

OVERVIEW

Sunrise Analysis: Nurse Aides

Report No. 07-06, April 2007

Summary

Nurse aides work under the supervision of nurses and medical staff in various healthcare settings. They may also be primary care givers in adult residential care homes. Their duties may include serving and collecting food trays, helping patients to get out of bed, bathe, and dress, changing bed linens, delivering messages, sterilizing instruments, and assisting in all activities of daily living.

Currently, there are approximately 8,963 certified nurse aides in Hawai'i. For ease of description, these nurse aides are informally categorized into three groups based on their employment: "Group 1"—nurse aides employed in Medicare or Medicaid-certified nursing facilities; "Group 2"—nurse aides employed in state-licensed or –certified healthcare settings; and "Group 3"—nurse aides who are self-employed, are employed in physicians' offices, or whose employers are not Department of Human Services (DHS), or Department of Health (DOH)-licensed or –certified facilities, such as home care placement agencies. Nurse aides in Group 1 number approximately 2,726, with the remaining 6,237 nurse aides in Groups 2 and 3, who are not required to be certified by either federal or state law. Senate Bill No. 3277, Senate Draft 2, introduced in the 2006 Regular Session, proposed state regulation of Group 2 only. The Legislature requested the Auditor to analyze this proposal in House Concurrent Resolution No. 73, House Draft 1 of the 2006 session.

Federal regulations require certification of nurse aides in Group 1. In 1990, the State through Chapter 457A, Hawai'i Revised Statutes (HRS), established a certification program for nurse aides that the Department of Commerce and Consumer Affairs (DCCA), the lead agency, voluntarily extended to *all* nurse aides. However, by 2004, the DCCA attempted to discontinue certification and recertification of Groups 2 and 3. It was met with much opposition.

The DCCA is responsible for administering the certification program and maintaining the nurse aide registry. The department has contracted the American Red Cross to handle the application, testing, and other processing tasks. The Department of Human Services (DHS), the State's Medicaid Agency, is responsible for establishing the curriculum requirements for Nurse Aide Training Programs and determining the content of the Competency Evaluation Program. The DOH has contracted with the federal Centers for Medicare and Medicaid Services to implement the federal survey and certification program which includes the investigation of allegations of abuse, neglect, and misappropriation of resident property against certified nurse aides employed in certified nursing facilities and is the only entity that can place findings on the certified nurse aide registry.

The Hawai'i Regulatory Licensing Reform Act, Chapter 26H, HRS, provides the criteria for assessing whether the State should regulate professions and occupations.



The primary criterion is protecting the health, safety, and welfare of consumers. Evidence of abuse and harm must be given great weight. We found evidence of actual and potential harm by the already-regulated Group 1 nurse aides. We therefore conclude that regulation of *all* nurse aides is warranted.

Furthermore, we found that other protections do not exist to adequately safeguard the public. The current complaints process addresses only Group 1, which leaves no recourse to consumers should they have complaints against nurse aides in Groups 2 and 3. The proposed measure, which leaves out Group 3, leaves the public with no recourse should harm occur from more than one-third of the nurse aides in Hawai'i.

In addition, Section 26H-2, HRS, requires that regulation of an occupation take place only to protect consumers from harm by incompetent practitioners. We found that the competency of the individual nurse aide does not appear to be the primary criterion under the current proposed regulatory scheme, but employment is. Those who argue for regulation of only Groups 1 and 2 base their position on government "oversight" of the facilities where the nurse aides are employed. However, those were the very facilities where we found evidence of harm from Group 1. Extending certification to those who work in state-regulated locations but not where the state has no oversight over employers ignores the possibly greater harm posed to consumers by Group 3.

Recommendations and Response

We recommend that the State regulate all nurse aides to protect the public from harm. Senate Bill No. 3277, Senate Draft 2 of the 2006 legislative session should be amended to include nurse aides in Group 3, thereby shifting emphasis to regulation of individuals based on their competency and not their employment.

Both the DCCA and the DHS disagreed with our recommendation, preferring to limit the expanded certification to Group 2, whose employers are state-licensed or –certified healthcare settings. We recognize the basis of the departments' position—that the federal government has set the bar by incorporating employment status with competency in requiring the regulation of Group 1 nurse aides.

But we are bound by the State's policies in Section 26H-2—that regulation of an occupation takes place only to protect consumers from harm by incompetent practitioners. Regulating nurse aides should be no different conceptually than regulating nurses, who are licensed on their individual competency and not on their employment.

The Department of Health concurred with our recommendation, agreeing that nurse aides in Groups 2 and 3 should also be certified in order to provide baseline competency.

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