customary for you to see privatization being utilized by our agency this is a trend happening with other regulatory agencies throughout the United States. Fiscal constraints on government operations has led to privatization, with applicants/licenseses bearing the costs directly. Our delegation to an agent (Educational Testing Service, "ETS") is authorized by statute and supported by an official contract. Therefore the delegation is appropriate. Further, ETS has implemented activities which we have established, reviewed and approved (emphasis added). The distance in oversight that you perceive is

only because we had thoroughly laid out and approved ETS responsibilities at the onset of our implementation, and every year thereafter when we renew our agent relationship with them. ETS simply implements. ETS has no discretion whatsoever. We decided on the licensing examinations and the passing scores to be used. (Note: We also do this with a majority of our licensing programs who utilize national examinations. This practice has been supported by your office.) We had set forth when certificates were to be issued (upon meeting OBRA requirements) and the format of certificates. The requirements for maintaining the registry was established by us and we detailed the substance of such database. Circumstances relating to updating the registry database were approved by us. The Department maintains three comprehensive binders of such information. The first binder contains an understanding of the needs of Hawaii's Departments of Human Services and Health (and the Commerce and Consumer Affairs when it became the successor-in-interest); description of the evaluation instruments; evaluation items; Hawaii's registry system; Procure interactive videodisc technology for training and testing; ETS' experience and personnel qualifications; and cost proposal. The second binder is the nurse aide certification programs outlining the standards for quality assurance and fairness; clinical skills task lists; sample written/oral competency evaluation questions; sensitivity review process; differential item functioning; test registration form; evaluation admission ticket; score report; and summary reports. The third binder is comprised of several folders of information on the duties of the subcontractor (ARC). We receive information on the registry from ETS sufficient to monitor performance.

Clearly, ETS is bound legally to act only upon our instructions, which we feel we have thoroughly provided. We are directly overseeing ETS to ensure an efficient processing system. (Note: Your report did not contain any findings that the system was inefficient or the activities by ETS incomplete, or inaccurate.) Thusly, we find no reason to support the recommendation that the statute mandate DCCA staff handle certain document processing or the registry. We also would like to point out that if your recommendation were to be adopted there would be a substantial cost implication. To match all the staff, services and equipment that our agent provides, additional funding would be needed for us to implement.

2. "The Department of Commerce and Consumer Affairs should develop a working agreement with the Department of Health and the Department of Human Services that delineates their respective roles and responsibilities."

The Department feels that each department clearly understands its respective roles and responsibilities in the nurse aide program as codified in the Agreement for Contract Services ("Agreement") with ETS (of which each department is in possession of). The DHS is directly referred to in the Agreement as it relates to the Compensation and Payment Schedule. The DHS is also responsible for establishing and maintaining standards for nurse aide training programs in the State, reimbursing facilities for evaluation costs, and paying registry costs pursuant to federal regulations. The duties of the surveying agency (DOH) is defined in the Agreement as it relates to the registry. DOH is responsible for surveying the facilities and processing complaints against nurse aides as mandated by federal regulations. DOH disputes findings in your report. Quoting from a letter from Helen Yoshimi, DOH Hospital and Medical Facilities Branch Chief: "It is not that a Memorandum of Agreement has not been drafted between DOH and DCCA that information has not yet been recorded on the Nurse Aide Registry. The delay of information relative to CNA's (Certified Nurse Aides) with substantiated findings of abuse, neglect, and/or misappropriation of funds of residents in nursing facilities being placed on the Registry is due to the DOH State Survey Agency and not DCCA. The information on the reported cases will be processed now and will be on the Registry by the end of August, 1993. The DOH now has policies and procedures in place and information on future substantiated cases involving a CNA will be placed on the NA Registry in a timely manner. DCCA has maintained an excellent working relationship with the DOH State Survey Agency and we look ahead to continued cooperative efforts." (emphasis added) Although the Department feels that the roles of the three departments are clearly understood, it is not opposed to developing another form of a working agreement amongst the agencies.

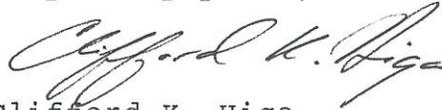
3. "The director of commerce and consumer affairs should issue rules governing the entire certification program including rules specifying the logistics of updating the nurse aide registry."

The Department does intend to promulgate rules to codify current practices and federal interpretations.

The Honorable Marion M. Higa
August 25, 1993
Page 5

Again, thank you for the opportunity to provide comments on the recommendations and statements contained in the sunset evaluation report on nurse aides.

Very truly yours,

A handwritten signature in cursive script that reads "Clifford K. Higa".

Clifford K. Higa
Director

PROPOSED LEGISLATION

SEVENTEENTH LEGISLATURE, 1994
STATE OF HAWAII

A BILL FOR AN ACT

RELATING TO NURSE AIDES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Section 26H-4, Hawaii Revised Statutes, is
2 amended by amending subsection (d) to read as follows:

3 "[~~(d)~~] (a) The following chapters are hereby repealed
4 effective December 31, 1994:

- 5 (1) Chapter 447 (Dental Hygienists)
6 (2) Chapter 457 (Board of Nursing)
7 [~~(3)~~] Chapter 457A (Nurse Aides)
8 [~~(4)~~] (3) Chapter 457B (Board of Examiners of Nursing Home
9 Administrators)
10 [~~(5)~~] (4) Chapter 461 (Board of Pharmacy)
11 [~~(6)~~] (5) Chapter 468L (Travel Agencies)"]

12 SECTION 2. Section 26H-4, Hawaii Revised Statutes, is
13 amended by amending subsection (j) to read as follows:

14 [~~(j)~~] (g) The following chapters are hereby repealed
15 effective December 31, 2000:

- 16 (1) Chapter 439 (Board of Cosmetology)
17 (2) Chapter 448F (Electrologists)
18 (3) Chapter 454 (Mortgage Brokers and Solicitors)
19 (4) Chapter 454D (Real Estate Collection Servicing Agents)

1 (5) Chapter 466 (Board of Public Accountancy)

2 (6) Chapter 467 (Real Estate Commission)

3 (7) Chapter 457A (Nurse Aides)"

4 SECTION 3. Chapter 457A, Hawaii Revised Statutes, is
5 amended as follows:

6 1. By amending section 457A-1 to read as follows:

7 "[~~§~~457A-1] Findings and purpose. (a) The legislature
8 recognizes that 42 United States Code §1395i-3 and §1396R
9 requires nurse aides working in nursing facilities participating
10 in medicare and medicaid programs to be certified. This chapter
11 implements [the provisions of] 42 United States Code §1395i-3 and
12 §1396R with respect to [establishing]:

13 (1) Establishing the State's regulatory scheme for
14 certifying nurse aides[.];

15 (2) Defining the scope of regulation;

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

18 (4) Establishing standards of responsibility of state
19 agencies for various aspects of the program.

20 (b) As used in this chapter, "nurse aide" means one who
21 works under the supervision of nurses and medical staff to
22 perform a variety of duties relating to patients and patient care

1 including but not limited to assisting patients in all activities
2 of daily living such as serving and collecting food trays,
3 helping patients with getting out of bed, bathing, and dressing.
4 A nurse aide may also assist nurses and medical staff by changing
5 bed linens, delivering messages, or sterilizing instruments."

6 2. By amending section 457A-2 to read as follows:

7 "[[]§457A-2[[]] Implementation. The director of commerce
8 and consumer affairs shall implement the provisions of 42 United
9 States Code §1395i-3 and §1396R as it relates only to
10 establishing [the]:

- 11 (1) The minimum requirements and standards necessary for
12 certification as a nurse aide[, examination];
- 13 (2) Examination requirements, including the passing score[,
14 maintenance];
- 15 (3) Maintenance requirements for continued certification[,
16 implementation] on a biennial basis; and
- 17 (4) Implementation of a nurse aide registry."

18 3. By amending section 457A-3 to read as follows:

19 "[[]§457A-3[[]] Power of director. (a) The director, in
20 accordance with [the provisions of] chapters 91 and 92, shall
21 adopt such rules as may be necessary to implement the provisions
22 of 42 United States Code §1395i-3 and §1396R, as well as the

1 federal regulations adopted pursuant thereto as it relates only
2 to establishing [the]:

3 (1) The minimum requirements necessary for certification as
4 a nurse aide[, examination];

5 (2) Examination requirements, [maintenance] including the
6 passing score and provisions for contesting examination
7 results;

8 (3) Maintenance requirements for continued
9 certification[,]; and [implementation]

10 (4) Implementation and maintenance of a nurse aide
11 registry.

12 (b) The director shall issue certificates to qualified
13 nurse aides and shall be responsible for maintenance of an
14 up-to-date nurse aide registry which shall include the names of
15 certified nurse aides, their place of employment, and
16 disciplinary actions. Disciplinary actions shall be limited to
17 the placement of substantiated findings from the department of
18 health into the nurse aide registry within ten working days of
19 court settlement."

20 4. By amending section 457A-4 to read as follows:

21 "[[§457A-4]] **Contract for administrative services.** The
22 director may contract with a professional testing service that is

1 qualified to test the competency of nurse aides[.]; provided that
2 the contract shall only be for the administration and grading of
3 tests. The department may require that fees for services be paid
4 directly to the professional testing service."

5 SECTION 4. Statutory material to be repealed is bracketed.
6 New statutory material is underscored.

7 SECTION 5. This Act shall take effect upon its approval.

8

9

INTRODUCED BY: _____