

SENATE BILL NO. 152

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - FIRST SESSION

BY SENATOR LEMAN BY REQUEST

Introduced: 3/25/97

Referred: Labor and Commerce, HESS

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.**

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 the
 31 Department of Commerce and Economic Development, as designated by the board,

1 may issue certification as a nurse aide to qualified applicants. The board, after
 2 consultation with affected agencies, may adopt regulations regarding the certification
 3 of nurse aides, including

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

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

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

9 (b) The board may

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

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

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

16 (b) A person who knowingly violates this section is guilty of a class B
 17 misdemeanor. In this subsection, "knowingly" has the meaning given in
 18 AS 11.81.900(a).

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

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

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

1 deposited in the United States mail addressed to the nurse aide's last known mailing
2 address on file with the board.

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

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

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

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

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

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

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

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

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

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

30 (A) professional incompetence;

31 (B) addiction or severe dependency on alcohol or a drug that

- 1 impairs the licensee's ability to practice safely;
- 2 (C) physical or mental disability; or
- 3 (D) other factors determined by the board;
- 4 (6) has knowingly or repeatedly failed to comply with this chapter, a
- 5 regulation adopted under this chapter, or with an order of the board; or
- 6 (7) has misappropriated the property of, abused, or neglected a client.

7 **Sec. 08.68.335. Immunity for certain reports to the board.** A person who,

8 in good faith, reports information to the board relating to alleged incidents of

9 incompetent, unprofessional, or unlawful conduct of a certified nurse aide is not liable

10 in a civil action for damages resulting from the reporting of the information.

11 **Sec. 08.68.336. Fees.** The Department of Commerce and Economic

12 Development shall set fees under AS 08.01.065 for certified nurse aides for each of

13 the following:

- 14 (1) application;
- 15 (2) examination;
- 16 (3) certification; and
- 17 (4) renewal of certification.

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

19 (9) "certified nurse aide" is a person who is certified as a nurse aide by

20 the board.

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

22 (10) Board of Nursing **functions, except those related to findings of**

23 **abuse, neglect, or misappropriation of property contained in the registry of**

24 **certified nurse aides under AS 08.68.333;**

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

26 (15) investigate reports of abuse, neglect, or misappropriation of

27 property by certified nurse aides in facilities licensed by the department under

28 AS 18.20.

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

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

31 in addition to those otherwise required under AS 47.17 and AS 47.24, when a report

1 of harm is made under AS 47.17 or AS 47.24 that might relate to harm caused by
 2 actions or inactions of a public home care provider. The regulations must

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

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

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

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

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

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

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

30 (f) If an investigation under this section shows reasonable cause to believe that
 31 a certified nurse aide has committed abuse, neglect, or misappropriation of property,

1 the department shall report the matter to the Board of Nursing.

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

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

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

12 (15) a certified nurse aide.

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

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

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

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

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

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

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

30 (f) If the licensing agency's investigation shows reasonable cause to believe
31 that a certified nurse aide has committed abuse, neglect, or misappropriation of

1 property, the licensing agency shall report the matter to the Board of Nursing.

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

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

10 (b) A person who, on the day before the effective date of this bill section, holds a
11 certification from the Board of Nursing as a nurse aide that has been expired for less than two
12 years may apply for renewal of that certification under standards to be established by the
13 board. A certification may not be renewed under this subsection unless the person applies for
14 the renewal before September 1, 1998.

15 * **Sec. 20.** Section 18 of this Act takes effect immediately under AS 01.10.070(c).