

CHAPTER 400

PROFESSIONS AND OCCUPATIONS

SENATE BILL 09-138

BY SENATOR(S) Boyd, Newell, Tochtrop, Williams;
also REPRESENTATIVE(S) Gagliardi, Apuan, Labuda, Schafer S., Todd.

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 This article is repealed, effective ~~July 1, 2009~~ SEPTEMBER 1, 2020. 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. 24-34-104 (5) (b), (40) (n), and (41) (r), Colorado Revised Statutes, are amended to read:

24-34-104. General assembly review of regulatory agencies and functions for termination, continuation, or reestablishment. (5) (b) Upon termination, each division, board, or agency shall continue in existence or, in the case of the termination of a function, each function shall continue to be performed until July 1 of the next succeeding year OR UNTIL THE DATE THAT IS ONE YEAR AFTER ANY SPECIFIED TERMINATION DATE OTHER THAN JULY 1 for the purpose of winding up affairs. During the wind-up period, termination shall not reduce or otherwise limit the powers or authority of each respective agency; except that every license issued or renewed during the wind-up period shall expire at the end of said period, and original license and renewal fees shall be prorated accordingly. Upon the expiration of one year after termination, each respective agency shall cease all activities, or, in the case of the termination of a function, each function shall cease. When a license issued or renewed prior to termination is scheduled to expire after the cessation of activities, the license shall expire at the end of the wind-up period, and the agency shall refund the portion of the license fee paid ~~which~~ THAT is attributable to the

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

period following the cessation of activities. Any criminal penalty for engaging in any profession or activity without being licensed therefor shall not be enforceable with respect to activities occurring after an agency has ceased its activities pursuant to this section.

(40) The following agencies, functions, or both, shall terminate on July 1, 2009:

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

(41) The following agencies, functions, or both, shall terminate on July 1, 2010:

~~(r) The training, education, and functions of medication aides pursuant to section 12-38.1-110.5, C.R.S.;~~

SECTION 3. 24-34-104, Colorado Revised Statutes, is 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. (51.5) THE FOLLOWING AGENCIES, FUNCTIONS, OR BOTH, SHALL TERMINATE ON SEPTEMBER 1, 2020: 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. 12-38.1-110 (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~~ WHICH shall report to the board. Such committee shall be composed of seven members who have expertise in an area under review. One member shall be a certified nurse aide; one member shall be a licensed professional nurse OR A LICENSED PRACTICAL NURSE AS DEFINED IN SECTION 12-38-103, who supervises certified nurse aides; one member shall represent a home health agency; one member shall represent a nursing facility; one member shall be a department of public health and environment employee; ~~one member~~ AND TWO MEMBERS 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 MEMBERS OF THE PUBLIC. Committee members shall ~~not be compensated~~ RECEIVE A PER DIEM ALLOWANCE PURSUANT TO SECTION 24-34-102 (13), C.R.S., for their services ~~but~~ AND 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 5. Repeal. 12-38.1-110.3, Colorado Revised Statutes, is repealed as follows:

12-38.1-110.3. Medication administration advisory committee - created - department of regulatory agencies - report. ~~(1) The executive director of the department of regulatory agencies shall appoint an advisory committee to assist with a study of the administration of medication by certified nurse aides in nursing facilities and through home health care agencies.~~

~~(2) The advisory committee shall consist of eleven members as follows:~~

~~(a) The director of the division of registrations in the department of regulatory agencies or the director's designee who is a member of or a staff person for the state board of nursing;~~

~~(b) One geriatric physician licensed pursuant to article 36 of this title;~~

~~(c) One pharmacist experienced in the delivery of pharmaceutical products in a health care-based setting who is licensed pursuant to article 22 of this title;~~

~~(d) One advocate who represents the residents or patients in nursing facilities;~~

~~(e) One home health care nurse;~~

~~(f) One director of a home health agency;~~

~~(g) One professional nurse who is a director of a nursing home located in an urban area;~~

~~(h) One professional nurse who is a director of a nursing home located in a rural area;~~

~~(i) One registered nurse who has experience teaching medication administration;~~

~~(j) One registered nurse who has experience teaching the certified nurse aide program; and~~

~~(k) One clinical researcher who has studied care delivery in long-term settings and in home health care.~~

~~(3) The members appointed to the advisory committee pursuant to subsection (2) of this section shall not receive compensation for their services.~~

~~(4) For the purposes of the review provided in sections 12-38.1-120 and 24-34-104, C.R.S., the advisory committee shall provide input to the department of regulatory agencies regarding the issue of allowing certified nurse aides to administer medications in nursing facilities and through home health agencies. After such review, the report by the department of regulatory agencies required pursuant to section 24-34-104 (8), C.R.S., shall include, but not be limited to, the following:~~

~~(a) The benefits and risks associated with certified nurse aides serving as medication aides;~~

~~(b) The effect of the use of medication aides on the level of patient care;~~

~~(c) The level of experience a certified nurse aide must have in order to be considered for training as a medication aide;~~

~~(d) The extent and content of classroom training and education required to be a~~

~~medication aide;~~

~~(e) The extent and limit to the scope of practice of a certified nurse aide who has completed training as a medication aide; and~~

~~(f) The requirements for supervision for medication aides.~~

~~(5) Repealed.~~

SECTION 6. The introductory portion to 12-38.1-111 (1) and 12-38.1-111 (1) (i) and (1) (t), Colorado Revised Statutes, are amended, and the said 12-38.1-111 (1) is further amended BY THE ADDITION OF THE FOLLOWING NEW PARAGRAPHS, to read:

12-38.1-111. Grounds for discipline. (1) The board may suspend, revoke, or deny any PERSON'S certification to practice as a nurse aide or ~~any~~ authority to practice as a medication aide, or MAY issue TO THE PERSON a letter of admonition, upon proof that such person:

(i) ~~Has habitually abused or excessively used any habit-forming drug or any controlled substance as defined in section 18-18-102 (5), C.R.S. HABITUAL INTEMPERANCE OR EXCESSIVELY USES ANY HABIT-FORMING DRUG OR ANY CONTROLLED SUBSTANCE AS DEFINED IN SECTION 12-22-303 (7), OR OTHER DRUGS HAVING SIMILAR EFFECTS, OR IS DIVERTING CONTROLLED SUBSTANCES, AS DEFINED IN SECTION 18-18-102 (5), C.R.S., OR OTHER DRUGS HAVING SIMILAR EFFECTS FROM THE PERSON'S PLACE OF EMPLOYMENT;~~

~~(t) Has used any designation in connection with his or her name that tends to imply that he or she is a certified nurse aide unless he or she is so certified under this article;~~

(w) HAS FAILED TO RESPOND IN A MATERIALLY FACTUAL AND TIMELY MANNER TO A COMPLAINT AS GROUNDS FOR DISCIPLINE PURSUANT TO SECTION 12-38.1-114;

(x) HAS FAILED TO REPORT A CRIMINAL CONVICTION TO THE BOARD WITHIN FORTY-FIVE DAYS AFTER THE CONVICTION.

SECTION 7. 12-38.1-118 (2), Colorado Revised Statutes, is amended to read:

12-38.1-118. Unauthorized practices - penalties. (2) Any person who practices or offers or attempts nursing aide practice or medication administration without an active certificate ~~or~~ OF authority issued under this article; PRACTICES IN A MEDICAL FACILITY AS A NURSE AIDE EXCEPT AS PROVIDED IN THIS ARTICLE; USES ANY DESIGNATION IN CONNECTION WITH HIS OR HER NAME THAT TENDS TO IMPLY THAT HE OR SHE IS A CERTIFIED NURSE AIDE UNLESS HE OR SHE IS SO CERTIFIED UNDER THIS ARTICLE; PRACTICES AS A NURSE AIDE DURING ANY PERIOD WHEN HIS OR HER CERTIFICATE HAS BEEN SUSPENDED OR REVOKED; OR SELLS OR FRAUDULENTLY OBTAINS OR FURNISHES A CERTIFICATE TO PRACTICE AS A NURSE AIDE OR AIDS OR ABETS THEREIN commits a class 2 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S., for the first offense, and any person committing a second or subsequent offense commits a class 6 felony and

shall be punished as provided in section 18-1.3-401, C.R.S.

SECTION 8. 12-38.1-113 (2), Colorado Revised Statutes, is amended to read:

12-38.1-113. Mental and physical competency of nurse aides. (2) (a) If the board has reasonable cause to believe that the physical or mental condition of a certified nurse aide has resulted in ~~such~~ THE nurse aide being unable to practice with reasonable skill or that the practice of ~~such~~ THE nurse aide is a threat to the safety of ~~such~~ THE nurse aide's patients, the board may require ~~such~~ THE nurse aide to submit to a mental or physical examination by a physician OR OTHER LICENSED HEALTH CARE PROVIDER designated by the board.

(b) If ~~such~~ A nurse aide fails to submit to ~~such~~ A MENTAL OR PHYSICAL examination, ~~absent a determination by the board that there is good cause for such failure;~~ the board may summarily suspend ~~such~~ THE nurse aide's certification until ~~such time as the nurse aide submits to the required examination OR EXAMINATIONS ARE CONDUCTED.~~

SECTION 9. 12-38-116.5 (9), Colorado Revised Statutes, is amended to read:

12-38-116.5. Disciplinary procedures of the board - inquiry and hearings panels. (9) (a) ~~Except when a decision to proceed with a disciplinary action has been agreed upon by a majority of an inquiry panel and a notice of formal complaint is drafted and served on the licensee by first-class mail,~~ Investigations, examinations, hearings, meetings, or any other proceedings of the board conducted pursuant to the provisions of this section shall be exempt from the OPEN MEETINGS provisions of the ~~open records law, article 72 "COLORADO SUNSHINE ACT OF 1972" CONTAINED IN PART 4 OF ARTICLE 6 of title 24, C.R.S., requiring that proceedings of the board be conducted publicly, or AND THE OPEN RECORDS PROVISIONS OF ARTICLE 72 OF TITLE 24, C.R.S., requiring 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.~~

(b) NOTWITHSTANDING THE EXEMPTIONS IN PARAGRAPH (a) OF THIS SUBSECTION (9), RECORDS OF DISCIPLINARY ACTION TAKEN BY THE BOARD PURSUANT TO THIS SECTION SHALL BE OPEN TO PUBLIC INSPECTION PURSUANT TO THE OPEN RECORDS PROVISIONS OF ARTICLE 72 OF TITLE 24, C.R.S.

SECTION 10. 12-38.1-110.5 (1), (2), (3), and (6), Colorado Revised Statutes, are amended to read:

12-38.1-110.5. Medication aides - training - scope of duties - rules - repeal. (1) Prior to a certified nurse aide obtaining authority as a medication aide to administer medications, ~~in a nursing facility,~~ the certified nurse aide shall meet ~~the following prerequisites:~~ ALL APPLICABLE REQUIREMENTS AS ESTABLISHED BY RULES OF THE BOARD. THE BOARD SHALL PROMULGATE RULES REGARDING THE SCOPE OF PRACTICE, EDUCATION, EXPERIENCE, AND CERTIFICATION REQUIREMENTS FOR A NURSE AIDE TO OBTAIN AUTHORITY TO ADMINISTER MEDICATIONS. THE BOARD SHALL CONSIDER, BUT NOT BE LIMITED TO, REDUCING THE NUMBER OF REQUIRED HOURS OF EDUCATION, EXPANDING THE ALLOWABLE ROUTES OF ADMINISTRATION, REDUCING OR ELIMINATING THE REQUIRED HOURS OF WORK EXPERIENCE, AND

DEVELOPING DIFFERENT SCOPES OF PRACTICE DEPENDING ON PRACTICE SETTING, IF APPROPRIATE.

- ~~(a) Possession of a high school diploma or a general equivalency diploma;~~
- ~~(b) Attainment of eighteen years of age;~~
- ~~(c) The ability to read and comprehend English; and~~
- ~~(d) At least two thousand hours working as a certified nurse aide in a nursing facility.~~

~~(2) In addition to meeting the requirements of subsection (1) of this section, an applicant for medication aide authority shall successfully complete education in the following courses that are intended to provide training and experience in medication administration:~~

~~(a) Training courses offered in a practical nursing or licensed psychiatric technician educational program conducted by an educational or health care institution that include the following topics and numbers of credit hours:~~

- ~~(I) Four credit hours in biology, anatomy, and physiology;~~
- ~~(II) One credit hour in pharmacology calculations;~~
- ~~(III) Two credit hours in pharmacology; and~~
- ~~(IV) One credit hour in health assessment.~~

~~(b) Two credit hours in a medication administration practicum at the facility where the applicant is employed under the supervision of a licensed staff member at the facility.~~

~~(3) (a) After demonstrating to the board that the certified nurse aide has complied with the requirements of subsections (1) and (2) of this section, a certified nurse aide shall apply to the board to take a medication administration examination approved by the board. If the certified nurse aide passes the examination, the board shall grant the certified nurse aide authority to perform the following tasks, in a nursing facility only:~~

~~(i) Measurement and documentation of vital signs prior to administering medications;~~

~~(ii) Administration of routinely prescribed oral medications, which the medication aide has personally prepared, including the crushing and administering of medications if such preparation is appropriate according to the manufacturer's instructions and a physician's order, and excluding coumadin and its derivatives and any scheduled drugs; and~~

~~(iii) Documentation of any medications personally administered by the medication aide.~~

~~(b) A medication aide shall report medication administration errors immediately to his or her supervisor.~~

~~(6) (a) This section is repealed, effective July 1, 2010.~~

~~(b) Prior to such repeal, the training, education, and functions of medication aides shall be reviewed as provided for in section 24-34-104, C.R.S.~~

SECTION 11. 12-38.1-108 (6), Colorado Revised Statutes, is amended to read:

12-38.1-108. Approved nurse aide training programs. (6) ~~Except as provided in this article, The board shall not~~ MAY require a nurse aide training program ~~that substantially exceeds~~ TO INCLUDE UP TO TWENTY-FIVE PERCENT MORE HOURS THAN the MINIMUM requirements established in the federal "Omnibus Budget Reconciliation Act of 1987", as amended, PUB.L. 100-203, 101 STAT. 1330 (1987). ANY ADDITIONAL TRAINING HOURS SHALL BE WITHIN THE SUBJECT AREAS REQUIRED BY FEDERAL LAW.

SECTION 12. 12-38.1-117 (1) (d), Colorado Revised Statutes, is amended to read:

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

(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 CONSECUTIVE 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 13. 12-38.1-115 (3), Colorado Revised Statutes, 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 DENIED, REVOKED, OR surrendered unless a ~~one-year~~ TWO-YEAR waiting period has passed since the date of the surrender AND the applicant has met the requirements of this article, has successfully repeated an approved education program, and has repeated and passed a competency evaluation.

SECTION 14. Appropriation. (1) In addition to any other appropriation, there is hereby appropriated, out of any moneys in the division of registrations cash fund created in section 24-34-105 (2) (b) (I), Colorado Revised Statutes, not otherwise appropriated, to the department of regulatory agencies, for allocation to the division of registrations, for the continued certifications of nurse aides, for the fiscal year beginning July 1, 2009, the sum of seventeen thousand fifty-five dollars (\$17,055) cash funds, or so much thereof as may be necessary, for the implementation of this act.

(2) In addition to any other appropriation, there is hereby appropriated, to the

department of law, for the fiscal year beginning July 1, 2009, the sum of three thousand seven hundred fifty-five dollars (\$3,755), or so much thereof as may be necessary, for the provision of legal services to the department of regulatory agencies related to the implementation of this act. Said sum shall be from reappropriated funds received from the department of regulatory agencies out of the appropriation made in subsection (1) of this section.

SECTION 15. Effective date. This act shall take effect July 1, 2009.

SECTION 16. 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 2, 2009