

HOUSE BILL NO. 217

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - FIRST SESSION

BY REPRESENTATIVE RYAN

Introduced: 3/27/97

Referred: Labor and Commerce

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to certified nurse aides; and providing for an effective date."

2 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

3 * **Section 1.** AS 08.01.087 is amended by adding a new subsection to read:

4 (c) Under procedures and standards of operation established by the department
5 by regulation, and with the agreement of the appropriate agency, the department may
6 designate appropriate state or municipal agencies to investigate reports of abuse,
7 neglect, or misappropriation of property by certified nurse aides.

8 * **Sec. 2.** AS 08.01.090 is amended to read:

9 **Sec. 08.01.090. Applicability of the Administrative Procedure Act.** The
10 Administrative Procedure Act (AS 44.62) applies to regulations adopted and
11 proceedings held under this chapter, except those under AS 08.01.087(b) **and**
12 **AS 08.68.333(f).**

13 * **Sec. 3.** AS 08.68.100(a) is amended to read:

14 (a) The board shall

15 (1) adopt regulations necessary to implement this chapter, including

1 regulations pertaining to practice as an advanced nurse practitioner and a nurse
 2 anesthetist, **and regulations necessary to implement AS 08.68.331 - 08.68.336**
 3 **relating to certified nurse aides in order to protect the health, safety, and welfare**
 4 **of clients served by nurse aides;**

5 (2) approve curricula and adopt standards for basic education programs
 6 that prepare persons for licensing under AS 08.68.190;

7 (3) provide for surveys of the basic nursing education programs in the
 8 state at the times it considers necessary;

9 (4) approve education programs that meet the requirements of this
 10 chapter and of the board, and deny, revoke, or suspend approval of education programs
 11 for failure to meet the requirements;

12 (5) examine, license, and renew the licenses of qualified applicants;

13 (6) prescribe requirements for competence before a former nurse may
 14 resume the practice of nursing under this chapter;

15 (7) keep a record of its proceedings, and submit annual reports to the
 16 governor and legislature;

17 (8) define by regulation the qualifications and duties of the executive
 18 secretary and delegate authority to the executive secretary that is necessary to conduct
 19 board business;

20 (9) develop reasonable and uniform standards for nursing practice;

21 (10) publish advisory opinions regarding whether nursing practice
 22 procedures or policies comply with acceptable standards of nursing practice as defined
 23 under this chapter.

24 * **Sec. 4.** AS 08.68.140 is amended to read:

25 **Sec. 08.68.140. Applicability of Administrative Procedure Act. Except as**
 26 **specified in AS 08.68.333(f), the** [THE] board shall comply with the Administrative
 27 Procedure Act (AS 44.62).

28 * **Sec. 5.** AS 08.68 is amended by adding new sections to read:

29 **Article 3A. Certified Nurse Aides.**

30 **Sec. 08.68.331. Certification of nurse aides.** (a) The board or its designee
 31 may issue certification as a nurse aide to qualified applicants. The board, after

1 consultation with affected agencies, may adopt regulations regarding the certification
2 of nurse aides, including

3 (1) the training, educational, and other qualifications for certification
4 that will ensure that the nurse aides are competent to perform the tasks of their
5 occupation;

6 (2) application, certification, renewal, and revocation procedures; and

7 (3) maintenance of a registry of certified nurse aides.

8 (b) The board may

9 (1) conduct hearings upon charges of alleged violations of this chapter
10 or regulations adopted under it; and

11 (2) invoke, or request the department to invoke, disciplinary action
12 under AS 08.01.075 against a certified nurse aide.

13 (c) The board may, for good cause, require a certified nurse aide to submit to
14 a physical or mental examination to determine the person's fitness to perform the
15 duties of a certified nurse aide.

16 **Sec. 08.68.332. Use of title.** (a) A person may not use the title "certified
17 nurse aide" unless the person is certified under this chapter.

18 (b) A person who knowingly violates this section is guilty of a class B
19 misdemeanor.

20 **Sec. 08.68.333. Registry of certified nurse aides.** (a) The board shall
21 maintain a registry of certified nurse aides. At a minimum, this registry must include
22 the information required under federal regulations that are applicable to nurse aides
23 found to have committed abuse, neglect, or misappropriation of property in connection
24 with their employment by a facility participating in the Medicaid or Medicare program.

25 (b) If the board finds that a certified nurse aide has committed abuse, neglect,
26 or misappropriation of property, the board shall revoke the nurse aide's certification
27 and enter the finding in the registry.

28 (c) Upon receiving a notice of a finding under AS 47.05.055 that a certified
29 nurse aide has committed abuse, neglect, or misappropriation of property, the board
30 shall immediately revoke the nurse aide's certification without a hearing, enter the
31 finding in the registry, and notify the nurse aide of the revocation and entry of the

1 finding. Notice is considered given when delivered personally to the nurse aide or
 2 deposited in the United States mail addressed to the nurse aide's last known mailing
 3 address on file with the board.

4 (d) If the certified nurse aide is employed in a skilled nursing facility or a
 5 nursing facility, other than an intermediate care facility for the mentally retarded, that
 6 is participating in the Medicaid or Medicare program, only the state survey and
 7 certification agency may make, and report to the Board of Nursing, a finding that the
 8 certified nurse aide has committed abuse, neglect, or misappropriation of property in
 9 connection with the nurse aide's employment at the facility.

10 (e) The board shall establish procedures under which a finding under
 11 AS 47.05.055 that a certified nurse aide has committed abuse, neglect, or
 12 misappropriation of property and the resulting revocation of certification will be
 13 removed from the registry if the certified nurse aide requests a hearing and can
 14 establish mistaken identity or the finding has been set aside by the reporting agency
 15 or by a court of competent jurisdiction.

16 (f) AS 44.62.330 - 44.62.630 do not apply to hearings held or the procedures
 17 established under this section.

18 **Sec. 08.68.334. Grounds for denial, suspension, or revocation of certificate.**

19 The board may deny a certification to, or impose a disciplinary sanction authorized
 20 under AS 08.01.075 against, a person who

21 (1) has obtained or attempted to obtain certification as a nurse aide by
 22 fraud, deceit, or intentional misrepresentation;

23 (2) has been convicted of a crime substantially related to the
 24 qualifications, functions, or duties of a certified nurse aide;

25 (3) has impersonated a registered or practical nurse or other licensed
 26 health care provider;

27 (4) has intentionally or negligently engaged in conduct that has resulted
 28 in a significant risk to the health or safety of a client or in injury to a client;

29 (5) is incapable of working as a certified nurse aide with reasonable
 30 skill, competence, and safety for the public because of

31 (A) professional incompetence;

1 (B) addiction or severe dependency on alcohol or a drug that
2 impairs the licensee's ability to practice safely;

3 (C) physical or mental disability; or

4 (D) other factors determined by the board;

5 (6) has knowingly or repeatedly failed to comply with this chapter, a
6 regulation adopted under this chapter, or with an order of the board; or

7 (7) has misappropriated the property of, abused, or neglected a client.

8 **Sec. 08.68.335. Immunity for certain reports to the board.** A person who,
9 in good faith, reports information to the board relating to alleged incidents of
10 incompetent, unprofessional, or unlawful conduct of a certified nurse aide is not liable
11 in a civil action for damages resulting from the reporting of the information.

12 **Sec. 08.68.336. Fees.** The Department of Commerce and Economic
13 Development shall set fees under AS 08.01.065 for certified nurse aides for each of
14 the following:

15 (1) application;

16 (2) examination;

17 (3) certification; and

18 (4) renewal of certification.

19 * **Sec. 6.** AS 08.68.410 is amended by adding a new paragraph to read:

20 (9) "certified nurse aide" is a person who is certified as a nurse aide by
21 the board.

22 * **Sec. 7.** AS 44.62.330(a)(10) is amended to read:

23 (10) Board of Nursing **functions, except those related to findings of**
24 **abuse, neglect, or misappropriation of property contained in the registry of**
25 **certified nurse aides under AS 08.68.333;**

26 * **Sec. 8.** AS 47.05.010 is amended by adding a new paragraph to read:

27 (15) investigate reports of abuse, neglect, or misappropriation of
28 property by certified nurse aides in facilities licensed by the department under
29 AS 18.20.

30 * **Sec. 9.** AS 47.05.017(b) is amended to read:

31 (b) The department shall adopt regulations identifying actions that it will take,

1 in addition to those otherwise required under AS 47.17 and AS 47.24, when a report
 2 of harm is made under AS 47.17 or AS 47.24 that might relate to harm caused by
 3 actions or inactions of a public home care provider. The regulations must

4 (1) address circumstances under which the department will, or will
 5 require a contractor or grantee to, reassign, suspend, or terminate a person alleged to
 6 have perpetrated harm; [AND]

7 (2) include appropriate procedural safeguards to protect the due process
 8 rights of public home care providers who may be reassigned, suspended, or terminated
 9 under the circumstances described in (1) of this subsection; **and**

10 **(3) if the home care provider is a certified nurse aide, include**
 11 **procedures under which the department shall notify the Board of Nursing if the**
 12 **nurse aide is suspected of abuse, neglect, or misappropriation of property.**

13 * **Sec. 10.** AS 47.05 is amended by adding a new section to read:

14 **Sec. 47.05.055. Certified nurse aides.** (a) If the department has reason to
 15 believe that a certified nurse aide employed in a facility licensed by the department
 16 under AS 18.20 has committed abuse, neglect, or misappropriation of property in
 17 connection with the person's duties as a certified nurse aide at the facility, the
 18 department shall investigate the matter. The department shall conduct proceedings to
 19 determine if a finding of abuse, neglect, or misappropriation of property should be
 20 made. These proceedings shall be conducted under regulations adopted by the
 21 department and are exempt from AS 44.62.330 - 44.62.630. A finding that a certified
 22 nurse aide has committed abuse, neglect, or misappropriation of property shall be
 23 reported by the department to the Board of Nursing.

24 (b) If the certified nurse aide is employed in a skilled nursing facility or
 25 nursing facility, other than an intermediate care facility for the mentally retarded, that
 26 is participating in the Medicaid or Medicare program, only the state survey and
 27 certification agency may make, and report to the Board of Nursing, a finding that a
 28 certified nurse aide has committed abuse, neglect, or misappropriation of property in
 29 connection with the nurse aide's employment at the facility.

30 * **Sec. 11.** AS 47.17.030 is amended by adding a new subsection to read:

31 (f) If an investigation under this section shows reasonable cause to believe that

1 a certified nurse aide has committed abuse, neglect, or misappropriation of property,
2 the department shall report the matter to the Board of Nursing.

3 * **Sec. 12.** AS 47.17.290(13) is amended to read:

4 (13) "practitioner of the healing arts" includes chiropractors, mental
5 health counselors, dental hygienists, dentists, health aides, nurses, nurse practitioners,
6 **certified nurse aides**, occupational therapists, occupational therapy assistants,
7 optometrists, osteopaths, naturopaths, physical therapists, physical therapy assistants,
8 physicians, physician's assistants, psychiatrists, psychologists, psychological associates,
9 audiologists licensed under AS 08.11, hearing aid dealers licensed under AS 08.55,
10 marital and family therapists licensed under AS 08.63, religious healing practitioners,
11 acupuncturists, and surgeons;

12 * **Sec. 13.** AS 47.24.010(a) is amended by adding a new paragraph to read:

13 (15) a certified nurse aide.

14 * **Sec. 14.** AS 47.24.013 is amended by adding a new subsection to read:

15 (f) If an investigation conducted by an agency under this section shows
16 reasonable cause to believe that a certified nurse aide has committed abuse, neglect,
17 or misappropriation of property, the agency shall report the matter to the Board of
18 Nursing.

19 * **Sec. 15.** AS 47.24.015 is amended by adding a new subsection to read:

20 (g) If an investigation under this section shows reasonable cause to believe that
21 a certified nurse aide has committed abuse, neglect, or misappropriation of property,
22 the department shall report the matter to the Board of Nursing.

23 * **Sec. 16.** AS 47.33.500(c) is amended to read:

24 (c) Unless disclosure is required by court order **or is to an appropriate**
25 **agency in connection with investigations or administrative or judicial proceedings**
26 **involving the abandonment, abuse, exploitation, or neglect of a child or vulnerable**
27 **adult by a certified nurse aide**, the licensing agency may not disclose the identity of
28 a complainant, or of a resident on whose behalf a complaint is filed, without the
29 consent of the complainant or the resident or the resident's representative.

30 * **Sec. 17.** AS 47.33.520 is amended by adding a new subsection to read:

31 (f) If the licensing agency's investigation shows reasonable cause to believe

1 that a certified nurse aide has committed abuse, neglect, or misappropriation of
2 property, the licensing agency shall report the matter to the Board of Nursing.

3 * **Sec. 18.** TRANSITION: REGULATIONS. A state agency affected by this Act may
4 proceed to adopt regulations necessary to implement changes affecting the state agency that
5 are enacted by this Act. The regulations take effect under AS 44.62 (Administrative
6 Procedure Act), but not before the effective date of the changes in law in this Act.

7 * **Sec. 19.** TRANSITION: CERTIFICATIONS. (a) A person who holds a current, valid
8 certification from the Board of Nursing as a nurse aide on the day before the effective date
9 of this bill section, subject to continued eligibility under AS 08.68 and regulations adopted
10 under that chapter, is entitled to retain a renewable certification as a nurse aide.

11 (b) A person who, on the day before the effective date of this bill section, holds a
12 certification as a nurse aide that has been expired for less than two years may apply for
13 renewal of that certification under standards to be established by the board. A certification
14 may not be renewed under this subsection unless the person applies for renewal before
15 September 1, 2000.

16 * **Sec. 20.** Section 18 of this Act takes effect immediately.