

AN ACT

RELATING TO HEALTH CARE; CLARIFYING CERTAIN DUTIES OF THE BOARD OF NURSING; PROVIDING FOR A NURSING EXCELLENCE PROGRAM; CREATING THE NURSING EXCELLENCE FUND; AMENDING AND ENACTING SECTIONS OF THE NURSING PRACTICE ACT; MAKING AN APPROPRIATION.

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BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 61-3-1 NMSA 1978 (being Laws 1968, Chapter 44, Section 1) is amended to read:

"61-3-1. SHORT TITLE.--Chapter 61, Article 3 NMSA 1978 may be cited as the "Nursing Practice Act"."

Section 2. A new section of the Nursing Practice Act is enacted to read:

"NURSING EXCELLENCE PROGRAM--LICENSE RENEWAL SURCHARGE.--

A. The board may establish a "nursing excellence program" that provides strategies to enhance recruitment and retention of professional nurses, increase career and educational opportunities and improve interaction with health facilities administrations, the medical profession and institutions of higher education.

B. The board may impose a license renewal surcharge for each nursing license renewed in an amount not to exceed twenty dollars (\$20.00) to implement and maintain the nursing excellence program. The license renewal surcharge shall be deposited in the nursing excellence fund."

Section 3. A new section of the Nursing Practice Act is enacted to read:

"NURSING EXCELLENCE FUND CREATED.--The "nursing excellence fund" is created in the state treasury to support the nursing excellence program. The fund

consists of license renewal surcharges, appropriations, gifts, grants, donations and
income from investment of the fund. Any income earned on investment of the fund
shall remain in the fund. Money in the fund shall not revert to any other fund at the
end of a fiscal year. The fund shall be administered by the board and money in the
fund is appropriated to the board to carry out the purposes of the nursing excellence
program. Disbursements from the fund shall be made only upon warrant drawn by the
secretary of finance and administration pursuant to vouchers signed by the chairman
of the board or his authorized representative."

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Section 4. Section 61-3-10 NMSA 1978 (being Laws 1968, Chapter 44, Section 7, as amended) is amended to read:

"61-3-10. POWERS--DUTIES.--The board:

A. shall adopt and revise such rules and regulations as may be necessary to enable it to carry into effect the provisions of the Nursing Practice Act and to maintain high standards of practice;

B. shall prescribe standards and approve curricula for educational programs preparing persons for licensure under the Nursing Practice Act;

C. shall provide for surveys of educational programs preparing persons for licensure under the Nursing Practice Act;

D. shall grant, deny or withdraw approval from educational programs for failure to meet prescribed standards, if a majority of the board concurs in the decision;

E. shall provide for the examination, licensing and renewal of licenses of applicants;

F. shall conduct hearings upon charges relating to discipline of a

licensee or the denial, suspension or revocation of a license in accordance with the procedures of the Uniform Licensing Act;

G. shall cause the prosecution of all persons, including firms, associations, institutions and corporations, violating the Nursing Practice Act and have the power to incur such expense as is necessary therefor;

H. shall keep a record of all proceedings;

I. shall make an annual report to the governor;

J. shall appoint and employ a qualified registered nurse, who shall not be a member of the board, to serve as executive officer to the board, who shall define the duties and responsibilities of the executive officer, except that the power to grant, deny or withdraw approval for schools of nursing or to revoke, suspend or withhold any license authorized by the Nursing Practice Act shall not be delegated by the board;

K. shall provide for such qualified assistants as may be necessary to carry out the provisions of the Nursing Practice Act. Such employees shall be paid a salary commensurate with their duties;

L. shall, for the purpose of protecting the health and well-being of the citizens of New Mexico and promoting current nursing knowledge and practice, adopt rules and regulations establishing continuing education requirements as a condition of license renewal and shall study methods of monitoring continuing competence;

M. may appoint advisory committees consisting of at least one member who is a board member and at least two members expert in the pertinent field of health care to assist it in the performance of its duties. Committee members may be reimbursed as provided in the Per Diem and Mileage Act;

N. may adopt and revise rules and regulations designed to maintain an

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inactive status listing for registered nurses and licensed practical nurses;

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O. may adopt rules and regulations to regulate the advanced practice of professional registered nursing and expanded practice of licensed practical nursing;

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P. shall license qualified certified nurse practitioners, certified registered nurse anesthetists and clinical nurse specialists; and

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Q. shall adopt rules and regulations establishing standards for authorizing prescriptive authority to certified nurse practitioners, clinical nurse specialists and certified registered nurse anesthetists."

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Section 5. Section 61-3-10.1 NMSA 1978 (being Laws 1993, Chapter 61, Section 2, as amended) is amended to read:

"61-3-10.1. HEMODIALYSIS TECHNICIANS--TRAINING PROGRAMS--CERTIFICATION.--

A. As used in this section:

(1) "hemodialysis technician" means a person who is certified by the board to assist with the direct care of a patient undergoing hemodialysis, including performing arteriovenous punctures for dialysis access, injecting intradermal lidocaine in preparation for dialysis access, administering heparin bolus and connecting a dialysis access to isotonic saline or heparinized isotonic saline according to standards adopted by the board; and

(2) "training program" means an educational program approved by the board for persons seeking certification as hemodialysis technicians.

B. Unless certified as a hemodialysis technician pursuant to this section, no person shall practice as a hemodialysis technician or use the title "certified hemodialysis technician", "hemodialysis technician" or other title, abbreviation, letters,

figures, signs or devices to indicate or imply that the person is a hemodialysis technician.

C. The board shall:

- (1) maintain a permanent register of all hemodialysis technicians;
- (2) adopt rules and regulations that set reasonable requirements for training programs, including prescribing standards and approving curricula;
- (3) provide for periodic evaluation of training programs at least every two years;
- (4) grant, deny or withdraw approval from training programs for failure to meet prescribed standards;
- (5) withdraw approval from a training program for failure to maintain a current contract with the board or for failure to pay the administrative fee as provided in the contract; and
- (6) conduct hearings on charges relating to discipline of a hemodialysis technician and may deny certification, place a technician on probation or suspend or revoke a certificate in accordance with the Uniform Licensing Act.

D. Every applicant for certification as a hemodialysis technician shall pay the required application fee, submit written evidence of having completed a training program and successfully complete a board-approved examination. The board shall issue a certificate to any person who fulfills the requirements for certification.

E. A certificate shall be renewed every two years by the last day of the hemodialysis technician's certification month upon payment of the required fee, proof of employment as a hemodialysis technician and proof of having met any continuing

education requirements adopted by the board.

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F. The board shall set by rule the following nonrefundable fees:

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(1) initial certification of a hemodialysis technician by examination, not to exceed sixty dollars (\$60.00);

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(2) renewal of certification of a hemodialysis technician, not to exceed sixty dollars (\$60.00);

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(3) reactivation of a certificate of a hemodialysis technician after failure to renew a certificate, not to exceed thirty dollars (\$30.00);

(4) initial review and approval of a training program, not to exceed three hundred dollars (\$300);

(5) subsequent review and approval of a training program where the hemodialysis unit has changed the program, not to exceed one hundred dollars (\$100);

(6) subsequent review and approval of a training program when a change has been required by a change in board policy, rules or regulations, not to exceed fifty dollars (\$50.00); and

(7) periodic evaluation of a training program, not to exceed one hundred fifty dollars (\$150).

G. Each training program shall, through contract or agreement, pay the board for administrative and other costs associated with oversight of the program."

Section 6. Section 61-3-10.2 NMSA 1978 (being Laws 1991, Chapter 209, Section 1, as amended) is amended to read:

"61-3-10.2. MEDICATION AIDES.--

A. This section shall permit the operation of a program for certification

of medication aides and medication aide training programs in licensed intermediate care facilities for the mentally retarded. The purpose of the program is to effectuate a cost-containment and efficient program for the administration of the medicaid program. It is the intention of the legislature that costs of continuing the program shall be provided through appropriate agreements between the board and licensed intermediate care facilities for the mentally retarded.

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B. For the purposes of this section, "medication aide" means a person who, under the supervision of a licensed nurse in a licensed intermediate care facility for the mentally retarded, is permitted to administer oral medications according to the standards adopted by the board.

C. Unless certified as a medication aide under the Nursing Practice Act, no person shall:

- (1) practice as a medication aide; or
- (2) use the titles "certified medication aide" or "medication aide" or any other title, abbreviation, letters, figures, signs or devices to indicate or imply that the person is a certified medication aide.

D. The board shall:

- (1) maintain a permanent register of all persons to whom certification to practice as a certified medication aide is provided;
- (2) adopt rules and regulations that set reasonable requirements for medication aide educational or training programs and certification that protect the health and well-being of the mentally retarded while facilitating low-cost access to medication services;
- (3) withdraw approval from a medication aide training program

or participant program for failure to maintain a current contract with the board or for failure to pay the administrative fee as provided in the contract;

(4) adopt rules and regulations governing the supervision of medication aides by licensed nurses, which shall include, but not be limited to, standards for medication aides and performance evaluations of medication aides; and

(5) conduct hearings upon charges relating to discipline of a certified medication aide or the denial, suspension or revocation of a medication aide certificate in accordance with the Uniform Licensing Act.

E. Every applicant for certification as a medication aide shall pay the required application fee, submit written evidence of having completed a board-approved program for the certification of medication aides and successfully complete a board-approved examination.

F. The board shall issue a certificate enabling a person to function as a medication aide to any person who fulfills the requirements for medication aides set by law.

G. Every certificate issued by the board to practice as a medication aide shall be renewed every two years by the last day of the medication aide's birth month and upon payment of the required fee. The medication aide seeking renewal shall submit proof of employment as a medication aide and proof of having met any continuing education requirements adopted by the board.

H. Applicants for certification or renewal of certification as certified medication aides shall pay the following fees:

(1) for initial certification by examination or certification after a failure to renew timely an initial certification, the fee shall be set by the board not to

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exceed thirty dollars (\$30.00); and

(2) for renewal of certification, the fee shall be set by the board not to exceed thirty dollars (\$30.00).

I. The board shall:

(1) prescribe standards and approve curricula for educational or training programs preparing persons as medication aides;

(2) set a reasonable fee for the review and approval of educational or training programs for certification as certified medication aides not to exceed three hundred dollars (\$300) for each initial review and approval or one hundred dollars (\$100) for each subsequent review and approval in case of change or modification in a training program;

(3) provide for periodic evaluation at intervals of no less than two years of educational or training programs preparing persons for certification as certified medication aides, including setting a reasonable fee for each periodic evaluation, which shall not exceed one hundred fifty dollars (\$150); and

(4) grant, deny or withdraw approval from medication aide programs for failure to meet prescribed standards; provided that, in the event of a denial or withdrawal of approval, none of the fees provided for in this section shall be refundable."

Section 7. Section 61-3-18 NMSA 1978 (being Laws 1968, Chapter 44, Section 15, as amended) is amended to read:

"61-3-18. QUALIFICATIONS FOR LICENSURE AS A LICENSED PRACTICAL NURSE.--Before being considered for licensure as a licensed practical nurse, either by endorsement or examination, under Section 61-3-19 NMSA 1978, an applicant shall:

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A. furnish evidence satisfactory to the board that the applicant has successfully completed an approved program of nursing for licensure as a licensed practical nurse or registered nurse and has graduated or is eligible for graduation; and

B. at the cost to the applicant, provide the board with fingerprints and other information necessary for a state and national criminal background check."

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Section 8. Section 61-3-23 NMSA 1978 (being Laws 1977, Chapter 220, Section 14, as amended) is amended to read:

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"61-3-23. PERMIT TO PRACTICE FOR GRADUATE NURSES.--

A. The board may issue a permit to practice to an applicant upon completion of an approved course of study and upon application to take the national licensing examination after graduation within the time frame set by rules of the board.

B. The permit to practice shall be issued for practice under direct supervision at a specified place of employment in the state.

C. The permit to practice shall be valid from issuance until the results of the national licensing examination are disseminated by the board office to the examinee, at which time the permit is void and the applicant who has passed the examination may be issued a license to practice."

Section 9. Section 61-3-24 NMSA 1978 (being Laws 1968, Chapter 44, Section 20, as amended) is amended to read:

"61-3-24. RENEWAL OF LICENSES.--

A. Any person licensed pursuant to the provisions of the Nursing Practice Act who intends to continue practice shall renew the license every two years by the end of the applicant's renewal month except when on active military duty during a military action.

B. At least six weeks before the end of the renewal month, the board shall mail to the licensee an application blank, which shall be returned to the board before the end of the renewal month, together with proof of completion of continuing education requirements as required by the board and the renewal fee set by the board in an amount not to exceed one hundred dollars (\$100).

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C. Upon receipt of the application and fee, the board shall verify the licensee's eligibility for continued licensure and issue to the applicant a renewal license for two years. Renewal shall render the holder a legal practitioner of nursing for the period stated on the renewal license.

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D. Any person who allows his license to lapse by failure to secure renewal as provided in this section shall be reinstated by the board on payment of the fee for the current two years plus a reinstatement fee to be set by the board in an amount that shall not exceed two hundred dollars (\$200), provided that all requirements have been met."

Section 10. Section 61-3-27 NMSA 1978 (being Laws 1968, Chapter 44, Section 23, as amended) is amended to read:

"61-3-27. FUND ESTABLISHED--DISPOSITION--METHOD OF PAYMENT.--

A. There is created a "board of nursing fund".

B. Except as provided in Sections 2 and 3 of this 2003 act, all funds received by the board and money collected under the Nursing Practice Act shall be deposited with the state treasurer. The state treasurer shall place the money to the credit of the board of nursing fund. Any income earned on investment of the fund shall remain in the fund.

C. Payments out of the board of nursing fund shall be on vouchers

issued and signed by the person designated by the board upon warrants drawn by the department of finance and administration in accordance with the budget approved by the department.

D. All amounts paid into the board of nursing fund shall be subject to the order of the board and shall only be used for the purpose of meeting necessary expenses incurred in the enforcement of the purposes of the Nursing Practice Act, the duties imposed by that act and the promotion of nursing education and standards in this state. All money unused at the end of the fiscal year shall remain in the board of nursing fund for use in accordance with the provisions of the Nursing Practice Act to further the purposes of that act.

E. All funds that may have accumulated to the credit of the board under any previous act shall be continued for use by the board in administration of the Nursing Practice Act."

Section 11. Section 61-3-29 NMSA 1978 (being Laws 1968, Chapter 44, Section 25, as amended) is amended to read:

"61-3-29. EXCEPTIONS.--The Nursing Practice Act shall not apply to or affect:

- A. gratuitous nursing by friends or members of the family;
- B. nursing assistance in case of emergencies;
- C. nursing by students when enrolled in approved schools of nursing or approved courses for the education of professional or practical nurses when such nursing is part of the educational program;
- D. nursing in this state by a legally licensed nurse of another state whose employment requires the nurse to transport a patient or who is a camp nurse who accompanies and cares for a patient temporarily residing in this state if the nurse's

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practice in this state does not exceed three months and the nurse does not claim to be licensed in this state;

E. nursing in this state by any person who is employed by the United States government or any bureau, division or agency thereof, while in the discharge of his official duties;

F. the practice of midwifery by any person other than a registered nurse who is certified or licensed in this state to practice midwifery;

G. any person working as a home health aide, unless performing acts defined as professional nursing or practical nursing pursuant to the Nursing Practice Act;

H. any nursing aide or orderly, unless performing acts defined as professional nursing or practical nursing pursuant to the Nursing Practice Act;

I. any registered nurse holding a current license in another jurisdiction who is enrolled in any professional course requiring nursing practice as a part of the educational program;

J. performance by a personal care provider in a noninstitutional setting of bowel and bladder assistance for an individual whom a health care provider certifies is stable, not currently in need of medical care and able to communicate and assess his own needs; or

K. medication aides working in licensed intermediate care facilities for the mentally retarded or serving persons who are participating in the developmentally disabled medicaid waiver program and who have completed a board-approved medication aide training program and who are certified by the board to administer

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routine oral medications, which may be expanded to include all medications except subcutaneous, intramuscular and intravenous injections, unless the medication aide is performing acts defined as professional or practical nursing under the Nursing Practice Act." HB 376