

First Regular Session
Sixty-seventh General Assembly
STATE OF COLORADO

Attachment F

1.8.09

DRAFT

LLS NO. 09-0222.01 Kristen Forrestal

SUNSET BILL

Sunset Process - Senate Health and
Human Services Committee

SHORT TITLE: "Sunset Certified Nurse Aides"

A BILL FOR AN ACT

101 CONCERNING THE CONTINUATION OF THE CERTIFICATION OF NURSE
102 AIDES BY THE STATE BOARD OF NURSING.

Bill Summary

(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments that may be subsequently adopted.)

Sunset Process - Senate Health and Human Services Committee. Implements the recommendations of the department of regulatory agencies in its sunset review of the nurse aide certification program as follows:

- *Recommendation 1.* Continues the regulation of certified nurse aides (CNAs) through July 1, 2020.
- *Recommendation 2.* Changes the composition of the

*Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.*

advisory committee to allow a professional nurse or a practical nurse who supervises CNAs to serve on the committee and simplifies the requirements for representing the public.

- *Recommendation 3.* Changes the make-up of the advisory committee and authorizes members of the advisory committee to receive a per diem for their service.
- *Recommendation 4.* Repeals the medication administration advisory committee.
- *Recommendation 5.* Clarifies grounds for discipline regarding drug use and establishes as grounds for discipline the failure to respond to the state board of nursing (board) and the failure to report a criminal conviction.
- *Recommendation 6.* Consolidates language regarding unauthorized nurse aide practice.
- *Recommendation 7.* Allows the board to require a CNA to undergo a physical or mental examination by a licensed health care provider other than a physician.
- *Recommendation 8.* Repeals the requirement that proceedings relating to complaints where formal charges were filed be subject to the open records law.
- *Recommendation 9.* Repeals the statutes specifying scope of practice, education, and experience requirements for certification as a medication aide and requires the board to promulgate rules in these areas.
- *Recommendation 10.* Authorizes the board to require CNA training programs to include up to 25% more hours than the minimum federal requirements.
- *Recommendation 11.* Specifies that the 4 months that a CNA may work without certification shall be consecutive.
- *Recommendation 12.* Extends the waiting period for a CNA whose certification has been denied, revoked, or surrendered from one year to 2 years before the board may reinstate the certification.
- *Recommendation 13.* Repeals the section in the "Nurse Practice Act" that prohibits a registered nurse from delegating the authority to select medications to another person if the person is not otherwise authorized to select medications.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **Recommendation 1**

1 **SECTION 1.** 12-38.1-120, Colorado Revised Statutes, is
2 amended to read:

3 **12-38.1-120. Repeal of article.** This article is repealed, effective
4 July 1, 2009 2020. Prior to such repeal, the certification functions of the
5 state board of nursing shall be reviewed as provided for in section
6 24-34-104, C.R.S.

7 **SECTION 2.** 24-34-104 (40) (n) and (51), Colorado Revised
8 Statutes, are amended to read:

9 **24-34-104. General assembly review of regulatory agencies
10 and functions for termination, continuation, or reestablishment.**

11 (40) The following agencies, functions, or both, shall terminate on July
12 1, 2009:

13 (n) ~~The certification of nurse aides by the state board of nursing
14 in accordance with article 38.1 of title 12, C.R.S.;~~

15 (51) The following agencies, functions, or both, shall terminate on
16 July 1, 2020:

17 (a) The regulation of persons working in coal mines by the
18 department of natural resources through the coal mine board of examiners
19 in accordance with article 22 of title 34, C.R.S.;

20 (b) ~~THE CERTIFICATION OF NURSE AIDES BY THE STATE BOARD OF
21 NURSING IN ACCORDANCE WITH ARTICLE 38.1 OF TITLE 12, C.R.S.~~

22 **Recommendations 2 & 3**

23 **SECTION 3.** 12-38.1-110 (1), Colorado Revised Statutes, is
24 amended to read:

25 **12-38.1-110. Advisory committee.** (1) To assist in the
26 performance of its duties under this article, the board may designate an
27 advisory committee, ~~that~~ WHICH shall report to the board. Such

1 committee shall be composed of seven members who have expertise in an
2 area under review. One member shall be a certified nurse aide; one
3 member shall be a licensed professional nurse OR A LICENSED PRACTICAL
4 NURSE AS DEFINED IN SECTION 12-38-103, who supervises certified nurse
5 aides; one member shall represent a home health agency; one member
6 shall represent a nursing facility; one member shall be a department of
7 public health and environment employee; ~~one member~~ AND TWO
8 MEMBERS shall be a family member of a consumer who receives home
9 health services or nursing facility services; and one member shall be a
10 consumer of home health care or nursing facility services MEMBERS OF
11 THE PUBLIC. Committee members shall ~~not be compensated~~ RECEIVE A
12 PER DIEM ALLOWANCE PURSUANT TO SECTION 24-34-102 (13), C.R.S., for
13 their services ~~but~~ AND shall be reimbursed for the actual and necessary
14 expenses in the performance of their duties from the division of
15 registrations cash fund by the general assembly.

16 **Recommendation 4**

17 **SECTION 4. Repeal.** 12-38.1-110.3, Colorado Revised Statutes,
18 is repealed as follows:

19 **12-38.1-110.3. Medication administration advisory committee**
20 **- created - department of regulatory agencies - report.** ~~(1) The~~
21 ~~executive director of the department of regulatory agencies shall appoint~~
22 ~~an advisory committee to assist with a study of the administration of~~
23 ~~medication by certified nurse aides in nursing facilities and through home~~
24 ~~health care agencies.~~

25 ~~(2) The advisory committee shall consist of eleven members as~~
26 ~~follows:~~

27 ~~(a) The director of the division of registrations in the department~~

1 ~~of regulatory agencies or the director's designee who is a member of or~~
2 ~~a staff person for the state board of nursing;~~

3 ~~(b) One geriatric physician licensed pursuant to article 36 of this~~
4 ~~title;~~

5 ~~(c) One pharmacist experienced in the delivery of pharmaceutical~~
6 ~~products in a health care-based setting who is licensed pursuant to article~~
7 ~~22 of this title;~~

8 ~~(d) One advocate who represents the residents or patients in~~
9 ~~nursing facilities;~~

10 ~~(e) One home health care nurse;~~

11 ~~(f) One director of a home health agency;~~

12 ~~(g) One professional nurse who is a director of a nursing home~~
13 ~~located in an urban area;~~

14 ~~(h) One professional nurse who is a director of a nursing home~~
15 ~~located in a rural area;~~

16 ~~(i) One registered nurse who has experience teaching medication~~
17 ~~administration;~~

18 ~~(j) One registered nurse who has experience teaching the certified~~
19 ~~nurse aide program; and~~

20 ~~(k) One clinical researcher who has studied care delivery in~~
21 ~~long-term settings and in home health care.~~

22 ~~(3) The members appointed to the advisory committee pursuant~~
23 ~~to subsection (2) of this section shall not receive compensation for their~~
24 ~~services.~~

25 ~~(4) For the purposes of the review provided in sections~~
26 ~~12-38.1-120 and 24-34-104, C.R.S., the advisory committee shall provide~~
27 ~~input to the department of regulatory agencies regarding the issue of~~

1 ~~allowing certified nurse aides to administer medications in nursing~~
2 ~~facilities and through home health agencies. After such review, the report~~
3 ~~by the department of regulatory agencies required pursuant to section~~
4 ~~24-34-104 (8), C.R.S., shall include, but not be limited to, the following:~~

5 ~~(a) The benefits and risks associated with certified nurse aides~~
6 ~~servicing as medication aides;~~

7 ~~(b) The effect of the use of medication aides on the level of~~
8 ~~patient care;~~

9 ~~(c) The level of experience a certified nurse aide must have in~~
10 ~~order to be considered for training as a medication aide;~~

11 ~~(d) The extent and content of classroom training and education~~
12 ~~required to be a medication aide;~~

13 ~~(e) The extent and limit to the scope of practice of a certified~~
14 ~~nurse aide who has completed training as a medication aide; and~~

15 ~~(f) The requirements for supervision for medication aides.~~

16 ~~(5) Repealed.~~

17 **Recommendation 5**

18 **SECTION 5.** The introductory portion to 12-38.1-111 (1) and
19 12-38.1-111 (1) (i), Colorado Revised Statutes, are amended, and the said
20 12-38.1-111 (1) is further amended BY THE ADDITION OF THE
21 FOLLOWING NEW PARAGRAPHS, to read:

22 **12-38.1-111. Grounds for discipline.** (1) The board may
23 suspend, revoke, or deny any PERSON'S certification to practice as a nurse
24 aide or any authority to practice as a medication aide, or MAY issue TO
25 THE PERSON a letter of admonition, upon proof that such person:

26 (i) ~~Has habitually abused or excessively used any habit-forming~~
27 ~~drug or any controlled substance as defined in section 18-18-102 (5);~~

1 ~~C.R.S.~~ HABITUAL INTEMPERANCE OR EXCESSIVELY USES ANY
2 HABIT-FORMING DRUG OR ANY CONTROLLED SUBSTANCE AS DEFINED IN
3 SECTION 12-22-303 (7), C.R.S., OR OTHER DRUGS HAVING SIMILAR
4 EFFECTS, OR IS DIVERTING CONTROLLED SUBSTANCES, AS DEFINED IN
5 SECTION 18-18-102 (5), C.R.S., OR OTHER DRUGS HAVING SIMILAR
6 EFFECTS FROM THE PERSON'S PLACE OF EMPLOYMENT;

7 (w) HAS FAILED TO RESPOND IN A MATERIALLY FACTUAL AND
8 TIMELY MANNER TO A COMPLAINT AS GROUNDS FOR DISCIPLINE PURSUANT
9 TO SECTION 12-38.1-114;

10 (x) HAS FAILED TO REPORT A CRIMINAL CONVICTION TO THE
11 BOARD WITHIN FORTY-FIVE DAYS AFTER THE CONVICTION.

12 **Recommendation 6**

13 **SECTION 6. Repeal.** 12-38.1-111 (1) (t), Colorado Revised
14 Statutes, is repealed as follows:

15 **12-38.1-111. Grounds for discipline.** (1) The board may
16 suspend, revoke, or deny any PERSON'S certification to practice as a nurse
17 aide or any authority to practice as a medication aide, or MAY issue TO
18 THE PERSON a letter of admonition, upon proof that such person:

19 ~~(t) Has used any designation in connection with his or her name~~
20 ~~that tends to imply that he or she is a certified nurse aide unless he or she~~
21 ~~is so certified under this article;~~

22 **SECTION 7.** 12-38.1-118 (2), Colorado Revised Statutes, is
23 amended to read:

24 **12-38.1-118. Unauthorized practices - penalties.** (2) Any
25 person who practices or offers or attempts nursing aide practice or
26 medication administration without an active certificate or OF authority
27 issued under this article; PRACTICES IN A MEDICAL FACILITY AS A NURSE

1 AIDE EXCEPT AS PROVIDED IN THIS ARTICLE; USES ANY DESIGNATION IN
2 CONNECTION WITH HIS OR HER NAME THAT TENDS TO IMPLY THAT HE OR
3 SHE IS A CERTIFIED NURSE AIDE UNLESS HE OR SHE IS SO CERTIFIED UNDER
4 THIS ARTICLE; PRACTICES AS A NURSE AIDE DURING ANY PERIOD WHEN HIS
5 OR HER CERTIFICATE HAS BEEN SUSPENDED OR REVOKED; OR SELLS OR
6 FRAUDULENTLY OBTAINS OR FURNISHES A CERTIFICATE TO PRACTICE AS A
7 NURSE AIDE OR AIDS OR ABETS THEREIN commits a class 2 misdemeanor
8 and shall be punished as provided in section 18-1.3-501, C.R.S., for the
9 first offense, and any person committing a second or subsequent offense
10 commits a class 6 felony and shall be punished as provided in section
11 18-1.3-401, C.R.S.

12 **Recommendation 7**

13 **SECTION 8.** 12-38.1-113 (2), Colorado Revised Statutes, is
14 amended to read:

15 **12-38.1-113. Mental and physical competency of nurse aides.**

16 (2) (a) If the board has reasonable cause to believe that the physical or
17 mental condition of a certified nurse aide has resulted in ~~such~~ THE nurse
18 aide being unable to practice with reasonable skill or that the practice of
19 ~~such~~ THE nurse aide is a threat to the safety of ~~such~~ THE nurse aide's
20 patients, the board may require ~~such~~ THE nurse aide to submit to a mental
21 or physical examination by a physician OR OTHER LICENSED HEALTH CARE
22 PROVIDER designated by the board.

23 (b) If ~~such~~ A nurse aide fails to submit to ~~such~~ A MENTAL OR
24 PHYSICAL examination, ~~absent a determination by the board that there is~~
25 ~~good cause for such failure~~, the board may summarily suspend ~~such~~ THE
26 nurse aide's certification until ~~such time as the nurse aide submits to the~~
27 required examination OR EXAMINATIONS ARE CONDUCTED.

1 **Recommendation 8**

2 **SECTION 9.** 12-38-116.5 (9), Colorado Revised Statutes, is
3 amended to read:

4 **12-38-116.5. Disciplinary procedures of the board - inquiry**
5 **and hearings panels.** (9) (a) ~~Except when a decision to proceed with a~~
6 ~~disciplinary action has been agreed upon by a majority of an inquiry panel~~
7 ~~and a notice of formal complaint is drafted and served on the licensee by~~
8 ~~first-class mail; Investigations, examinations, hearings, meetings, or any~~
9 other proceedings of the board conducted pursuant to the provisions of
10 this section shall be exempt from the OPEN MEETINGS provisions of the
11 ~~open records law, article 72~~ "COLORADO SUNSHINE ACT OF 1972"
12 CONTAINED IN PART 4 OF ARTICLE 6 of title 24, C.R.S., requiring that
13 proceedings of the board be conducted publicly, ~~or~~ AND THE OPEN
14 RECORDS PROVISIONS OF ARTICLE 72 OF TITLE 24, C.R.S., REQUIRING that
15 the minutes or records of the board with respect to action of the board
16 taken pursuant to the provisions of this section be open to public
17 inspection.

18 (b) NOTWITHSTANDING THE EXEMPTIONS IN PARAGRAPH (a) OF
19 THIS SUBSECTION (9), RECORDS OF DISCIPLINARY ACTION TAKEN BY THE
20 BOARD PURSUANT TO THIS SECTION SHALL BE OPEN TO PUBLIC INSPECTION
21 PURSUANT TO THE OPEN RECORDS PROVISIONS OF ARTICLE 72 OF TITLE 24,
22 C.R.S.

23 **Recommendation 9**

24 **SECTION 10.** 12-38.1-110.5 (1), (2), and (3), Colorado Revised
25 Statutes, are amended to read:

26 **12-38.1-110.5. Medication aides - training - scope of duties -**
27 **rules - repeal.** (1) Prior to a certified nurse aide obtaining authority as

1 a medication aide to administer medications, ~~in a nursing facility~~, the
2 certified nurse aide shall meet ~~the following prerequisites~~: ALL
3 APPLICABLE REQUIREMENTS AS ESTABLISHED BY RULES OF THE BOARD.
4 THE BOARD SHALL PROMULGATE RULES REGARDING THE SCOPE OF
5 PRACTICE, EDUCATION, EXPERIENCE, AND CERTIFICATION REQUIREMENTS
6 FOR A NURSE AIDE TO OBTAIN AUTHORITY TO ADMINISTER MEDICATIONS.
7 THE BOARD SHALL CONSIDER, BUT NOT BE LIMITED TO, REDUCING THE
8 NUMBER OF REQUIRED HOURS OF EDUCATION, EXPANDING THE
9 ALLOWABLE ROUTES OF ADMINISTRATION, REDUCING OR ELIMINATING THE
10 REQUIRED HOURS OF WORK EXPERIENCE, AND DEVELOPING DIFFERENT
11 SCOPES OF PRACTICE DEPENDING ON PRACTICE SETTING, IF APPROPRIATE.

12 (a) ~~Possession of a high school diploma or a general equivalency~~
13 ~~diploma;~~

14 (b) ~~Attainment of eighteen years of age;~~

15 (c) ~~The ability to read and comprehend English; and~~

16 (d) ~~At least two thousand hours working as a certified nurse aide~~
17 ~~in a nursing facility.~~

18 (2) ~~In addition to meeting the requirements of subsection (1) of~~
19 ~~this section, an applicant for medication aide authority shall successfully~~
20 ~~complete education in the following courses that are intended to provide~~
21 ~~training and experience in medication administration:~~

22 (a) ~~Training courses offered in a practical nursing or licensed~~
23 ~~psychiatric technician educational program conducted by an educational~~
24 ~~or health care institution that include the following topics and numbers of~~
25 ~~credit hours:~~

26 (i) ~~Four credit hours in biology, anatomy, and physiology;~~

27 (ii) ~~One credit hour in pharmacology calculations;~~

1 ~~(III) Two credit hours in pharmacology; and~~

2 ~~(IV) One credit hour in health assessment.~~

3 ~~(b) Two credit hours in a medication administration practicum at~~
4 ~~the facility where the applicant is employed under the supervision of a~~
5 ~~licensed staff member at the facility.~~

6 ~~(3) (a) After demonstrating to the board that the certified nurse~~
7 ~~aide has complied with the requirements of subsections (1) and (2) of this~~
8 ~~section, a certified nurse aide shall apply to the board to take a medication~~
9 ~~administration examination approved by the board. If the certified nurse~~
10 ~~aide passes the examination, the board shall grant the certified nurse aide~~
11 ~~authority to perform the following tasks, in a nursing facility only:~~

12 ~~(I) Measurement and documentation of vital signs prior to~~
13 ~~administering medications;~~

14 ~~(II) Administration of routinely prescribed oral medications,~~
15 ~~which the medication aide has personally prepared, including the crushing~~
16 ~~and administering of medications if such preparation is appropriate~~
17 ~~according to the manufacturer's instructions and a physician's order, and~~
18 ~~excluding coumadin and its derivatives and any scheduled drugs; and~~

19 ~~(III) Documentation of any medications personally administered~~
20 ~~by the medication aide.~~

21 ~~(b) A medication aide shall report medication administration~~
22 ~~errors immediately to his or her supervisor.~~

23 **SECTION 11. Repeal.** 24-34-104 (41) (r), Colorado Revised
24 Statutes, is repealed as follows:

25 **24-34-104. General assembly review of regulatory agencies**
26 **and functions for termination, continuation, or reestablishment.**

27 (41) The following agencies, functions, or both, shall terminate on July

1 1, 2010:

2 (r) ~~The training, education, and functions of medication aides~~
3 ~~pursuant to section 12-38.1-110.5, C.R.S.;~~

4 **Recommendation 10**

5 **SECTION 12.** 12-38.1-108 (6), Colorado Revised Statutes, is
6 amended to read:

7 **12-38.1-108. Approved nurse aide training programs.**

8 (6) ~~Except as provided in this article;~~ The board shall not MAY require a
9 nurse aide training program ~~that substantially exceeds~~ TO INCLUDE UP TO
10 TWENTY-FIVE PERCENT MORE HOURS THAN the MINIMUM requirements
11 established in the federal "Omnibus Budget Reconciliation Act of 1987",
12 as amended, PUB.L. 100-203, 101 STAT. 1330 (1987). ANY ADDITIONAL
13 TRAINING HOURS SHALL BE WITHIN THE SUBJECT AREAS REQUIRED BY
14 FEDERAL LAW.

15 **Recommendation 11**

16 **SECTION 13.** 12-38.1-117 (1) (d), Colorado Revised Statutes,
17 is amended to read:

18 **12-38.1-117. Exclusions.** (1) This article shall not be construed
19 to affect or apply to:

20 (d) A person who is directly employed by a medical facility while
21 acting within the scope and course of such employment for the first four
22 CONSECUTIVE months of such person's employment at such medical
23 facility if such person is pursuing initial certification as a nurse aide. A
24 person may utilize this exclusion only once in any twelve-month period.
25 This exclusion shall not apply to any person who has allowed his or her
26 certification to lapse, had his or her certification as a nurse aide
27 suspended or revoked, or had his or her application for such certification

1 " denied.

2 **Recommendation 12**

3 **SECTION 14.** 12-38.1-115 (3), Colorado Revised Statutes, is
4 amended to read:

5 **12-38.1-115. Surrender of certificate.** (3) The board shall not
6 issue a certificate to a former holder of a certificate whose certificate has
7 been DENIED, REVOKED, OR surrendered unless a ~~one-year~~ TWO-YEAR
8 waiting period has passed since the date of the surrender AND the
9 applicant has met the requirements of this article, has successfully
10 repeated an approved education program, and has repeated and passed a
11 competency evaluation.

12 **Recommendation 13**

13 **SECTION 15.** 12-38-132 (1), Colorado Revised Statutes, is
14 amended to read:

15 **12-38-132. Delegation of nursing tasks.** (1) Any registered
16 nurse, as defined in section 12-38-103 (11), may delegate any task
17 included in the practice of professional nursing, as defined in section
18 12-38-103 (10), subject to the requirements of this section. ~~In no event~~
19 ~~may a registered nurse delegate to another person the authority to select~~
20 ~~medications if such person is not, independent of such delegation,~~
21 ~~authorized by law to select medications.~~

22 **SECTION 16. Effective date.** This act shall take effect July 1,
23 2009.

24 **SECTION 17. Safety clause.** The general assembly hereby finds,
25 determines, and declares that this act is necessary for the immediate
26 preservation of the public peace, health, and safety.

