

AN ACT

RELATING TO NURSING; REVISING THE NURSING PRACTICE ACT TO MAKE PERMANENT VARIOUS MEDICATION AIDES AND HEMODIALYSIS TECHNICIAN PROGRAMS; AMENDING AND REPEALING SECTIONS OF THE NMSA 1978; DECLARING AN EMERGENCY.

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

Section 1. Section 61-3-3 NMSA 1978 (being Laws 1991, Chapter 190, Section 2, as amended) is amended to read:

"61-3-3. DEFINITIONS.--As used in the Nursing Practice Act:

A. "advanced practice" means the practice of professional registered nursing by a registered nurse who has been prepared through additional formal education as provided in Sections 61-3-23.2 through 61-3-23.4 NMSA 1978 to function beyond the scope of practice of professional registered nursing, including certified nurse practitioners, certified registered nurse anesthetists and clinical nurse specialists;

B. "board" means the board of nursing;

C. "certified hemodialysis technician" means a person who is certified by the board to assist in the direct care of a patient undergoing hemodialysis, under the supervision and at the direction of a registered nurse or a licensed practical nurse, according to the rules adopted by the board;

D. "certified medication aide" means a person who is certified by the board to administer medications under the supervision and at the direction of a registered nurse or a licensed practical nurse, according to the rules adopted by the board;

E. "certified nurse practitioner" means a registered nurse who is licensed by the board for advanced practice as a certified nurse practitioner and whose name and pertinent information are entered on the list of certified nurse practitioners maintained by the board;

F. "certified registered nurse anesthetist" means a registered nurse who is licensed by the board for advanced practice as a certified registered nurse anesthetist and whose name and pertinent information are entered on the list of certified registered nurse anesthetists maintained by the board;

G. "clinical nurse specialist" means a registered nurse who is licensed by the board for advanced practice as a clinical nurse specialist and whose name and pertinent information are entered on the list of clinical nurse specialists maintained by the board;

H. "collaboration" means the cooperative working relationship with another health care provider in the provision of patient care, and such collaborative practice includes the discussion of patient diagnosis and cooperation

in the management and delivery of health care;

I. "licensed practical nurse" means a nurse who practices licensed practical nursing and whose name and pertinent information are entered in the register of licensed practical nurses maintained by the board or a nurse who practices licensed practical nursing pursuant to a multistate licensure privilege as provided in the Nurse Licensure Compact;

J. "licensed practical nursing" means the practice of a directed scope of nursing requiring basic knowledge of the biological, physical, social and behavioral sciences and nursing procedures, which practice is at the direction of a registered nurse, physician or dentist licensed to practice in this state. This practice includes but is not limited to:

(1) contributing to the assessment of the health status of individuals, families and communities;

(2) participating in the development and modification of the plan of care;

(3) implementing appropriate aspects of the plan of care commensurate with education and verified competence;

(4) collaborating with other health care professionals in the management of health care; and

(5) participating in the evaluation of responses to interventions;

K. "Nurse Licensure Compact" means the agreement entered into between New Mexico and other jurisdictions permitting the practice of professional registered nursing or licensed practical nursing pursuant to a multistate licensure privilege;

L. "nursing diagnosis" means a clinical judgment about individual, family or community responses to actual or potential health problems or life processes, which judgment provides a basis for the selection of nursing interventions to achieve outcomes for which the person making the judgment is accountable;

M. "practice of nursing" means assisting individuals, families or communities in maintaining or attaining optimal health, assessing and implementing a plan of care to accomplish defined goals and evaluating responses to care and treatment. This practice is based on specialized knowledge, judgment and nursing skills acquired through educational preparation in nursing and in the biological, physical, social and behavioral sciences and includes but is not limited to:

(1) initiating and maintaining comfort measures;

(2) promoting and supporting optimal human functions and responses;

(3) establishing an environment conducive to

well-being or to the support of a dignified death;

(4) collaborating on the health care regimen;

(5) administering medications and performing treatments prescribed by a person authorized in this state or in any other state in the United States to prescribe them;

(6) recording and reporting nursing observations, assessments, interventions and responses to health care;

(7) providing counseling and health teaching;

(8) delegating and supervising nursing interventions that may be performed safely by others and are not in conflict with the Nursing Practice Act; and

(9) maintaining accountability for safe and effective nursing care;

N. "professional registered nursing" means the practice of the full scope of nursing requiring substantial knowledge of the biological, physical, social and behavioral sciences and of nursing theory and may include advanced practice pursuant to the Nursing Practice Act. This practice includes but is not limited to:

(1) assessing the health status of individuals, families and communities;

(2) establishing a nursing diagnosis;

- (3) establishing goals to meet identified health care needs;
- (4) developing a plan of care;
- (5) determining nursing intervention to implement the plan of care;
- (6) implementing the plan of care commensurate with education and verified competence;
- (7) evaluating responses to interventions;
- (8) teaching based on the theory and practice of nursing;
- (9) managing and supervising the practice of nursing;
- (10) collaborating with other health care professionals in the management of health care; and
- (11) conducting nursing research;

O. "registered nurse" means a nurse who practices professional registered nursing and whose name and pertinent information are entered in the register of licensed registered nurses maintained by the board or a nurse who practices professional registered nursing pursuant to a multistate licensure privilege as provided in the Nurse Licensure Compact;

P. "scope of practice" means the parameters within which nurses practice based upon education, experience, licensure, certification and expertise; and

Q. "training program" means an educational program approved by the board."

Section 2. Section 61-3-6 NMSA 1978 (being Laws 1973, Chapter 149, Section 2, as amended) is amended to read:

"61-3-6. ADMINISTRATION OF ANESTHETICS.--It is unlawful for any person, other than a person licensed in New Mexico to practice medicine, osteopathy or dentistry or a currently licensed certified registered nurse anesthetist, to administer anesthetics to any person. Nothing in this section prohibits a person currently licensed pursuant to the Nursing Practice Act from using hypnosis or from administering local anesthetics or moderate sedation."

Section 3. 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. A statewide program for certification of hemodialysis technicians is created according to the rules adopted by the board.

B. Unless certified as a certified hemodialysis technician pursuant to the Nursing Practice Act, no person shall:

(1) practice as a certified hemodialysis technician; or

(2) 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 certified hemodialysis technician.

C. The board shall:

(1) maintain a permanent register of all certified hemodialysis technicians;

(2) adopt rules for certified hemodialysis technician training programs, including standards and curricula;

(3) provide for periodic evaluation of training programs at least every two years;

(4) grant, deny or withdraw approval from a training program that fails to meet prescribed standards or fails to maintain a current contract with the board; and

(5) conduct disciplinary hearings of certified hemodialysis technicians or on the denial, suspension or revocation of certified hemodialysis technician certificates in accordance with the Uniform Licensing Act.

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

requirements for certification.

E. Every certificate issued by the board to practice as a certified hemodialysis technician shall be renewed every two years. The certified hemodialysis technician seeking renewal shall submit proof of employment as a certified hemodialysis technician and proof of having met continuing education requirements adopted by the board.

F. The board shall set the following nonrefundable fees:

(1) for initial certification by initial or subsequent examination, a fee not to exceed sixty dollars (\$60.00);

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

(3) for reactivation of a lapsed certificate after failure to renew a certificate or following board action, a fee not to exceed sixty dollars (\$60.00);

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

(5) for subsequent review and approval of a training program that has changed, a fee not to exceed two hundred dollars (\$200);

(6) for subsequent review and approval of a training program when a change has been required by a change

in board policy or rules, a fee not to exceed fifty dollars (\$50.00); and

(7) for periodic evaluation of a training program, a fee not to exceed two hundred dollars (\$200)."

Section 4. 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. A statewide program for certification of medication aides and approval of medication aide training programs is created under the board.

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

(1) practice as a certified 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.

C. The board shall:

(1) maintain a permanent register of all persons certified to practice as a certified medication aide;

(2) adopt rules for certified medication aide education and certification, including standards and curricula;

(3) adopt rules governing the supervision of

certified medication aides by licensed nurses, including standards and performance evaluations of certified medication aides;

(4) conduct disciplinary hearings of certified medication aides or on the denial, suspension or revocation of certified medication aide certificates in accordance with the Uniform Licensing Act; and

(5) grant approval to a certified medication aide training program that meets all the requirements set by the board and deny or withdraw approval from medication aide training programs that fail to meet prescribed standards or fail to maintain a current contract.

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

E. Every certificate issued by the board to practice as a certified medication aide shall be renewed every two years. The certified medication aide seeking renewal shall submit proof of employment as a certified medication aide and proof of having met continuing education requirements adopted by the board.

F. The board shall set the following nonrefundable fees:

(1) for initial certification by initial or subsequent examination, a fee not to exceed sixty dollars (\$60.00);

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

(3) for reactivation of a lapsed certificate after failure to renew a certificate or following board action, a fee not to exceed sixty dollars (\$60.00);

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

(5) for subsequent review and approval of a training program that has changed, a fee not to exceed two hundred dollars (\$200);

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

(7) for periodic evaluation of a training program, a fee not to exceed two hundred dollars (\$200)."

Section 5. Section 61-3-16 NMSA 1978 (being Laws 1968, Chapter 44, Section 13, as amended) is amended to read:

"61-3-16. FEES FOR LICENSURE AS REGISTERED NURSES.--

Applicants for licensure as registered nurses shall pay the following nonrefundable fees:

A. for licensure without examination, a fee not to exceed one hundred fifty dollars (\$150);

B. for licensure by examination when the examination is the first for the applicant in this state, a fee not to exceed one hundred fifty dollars (\$150);

C. for licensure by examination when the examination is other than the first examination, a fee not to exceed sixty dollars (\$60.00); and

D. for initial licensure as a certified nurse practitioner, certified registered nurse anesthetist or clinical nurse specialist, a fee not to exceed one hundred dollars (\$100). This fee shall be in addition to the fee paid for registered nurse licensure."

Section 6. Section 61-3-22 NMSA 1978 (being Laws 1968, Chapter 44, Section 19, as amended) is amended to read:

"61-3-22. FEES FOR LICENSURE AS LICENSED PRACTICAL NURSES.--Applicants for licensure as licensed practical nurses shall pay the following nonrefundable fees:

A. for licensure without examination, a fee not to exceed one hundred fifty dollars (\$150);

B. for licensure by examination when the examination is the first for the applicant in this state, a

fee not to exceed one hundred fifty dollars (\$150); and

C. for licensure by examination when the examination is other than the first examination, a fee not to exceed sixty dollars (\$60.00) for each examination."

Section 7. 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 and shall show proof of continuing education as required by the board except when on active military duty during a military action.

B. Upon receipt of the application and fee, in an amount not to exceed one hundred ten dollars (\$110), a license valid for two years shall be issued.

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.

D. A person who allows a license to lapse shall be reinstated by the board on payment of the fee for the current two years plus a reinstatement fee not to exceed two hundred dollars (\$200), provided that all other requirements are met."

Section 8. 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 nurse licensed in 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 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 a person employed by the United States government, while in the discharge of the person's official duties;

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

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

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

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

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 the individual's own needs."

Section 9. Section 61-3-30 NMSA 1978 (being Laws 1968, Chapter 44, Section 26, as amended) is amended to read:

"61-3-30. VIOLATIONS--PENALTIES.--It is a misdemeanor for a person, firm, association or corporation to:

A. sell, fraudulently obtain or furnish a nursing diploma, license, examination or record or to aid or abet therein;

B. practice professional nursing as defined by the Nursing Practice Act unless exempted or duly licensed to do so pursuant to the provisions of that act;

C. practice licensed practical nursing as defined by the Nursing Practice Act unless exempted or duly licensed to do so pursuant to the provisions of that act;

D. use in connection with his name a designation tending to imply that such person is a registered nurse or a licensed practical nurse unless duly licensed pursuant to the provisions of the Nursing Practice Act;

E. conduct a school of nursing or a course for the education of professional or licensed practical nurses for licensing unless the school or course has been approved by the board;

F. practice nursing after the person's license has lapsed or been suspended or revoked. Such person shall be considered an illegal practitioner;

G. employ unlicensed persons to practice as registered nurses or as licensed practical nurses;

H. practice or employ a person to practice as a certified registered nurse anesthetist, certified nurse practitioner or clinical nurse specialist unless endorsed as a certified registered nurse anesthetist, certified nurse practitioner or clinical nurse specialist pursuant to the Nursing Practice Act;

I. employ as a certified hemodialysis technician or certified medication aide an unlicensed person without a certificate from the board to practice as a certified hemodialysis technician or certified medication aide; or

J. otherwise violate a provision of the Nursing Practice Act.

The board shall assist the proper legal authorities in the prosecution of all persons who violate a provision of the Nursing Practice Act. In prosecutions under the Nursing Practice Act, it shall not be necessary to prove a general course of conduct. Proof of a single act, a single holding out or a single attempt constitutes a violation, and, upon conviction, such person shall be sentenced to be imprisoned in the county jail for a definite term not to exceed one year or to the payment of a fine of not more than one thousand dollars (\$1,000) or both."

Section 10. REPEAL.--Sections 61-3-10.3, 61-3-10.4, 61-3-24.3 and 61-3-31 NMSA 1978 (being Laws 1995, Chapter 117, Section 1, Laws 2003, Chapter 282, Section 2, Laws 2003, Chapter 307, Section 3 and Laws 1979, Chapter 379, Section 11, as amended) are repealed.

Section 11. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately.

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