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December 5, 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.

A surge in Respiratory Syncytial Virus Infection ("RSV"), Influenza virus, and the highly contagious SARS-CoV-2 (COVID-19) virus cases continues to cause high numbers of hospitalizations and deaths around the world, in the United States of America, and in our state; resulting in a strain of the state's healthcare. A possible tridemic 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 for November 2022, the total hospital census is 2,458 patients;
8. For 2019, the total average daily census was 1,984;
9. For 2020, the total average daily census was 1,984;
10. For 2021, the total average daily census was 2,184;

11. The average daily census for November 2022 is 2,458, which is 488 patients more than it was pre-pandemic in 2019;
12. In 2019, pre-pandemic, hospitals reported a vacancy rate of 10% in their acute care hospitals, for 76 non-physician, patient facing professions.
13. Currently, hospitals report a vacancy rate of 15% 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 submissions 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 form 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

December 2, 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

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

**§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) A surge in Respiratory Syncytial Virus Infection ("RSV"), Influenza virus, and the 2019 Novel Coronavirus ("COVID-19") cases has overwhelmed hospitals nationwide and, in our State, creating a possible tridemic.

(b) RSV and the Influenza virus are seasonal respiratory viruses that infect the nose, throat, lungs, and respiratory system.

(c) RSV, the Influenza virus, and COVID-19 spread 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.

(d) The highly contagious RSV, Influenza, and COVID-19 viruses continue to cause high case numbers, hospitalizations, and deaths around the world, in the United States, and in our State, resulting in a strain on the State's health care workforce. RSV, the Influenza virus, and COVID-19 continue 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.

(e) 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 due to a surge in RSV, Influenza virus, and COVID-19-related admissions and existing patient backlogs;
- (2) Ongoing staff shortages in hospitals, particularly within the nursing profession;
- (3) Hospitals are unable to transfer patients to long-term care facilities, which themselves are also understaffed, and unable to take new patients;
- (4) Hospitals currently estimate that 200-300 patients are ready to be discharged and 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 professionals are burning out and opting for early retirement or moving out of State;
- (7) As of November 30, 2022, the seven-day average for the total census is 2,384 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-physicians, patient-facing professions; and

- (9) As of November 30, 2022, hospitals are reporting a vacancy rate of 15% in their acute care hospitals, for 80 non-physicians, patient-facing professions.

(f) A possible RSV, Influenza, and COVID-19 tridemic constitutes an imminent peril to "public health, safety, or morals" as set forth in section 91-3(b), Hawaii Revised Statutes ("HRS").

(g) Swift adoption of these rules is necessary to address and mitigate the effects of a possible tridemic 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 health care professionals may focus on providing critical care to patients during the surge of RSV, Influenza, and COVID-19 cases and be alleviated from the significant administrative burden of obtaining a license.

Health care professionals may be overwhelmed by the administrative burden of the licensure process and may be unable to effectively respond to the surge in RSV, Influenza, and COVID-19 cases, presenting a risk to public health and safety.

(h) The Department of Commerce and Consumer Affairs must therefore adopt these rules without prior notice or hearing in order to continue the agency's mitigation efforts and to provide relief to the people of Hawaii as authorized under section 91-3(b), HRS. [Eff 12/2/22] (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 12/2/22] (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 12/2/22] (Auth: HRS §§26-9(b), 91-3(b) and 91-4(b)(2)) (Imp: HRSS§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 12/2/22]  
(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 December 2, 2022, were adopted on December 2, 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.

LIEUTENANT GOVERNOR'S  
OFFICE


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APPROVED:



CATHERINE P. AWAKUNI COLÓN  
Director of Commerce and  
Consumer Affairs

Date: 12/2/2022



DAVID I. IGE  
Governor  
State of Hawaii

Date: DEC - 2 2022

APPROVED AS TO FORM:

  
Deputy Attorney General

Filed