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156

STEVE COWPER
GOVERNOR



156

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

February 3, 1989

The Honorable Tim Kelly
President of the Senate
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Dear Mr. President:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill that will authorize the Board of Nursing in the Department of Commerce and Economic Development (DCED) to adopt regulations that establish a program for certifying nurse aides.

A recent federal law requires states to certify the education and competency testing, and to register, nurse aides. Without this certification program, the state's long-term-care facilities will no longer qualify for medicare and medicaid money.

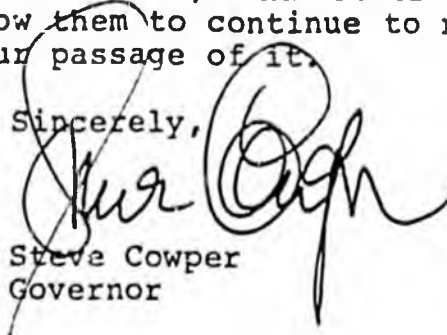
The division of medical assistance, in the Department of Health and Social Services, and the division of occupational licensing in DCED are jointly developing the education and competency testing components of this program. These agencies have agreed that the licensing and certification aspects should be in the division of occupational licensing, and the Board of Nursing has agreed to assume responsibility for the regulation of nurse aides.

The effective date of the requirement that a person be certified and registered before practicing as a nurse aide is delayed until January 1, 1990, to allow persons currently practicing as nurse aides to continue doing so until they have a reasonable opportunity to meet the standards and requirements that will be developed under sec. 2 of this bill.

The divisions understand that the federal government will provide approximately 90 percent of the costs of running this program in FY 89 and FY 90. After that, the state will have to assume the cost of the program.

Because this bill will advance the quality of care that is provided by long-term-care facilities, and other health care facilities, and will allow them to continue to receive federal assistance, I urge your passage of it.

Sincerely,



Steve Cowper
Governor

STATE OF ALASKA
1989 LEGISLATIVE SESSION

(a)
BILL VERSION:cs SB 156 (Finance)
PUBLISH DATE: 4/6/89

FISCAL NOTE

REQUEST: _____

REVISION DATE: _____
TITLE: Regulation of nurse aides
by Board of Nursing
SPONSOR: Rules/Governor
REQUESTOR: _____

AGENCY: Commerce & Econ Development
BRU: Occupational Licensing
COMPONENTS: Administration

EXPENDITURES/REVENUES: (THOUSANDS OF DOLLARS)

| OPERATING | FY 89 | FY 90 | FY 91 | FY 92 | FY 93 | FY 94 |
|----------------|-------|-------|-------|-------|-------|-------|
| PERS. SERVICES | | | | | | |
| TRAVEL | | | | | | |
| CONTRACTUAL | | | | | | |
| SUPPLIES | | | | | | |
| EQUIPMENT | | | | | | |
| LAND/BUILD. | | | | | | |
| GRANTS/CLAIMS | | | | | | |
| MISCELLANEOUS | | 96.1 | 96.1 | 96.1 | 96.1 | 96.1 |
| TOTAL | | 96.1 | 96.1 | 96.1 | 96.1 | 96.1 |
| CAPITAL | | | | | | |
| REVENUE | | | | | | |

FUNDING: (THOUSANDS OF DOLLARS)

| | | | | | | |
|-----------------|--|------|------|------|------|------|
| GENERAL FUNDS | | | | | | |
| FEDERAL FUNDS | | | | | | |
| OTHER I-A Rects | | 96.1 | 96.1 | 96.1 | 96.1 | 96.1 |
| TOTAL | | 96.1 | 96.1 | 96.1 | 96.1 | 96.1 |

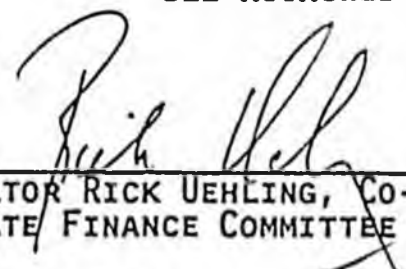
POSITIONS:

| | | | | | | |
|-----------|--|--|--|--|--|--|
| FULL-TIME | | | | | | |
| PART-TIME | | | | | | |
| TEMPORARY | | | | | | |

ANALYSIS:

SEE ATTACHED

PREPARED BY:


SENATOR RICK UEHLING, CO-CHAIRMAN
SENATE FINANCE COMMITTEE

DATE:

April 5, 1989

PHONE NO.: 465-4821

Page 1 of 2

CS FOR SENATE BILL NO. 156 (Finance)

"An Act relating to the regulation of nurse aides by the Board of Nursing; and providing for an effective date."

ANALYSIS

Under the Nursing Reform Act of 1987 (PL 103-200), the federal government requires each state to create a nurse aide training and certification program and to begin implementation of the program at the start of 1989. As a result, funding of \$96.1 is being provided to the Division of Occupational Licensing by interagency receipts from the Division of Medical Assistance in the Department of Health and Social Services. The federal government is funding a portion of the \$96.1 for FY 89 and FY 90 after which the costs to run the program will be built into the occupational licensing operation budget. Therefore, new funds are not required at this time.

04/05/89

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: An Act relating to the regulation of nurse aides
Sponsor: Rules Committee
Requestor: Governor

Agency Affected: Health & Social Services
BRU: Medical Assistance Administration
Components: Certification & Licensing

EXPENDITURES/REVENUES: (Thousands of Dollars)

| OPERATING | FY 89 | FY 90 | FY 91 | FY 92 | FY 93 | FY 94 |
|-------------------|-------|-------|-------|-------|-------|-------|
| PERSONAL SERVICES | -0- | -0- | | | | |
| TRAVEL | -0- | -0- | | | | |
| CONTRACTUAL | -0- | 128.2 | | | | |
| SUPPLIES | -0- | -0- | | | | |
| EQUIPMENT | -0- | -0- | | | | |
| LAND & STRUCTURES | | | | | | |
| GRANTS, CLAIMS | | | | | | |
| MISCELLANEOUS | | | | | | |
| TOTAL OPERATING | -0- | 128.2 | -0- | -0- | -0- | -0- |
| CAPITAL | -0- | -0- | -0- | -0- | -0- | -0- |
| REVENUE | | | | | | |

FUNDING: (Thousands of Dollars)

| | | | | | | |
|---------------|-----|-------|-----|-----|-----|-----|
| GENERAL FUND | -0- | 64.1 | -0- | -0- | -0- | -0- |
| FEDERAL FUNDS | -0- | 64.1 | | | | |
| OTHER | | | | | | |
| TOTAL | -0- | 128.2 | -0- | -0- | -0- | -0- |

POSITIONS:

| | | | | | | |
|-----------|--|--|--|--|--|--|
| FULL-TIME | | | | | | |
| PART-TIME | | | | | | |
| TEMPORARY | | | | | | |

ANALYSIS : (Attach a separate page if necessary) An increment has been included within the Governor's FY90 budget request to pay for expenditures associated with the nurse aid registry in FY90. Of this request, one-half or 64.1 are general funds and an equal amount are federal funds.

Prepared by: Kim Busch, Director
Division: Medical Assistance

Phone: 465-3355
Date: _____

Approved by Commissioner: Nyra H. Munson, Commissioner
Agency: Department of Health and Social Services

Date: February 1, 1989

Distribution (by preparer):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

SFC: 4/6/89

REC'D APR 24 1989



April 20, 1989

Representative John Ellis
House of Representatives
P.O. Box V
Juneau, Alaska 99811

Dear John:

Senate Bill 156, an act related to regulation of nurse aides by the Board of Nursing, is before the House, Health, Education and Social Security Committee.

I would like to request that you hold this bill until next legislative session. The bill is premature and unnecessary at this time. As you know, there have been a large number of Medicare and Medicaid changes in requirements for Long Term Care facilities due to the Omnibus Budget Reconciliation Act of 1987. (See attached proposed regulations). At present, these changes are in final rule form but are still subject to change by the Health Care Financing Administration.

One of the provisions within this "nursing home reform package" is found at 483.75(g) page 5371 (highlighted in attached) entitled "Required Training of Nurses Aides."

These regulations in coordination with the State of Alaska's Medicaid State Plan (contract) makes up the authority that the State of Alaska requires in order to acquire the 50% Federal matching funds for the implementation of training and competency testing for nurses aids. Through its agreement with the Federal government the Department of Health and Social Services is termed the "single State agency" and therefore is responsible to the Health Care Financing Administration for operation of the Medicaid program.

It is the Department of Health and Social Services responsibility to see that a:

- a) Training of nurse aids is available.
- b) Competency evaluation programs for current employees are in effect.
- c) Regular in-service education is provided.
- d) A competency registry is in place to register those aids that demonstrate incompetence.

All of these actions can be accomplished by the Department of Health and Social Services through an inter-agency contract with the Division of Occupational Licensing, Department of Commerce without loss of State or Federal funds. S.B. 156 does not effect Federal financial participation and does not enhance State or Federal funding.

As you can imagine, the training and competency testing for nurses aids established in the State of Alaska must be carefully thought out and implemented after public education and careful consideration. The outcome will effect the lives of many key, essential providers of health services. These individuals are the back-bone of direct care services within nursing homes.

We would like to see the Department of Health and Social Services, the Department of Commerce and the long term care providers work together between sessions in getting a nurse aid training and competence program in place. At present, the program is in its very beginning stages and has much to be debated before finalized. In this process, we would determine whether a statute is needed and if needed what should be in the statute. I do not believe we have enough experience, at this time, to know what should be in the statute and most importantly whether nurse aid training and competency should rest within the control of the Board of Nursing.

If SB 156 passes this session, I predict health care interest will be back to you in a year or two to amend the statute to be in line with the program that develops.

Please be assured I and other nursing home administrators are committed to the development of an excellent nurse aid training and competency program and will work with the Departments in planning, developing and implementing such a program. We are supportive of the Board of Nurses and have always had an excellent working relationship. However, in this situation, the legislation is premature and may be incomplete.

Thank you in advance for all consideration given to holding this legislation until next session.

Sincerely,


Robert G. Ogden
Administrator

cc: Sam Cotton
Gail McGuill

section 1122(b) of the Act, or if no such agency is designated, to the appropriate health planning agency in the State, except when a facility is exempt from section 1122 review under section 1122(j) of the Act (see 42 CFR Part 100):

(4) Is reviewed and updated by the facility at least annually; and

(5) Is prepared, under the direction of the governing body of the institution by a committee consisting of representatives of the governing body, the administrative staff, and the medical staff of the institution.

(g) *Level B requirement: Required training of nurse aides*—(1) *General rule.* Effective January 1, 1990, a facility must not use any individual working in the facility as a nurse aide for more than 4 months, on a full-time, temporary, per diem, or other basis, unless:

(i) That individual has completed a training and competency evaluation program, or a competency evaluation program approved by the State, and

(ii) That individual is competent to provide nursing and nursing related services.

(2) *Competency evaluation programs for current employees.* Effective July 1, 1989, a facility must provide, for individuals used as nurse aides, a competency evaluation program approved by the State, and preparation necessary for the individual to complete the program by January 1, 1990.

(3) *Competency.* Effective January 1, 1990, a facility must permit an individual to serve as a nurse aide or provide services of a type for which the individual has not demonstrated competence only when—

(i) The individual is in a training and competency evaluation program or a competency evaluation program approved by the State; and

(ii) The facility has asked and not yet evaluated a reply from the State registry for information concerning the individual.

(4) *Required retraining.* Effective January 1, 1990, when an individual has not performed paid nursing or nursing-related services for a continuous period of 24 consecutive months since the most recent completion of a training and competency evaluation program, the facility must require the individual to complete a new training and competency evaluation program.

(5) *Regular in-service education.* Effective January 1, 1990, the facility must provide regular performance review and regular in-service education to ensure that individuals used as nurse aides are competent to perform services as nurse aides. In-service education must include training for individuals providing nursing and nursing-related

services to residents with cognitive impairments.

(6) *Definition of nurse aide.* For purposes of this section, the term "nurse aide," means any individual providing nursing or nursing-related services to residents in a facility. This definition does not include an individual who volunteers to provide such services without pay.

(h) *Level B requirement: Proficiency of Nurse aides.* The facility must ensure that nurse aides are able to demonstrate competency in skills and techniques necessary to care for residents' needs, as identified through resident assessments, and described in the plan of care.

(i) *Level B requirement: Staff qualifications.* (1) The facility must employ on a full time, part time, or consultant basis those professionals necessary to carry out the provisions of these conditions of participation.

(2) Professional staff must be licensed, certified or registered in accordance with applicable State laws.

(j) *Level B requirement: Use of outside resources.* (1) If the facility does not employ a qualified professional person to furnish a specific service to be provided by the facility, the facility must have that service furnished to residents by a person or agency outside the facility under an arrangement described in section 1861(w) of the Act or an agreement described in paragraph (j)(2) of this section.

(2) Arrangements or agreements pertaining to services furnished by outside resources must specify in writing that the facility assumes responsibility for—

(i) Obtaining services that meet professional standards and principles that apply to professionals providing services in such a facility; and

(ii) The timeliness of the services.

(k) *Level B requirement: Medical director.* (1) The facility must designate a physician to serve as medical director.

(2) The medical director is responsible for—

(i) Implementation of resident care policies; and

(ii) The coordination of medical care in the facility.

(l) *Level B requirement: Laboratory services.* (1) The facility must provide or obtain clinical laboratory services to meet the needs of its residents. The facility is responsible for the quality and timeliness of the services.

(i) If the facility provides its own laboratory services, the services must meet the applicable conditions for coverage of the services furnished by independent laboratories specified in Subpart M of Part 405 of this chapter;

(ii) If the facility provides blood bank and transfusion services, it must meet the applicable conditions for—

(A) Independent laboratories specified in Subpart M of Part 405 of this chapter; and

(B) Hospitals specified in § 482.27(d) of this subchapter;

(iii) If the laboratory chooses to refer specimens for testing to another laboratory, the referral laboratory must be approved for participation in the Medicare program either as a hospital or an independent laboratory;

(iv) If the facility does not provide laboratory services on site, it must have an agreement to obtain these services only from a laboratory that is approved for participation in the Medicare program either as a hospital or as an independent laboratory.

(2) The facility must—

(i) Provide or obtain laboratory services only when ordered by the attending physician;

(ii) Promptly notify the attending physician of the findings;

(iii) Assist the resident in making transportation arrangements to and from the source of service, if the resident needs assistance.

(iv) File in the resident's clinical record signed and dated reports of clinical laboratory services.

(m) *Level B requirement: Radiology and other diagnostic services.* (1) The skilled nursing facility must provide or obtain radiology and other diagnostic services to meet the needs of its residents. The facility is responsible for the quality and timeliness of the services.

(i) If the facility provides its own diagnostic services, the services must meet the applicable conditions of participation for hospitals contained in § 482.28 of this subchapter.

(ii) If the facility does not provide diagnostic services, it must have an agreement to obtain these services from a provider or supplier that is approved to provide these services under Medicare.

(2) The facility must—

(i) Provide or obtain radiology and other diagnostic services only when ordered by the attending physician;

(ii) Promptly notify the attending physician of the findings;

(iii) Assist the resident in making transportation arrangements to and from the source of service, if the resident needs assistance; and

(iv) File in the resident's clinical record signed and dated reports of x-ray and other diagnostic services.

(n) *Level B requirement: Clinical records.* (1) The facility must maintain