

CHAPTER 294

PROFESSIONS AND OCCUPATIONS

HOUSE BILL 93-1195

BY REPRESENTATIVES Entz, Benavidez, Pierson, and Tucker;
also SENATOR Martinez.

AN ACT

CONCERNING THE REGULATION OF NURSE AIDES, AND, IN CONNECTION THEREWITH, CONTINUING THE AUTHORITY FOR SUCH REGULATION BY THE STATE BOARD OF NURSING.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. 2-3-1203 (3) (f) (XV), Colorado Revised Statutes, 1980 Repl. Vol., as amended, is amended to read:

2-3-1203. Sunset review of advisory committees. (3) The following dates are the dates for which the statutory authorization for the designated advisory committees is scheduled for repeal:

(f) July 1, 1993:

(XV) ~~The advisory committee on nurse aides appointed pursuant to section 12-38.1-110, C.R.S.;~~

SECTION 2. 12-38.1-102 (3) and (4), Colorado Revised Statutes, 1991 Repl. Vol., are amended to read:

12-38.1-102. Definitions. As used in this article, unless the context otherwise requires:

(3) "Certified nurse aide" means a person who meets the qualifications specified in this article and who is currently certified by the board. ONLY A PERSON WHO HOLDS A CERTIFICATE TO PRACTICE AS A NURSE AIDE IN THIS STATE PURSUANT TO THE PROVISIONS OF THIS ARTICLE SHALL HAVE THE RIGHT TO USE THE TITLE "CERTIFIED NURSE AIDE" AND ITS ABBREVIATION, "C.N.A.".

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

(4) "Medical facility" means a nursing facility licensed by the department of health or HOME HEALTH AGENCIES certified by the department of health to receive medicare or medicaid funds, PURSUANT TO THE FEDERAL "SOCIAL SECURITY ACT", AS AMENDED, distinct part nursing facilities, or home health agencies OR ENTITIES ENGAGED IN NURSE AIDE PRACTICES AS SUCH PRACTICES ARE DEFINED IN SUBSECTION (5) OF THIS SECTION. ~~certified by the department of health to receive medicare funds.~~ "Medical facility" does not include a licensed hospital engaged primarily in providing acute care to patients, except to the extent that federal law or regulation requires such hospital to be included in the definition of "medical facility" HOSPITALS AND OTHER FACILITIES LICENSED OR CERTIFIED PURSUANT TO SECTION 25-1-107 (1) (I), C.R.S.

SECTION 3. 12-38.1-103, Colorado Revised Statutes, 1991 Repl. Vol., is amended BY THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS to read:

12-38.1-103. Certification - state board of nursing. (5) (a) THE BOARD SHALL NOT ISSUE A CERTIFICATE TO A FORMER HOLDER OF A CERTIFICATE WHOSE CERTIFICATE WAS REVOKED UNLESS THE APPLICANT MEETS THE REQUIREMENTS OF THIS ARTICLE, HAS SUCCESSFULLY REPEATED AN APPROVED EDUCATION PROGRAM AS REQUIRED BY THE BOARD, AND HAS REPEATED AND PASSED A COMPETENCY EVALUATION.

(b) NO NURSE AIDE CERTIFICATE HOLDER WHO HAS HAD A CERTIFICATE REVOKED MAY APPLY FOR RECERTIFICATION BEFORE A ONE-YEAR WAITING PERIOD AFTER SUCH REVOCATION.

(6) FUNDING FOR THE NURSE AIDE CERTIFICATION PROGRAM, AS OPERATED BY THE DEPARTMENT OF REGULATORY AGENCIES, SHALL BE PROVIDED BY THE FEDERAL MEDICAID AND MEDICARE PROGRAMS. MEDICAID FUNDING SHALL BE SECURED BY THE DEPARTMENT OF SOCIAL SERVICES AND MEDICARE FUNDING SHALL BE SECURED BY THE DEPARTMENT OF HEALTH. ALL SUCH FUNDING SHALL BE FORWARDED TO THE DEPARTMENT OF REGULATORY AGENCIES FOR ITS USE IN OPERATING THE NURSE AIDE CERTIFICATION PROGRAM. THE DEPARTMENTS OF SOCIAL SERVICES AND HEALTH SHALL TAKE ALL REASONABLE AND NECESSARY STEPS TO SECURE SUCH FUNDING FROM THE FEDERAL MEDICAID AND MEDICARE PROGRAMS.

SECTION 4. 12-38.1-109, Colorado Revised Statutes, 1991 Repl. Vol., is amended to read:

12-38.1-109. Renewal of certification. Each certificate to practice as a nurse aide shall be renewed biennially upon payment of a specified renewal fee established pursuant to section 24-34-105, C.R.S. The board may reduce such fee if federal funds are available. Such fee shall not be subject to the provisions of section 24-34-104.4, C.R.S. At the time of such renewal, the nurse aide shall submit proof to the board, as required by federal law or regulation, ~~that he has performed~~ OF EITHER HAVING PERFORMED nurse aide services, OR THE EQUIVALENT, AS DEFINED IN RULES AND REGULATIONS, for pay during the preceding twenty-four-month period ~~and shall attest that he has completed the required ongoing training or that he has completed~~ OR HAVING COMPLETED a new training program approved under the provisions of this article during the preceding ~~four~~ TWENTY-FOUR months.

SECTION 5. 12-38.1-110 (1) and (2), Colorado Revised Statutes, 1991 Repl. Vol., are amended to read:

12-38.1-110. Advisory committee. (1) To assist in the performance of its duties under this article, the board may designate an advisory committee. Such committee shall be composed of five members. One member shall be a certified nurse aide, one member shall be a member of the state board of nursing, ~~one member shall be a department of health employee~~ ONE MEMBER SHALL REPRESENT PROFESSIONAL ASSOCIATIONS COMPOSED OF HOME HEALTH AGENCIES, one member shall be from a group representing the concerns of senior citizens, and one member shall represent professional associations composed of ~~medical facilities~~ NURSING HOMES. A DEPARTMENT OF HEALTH EMPLOYEE SHALL SERVE AS AN EX OFFICIO MEMBER. Committee members shall be compensated for their services in accordance with the provisions of section 24-34-102 (13), C.R.S.

(2) (a) ~~This section is repealed, effective July 1, 1993.~~

(b) ~~Prior to said repeal, the advisory committee shall be reviewed as provided for in section 2-3-1203, C.R.S.~~

SECTION 6. 12-38.1-111 (1) (m), Colorado Revised Statutes, 1991 Repl. Vol., is amended, and the said 12-38.1-111 is further amended BY THE ADDITION OF A NEW SUBSECTION, to read:

12-38.1-111. Grounds for discipline. (1) The board may suspend, revoke, or deny any certification to practice as a nurse aide or issue a letter of admonition to a certified nurse aide upon proof that such person:

(m) Has misappropriated patient OR FACILITY property.

(3) WHENEVER A COMPLAINT OR INVESTIGATION DISCLOSES AN INSTANCE OF MISCONDUCT WHICH, IN THE OPINION OF THE BOARD DOES NOT WARRANT FORMAL ACTION BY THE BOARD BUT WHICH SHOULD NOT BE DISMISSED AS BEING WITHOUT MERIT, A LETTER OF ADMONITION MAY BE SENT BY CERTIFIED MAIL TO THE NURSE AIDE AGAINST WHOM A COMPLAINT WAS MADE AND A COPY THEREOF TO THE PERSON MAKING THE COMPLAINT. WHEN THE LETTER OF ADMONITION IS SENT BY CERTIFIED MAIL BY THE BOARD TO A NURSE AIDE COMPLAINED AGAINST, SUCH NURSE AIDE SHALL BE ADVISED THAT SUCH PERSON HAS THE RIGHT TO REQUEST IN WRITING WITHIN TWENTY DAYS AFTER PROVEN RECEIPT OF THE LETTER, THAT FORMAL DISCIPLINARY PROCEEDINGS BE INITIATED TO ADJUDICATE THE PROPRIETY OF THE COMPLAINT ON WHICH THE LETTER OF ADMONITION IS BASED. IF SUCH REQUEST IS TIMELY MADE, THE LETTER OF ADMONITION SHALL BE DEEMED VACATED AND THE MATTER SHALL BE HEARD AS A FORMAL DISCIPLINARY PROCEEDING.

SECTION 7. 12-38.1-114 (3), (4), (5), (6), (7), (8), and (9), Colorado Revised Statutes, 1991 Repl. Vol., are amended, and the said 12-38.1-114 is further amended BY THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS, to read:

12-38.1-114. Disciplinary proceedings - hearing officers. (3) ~~The attendance of witnesses and the production of books, patient records, papers, and other pertinent documents at the hearing may be summoned by subpoenas issued by the board, which~~

shall be served in the manner provided by the Colorado rules of civil procedure for service of subpoenas. THE LICENSE OF A PERSON CERTIFIED BY THE BOARD AS A NURSE AIDE MAY BE REVOKED OR SUSPENDED OR SUCH PERSON MAY OTHERWISE BE DISCIPLINED UPON WRITTEN FINDINGS BY THE BOARD THAT THE LICENSEE HAS COMMITTED ACTS WHICH VIOLATE THE PROVISIONS OF THIS ARTICLE.

~~(4) Disciplinary proceedings shall be conducted in the manner prescribed by article 4 of title 24, C.R.S., and the hearing and opportunity for review shall be conducted pursuant to said article by the board or a hearing officer at the board's discretion. ANY CERTIFIED NURSE AIDE DISCIPLINED UNDER SUBSECTION (3) OF THIS SECTION SHALL BE NOTIFIED BY THE BOARD, BY A CERTIFIED LETTER TO THE MOST RECENT ADDRESS PROVIDED TO THE BOARD BY THE CERTIFIED NURSE AIDE, NO LATER THAN THIRTY DAYS FOLLOWING THE DATE OF THE BOARD'S ACTION, OF THE ACTION TAKEN, THE SPECIFIC CHARGES GIVING RISE TO THE ACTION, AND THE CERTIFIED NURSE AIDE'S RIGHT TO REQUEST A HEARING ON THE ACTION TAKEN.~~

~~(5) (a) No previously issued certificate to engage in practice as a nurse aide shall be revoked or suspended until after a hearing conducted pursuant to section 24-4-105, C.R.S., except in emergency situations as provided for by section 24-4-104, C.R.S. WITHIN THIRTY DAYS AFTER NOTIFICATION IS SENT BY THE BOARD, THE CERTIFIED NURSE AIDE MAY FILE A WRITTEN REQUEST WITH THE BOARD FOR A HEARING ON THE ACTION TAKEN. UPON RECEIPT OF THE REQUEST THE BOARD SHALL GRANT A HEARING TO THE CERTIFIED NURSE AIDE. IF THE CERTIFIED NURSE AIDE FAILS TO FILE A WRITTEN REQUEST FOR A HEARING WITHIN THIRTY DAYS, THE ACTION OF THE BOARD SHALL BE FINAL ON THAT DATE.~~

~~(b) The denial of an application to renew an existing certificate shall be treated in all respects as a revocation.~~

~~(6) In order to aid the board in any hearing or investigation instituted pursuant to this section, the board, through any member or executive officer thereof, shall have the power to issue subpoenas commanding production of copies of any documents containing information relevant to the practice of the nurse aide, including, but not limited to, hospital and physician records. The person providing such copies shall prepare them from the original record and shall delete from the copy provided pursuant to the subpoena the name of the patient, but he shall identify the patient by a numbered code to be retained by the custodian of the records from which the copies were made. Upon certification of the custodian that the copies are true and complete except for the patient's name, they shall be deemed authentic, subject to the right to inspect the originals for the limited purpose of ascertaining the accuracy of the copies. No privilege of confidentiality shall exist with respect to such copies, and no liability shall lie against the board or the custodian or the custodian's authorized employee for furnishing or using such copies in accordance with this subsection (6). THE ATTENDANCE OF WITNESSES AND THE PRODUCTION OF BOOKS, PATIENT RECORDS, PAPERS, AND OTHER PERTINENT DOCUMENTS AT THE HEARING MAY BE SUMMONED BY SUBPOENAS ISSUED BY THE BOARD, WHICH SHALL BE SERVED IN THE MANNER PROVIDED BY THE COLORADO RULES OF CIVIL PROCEDURE FOR SERVICE OF SUBPOENAS.~~

~~(7) Any person participating in good faith in the making of a complaint or report or participating in any investigative or administrative proceeding pursuant to this~~

~~article shall be immune from any civil liability that otherwise might result by reason of such action.~~ DISCIPLINARY PROCEEDINGS SHALL BE CONDUCTED IN THE MANNER PRESCRIBED BY ARTICLE 4 OF TITLE 24, C.R.S., AND THE HEARING AND OPPORTUNITY FOR REVIEW SHALL BE CONDUCTED PURSUANT TO SAID ARTICLE BY THE BOARD OR A HEARING OFFICER AT THE BOARD'S DISCRETION.

(8) ~~An employer of a nurse aide shall report to the board any disciplinary action taken against the nurse aide or any resignation in lieu of a disciplinary action for conduct which constitutes a violation of this article.~~ FAILURE OF THE CERTIFIED AIDE TO APPEAR AT THE HEARING WITHOUT GOOD CAUSE SHALL BE DEEMED A WITHDRAWAL OF HIS OR HER REQUEST FOR A HEARING, AND THE BOARD'S ACTION SHALL BE FINAL ON THAT DATE. FAILURE, WITHOUT GOOD CAUSE, OF THE BOARD TO APPEAR AT THE HEARING SHALL BE DEEMED CAUSE TO DISMISS THE PROCEEDING.

(9) (a) ~~Except when a decision to proceed with a disciplinary action has been agreed upon by a majority of the board or its designee, any investigations, examinations, hearings, meetings, or any other proceedings of the board related to discipline that are conducted pursuant to the provisions of this section shall be exempt from the provisions of any law requiring that the proceedings of the board be conducted publicly.~~ NO PREVIOUSLY ISSUED CERTIFICATE TO ENGAGE IN PRACTICE AS A NURSE AIDE SHALL BE REVOKED OR SUSPENDED EXCEPT UNDER THE PROCEDURE SET FORTH IN THIS SECTION, EXCEPT IN EMERGENCY SITUATIONS AS PROVIDED BY SECTION 24-4-104, C.R.S.

(b) THE DENIAL OF AN APPLICATION TO RENEW AN EXISTING CERTIFICATE SHALL BE TREATED IN ALL RESPECTS AS A REVOCATION.

(10) IN ORDER TO AID THE BOARD IN ANY HEARING OR INVESTIGATION INSTITUTED PURSUANT TO THIS SECTION, THE BOARD, THROUGH ANY MEMBER OR EXECUTIVE OFFICER THEREOF, SHALL HAVE THE POWER TO ISSUE SUBPOENAS COMMANDING PRODUCTION OF COPIES OF ANY DOCUMENTS CONTAINING INFORMATION RELEVANT TO THE PRACTICE OF THE NURSE AIDE, INCLUDING, BUT NOT LIMITED TO, HOSPITAL AND PHYSICIAN RECORDS. THE PERSON PROVIDING SUCH COPIES SHALL PREPARE THEM FROM THE ORIGINAL RECORD AND SHALL DELETE FROM THE COPY PROVIDED PURSUANT TO THE SUBPOENA THE NAME OF THE PATIENT, BUT THE PATIENT SHALL BE IDENTIFIED BY A NUMBERED CODE TO BE RETAINED BY THE CUSTODIAN OF THE RECORDS FROM WHICH THE COPIES WERE MADE. UPON CERTIFICATION OF THE CUSTODIAN THAT THE COPIES ARE TRUE AND COMPLETE EXCEPT FOR THE PATIENT'S NAME, THEY SHALL BE DEEMED AUTHENTIC, SUBJECT TO THE RIGHT TO INSPECT THE ORIGINALS FOR THE LIMITED PURPOSE OF ASCERTAINING THE ACCURACY OF THE COPIES. NO PRIVILEGE OF CONFIDENTIALITY SHALL EXIST WITH RESPECT TO SUCH COPIES, AND NO LIABILITY SHALL LIE AGAINST THE BOARD OR THE CUSTODIAN OR THE CUSTODIAN'S AUTHORIZED EMPLOYEE FOR FURNISHING OR USING SUCH COPIES IN ACCORDANCE WITH THIS SUBSECTION (10).

(11) ANY PERSON PARTICIPATING IN GOOD FAITH IN THE MAKING OF A COMPLAINT OR REPORT OR PARTICIPATING IN ANY INVESTIGATIVE OR ADMINISTRATIVE PROCEEDING PURSUANT TO THIS ARTICLE SHALL BE IMMUNE FROM ANY CIVIL LIABILITY THAT OTHERWISE MIGHT RESULT BY REASON OF SUCH ACTION.

(12) AN EMPLOYER OF A NURSE AIDE SHALL REPORT TO THE BOARD ANY

DISCIPLINARY ACTION TAKEN AGAINST THE NURSE AIDE OR ANY RESIGNATION IN LIEU OF A DISCIPLINARY ACTION FOR CONDUCT WHICH CONSTITUTES A VIOLATION OF THIS ARTICLE.

(13) EXCEPT WHEN A DECISION TO PROCEED WITH A DISCIPLINARY ACTION HAS BEEN AGREED UPON BY A MAJORITY OF THE BOARD OR ITS DESIGNEE, ANY INVESTIGATIONS, EXAMINATIONS, HEARINGS, MEETINGS, OR ANY OTHER PROCEEDINGS OF THE BOARD RELATED TO DISCIPLINE THAT ARE CONDUCTED PURSUANT TO THE PROVISIONS OF THIS SECTION SHALL BE EXEMPT FROM THE PROVISIONS OF ANY LAW REQUIRING THAT THE PROCEEDINGS OF THE BOARD BE CONDUCTED PUBLICLY.

SECTION 8. 12-38.1-115 (3), Colorado Revised Statutes, 1991 Repl. Vol., is amended to read:

12-38.1-115. Surrender of certificate. (3) The board shall not issue a certificate to a former holder of a certificate whose certificate has been surrendered unless A ONE-YEAR WAITING PERIOD HAS PASSED SINCE THE DATE OF THE SURRENDER, the applicant ~~meets~~ HAS MET the requirements of this article, has successfully repeated an approved education program, and has REPEATED AND passed a competency evaluation.

SECTION 9. 12-38.1-117 (1), Colorado Revised Statutes, 1991 Repl. Vol., is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

12-38.1-117. Exclusions. (1) This article shall not be construed to affect or apply to:

(f) ANY PERSON PERFORMING SERVICES PURSUANT TO SECTIONS 12-38-132, 25-1-107 (1) (ee), AND 27-10.5-103 (2) (k), C.R.S.

SECTION 10. 12-38.1-118 (2), Colorado Revised Statutes, 1991 Repl. Vol., is amended to read:

12-38.1-118. Unlawful acts. (2) Any person who violates the provisions of subsection (1) of this section commits a class ~~3~~ 2 misdemeanor and shall be punished as provided in section 18-1-106, C.R.S., ~~Any person who subsequently violates any provision of subsection (1) of this section within three years after the date of the first conviction under this section commits a class 5 felony and shall be punished as provided in section 18-1-105, C.R.S.~~ AND ANY PERSON COMMITTING A SUBSEQUENT OFFENSE COMMITS A CLASS 6 FELONY AND SHALL BE PUNISHED AS PROVIDED IN SECTION 18-1-105, C.R.S.

SECTION 11. 12-38.1-120, Colorado Revised Statutes, 1991 Repl. Vol., is amended to read:

12-38.1-120. Repeal of article. This article is repealed, effective ~~July 1, 1993~~ JULY 1, 2003. Prior to such repeal, the certification functions of the state board of nursing shall be reviewed as provided for in section 24-34-104, C.R.S.

SECTION 12. 24-34-104 (22) (c) (II), Colorado Revised Statutes, 1988 Repl. Vol., as amended, is amended, and the said 24-34-104 is further amended BY THE

ADDITION OF A NEW SUBSECTION, to read:

24-34-104. General assembly review of regulatory agencies and functions for termination, continuation, or reestablishment. (22) (c) The following functions of the specified agencies shall terminate on July 1, 1993:

(II) ~~The certification of nurse aides by the state board of nursing in accordance with article 38.1 of title 12, C.R.S.~~

(32) THE FOLLOWING FUNCTION OF THE SPECIFIED AGENCY SHALL TERMINATE ON JULY 1, 2003: THE CERTIFICATION OF NURSE AIDES BY THE STATE BOARD OF NURSING IN ACCORDANCE WITH ARTICLE 38.1 OF TITLE 12, C.R.S.

SECTION 13. No appropriation. The general assembly has determined that this act can be implemented within existing appropriations, and therefore no separate appropriation of state moneys is necessary to carry out the purposes of this act.

SECTION 14. Effective date - applicability. This act shall take effect July 1, 1993, and shall apply to acts committed on or after said date, except for any requirements for certification pursuant to section 12-38.1-102 (4), which shall take effect January 1, 1994.

SECTION 15. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: June 6, 1993