

BILL ANALYSIS

Senate Research Center
81R2734 YDB-D

S.B. 791
By: Nelson
Health & Human Services
3/16/2009
As Filed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Regulation of certified nurse aides (CNAs) depends on where they practice. CNAs practicing in nursing homes are regulated by the Department of Aging and Disability Services (DADS), while CNAs in hospitals are regulated by the hospital.

As proposed, S.B. 791 creates a consistent regulation and training program for CNAs within the Texas Board of Nursing to regulate CNAs and nurse aide training and competency programs. The bill requires DADS to establish an advisory committee to advise on training CNAs and increases the number of training hours required for a CNA program.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Board of Nursing (BON) in SECTION 3 (Section 301.157, Occupations Code) and SECTION 6 (Section 301.281, Occupations Code) of this bill.

Rulemaking authority previously granted to BON is modified in SECTION 2 (Section 301.151, Occupations Code), SECTION 22 (Section 301.464, Occupations Code), and SECTION 29 (Section 301.552, Occupations Code) of this bill.

Rulemaking authority is expressly granted to the executive commissioner of the Health and Human Services Commission in SECTION 32 of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 301.002, Occupations Code, by adding Subdivision (6) to define "certified nurse aide."

SECTION 2. Amends Section 301.151, Occupations Code, as follows:

Sec. 301.151. GENERAL RULEMAKING AUTHORITY. Authorizes the Texas Board of Nursing (BON) to adopt and enforce rules consistent with this chapter and necessary to:

- (1) perform its duties and conduct proceedings before the board;
- (2) regulate the practice of professional nursing and vocational nursing and the practice of certified nurse aides;
- (3) establish standards of professional conduct for license and certificate holders under this chapter;
- (4) determine the scope of practice for certified nurse aides; and
- (5) determine whether an act constitutes the practice of professional nursing or vocational nursing or the practice of certified nurse aides.

SECTION 3. Amends Section 301.157, Occupations Code, by adding Subsection (i), to require BON by rule to prescribe a program of study to qualify a person for an initial certificate of

registration as a certified nurse aide; and approve training programs that meet BON's requirements for the program of study.

SECTION 4. Amends Subchapter D, Chapter 301, Occupations Code, by adding Section 301.1596, as follows:

Sec. 301.1596. CERTIFIED NURSE AIDE ADVISORY COMMITTEE. (a) Requires BON to establish a certified nurse aide advisory committee to advise BON on the regulation of certified nurse aides.

(b) Provides that the advisory committee consists of at least 13 members appointed by the commissioner [*sic*], including two nursing home representatives; two representatives from community colleges with certified nurse aide training programs in this state; one hospital representative; one home health industry representative; three certified nurse aides, two with not more than five years' experience as certified nurse aides and one with at least five years' experience as a certified nurse aide; two representatives of certified nurse aide training programs that are not conducted by a facility described by Section 250.001 (Definitions), Health and Safety Code, or a community college; one registered nurse with at least two years' experience in training certified nurse aides; and one licensed vocational nurse with at least two years' experience in working directly with certified nurse aides.

(c) Requires the nurse aide advisory committee to study and provide recommendations to BON in the manner required by the commissioner [*sic*] on:

- (1) improving communication between nurses and certified nurse aides;
- (2) clarifying the scope of practice of certified nurse aides;
- (3) clarifying the professional relationship between nurses and certified nurse aides;
- (4) improving the practice of certified nurse aides;
- (5) improving the training for certified nurse aides to more adequately meet the state health care system's acute and long-term care demands;
- (6) establishing the program of study and classroom hours required for successful completion of a certified nurse aide training program;
- (7) listing the subjects to be included in the training program curriculum to ensure the curriculum's continued relevancy in health care, including consideration of curriculum related to successful strategies for dealing with patients with dementia or other difficult patients; time management; task prioritizing; interpersonal communication skills; cultural sensitivity; teamwork training; psychosocial skills; and the aging process; and
- (8) establishing the examination requirements for issuance of a certificate of registration as a certified nurse aide and for inclusion on the nurse aide registry.

(d) Entitles a member of the advisory committee to reimbursement for travel expenses incurred for service on the advisory committee as provided by the General Appropriations Act. Prohibits a member from receiving any compensation for that service.

(e) Requires the advisory committee to meet regularly as necessary at the call of the presiding officer of the advisory committee or at the call of the executive director of BON.

- (f) Requires BON to provide administrative support for the advisory committee.
- (g) Provides that Chapter 2110 (State Agency Advisory Committees), Government Code, does not apply to the advisory committee established under this section.

SECTION 5. Amends Subchapter D, Chapter 301, Occupations Code, by adding Section 301.168, as follows:

Sec. 301.168. INTERAGENCY CONTRACT. (a) Requires BON to enter into an interagency contract with the Health and Human Services Commission (HHSC) and the Department of Aging and Disability Services (DADS) under which BON is required to administer and maintain the nurse aide registry established under Chapter 250 (Nurse Aide Registry and Criminal History Checks of Employees and Applicants for Employment in Certain Facilities Serving the Elderly or Persons with Disabilities), Health and Safety Code.

- (b) Requires that the interagency contract provide that:
 - (1) DADS has oversight authority over the nurse aide registry established under Chapter 250, Health and Safety Code;
 - (2) DADS is the only state agency authorized to place findings of abuse, neglect, or exploitation in the registry as prescribed by federal law;
 - (3) BON is required to administer and maintain the daily operation of the registry and receive the necessary federal funding from DADS to reimburse BON for the duties performed by BON; and
 - (4) DADS is responsible for reimbursement provided to nursing home providers for the cost of certified nurse aide training at the provider's facilities.

SECTION 6. Amends Chapter 301, Occupations Code, by adding Subchapter F-1, as follows:

SUBCHAPTER F-1. NURSE AIDES: REGISTRATION AND REGISTRATION RENEWAL REQUIREMENTS

Sec. 301.281. CERTIFICATE OF REGISTRATION REQUIRED. (a) Prohibits a person from engaging in practice as a certified nurse aide or holding out to the public that the person is a certified nurse aide or is included on the nurse aide registry under Chapter 250, Health and Safety Code, unless the person holds a certificate of registration as a certified nurse aide under this chapter and is included on the nurse aide registry under Chapter 250.

- (b) Requires BON, in consultation with the nurse aide advisory committee established under Section 301.1596, by rule to define the scope of practice of a certified nurse aide, and establish the qualifications for holding a certificate of registration as a certified nurse aide and for inclusion on the nurse aide registry.
- (c) Requires that the qualifications established by BON require a person applying to hold a certificate of registration as a certified nurse aide and be included on the nurse aide registry to successfully complete a BON-approved training program that consists of not less than 120 hours and not more than 359 hours of course work as specified by BON rule; and a competency examination on completion of the training program.

Sec. 301.282. APPLICATION. Requires each person applying for a certified nurse aide certificate of registration and for inclusion on the nurse aide registry to submit to BON a sworn application that demonstrates the applicant's qualifications under this chapter, accompanied by evidence that the applicant has good professional character; has

successfully completed a training program approved by BON; and has passed the examination approved by BON.

Sec. 301.283. ISSUANCE AND INCLUSION; FEE. (a) Requires BON to issue a certificate of registration as a certified nurse aide to each qualified person who applies to BON on the form prescribed by BON and include the person on the nurse aide registry.

(b) Authorizes BON to charge a fee for the issuance of a copy of a certificate of registration.

Sec. 301.284. TERM. (a) Provides that a certificate of registration as a certified nurse aide issued under this subchapter is valid for two years. Requires BON to include the expiration date on each certificate of registration under this subchapter.

(b) Provides that inclusion on the nurse aide registry is valid until expiration of the certificate of registration.

Sec. 301.285. RENEWAL. (a) Authorizes a person to renew the person's certificate of registration as a certified nurse aide and renew inclusion on the nurse aide registry by submitting a renewal application to BON before the registration expires; providing proof that the person has successfully completed during the preceding two years the continuing education hours required by Subsection (b), and complying with any other renewal requirements adopted by BON.

(b) Requires a person who is registered as a certified nurse aide and who is included on the nurse aide registry to annually in accordance with BON rules complete at least 12 hours of continuing education.

(c) Requires BON, at least 30 days before the expiration of the person's certificate of registration, to send written notice of the impending certificate expiration to the person at the person's last known address according to the records of BON.

SECTION 7. Amends Section 301.407(b), Occupations Code, to require that a state agency that has reason to believe that a nurse or nurse aide has engaged in conduct subject to reporting to report the nurse or nurse aide in writing to BON or to a nursing peer review committee under Chapter 303 (Nursing Peer Review), unless expressly prohibited by state or federal law.

SECTION 8. Amends Section 301.451, Occupations Code, as follows:

Sec. 301.451. CERTAIN PROHIBITED PRACTICES. Prohibits a person from:

(1) selling, fraudulently obtaining, or fraudulently furnishing a nursing diploma, license, certificate, renewal license or certificate, or record;

(2) assisting another person in selling, fraudulently obtaining, or fraudulently furnishing a nursing diploma, license, certificate, renewal license or certificate, or record;

(3) practicing nursing or practicing as a nursing aide under a diploma, license, certificate, or record that was obtained unlawfully or fraudulently; or signed or issued unlawfully or under false representation; or

(4) practicing nursing or practicing as a nurse aide in a period in which the person's license or certificate is suspended or revoked.

SECTION 9. Amends Section 301.452(b), Occupations Code, to provide that a person is subject to denial of license or certificate or to disciplinary action under this subchapter for certain actions, including fraud or deceit in procuring or attempting to procure a license to practice professional nursing or vocational nursing or a nurse aide certificate; use of a nursing license, diploma, or permit, a nurse aide certificate, or the transcript of such a document, that has been

fraudulently purchased, issued, counterfeited, or materially altered; directly or indirectly aiding or abetting an unlicensed or uncertified person in connection with the unauthorized practice of nursing or unauthorized practice as a nurse aide; revocation, suspension, or denial of, or any other action relating to, the person's license, certificate, or privilege to practice nursing or to practice as a nurse aide in another jurisdiction.

SECTION 10. Amends Section 301.453, Occupations Code, as follows:

Sec. 301.253. DISCIPLINARY AUTHORITY OF BOARD; METHODS OF DISCIPLINE. (a) Requires BON, if BON determines that a person has committed an act listed in Section 301.452(b), to enter an order imposing one or more of certain actions. Makes conforming changes.

(b) Makes a conforming change.

(c) Makes conforming changes.

(d) Makes conforming changes.

SECTION 11. Amends Section 301.4531(c), Occupations Code, to make conforming changes.

SECTION 12. Amends Section 301.4535, Occupations Code, as follows:

Sec. 301.4535. New heading: REQUIRED SUSPENSION, REVOCATION, OR REFUSAL OF LICENSE OR CERTIFICATE FOR CERTAIN OFFENSES. (a) Requires BON to suspend a nurse's license or a nurse aide's certificate or refuse to issue a license or certificate to an applicant on proof that the nurse, nurse aide, or applicant has been initially convicted of certain acts.

(b) Makes conforming changes.

(c) Makes conforming changes.

SECTION 13. Amends Sections 301.454(a), (c), and (e), Occupations Code, to make conforming changes.

SECTION 14. Amends Section 301.455, Occupations Code, as follows:

Sec. 301.455. New heading: TEMPORARY LICENSE OR CERTIFICATE SUSPENSION OR RESTRICTION.

SECTION 15. Amends Sections 301.455(a) and (b), Occupations Code, to make conforming changes.

SECTION 16. Amends the heading to Section 301.457, Occupations Code, to read as follows:

Sec. 301.457. COMPLAINT AND INVESTIGATION RELATED TO NURSES.

SECTION 17. Amends Subchapter J, Chapter 301, Occupations Code, by adding Section 301.4571, as follows:

Sec. 301.4571. COMPLAINT AND INVESTIGATION RELATED TO NURSE AIDES. (a) Authorizes BON or any person to initiate a proceeding under this subchapter by filing with BON a complaint against a nurse aide. Requires the complaint to be in writing and signed by the complainant.

(b) Requires BON or a person authorized by BON, except as otherwise provided by this section, to conduct each investigation. Requires that each complaint against a nurse aide that requires a determination of competency be reviewed by a BON member, consultant, or employee with a nursing background BON considers sufficient.

(c) Provides that on the filing of a complaint, BON is authorized to conduct a preliminary investigation into the identity of the nurse aide named or described in the complaint; is required to make a timely and appropriate preliminary investigation of the complaint; and is authorized to issue a warning or reprimand to the nurse aide.

(d) Requires BON, after any preliminary investigation to determine the identity of the subject of the complaint, unless it would jeopardize an investigation, to notify the nurse aide that a complaint has been filed and the nature of the complaint. Requires BON, if the investigation reveals probable cause to take further disciplinary action, to either attempt an informal disposition of the complaint or file a formal charge against the nurse aide stating the provision of this chapter or BON rule that is alleged to have been violated and a brief description of each act or omission that constitutes the violation.

(e) Requires BON to conduct an investigation of the complaint to determine whether the nurse aide's continued practice poses a risk of harm to clients or other persons; and whether probable cause exists that a nurse aide committed an act listed in Section 301.452(b) or that violates other law.

(f) Requires BON, in making a determination under Subsection (e), to review the evidence to determine the extent to which a deficiency in care by the nurse aide was the result of deficiencies in the nurse aide's judgment, knowledge, training, or skill rather than other factors beyond the nurse aide's control. Requires that a determination that a deficiency in care is attributable to a nurse aide be based on the extent to which the nurse aide's conduct was the result of a deficiency in the nurse aide's judgment, knowledge, training, or skill.

(g) Requires BON, if BON determines after investigating a complaint under Subsection (e) that there is reason to believe that a nurse aide's deficiency in care was the result of a factor beyond the nurse aide's control, to report that determination to the patient safety committee at the facility where the nurse aide's deficiency in care occurred or, if the facility area does not have a patient safety committee, to the chief nursing officer.

(h) Requires BON and DADS to share investigation information, including files, reports, witness lists, findings, and any other pertinent information, related to the investigation of a nurse aide by BON or DADS.

SECTION 18. Amends Sections 301.458(a) and (c), Occupations Code, as follows:

(a) Requires BON or BON's authorized representative, unless there is an agreed disposition of the complaint under Section 301.463 (Agreed Disposition), and if probable cause is found under Section 301.457(e)(2) (relating to a BON investigation of the complaint to determine whether probable cause exists that a nurse committed certain acts) or Section 301.4571(e)(2), to initiate proceedings by filing formal charges against the nurse or nurse aide.

(c) Requires that a copy of the formal charge be served on the nurse or nurse aide, or on the nurse's or nurse aide's counsel of record.

SECTION 19. Amends Section 301.459(b), Occupations Code, to entitle a nurse or nurse aide, in any hearing under this section, to appear in person or by counsel.

SECTION 20. Amends Section 301.460(a), Occupations Code, to require BON, except for good cause shown for delay and subject to any other privilege or restriction set forth by statute, rule, or legal precedent, to, not later than the 30th day after the date BON receives a written request from a license or certificate holder who is the subject of a formal charge filed under Section 301.458 (Initiation of Formal Charges; Discovery) or from the license or certificate holder's counsel of record, provide the license or certificate holder with access to certain information.

SECTION 21. Amends Section 301.462, Occupations Code, as follows:

Sec. 301.462. New heading: VOLUNTARY SURRENDER OF LICENSE OR CERTIFICATE. (a) Creates this subsection from existing text.

(b) Authorizes BON to revoke a nurse aide's certificate without formal charges, notice, or opportunity of hearing if the nurse aide voluntarily surrenders the nurse aide's certificate to BON and executes a sworn statement that the nurse aide does not desire to be certified.

SECTION 22. Amends Section 301.464(b), Occupations Code, to require that rules adopted under this section provide the complainant and the license or certificate holder an opportunity to be heard, and require the presence of a representative of BON's legal staff or of the attorney general to advise BON or BON's employees.

SECTION 23. Amends Section 301.466, Occupations Code, to make conforming changes.

SECTION 24. Amends Sections 301.467(a) and (b), Occupations Code, as follows:

(a) Authorizes BON, on application, to reinstate a certificate of a nurse aide to a person whose certificate has been revoked, suspended, or surrendered. Makes nonsubstantive changes.

(b) Provides that an application to reinstate a revoked license or certificate is prohibited from being made before the first anniversary of the date of the revocation; and must be made in the manner and form BON requires.

SECTION 25. Amends Section 301.468, Occupations Code, by amending Subsections (a) and (c) and adding Subsections (a-1) and (a-2), as follows:

(a) Authorizes BON to determine that an order denying a license or certificate application or suspending a license or certificate be probated.

(a-1) Creates Subsection (a-1) from existing text. Requires a person subject to a probation order under Subsection (a) related to a license to conform to each condition BON sets as the terms of probation, including certain conditions.

(a-2) Requires a person subject to a probation order under Subsection (a) related to a certificate to conform to each condition BON sets as the terms of probation, including a condition limiting the practice of the person to, or excluding one or more specified activities performed by nurse aides; or requiring the person to submit to supervision, care, counseling, or treatment by a practitioner designated by BON.

(c) Makes a conforming change.

SECTION 26. Amends Section 301.469, Occupations Code, as follows:

Sec. 301.469. NOTICE OF FINAL ACTION. Requires BON, if BON takes a final disciplinary action, including a warning or reprimand, against a nurse or nurse aide under this subchapter, to immediately send a copy of BON's final order to the nurse or nurse aide and to the last known employer of the nurse or nurse aide.

SECTION 27. Amends Section 301.470, Occupations Code, to make conforming changes.

SECTION 28. Amends Section 301.471, Occupations Code, by adding Subsection (a-1) and amending Subsection (b), as follows:

(a-1) Authorizes BON, if it appears to BON that a person who is not certified as a nurse aide under this chapter is violating this chapter, a rule adopted under this chapter, or another state statute or rule relating to the practice of a nurse aide and BON determines

that the unauthorized activity constitutes a clear, imminent, or continuing threat to the public health and safety, to:

(1) issue an emergency cease and desist order prohibiting the person from engaging in the activity; and

(2) report the activity to a local law enforcement agency or the attorney general for prosecution.

(b) Sets forth requirements for an order issued under Subsection (a) or (a-1).

SECTION 29. Amends Section 301.552, Occupations Code, as follows:

Sec. 301.552. New heading: MONITORING OF LICENSE OR CERTIFICATE HOLDER. Requires BON by rule to develop a system for monitoring the compliance of license and certificate holders with the requirements of this chapter. Requires that rules adopted under this section include certain procedures. Makes conforming changes.

SECTION 30. Amends Section 250.001, Health and Safety Code, by amending Subdivisions (1) and (3) and adding Subdivision (6), as follows:

(1) Redefines "nurse aide registry."

(3) Redefines "facility."

(6) Defines "department."

SECTION 31. Amends Chapter 250, Health and Safety Code, by adding Section 250.0011, as follows:

Sec. 250.0011. NURSE AIDE REGISTRY. (a) Requires DADS to establish a registry of certified nurse aides.

(b) Requires DADS to oversee the nurse aide registry administered and maintained by BON under Chapter 301 (Nurses), Occupations Code, and under the interagency contract between DADS, HHSC, and BON.

(c) Requires DADS to place any finding of abuse, neglect, or exploitation by a certified nurse aide in the registry and in the employee misconduct registry maintained under Chapter 253 (Employee Misconduct Registry).

SECTION 32. (a) Requires the executive director of BON, not later than October 1, 2009, to appoint the members to the nurse aide advisory committee established by Section 301.196, Occupations Code, as added by this Act.

(b) Requires BON, HHSC, and DADS, not later than January 1, 2010, to enter an interagency contract as required by Section 301.168, Occupations Code, as added by this Act.

(c) Requires BON, not later than May 1, 2010, to establish the qualifications for issuance of a certificate of registration and renewal of registration as a certified nurse aide, and adopt the rules necessary to implement the changes in law made by this Act.

(d) Requires the executive commissioner of HHSC, not later than May 1, 2010, to adopt the rules necessary to implement the changes in law made by this Act.

SECTION 33. (a) Entitles a person listed as a certified nurse aide on the nurse aide registry under Chapter 250, Health and Safety Code, on the effective date of this Act, to renew a certificate of registration as a certified nurse aide and renew inclusion on the nurse aide registry without fulfilling any additional education training or examination requirements established by BON under Chapter 301, Occupations Code, as amended by this Act, if the person has the other

qualifications required by BON and Chapter 301 and if, before August 31, 2010, the person submits a renewal application as required by Chapter 301.

(b) Makes application of Chapter 301 under Chapter 250 of this Act prospective to September 1, 2010.

(c) Makes application of this Act prospective.

(d) Requires DADS to include the expiration date, as required by Chapter 301, Occupations Code, as amended by this Act, on each certified nurse aide certificate of registration issued or renewed by DADS before the effective date of this Act expires on the earlier of the second anniversary of the date of issuance of the certificate or August 31, 2011.

SECTION 34. Effective date: September 1, 2009.