

CHAPTER 410

PROFESSIONS AND OCCUPATIONS

SENATE BILL 03-134

BY SENATOR(S) Keller, Hagedorn, Groff, Hanna, Tapia, and Windels;
also REPRESENTATIVE(S) Tochtrop, Borodkin, Boyd, Butcher, Carroll, Cloer, Coleman, Hefley, Jahn, Larson, Madden,
Marshall, Merrifield, Mitchell, Paccione, Ragsdale, Salazar, Spence, Stafford, Vigil, Weddig, and Williams S.

AN ACT

CONCERNING THE CONTINUATION OF THE CERTIFICATION OF NURSE AIDES BY THE STATE BOARD OF NURSING, AND MAKING AN APPROPRIATION THEREFOR.

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

SECTION 1. 12-38.1-120, Colorado Revised Statutes, is amended to read:

12-38.1-120. Repeal of article. This article is repealed, effective July 1, 2003.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 2. Repeal. 24-34-104 (32) (a), Colorado Revised Statutes, is repealed as follows:

24-34-104. General assembly review of regulatory agencies and functions for termination, continuation, or reestablishment. (32) The following function of the specified agency shall terminate on July 1, 2003:

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

SECTION 3. 24-34-104 (41), Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

24-34-104. General assembly review of regulatory agencies and functions for termination, continuation, or reestablishment. (41) The following agencies, functions, or both, shall terminate on July 1, 2010:

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

(o) THE CERTIFICATION OF NURSE AIDES BY THE STATE BOARD OF NURSING IN ACCORDANCE WITH ARTICLE 38.1 OF TITLE 12, C.R.S.

SECTION 4. 12-38-108 (1) (I) (1) and (1) (I) (II), Colorado Revised Statutes, are amended to read:

12-38-108. Powers and duties of the board. (1) The board has the following powers and duties:

(I) (I) (A) To require criminal ~~background~~ HISTORY RECORD checks as evidence of criminal convictions on applicants for certification as nurse aides pursuant to section 12-38.1-104;

(B) To conduct criminal ~~background~~ HISTORY RECORD checks on any nurse aide against whom a complaint has been filed;

(C) To ~~approve private~~ STUDY NEW TECHNOLOGY REGARDING criminal background ~~check companies~~ CHECKS for ~~purposes~~ THE PURPOSE of conducting ~~criminal background~~ STATEWIDE AND NATIONAL FINGERPRINT-BASED CRIMINAL HISTORY RECORD checks on NURSE AIDE CERTIFICATION applicants. ~~for employment in nursing care facilities~~: ON OR BEFORE SEPTEMBER 1, 2003, THE BOARD SHALL REPORT AND MAKE RECOMMENDATIONS TO THE HEALTH CARE TASK FORCE CREATED IN SECTION 26-15-107, C.R.S., REGARDING THE FEASIBILITY OF REQUIRING NURSE AIDES TO SUBMIT TO STATEWIDE AND NATIONAL FINGERPRINT-BASED CRIMINAL HISTORY RECORD CHECKS IN ORDER TO OBTAIN CERTIFICATION PURSUANT TO ARTICLE 38.1 OF THIS TITLE.

(II) For purposes of this paragraph (I), "criminal ~~background~~ HISTORY RECORD check" means a written review of an individual's criminal conviction history. ~~provided by a company approved by the board~~.

SECTION 5. 12-38.1-104 (3), Colorado Revised Statutes, is amended to read:

12-38.1-104. Application for certification - fee. (3) (a) Every applicant seeking certification pursuant to this section shall submit a criminal history ~~background~~ RECORD check THAT SHALL BE conducted within the ninety-day period prior to submittal of the application ~~from a company approved by the board~~ AND PAID FOR AS PRESCRIBED BY THE BOARD. THE BOARD SHALL USE THE INFORMATION RESULTING FROM EACH CRIMINAL HISTORY RECORD CHECK TO DETERMINE WHETHER AN APPLICANT IS QUALIFIED FOR CERTIFICATION PURSUANT TO THIS SECTION.

(b) ~~Companies approved by the board to conduct criminal history background checks must be able to include information on convictions.~~

SECTION 6. 12-38.1-109, Colorado Revised Statutes, 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, of either having performed nurse aide services, or the equivalent, as defined ~~in rules and regulations~~ BY RULE, for pay during the preceding twenty-four-month period or having ~~completed a new training program~~ PASSED A COMPETENCY EVALUATION, AS approved under the provisions of this article, during the preceding twenty-four months.

SECTION 7. 12-38.1-110 (1), Colorado Revised Statutes, is 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 THAT SHALL REPORT TO THE BOARD. Such committee shall be composed of ~~five~~ SEVEN members WHO HAVE EXPERTISE IN AN AREA UNDER REVIEW. One member shall be a certified nurse aide, one member shall be a ~~member of the state board of nursing,~~ LICENSED PROFESSIONAL NURSE WHO SUPERVISES CERTIFIED NURSE AIDES, one member shall represent ~~professional associations composed of home health agencies~~ A HOME HEALTH AGENCY, ~~one member shall be from a group representing the concerns of senior citizens,~~ and one member shall represent ~~professional associations composed of a nursing homes~~ FACILITY, ONE MEMBER SHALL BE a department of public health and environment employee, ~~shall serve as an ex officio member,~~ ONE MEMBER SHALL BE A FAMILY MEMBER OF A CONSUMER WHO RECEIVES HOME HEALTH SERVICES OR NURSING FACILITY SERVICES, AND ONE MEMBER SHALL BE A CONSUMER OF HOME HEALTH CARE OR NURSING FACILITY SERVICES. Committee members shall NOT be compensated for their services ~~in accordance with the provisions of section 24-34-102 (13), C.R.S.~~ BUT SHALL BE REIMBURSED FOR THE ACTUAL AND NECESSARY EXPENSES IN THE PERFORMANCE OF THEIR DUTIES FROM THE DIVISION OF REGISTRATIONS CASH FUND BY THE GENERAL ASSEMBLY.

SECTION 8. 12-38.1-110.3, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

12-38.1-110.3. Medication administration advisory committee - created - department of regulatory agencies report. (5) ON OR BEFORE SEPTEMBER 1, 2003, THE BOARD SHALL PROVIDE A REPORT TO THE HEALTH CARE TASK FORCE CREATED IN SECTION 26-15-107, C.R.S., REGARDING THE STATUS OF IMPLEMENTATION OF THE PROGRAM FOR ADMINISTRATION OF MEDICATION BY MEDICATION AIDES IN NURSING FACILITIES. THE REPORT SHALL INCLUDE THE BOARD'S RECOMMENDATIONS FOR ANY STATUTORY CHANGES RELATED TO TRAINING REQUIREMENTS, APPROVAL OF TRAINING PROGRAMS, SCOPE OF PRACTICE, LICENSING, AND DISCIPLINE PROCEDURES FOR MEDICATION AIDES. BASED UPON SUCH REPORT, THE HEALTH CARE TASK FORCE MAY RECOMMEND STATUTORY CHANGES TO THE GENERAL ASSEMBLY NO LATER THAN JANUARY 1, 2004.

SECTION 9. 24-34-104 (39) (b), Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBPARAGRAPH to read:

24-34-104. General assembly review of regulatory agencies and functions for termination, continuation, or reestablishment. (39) (b) The following agencies, functions, or both, shall terminate on July 1, 2008:

(XVI) THE TRAINING, EDUCATION, AND FUNCTIONS OF MEDICATION AIDES PURSUANT TO SECTION 12-38.1-110.5, C.R.S.

SECTION 10. The introductory portion to 12-38.1-111 (1) and 12-38.1-111 (1) (c), (1) (f), (1) (h), (1) (i), (1) (j), and (3), Colorado Revised Statutes, are amended, and the said 12-38.1-111 (1) is further amended BY THE ADDITION OF A NEW PARAGRAPH, 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:

~~(c) Has willfully or negligently acted in a manner inconsistent with the health or safety of a person under his care;~~

~~(f) Has negligently or willfully practiced as a nurse aide in a manner which fails to meet generally accepted standards for such practice;~~

~~(h) Has VERBALLY OR PHYSICALLY abused neglected, or otherwise harmed a person under his the care OF THE CERTIFIED NURSE AIDE;~~

~~(i) Has habitually abused or excessively used any habit-forming drug, as defined in section 12-22-102 (13), or any controlled substance, as defined in section 12-22-303 (7) SECTION 18-18-102 (5), C.R.S.;~~

~~(j) Has misused any drug or controlled substance, as defined in section 12-22-303 (7) SECTION 18-18-102 (5), C.R.S.;~~

(o) HAS NEGLECTED A PERSON UNDER THE CARE OF THE CERTIFIED NURSE AIDE.

~~(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 11. 12-38.1-114 (3), Colorado Revised Statutes, is amended to read:

12-38.1-114. Disciplinary proceedings - hearing officers. (3) 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~~ THAT violate the provisions of this article.

SECTION 12. 12-38.1-114 (13), Colorado Revised Statutes, is amended to read:

12-38.1-114. Disciplinary proceedings - hearing officers. (13) Except when a decision to proceed with a disciplinary action has been agreed upon by a majority of the board or its designee AND NOTICE OF FORMAL COMPLAINT IS DRAFTED AND

SERVED ON THE LICENSEE BY FIRST-CLASS MAIL, 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 OPEN RECORDS provisions of ~~any law~~ ARTICLE 72 OF TITLE 24, C.R.S., requiring that the proceedings of the board be conducted publicly OR THAT THE MINUTES OR RECORDS OF THE BOARD WITH RESPECT TO ACTION OF THE BOARD TAKEN PURSUANT TO THE PROVISIONS OF THIS SECTION BE OPEN TO PUBLIC INSPECTION.

SECTION 13. 12-38.1-117 (1) (b) and (1) (d), Colorado Revised Statutes, are amended to read:

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

(b) A person for hire who does not represent himself OR HERSELF as or hold himself OR HERSELF out to the public as a certified nurse aide. However, no person for hire who is not a nurse aide certified under this article shall perform the duties of or hold himself OR HERSELF out as being able to perform the full duties of a CERTIFIED nurse aide.

(d) A person who is directly employed by a medical facility while acting within the scope and course of such employment for the first four months of such person's employment at such medical facility if such person is pursuing INITIAL certification as a nurse aide. A person may utilize this exclusion only once in any twelve-month period. This exclusion shall not apply to any person who has ALLOWED HIS OR HER CERTIFICATION TO LAPSE, had his OR HER certification as a nurse aide suspended or revoked, or HAD his OR HER application for such certification denied.

SECTION 14. Appropriation. In addition to any other appropriation, there is hereby appropriated, out of any moneys in the division of registrations cash fund not otherwise appropriated, to the department of regulatory agencies, for allocation to the division of registrations, for the fiscal year beginning July 1, 2003, the sum of one thousand two hundred dollars (\$1,200), or so much thereof as may be necessary, for the implementation of this act.

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 5, 2003