

HAWAII ADMINISTRATIVE RULES

TITLE 16

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

CHAPTER 89A

NURSE AIDE

Subchapter 1 General Provisions

§16-89A-1	Objective
§16-89A-2	Definitions
§16-89A-3	Requirements for nurse aide certification
§16-89A-4	Maintenance requirements for recertification
§16-89A-5	Implementation and maintenance of registry
§16-89A-6	Removal of entries from registry

SUBCHAPTER 1

GENERAL PROVISIONS

§16-89A-1 Objective. This chapter is intended to clarify and implement chapter 457A, Hawaii Revised Statutes, thereby also implementing the provisions of 42 United States Code sections 1395i-3 and 1396r, to the end that the provisions thereunder may be best effectuated and the public interest most effectively served. [Eff 2/12/09] (Auth: HRS §457A-3) (Imp: HRS §457A-2)

§16-89A-2 Definitions. As used in this chapter:
"Department" means the department of commerce and consumer affairs, unless specified otherwise.

"Director" means the director of the department of commerce and consumer affairs, unless specified otherwise. [Eff 2/12/09] (Auth: HRS §457A-3) (Imp: HRS §§457A-2, 457A-3)

§16-89A-3 Requirements for nurse aide certification. (a) The requirements for a person applying for certification as a nurse aide working in a medicare or medicaid certified nursing facility shall consist of the successful completion of:

- (1) The nurse aide training program approved by the director of the department of human services. No person shall be permitted to take the nurse aide examination until that person has successfully completed the training program; and
- (2) The nurse aide examination approved by the director, with a passing score of seventy per cent on the test, along with the successful demonstration of certain skills. The examination shall consist of either a written or oral test, at the election of the applicant, along with a demonstration of skills by means of a skills evaluation. The skills demonstration shall consist of five randomly selected items drawn from a pool consisting of tasks generally performed by a nurse aide; the person must successfully demonstrate all of these skills. The pool of skills shall include all personal care skills listed in 42 Code of Federal Regulations (C.F.R.) §483.152(b)(3).

(b) The requirements for a person applying for certification as a nurse aide working in state-licensed or state-certified health care settings shall consist of the successful completion of:

- (1) The nurse aide training program approved by the director of the department of human services. No person shall be permitted to take the nurse aide examination until that person has successfully completed the training program; and
- (2) The nurse aide examination approved by the director, with a passing score of seventy per cent on the test, along with the successful demonstration of certain skills. The examination shall consist of either a written or oral test, at the election of the applicant, along with a demonstration of skills by means of a skills evaluation, as provided in subsection (a)(2).

(c) Reciprocity certification shall be granted to a qualified nurse aide from another state whose requirements are comparable to the certification requirements of this subchapter.

(d) Once a nurse aide has met all of the requirements for certification, the director shall provide a certificate to the nurse aide.

(e) A person who is unsuccessful in attaining certification shall be advised of the areas in which the person is deficient.

(f) An individual whose application for certification has been denied shall be given the notice and opportunity for a hearing pursuant to chapter 91, Hawaii Revised Statutes. [Eff 2/12/09] (Auth: HRS §457A-3) (Imp: HRS §§91-9, 457A-1, 457A-1.5, 457A-2, 457A-3, 457A-7, 457A-8)

§16-89A-4 Maintenance requirements for recertification. (a) A nurse aide's certification is valid for a limited period up to twenty-four months and shall be renewed biennially. The certification of each nurse aide shall cease upon the expiration of that nurse aide's current biennial certification period, as determined by the department. A nurse aide's recertification application shall be received by the department on or before the end of the business day that is one month before the date the current certification expires. Each nurse aide shall be responsible for renewing the certification in a timely manner and satisfying the recertification requirements provided by law. Lack of notification by the department shall not be a valid reason for a nurse aide's non-renewal. Each nurse aide shall be responsible for ensuring timely renewal of that nurse aide's certification.

(b) The recertification requirements for a nurse aide working in a medicare or medicaid certified nursing facility shall consist of the successful completion of:

- (1) An annual performance review completed by the facility at least once every twelve months;
- (2) Regular in-service training provided by that facility based upon the outcome of the annual performance reviews;
- (3) A completed renewal application on a form approved by the department and postmarked or received by the department on or prior to thirty (30) days before the biennial expiration date, as determined by the department. The form shall be signed by the medicare or medicaid certified nursing facility's director of nurses, registered nurse, director of human services, physician or designee recognized by the department of health or the department of human services, who shall verify successful completion of paragraphs (1) and (2) herein; and
- (4) Verification that, for monetary compensation, the nurse aide provided, at a minimum, one full day of nursing or nursing-related services, in a medicare or medicaid certified nursing facility, involving direct patient care within the prior twenty-four months.

§16-89A-4

(c) The recertification requirements for a nurse aide working in state-licensed or state-certified health care settings shall consist of the successful completion of:

- (1) A competency evaluation approved by the department of human services;
- (2) A completed renewal application, including applicable fees, on a form approved by the department and postmarked or received by the department on or prior to thirty (30) days before the biennial expiration date, as determined by the department; and
- (3) Verification acceptable to the department that, for monetary compensation, the nurse aide provided, at a minimum, one full day of nursing-related services, in a state-licensed or state-certified health care setting, involving direct patient care within the prior twenty-four months.

(d) If a nurse aide has not provided proof of completing a minimum one full day of nursing or nursing-related services in a state-licensed or state-certified health care setting involving direct patient care for monetary compensation within the prior twenty-four months in either the facility or setting or fails to meet renewal requirements, that nurse aide shall complete the certification requirements of section 16-89A-3 anew. [Eff 2/12/09] (Auth: HRS §457A-3) (Imp: HRS §§457A-1, 457A-2, 457A-3, 457A-7, 457A-8)

§16-89A-5 Implementation and maintenance of registry. (a) The department shall establish and maintain a registry of all nurse aides who have been certified by the department as nurse aides to work in either a medicare or medicaid nursing facility or in state-licensed or state-certified health care settings or who have been deemed to meet the certification requirements by reciprocity or the nurse aide has been deemed to have met the requirements pursuant to 42 C.F.R. §483.150(b). No charge for the maintenance of this registry shall be imposed upon nurse aides working in a medicare or medicaid certified nursing facility. The registry shall be sufficiently accessible to promptly meet the needs of the public and health care providers. The record of successful certification shall be included in the registry within thirty days.

(b) The registry shall contain the following information which shall be considered confidential unless otherwise specified herein or as provided by law:

- (1) The nurse aide's full name;

- (2) The nurse aide's home address, home and work telephone numbers, and social security number or other identifying information, and verification that the nurse aide is at least eighteen years of age;
- (3) The nurse aide's place of employment;
- (4) The date when the nurse aide became eligible for entry in the registry by successfully completing certification or the date when the nurse aide was deemed to have met the requirements pursuant to 42 C.F.R. §483.150(b);
- (5) Any substantiated finding of abuse, neglect, or misappropriation of resident's property by the nurse aide documented and reported by the department of health or the department of human services to the registry within ten working days of that finding. If there is a substantiated finding of resident abuse, neglect, or misappropriation of resident's property from another state's registry against an individual applying as a nurse aide in this State, that finding shall be listed in this State's registry. Except as provided herein, only the department of health or the department of human services may formulate a substantiated finding for a nurse aide. The director's role, with regard to disciplining nurse aides, shall be limited to the placement of a substantiated finding and related information in the registry. Any appeal regarding the reporting and placement of a substantiated finding in the registry shall be made to the department of health or the department of human services, whichever department was responsible for reporting that finding for placement in the registry. The substantiated finding shall include:
 - (A) Documentation of the State's investigation, including the nature of the allegation, the evidence that led the department of health or the department of human services to conclude that the allegation was valid, and any other documentation of the department of health's investigation or the department of human services' investigation as deemed appropriate by the State or the nurse aide's criminal conviction;
 - (B) The date of the hearing, if requested by the nurse aide, and the outcome; and
 - (C) The nurse aide's statement disputing the allegation, if the nurse aide chooses to make a statement; and

§16-89A-5

- (6) The information in paragraph (5) shall remain in the registry permanently, unless the information is removed in accordance with section 16-89A-6.
- (c) Except as provided by law, the department shall disclose to any person all of the information provided in the subsections (b)(1), (3), (4), and (5).
- (d) The department of health or the department of human services, as applicable, shall promptly provide a nurse aide, who is listed with the registry, with all information in the registry when adverse findings are reported to and placed in the registry and upon a nurse aide's request for information. A nurse aide may correct any misstatements or inaccuracies in that nurse aide's entry in the registry by making a request in writing to the department of health or the department of human services, as applicable. If a nurse aide disagrees with the department of health's or the department of human services' decision regarding the correction of an entry for that nurse aide, the nurse aide may request a contested case hearing in accordance with chapter 91, Hawaii Revised Statutes.
- (e) A nurse aide may be removed from the registry in accordance with section 16-89A-6. If, after removal from the registry, a nurse aide wishes to be restored to the registry, that nurse aide shall complete the certification process as a new applicant in accordance with section 16-89A-3.
- (f) The department may contract the daily operation and maintenance of the registry to a non-state entity, while the State retains accountability for oversight of the registry. [Eff 2/12/09] (Auth: HRS §457A-3) (Imp: HRS §§457A-1.5, 457A-2, 457A-3, 457A-7, 457A-8)

§16-89A-6 Removal of entries from registry. (a) The registry shall remove an entry for a nurse aide who has not performed nurse aide services for twenty-four consecutive months, unless that entry includes documented findings of abuse, neglect, or misappropriation of resident's property, in which case the entry shall remain permanently in the registry unless removed in accordance with subsection (b).

(b) In the case of a substantiated finding, made by the department of health or the department of human services, against a nurse aide for abuse, neglect, or misappropriation of resident's property the applicable department shall remove that substantiated finding against the nurse aide's name upon the determination that:

- (1) The finding was erroneous, a court found the nurse aide not guilty, or the State is notified of the nurse aide's death; or

- (2) The nurse aide's employment and personal history does not reflect a pattern of abuse, neglect, or misappropriation of resident's property; and
- (3) The abuse, neglect, or misappropriation of resident's property involved in the original finding was a singular occurrence. [Eff 2/12/09] (Auth: HRS §457A-3) (Imp: HRS §§457A-2, 457A-3)

The new chapter 16-89A, Hawaii Administrative Rules, on the Summary page dated December 24, 2008, were adopted on December 24, 2008, following a public hearing held on December 24, 2008, after public notice was given in the Honolulu Star-Bulletin, The Garden Island, Hawaii Tribune-Herald, West Hawaii Today, and The Maui News on November 23, 2008.

They shall take effect ten days after filing with the Office of the Lieutenant Governor.

/s/ Lawrence M. Reifurth
LAWRENCE M. REIFURTH, Director
Commerce and Consumer Affairs

APPROVED AS TO FORM: Date: 1/8/09

/s/ James F. Nagle
Deputy Attorney General

APPROVED: Date: 2/2/09

/s/ Linda Lingle
LINDA LINGLE
Governor
State of Hawaii

February 2, 2009
Filed

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

Adoption of Chapter 16-89A
Hawaii Administrative Rules

December 24, 2008

SUMMARY

Chapter 16-89A, Hawaii Administrative Rules, entitled "Nurse Aide", is adopted.

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Effective 2/12/09