

NEW SECTION. Sec. 6. If any provision of this 1977 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected.

Passed the House June 6, 1977.

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CHAPTER 243

[House Bill No. 316]

NURSING HOME ADMINISTRATORS

AN ACT Relating to nursing home administrators; amending section 1, chapter 57, Laws of 1970 ex. sess. and RCW 18.52.010; amending section 7, chapter 57, Laws of 1970 ex. sess. as amended by section 52, chapter 30, Laws of 1975 1st ex. sess. and RCW 18.52.070; amending section 9, chapter 57, Laws of 1970 ex. sess. and RCW 18.52.090; amending section 10, chapter 57, Laws of 1970 ex. sess. and RCW 18.52.100; amending section 12, chapter 57, Laws of 1970 ex. sess. as amended by section 2, chapter 97, Laws of 1975 1st ex. sess. and RCW 18.52.120; amending section 15, chapter 57, Laws of 1970 ex. sess. and RCW 18.52.150; and adding a new section to chapter 57, Laws of 1970 ex. sess. and to chapter 18.52 RCW.

Be it enacted by the Legislature of the State of Washington:

Section 1. Section 1, chapter 57, Laws of 1970 ex. sess. and RCW 18.52.010 are each amended to read as follows:

This chapter shall be known as the "Nursing Home Administrator Licensing Act" and is intended to establish and provide for the enforcement of standards for the licensing of nursing home administrators. The legislature finds that the quality of patient care in nursing homes is directly related to the competence of the nursing home administrators. It is the intent of this chapter that licensed nursing home administrators continually maintain (1) the suitable character required and (2) the capacity to consider the available resources and personnel of the facility subject to their authority and come to reasonable decisions implementing patient care.

Sec. 2. Section 7, chapter 57, Laws of 1970 ex. sess. as amended by section 52, chapter 30, Laws of 1975 1st ex. sess. and RCW 18.52.070 are each amended to read as follows:

Upon the director's receipt of an application and examination fee determined by the director as provided in RCW 43.24.085 as now or hereafter amended, and completed application forms provided by the director, a nursing home administrator's license shall be issued to any person who:

(1) Is at least twenty-one years of age and of good moral character.

(2) Has ~~((satisfactorily completed a course of instruction and training concerning nursing home or health facility administration approved by the board, or has))~~ presented ~~((upon his affidavit))~~ evidence satisfactory to the board of ~~((at least two years of))~~ practical experience ~~((in the field of institutional administration which, regardless of formal training or instruction, is in the opinion of the board)),~~ education, and training which, when evaluated according to criteria developed by the board, is equivalent to two years of experience in the operation of a nursing home: PROVIDED, That after January 1, 1980, no license shall be issued to any applicant unless such applicant has either successfully completed at least two years of

formal education beyond the high school level or holds an associate degree from a recognized institution of higher learning.

(3) Has passed an examination administered by the board which shall be designed to test the candidate's competence to administer a nursing home on the basis of the candidate's formal instruction and training or actual experience: PROVIDED HOWEVER, That nothing in this chapter or the rules and regulations thereunder shall be construed to require an applicant for a license or provisional license as a nursing home administrator who is certified by any well established and generally recognized church or religious denomination which teaches reliance on spiritual means alone for healing as having been approved to administer institutions certified by such church or denomination for the care and treatment of the sick in accordance with its teachings, to demonstrate proficiency in any medical techniques or to meet any medical educational qualifications or medical standards not in accord with the remedial care and treatment provided in such institutions: PROVIDED FURTHER, That any such individual shall demonstrate in the process of application for the examination his membership in such church or religious denomination and his license shall indicate the limited extent of his authority to act as an administrator.

(4) The initial administrator members of the board shall be selected and appointed by the governor to meet the requirements of subsection (1) of this section and of RCW 18.52.040 and 18.52.050. The three nonadministrator members of the first board shall administer to the initial administrator members an appropriate examination, and the initial administrator members shall thereafter be issued their licenses under this chapter as nursing home administrators. The three nonadministrator members of the first board may exercise the powers of the board to carry out licensing of the initial administrator members, regardless of the normal quorum or procedural requirements for board action. The licensing of the initial administrator members of the first board shall be carried out within thirty days after appointment of the board, and in all events prior to April 1, 1970.

Sec. 3. Section 9, chapter 57, Laws of 1970 ex. sess. and RCW 18.52.090 are each amended to read as follows:

The director shall have the administrative duty and responsibility to:

(1) Issue nursing home administrator's licenses to individuals who meet the licensing requirements of RCW 18.52.070 and 18.52.080;

(2) ~~((Advise and assist the executive secretary or board as may be required in the investigation of))~~ Investigate complaints against nursing home administrators, and upon order of the board ~~((and after notice and hearing before the board))~~ reprimand any licensee, or revoke, suspend ~~((for not more than thirty days))~~, deny, or refuse to reregister the license of any ~~((holder))~~ licensee or applicant who fails to meet the ~~((licensing))~~ applicable requirements of this chapter.

Sec. 4. Section 10, chapter 57, Laws of 1970 ex. sess. and RCW 18.52.100 are each amended to read as follows:

The board with the assistance of the director for administrative matters shall have the duty and responsibility within the limits provided in this chapter:

(1) To develop standards which must be met by individuals in order to receive a license as a nursing home administrator, which standards shall include criteria to evaluate the practical experience, education, and training of applicants for licenses

to determine that applicants have the equivalent of two years of experience in the operation of a nursing home. The standards and criteria shall be designed to insure that nursing home administrators will be individuals who are of good character and are otherwise suitable, and who, by training or experience in the field of institutional administration, are qualified to serve as nursing home administrators as provided in this chapter.

(2) To develop appropriate techniques, including examinations and investigations to the extent necessary to determine whether an individual meets such standards for licensing.

(3) To develop, administer, and supervise an administrator-in-training program for applicants for licenses who are otherwise qualified but do not have the equivalent of two years experience in the operation of a nursing home at the time of application. Such program shall provide for supervision of each administrator-in-training by licensed nursing home administrators as preceptors. The board shall have the authority to do all acts necessary for the implementation of such a program, including, but not limited to, conducting education and training programs, establishing standards of qualification for preceptors, establishing criteria for creating and evaluating individual programs, and monitoring such programs to assure compliance with rules and regulations adopted by the board.

(4) To order the director to issue licenses to individuals determined by the board, after the application of such techniques, to meet such standards (~~(, and after notice and hearing to order the director to revoke, suspend or refuse to reregister licenses previously issued in any case where the individual holding any such license is determined substantially to have failed to conform to the requirements of such standards for licensing)~~) and to order the director to deny licenses to individuals who do not meet such standards or who are in violation of the provisions of RCW 18.52.120.

(5) To assure that the goals set forth in RCW 18.52.010 are effected the board shall have the authority after any notice and hearing which may be required by law, to order a reprimand of any licensee, or the suspension, refusal to reregister, or revocation of any license. The board may defer any such order or impose conditions thereon to permit continued licensed status when such action is reasonable considering the circumstances of the case, the protection of the health and safety of patients, and fairness to the administrator.

~~((4))~~ (6) To investigate, and take appropriate action with respect to, any charge or complaint filed with the board or director to the effect that any individual licensed as a nursing home administrator has failed to comply with the requirements of the standards for licensing.

~~((5))~~ (7) To conduct a continuing study and investigation of the licensing of administrators of nursing homes within the state with a view to the improvement of the standards imposed for the licensing of new administrators and of procedures and methods for the enforcement of such standards with respect to administrators of nursing homes who are to be licensed.

~~((6))~~ (8) To encourage qualified educational institutions and other qualified organizations to establish, provide, and conduct and continue such training and instruction courses and programs as will enable all otherwise qualified individuals to

attain the qualifications necessary to meet the standards for licensing nursing home administrators.

~~((7))~~ (9) To establish and carry out procedures, if required, designed to insure that individuals licensed as nursing home administrators will, during any period that they serve as such, comply with the requirements and standards for licensing set forth in this chapter.

~~((8))~~ (10) To establish appropriate procedures for the issuance in unusual circumstances and without examination of temporary license permits as nursing home administrators. Such permits may be issued and renewed by the director pursuant to rules and regulations which shall be established by the board. Such permits and renewals shall be subject to confirmation or rescission by order of the board upon review at the next board meeting. Any such permit or renewal thereof shall in all events expire six months from the date issued. No more than three consecutive permits shall be issued to any one person. Persons receiving such permits need not have passed the required examination but shall meet the other requirements of this chapter, except RCW 18.52.070(2). After hearing before the board and upon order of the board the director may revoke or suspend any such permit for the reasons provided in this chapter for suspension or revocation of administrator licenses.

~~((9))~~ (11) To advise the relevant state agencies regarding receipt and administration of such federal funds as are made available to carry out the educational purposes of this chapter.

~~((10))~~ (12) To advise the director regarding the application forms used by the director under this chapter.

~~((11))~~ (13) To direct the granting of provisional licenses as provided in this chapter.

~~((12))~~ (14) To issue rules and regulations which are necessary to carry out the functions of the board specifically assigned to it by this chapter.

Sec. 5. Section 12, chapter 57, Laws of 1970 ex. sess. as amended by section 2, chapter 97, Laws of 1975 1st ex. sess. and RCW 18.52.120 are each amended to read as follows:

The director, after any notice and hearing before the board which may be required by law, and upon the order of the board, shall, subject to any deferral or condition ordered, refuse to reregister or shall suspend or revoke an administrator's license, or issue a reprimand as directed by the board, as provided in this chapter when proof has been submitted to the board that:

(1) ~~((In the event))~~ The licensee ~~((or applicant))~~ has committed any fraud or material misrepresentation or concealment in obtaining or ~~((applying for))~~ maintaining the license.

(2) ~~((In the event the licensee or applicant has been convicted of a crime involving moral turpitude:~~

~~((3) If))~~ The license was obtained due to the mistake or inadvertence of the board or the director.

~~((4) In the event))~~ (3) The licensee has ~~((wilfully))~~ knowingly or repeatedly violated any of the provisions of this chapter or of the rules promulgated by the board in accordance with this chapter ~~((, or of the rules promulgated by the department of social and health services. PROVIDED, That the license suspension~~

~~shall only occur when instituted by board action and shall be subject to court review pursuant to chapter 34.04 RCW))~~ or authorized or directed another so to act.

(4) The licensee has knowingly or repeatedly violated rules promulgated by the department of social and health services or the state board of health concerning patient care in a manner demonstrating a substantial disregard for patient health and safety.

(5) ((In the event the licensee has been declared mentally incompetent by a court of competent jurisdiction:)) The licensee is unable to administer a nursing home with due regard for patient health and safety by reason of habitual, intemperate use of alcohol, controlled substances, or other chemicals or materials; or the licensee is similarly incapacitated by mental illness, insanity, mental disorder or some condition or situation requiring entry of an order for a guardianship, and such mental status or the need of a guardianship has been determined to exist by a court of competent jurisdiction: PROVIDED, That the board, when considering cases under this subsection, shall endeavor to encourage the recovery and rehabilitation of the administrator and the maintenance of the administrator's livelihood, but always subject to the primary objective of protecting patient health and safety.

(6) The licensee has committed any acts which, whether or not criminal prosecutions occur, constitute fraud, forgery, wrongful obtaining of funds, theft, larceny by trick, scheme or device, assault in the first, second or third degree, bribery or corrupt influence, or solicitation or conspiracy to commit any of said offenses: PROVIDED, That if some form of intent is required to render any such acts criminal such intent shall also be required to permit action against the licensee under this subsection, and liability under this subsection may be determined pursuant to the principles of liability set forth in RCW 9A.08.020.

(7) The licensee has been grossly negligent or committed gross misconduct in the administration of a nursing home.

(8) The licensee has participated in or has offered or agreed to participate in, any arrangement whereby any payment or rebate is given to any party in return for the referral of a patient to the facility the licensee administers, or for referral by such licensee of a patient to any party for rendition of professional services to such patient.

(9) The licensee or applicant has previously been refused a license as an administrator or had renewal thereof refused, or has had such a license suspended or revoked by any competent state, federal, or foreign authority: PROVIDED, That a suspension, revocation, refusal to issue or refusal to reregister a license under this subsection must be based upon a showing in the record of such previous proceedings which would constitute a proper basis for the action proposed under the provisions of this chapter, and the licensee or applicant shall, on request, have the opportunity to challenge the fairness of the previous proceedings or the correctness of the factual determinations involved.

((Persons)) Administrators whose licenses have been revoked, or to whom re-registration has been refused, may, on subsequent application be licensed, relicensed, or reregistered, according to such rules or regulations as may be prescribed by the board and according to standards prescribed by the board. Suspended licenses are automatically in force at the expiration of ((thirty days from the date of suspension)) the period of suspension specified in the board's order, but

must be reregistered in the normal course if they expire during the period of suspension.

Sec. 6. Section 15, chapter 57, Laws of 1970 ex. sess. and RCW 18.52.150 are each amended to read as follows:

Unless otherwise specifically provided in this chapter, all proceedings under this chapter of the director and board for rule making, for the hearings required by this chapter, for contested cases and for appeals shall be conducted in conformity with the administrative procedure act. ((All hearings specified under this chapter are mandatory)) In matters involving reprimand, suspension, revocation, refusal of re-registration, or denial of licenses, the board shall require clear, cogent, and convincing evidence before the board orders action. Complaints regarding any licensed administrator shall be considered only if submitted to the ((board)) director in writing ((and verified under oath)) and ((if they indicate)) signed. If a complaint indicates a possible violation of the provisions of this chapter, it shall be investigated by the director. ((In any such case, the complaint will be fully disclosed to the affected administrator and will be investigated to determine whether any board action should be initiated, and the report of such investigation shall be fully disclosed immediately to the licensed administrator in question.)) Additionally, the director on his own initiative may, or, upon order of the board, shall, initiate an investigation of possible violations of this chapter. The director shall advise the board of all complaints received and action taken.

If, after investigation the chairman of the board, or the board, decides that there is reasonable cause to believe that grounds exist for a reprimand, or for denial, suspension, refusal of reregistration, or revocation of a license issued or to be issued under this chapter, the director shall notify the applicant or licensee in writing and serve him personally, or by certified mail, with return receipt requested, stating the grounds for the reprimand or upon which the license is to be denied, suspended, revoked or reregistration refused, and shall make available, upon request, so much of the investigative information as relates to any grounds asserted for proposed action.

Within twenty days of the service or receipt of notice of the alleged grounds for reprimand, denial, suspension, revocation, or refusal or reregistration, the applicant or licensee may serve upon the director a written request for hearing before the board. Service of a request for a hearing shall be made personally or by certified mail, return receipt requested, and in the latter event shall be addressed to the director at the director's office in Thurston county.

Upon receiving a request for a hearing, the director shall refer the matter to the board to arrange for a hearing. Hearings may be conducted by the board, by a committee of the board the majority of which shall be administrator members, a hearing officer engaged by the board who shall be a licensed administrator, or by a hearing examiner of the state.

If the applicant or licensee does not file a timely request for a hearing in accordance with the provisions of this section, the director shall refer the matter to the board for appropriate action which may be taken without further notice to the applicant or licensee.

NEW SECTION. Sec. 7. There is added to chapter 57, Laws of 1970 ex. sess. and to chapter 18.52 RCW a new section to read as follows:

In any investigation or proceeding authorized in this chapter, the director, the board, any committee of the board, and any hearing officer conducting a contested case, shall have authority to administer oaths and take testimony, issue subpoenas requiring attendance of witnesses, together with relevant books, memoranda, papers, and other documents, articles, or instruments, and to discover from such witnesses all relevant facts known to them. In a contested case subpoenas shall be issued at the request of a party.

If an individual fails to obey the subpoena or obeys the subpoena but refuses to testify concerning matters relevant to the investigation or proceedings, the issuer of the subpoena may petition the superior court of the county where the investigation or proceeding is being conducted for enforcement of the subpoena. The petition shall be accompanied by a copy of the subpoena and proof of service, and shall set forth in what specific manner the subpoena has not been complied with, and shall ask an order of the court to compel the witness to appear and testify before the agency. The court may enter an order directing the witness to appear before the court at a time and place fixed in such order to show cause why he has not responded to the subpoena or has refused to testify. A copy of such order shall be served upon the witness. If it then appears to the court that the subpoena was properly issued and that the particular questions which the witness refuses to answer are reasonable and relevant the court shall enter an order that the witness appear at the time and place fixed in the order and testify or produce the items required, and on failing to obey the order the witness shall be subject to being held in contempt of court.

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CHAPTER 244

[Substitute House Bill No. 348]

NURSING HOMES—PATIENT ASSESSMENT SYSTEM—LICENSING STANDARDS

AN ACT Relating to nursing homes; adding a new section to chapter 18.51 RCW; and prescribing penalties.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Section 1. There is added to chapter 18.51 RCW a new section to read as follows:

(1) No later than September 30, 1977, the secretary shall implement and operate a patient assessment system whereby the characteristics of patients supported by the department under RCW 74.09.120 shall be computerized for the purpose of setting appropriate levels of staffing and reimbursement for nursing homes in accordance with the documented needs of the client population in each home.

(2) No later than November 30, 1977, the board of health shall adopt revised licensing standards for nursing homes after the fiscal impact of each revised standard has been assessed by the department. The licensing standards shall be suitable for: