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August 11, 2022

**DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
EMERGENCY RULES FOR NURSES TO PRACTICE IN THE STATE**

The Department of Commerce and Consumer Affairs finds that an imminent peril to public health and safety requires the adoption of a rule upon less than thirty days' notice of hearing for the following reasons.

The highly contagious SARS-CoV-2 (COVID-19) virus continues to cause high case numbers, hospitalizations, deaths around the world, in the United States of America, and in our state, resulting in a strain on the state's healthcare. COVID-19 continues to create considerable risk of infection for members of our community, and continues to endanger the health, safety and welfare of the people of Hawaii.

Hospitals throughout the state reported conditions warranting serious attention, effort, and sacrifice of all people in the state to avert catastrophic impacts to the state, including:

1. Hospitals are at full capacity with other patients;
2. There are ongoing staff shortages both in hospitals and at the Department of Commerce and Consumer Affairs;
3. Hospitals have an inability to transfer patients to long-term care facilities which are also short-staffed and unable to take new patients;
4. Hospitals estimate that 200-300 patients are waiting at hospitals to be transferred to long-term care facilities or nursing homes;
5. Hospitals advise of a shortage of health care professionals that existed prior to the pandemic;
6. Health care workers are burning out, opting for early retirement or moving out of state;
7. As of July 27, 2022, the total hospital census is 2,446 patients, including 163 COVID-19 positive patients, of which, 11 are in the ICU;
8. As of July 27, 2022, the seven-day average for the total census is 2,451 patients;
9. For 2019, the total average daily census was 1,984;
10. For 2020, the total average daily census was 1,984;

11. For 2021, the total average daily census was 2,184;
12. The average daily census for July 2022 is 2,349, which is 379 patients more than it was pre-pandemic in 2019;
13. At the peak of the Delta variant surge, September 10, 2021, hospitals reported having 2,365 inpatients, including 404 COVID-19 positive patients. At that time, hospitals employed approximately 800 mainland staff in Hawaii funded primarily by FEMA;
14. At the peak of the Omicron variant surge, January 21, 2022, hospitals reported having 2,436 inpatients, including 394 COVID-19 positive patients. At that time, hospitals employed over 700 mainland staff in Hawaii funded primarily by FEMA;
15. The increasing rate of the Omicron variants BA.4 and BA.5 in Hawaii is expected to increase the current infection rate, positivity rate, and hospitalization rate. It is reasonable to expect that August and potentially September will have higher infection rates, and hospitalization rates, than we are experiencing in July.
16. In 2019, pre-pandemic, hospitals reported a vacancy rate of 10% in their acute care hospitals, for 76 non-physician, patient facing professions.
17. Currently, hospitals report a vacancy rate of 17% in their acute care hospitals, for 80 non-physician, patient facing professions.

Pursuant to section 26-9 (b), Hawaii Revised Statutes (HRS), the Department of Commerce and Consumer Affairs shall set standards and enforce all laws and rules governing the licensing and operation of, and register and supervise the conduct of, trades, businesses, and professions, including banks, insurance companies, brokerage firms, and other financial institutions.

Pursuant to section 91-3(b), HRS, the emergency rules are to be effective for a period not longer than 120 days from the date of their filing with the Lieutenant Governor to protect the health and safety of the citizens of the state.

I. Temporary authority for nurses to practice in the state

(a) Notwithstanding any law to the contrary, a nurse may be authorized to temporarily practice in the State upon submission by a health care entity meeting the requirements of subsection (b).

(b) In order to receive temporary authorization under subsection (a), a health care entity shall submit to the Department of Commerce and Consumer Affairs a list containing the names of each nurse, the nurse's home state, a residential address, an email address, the nurse's active license number, and a signed verification that:

- (1) the nurse holds a current and active nursing license in another state;
- (2) the nurse's license, in all states in which a license is held, has not been encumbered;
- (3) there are no liability/malpractice insurance claims or pending lawsuits against the nurse;
- (4) the nurse will be practicing at a health care entity in Hawaii; and
- (5) the health care entity shall be responsible for the actions or inactions of the nurse.

(c) The authorization to temporarily practice shall be valid for 90 days after the date of the confirmation in subsection (d).

(d) Upon receipt of the signed verification from the health care entity, the Department of Commerce and Consumer Affairs may provide confirmation that the verification required by this section to temporarily practice was received.

(e) For purposes of this section, "health care entity" means those entities listed in section 321-11(10), Hawaii Revised Statutes.

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

Amendment to Chapter 16-89
Hawaii Administrative Rules

August 11, 2022

SUMMARY

1. §16-89-22.1 is added.
2. §16-89-22.2 is added.
3. §16-89-22.3 is added.
4. §16-89-22.4 is added.

HAWAII ADMINISTRATIVE RULES

TITLE 16

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

CHAPTER 89

NURSES

Subchapter 4 Temporary Permits

<u>§16-89-22.1</u>	<u>Findings</u>
<u>§16-89-22.2</u>	<u>Purpose</u>
<u>§16-89-22.3</u>	<u>Applicability; Force and Effect of Law</u>
<u>§16-89-22.4</u>	<u>Emergency Temporary Permits</u>

§16-89-22.1 Findings. The Department of Commerce and Consumer Affairs finds that an imminent peril to public health and safety requires the adoption of a rule upon less than thirty day's notice of hearing for the following reasons:

(a) The 2019 Novel Coronavirus ("COVID-19") was identified in January 2020 in Wuhan, China and has since spread around the world. COVID-19 spreads by respiratory droplets or aerosols expelled when a person breathes, coughs, sneezes, talks, or spits. It can also be spread by personal contact, including shaking hands or touching one's mouth, nose, or eyes after touching a contaminated surface.

(b) The highly contagious COVID-19 virus continues to cause high case numbers, hospitalizations and deaths around the world, in the United States of America, and in our State, resulting in a strain on

the State's healthcare. COVID-19 continues to create considerable risk of infection for members of our community, and continues to endanger the health, safety, and welfare of the people of Hawaii.

(c) Hospitals throughout the State reported conditions warranting serious attention, effort, and sacrifice of all people in the State to avert catastrophic impacts to the State, including:

- (1) Hospitals at full capacity with other patients;
- (2) Ongoing staff shortages in hospitals;
- (3) Hospitals have an inability to transfer patients to long-term care facilities which are also short-staffed and unable to take new patients;
- (4) Hospitals currently estimate that 200-300 patients are waiting at hospitals to be transferred to long-term care facilities or nursing homes;
- (5) Hospitals advise of a shortage of health care professionals that existed prior to the pandemic;
- (6) Health care workers are burning out and opting for early retirement or moving out of State;
- (7) As of July 27, 2022, the seven-day average for the total census is 2,451 patients. The total average daily census was 1,984 in 2019, 1,984 in 2020, and 2,184 in 2021;
- (8) In 2019, pre-pandemic, hospitals reported a vacancy rate of 10% in their acute care hospitals, for 76 non-physician, patient facing professions;
- (9) As of July 27, 2022, hospitals are reporting a vacancy rate of 17% in their acute care hospitals, for 80 non-physician, patient facing professions.

(d) The COVID-19 pandemic constitutes an imminent peril to "public health, safety, or morals" as set forth in section 91-3(b), HRS.

(e) Swift adoption of these rules is necessary to address and mitigate the effects of COVID-19 by

authorizing out-of-state nurses to temporarily practice in the State upon meeting certain requirements set forth by these emergency rules. This will ensure that medical professionals may focus on providing critical care to patients during the COVID-19 pandemic and be alleviated from the significant administrative burden of obtaining a license.

The medical profession may be overwhelmed by the administrative burden of license processing times and may be unable to efficiently respond to the COVID-19 emergency, presenting a risk to public health and safety.

(f) The Department of Commerce and Consumer Affairs must therefore adopt these rules without prior notice or hearing in order to continue the agency's COVID-19 mitigation efforts and to provide relief to the people of Hawaii as authorized under section 91-3(b), HRS. [Eff AUG 1 1 2022] (Auth: HRS §§91-3(b) and 91-4(b)(2)) (Imp: HRS §§91-3(b) and 91-4(b)(2))

§16-89-22.2 Purpose. The purpose of the Emergency Temporary Permit is to temporarily authorize out-of-state nurses to practice in the State provided certain requirements are satisfied. [Eff AUG 1 1 2022] (Auth: HRS §§26-9(b), 91-3(b) and 91-4(b)(2)) (Imp: HRS §§91-3(b) and 91-4(b)(2))

§16-89-22.3 Applicability; Force and Effect of Law. These emergency rules shall take effect upon filing with the Lieutenant Governor's office and shall be effective for one hundred twenty (120) days from the effective date. These emergency rules shall have the force and effect of law. [Eff AUG 1 1 2022] (Auth: HRS §§26-9(b), 91-3(b) and 91-4(b)(2)) (Imp: HRS §§91-3(b) and 91-4(b)(2))

§16-89-22.4 Emergency Temporary Permits. (a)

Notwithstanding any law to the contrary, a nurse may be authorized to temporarily practice in the State upon submission by a health care entity meeting the requirements of subsection (b).

(b) In order to receive temporary authorization under subsection (a), a health care entity shall submit to the department of commerce and consumer affairs a list containing the names of each nurse, identification of the state, territory, or country where the nurse holds a license, the nurse's license number, the nurse's residential address, and the nurse's email address, and a signed verification that:

- (1) The nurse holds a current and active nursing license in another state, territory, or country;
- (2) The nurse's license, in all jurisdictions in which a license is held, has not been encumbered;
- (3) There are no liability/malpractice insurance claims or pending lawsuits against the nurse;
- (4) The nurse will be practicing at a health care entity in Hawaii; and
- (5) The health care entity shall be responsible for the actions or inactions of the nurse.

(c) The authorization to temporarily practice shall be valid for 90 days after the date of the confirmation in subsection (d).

(d) Upon receipt of the signed verification from the health care entity, the department of commerce and consumer affairs may provide confirmation that the verification required by this section to temporarily practice was received.

(e) For purposes of this section, "health care entity" means those entities listed in section 321-11(10), Hawaii Revised Statutes.

[Eff **AUG 1 1 2022**] (Auth: HRS §§26-9(b), 91-3(b) and 91-4(b)(2)) (Imp: HRSS§91-3(b) and 91-4(b)(2))

Amendments to chapter 16-89, Hawaii Administrative Rules, on the Summary page dated August 11, 2022, were adopted on August 11, 2022, and public notice will be given within five days upon filing with the Office of the Lieutenant Governor.

These amendments shall take effect upon filing with the Office of the Lieutenant Governor.

APPROVED:

Catherine P. Awakuni Colón

CATHERINE P. AWAKUNI COLÓN
Director of Commerce and
Consumer Affairs

Date: 8/11/2022

David Y. Ige

DAVID Y. IGE
Governor
State of Hawaii

Date: 8/11/2022

LIEUTENANT GOVERNOR'S
OFFICE

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APPROVED AS TO FORM:

[Signature]
Deputy Attorney General

Filed