

CHAPTER 653

(House Bill 269)

AN ACT concerning

State Board of Nursing – Powers and Duties – Licensing, Certification, and Regulation

FOR the purpose of authorizing the State Board of Nursing to accept a certain alternate method of criminal history records check under certain circumstances; providing that certain applicants may only be issued inactive licenses until the completion of a certain course or program; authorizing the Board to grant certain extensions of certain licenses and certificates under certain circumstances; altering the date on which a certain license expires; altering the date on which the Board shall begin a process for requiring criminal history records checks; altering the information to be considered by the Board on receipt of criminal history record information; altering the procedures for the expiration of a temporary license or temporary practice letter; provided that a temporary license may be extended for a certain time period under certain circumstances; authorizing the deputy director to authorize the Board to issue certain subpoenas and administer certain oaths under certain circumstances; requiring the Board to adopt regulations establishing categories of skilled nursing assistants in licensed developmental disabilities administration group homes; repealing the requirement that the Board adopt regulations establishing categories of skilled nursing assistants in licensed developmental disabilities administration alternate living units; limiting the time period in which a medication technician graduate may practice, without certification by the Board; making certain technical changes; making this Act an emergency measure; and generally relating to the regulation and licensing of nurses, nursing assistants, and medication technicians by the State Board of Nursing.

BY repealing and reenacting, with amendments,

Article – Health Occupations

Section 8–303, 8–305, 8–308, 8–312, 8–315, 8–317, 8–6A–05(a)(2), 8–6A–07, 8–6A–08, and 8–6A–11

Annotated Code of Maryland

(2005 Replacement Volume and 2007 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article – Health Occupations

8–303.

(a) In this section, "Central Repository" means the Criminal Justice Information System Central Repository of the Department of Public Safety and Correctional Services.

(b) As part of an application to the Central Repository for a State and national criminal history records check, an applicant shall submit to the Central Repository:

(1) Two complete sets of legible fingerprints taken on forms approved by the Director of the Central Repository and the Director of the Federal Bureau of Investigation;

(2) The fee authorized under § 10-221(b)(7) of the Criminal Procedure Article for access to State criminal history records; and

(3) The processing fee required by the Federal Bureau of Investigation for a national criminal history records check.

(c) In accordance with §§ 10-201 through 10-228 of the Criminal Procedure Article, the Central Repository shall forward to the Board and to the applicant the criminal history record information of the applicant.

(D) IF AN APPLICANT HAS MADE TWO OR MORE UNSUCCESSFUL ATTEMPTS AT SECURING LEGIBLE FINGERPRINTS, THE BOARD MAY ACCEPT AN ALTERNATE METHOD OF CRIMINAL HISTORY RECORDS CHECK AS PERMITTED BY THE DIRECTOR OF THE CENTRAL REPOSITORY AND THE DIRECTOR OF THE FEDERAL BUREAU OF INVESTIGATION.

[(d)](E) Information obtained from the Central Repository under this section shall be:

(1) Confidential and may not be disseminated; and

(2) Used only for the licensing purpose authorized by this title.

[(e)](F) The subject of a criminal history records check under this section may contest the contents of the printed statement issued by the Central Repository as provided in § 10-223 of the Criminal Procedure Article.

8-305.

(a) Except as otherwise provided in subsection (b) of this section, an applicant who otherwise qualifies for a license as a registered nurse or as a licensed practical nurse is entitled to be examined for that license as provided in this section.

(b) Subject to the hearing provisions of § 8–317 of this subtitle, the Board may deny the right to be examined for a license as a registered nurse or as a licensed practical nurse to any applicant who is found to have violated any provision of § 8–316 of this subtitle.

(c) The Board shall give examinations to applicants at least once each calendar year at the times and places that the Board determines.

(d) The Board shall determine the subjects, scope, form, and passing score for each examination given under this title.

(E) AN APPLICANT WHOSE NURSING EDUCATION PROGRAM WAS COMPLETED 5 OR MORE YEARS PRIOR TO PASSING THE LICENSURE EXAMINATION AND WHO HAS NOT PRACTICED FOR AT LEAST 1,000 HOURS IN THE PREVIOUS 5 YEARS MAY ONLY BE ISSUED AN INACTIVE LICENSE UNTIL SUBMISSION TO THE BOARD OF SATISFACTORY EVIDENCE THAT THE APPLICANT HAS SUCCESSFULLY COMPLETED:

(1) A NURSING REVIEW COURSE APPROVED BY THE BOARD; OR

(2) A PRECEPTORSHIP PROGRAM PROVIDED BY AN EMPLOYER AND APPROVED BY THE BOARD.

~~[(e)](F)~~ (1) Except as provided in paragraph (2) of this subsection, an applicant who fails an examination may retake the examination if the applicant pays the reexamination fee set by the Board for each reexamination.

(2) The Board, by rule or regulation, may limit the number of times that an applicant may be reexamined after two failures and may limit the interval of time between reexaminations.

8–308.

(a) Subject to subsection (c) of this section, the Board shall issue the appropriate license to any applicant who meets the requirements for a license as:

(1) A registered nurse under this title; and

(2) A licensed practical nurse under this title.

(b) The Board shall show on each license:

(1) Any expiration date;

(2) The type of license; and

(3) Any certification.

(c) (1) On receipt of the criminal history record information of an applicant for licensure or certification forwarded to the Board in accordance with § 8–303 of this subtitle, in determining whether to grant a license or a certificate, the Board shall consider:

(i) The age at which the crime was committed;

(ii) The circumstances surrounding the crime;

(iii) The length of time that has passed since the crime;

(iv) Subsequent work history;

(v) Employment and character references; and

(vi) Other evidence that demonstrates [that] **WHETHER** the applicant [does not pose] **POSES** a threat to the public health or safety.

(2) (I) [The] **EXCEPT AS PROVIDED IN SUBPARAGRAPH (II) OF THIS PARAGRAPH, THE** Board may not issue a license or a certificate if the criminal history record information required under § 8–303 of this subtitle has not been received.

(II) THE BOARD MAY GRANT A 90-DAY EXTENSION OF A TEMPORARY LICENSE PENDING RECEIPT OF CRIMINAL HISTORY RECORD INFORMATION.

8–312.

(a) A license expires on the [last] **28TH** day of the birth month of the licensee, unless the license is renewed for a 1–year term as provided in this section.

(b) At least 1 month before the license expires, the Board shall send to the licensee a renewal notice.

(c) Before a license expires, the licensee periodically may renew it for an additional term, if the licensee:

(1) Otherwise is entitled to be licensed;

(2) Pays to the Board:

- (i) A renewal fee set by the Board; or
 - (ii) A renewal fee that is set by the Board if the licensee certifies to the Board that the licensee provides professional services only as a volunteer; and
- (3) Submits to the Board:
- (i) A renewal application on the form that the Board requires; and
 - (ii) Satisfactory evidence of completion of:
 - 1. 1,000 hours of active nursing practice within the 5-year period immediately preceding the date of renewal;
 - 2. A course of instruction, commonly known as a refresher course, approved by the Board; or
 - 3. A preceptorship program provided by an employer and approved by the Board.

(d) (1) The Board may grant a 30-day extension, beyond a license's expiration date, to a licensee so that the licensee may renew the license before it expires.

(2) THE BOARD MAY GRANT TWO 90-DAY EXTENSIONS BEYOND A LICENSE'S EXPIRATION DATE PENDING RECEIPT OF CRIMINAL HISTORY RECORD INFORMATION.

(e) (1) Each licensee shall notify the Board in writing of any change in the name or address of the licensee within 60 days after the change occurred.

(2) If a licensee fails to notify the Board within the time required under this subsection, subject to the hearing provisions of § 8-317 of this subtitle, the Board may impose an administrative penalty of \$100.

(f) (1) Subject to subsection (g) of this section, the Board shall renew the license of each licensee who meets the requirements of this section.

(2) A volunteer's license issued under paragraph (c)(2)(ii) of this section shall be clearly designated as a volunteer's license.

(g) (1) (i) Beginning [January 2008] **JULY 2009**, the Board shall begin a process requiring criminal history records checks in accordance with § 8-303 of this subtitle on:

1. Selected annual renewal applicants as determined by regulations adopted by the Board; and

2. Each former licensee who files for reinstatement under § 8–313 of this subtitle after failing to renew the license for a period of 1 year or more.

(ii) An additional criminal history records check shall be performed every 10 years thereafter.

(2) On receipt of the criminal history record information of a licensee forwarded to the Board in accordance with § 8–303 of this subtitle, in determining whether to renew a license, the Board shall consider:

(i) The age at which the crime was committed;

(ii) The circumstances surrounding the crime;

(iii) The length of time that has passed since the crime;

(iv) Subsequent work history;

(v) Employment and character references; and

(vi) Other evidence that demonstrates [that] **WHETHER** the licensee [does not pose] **POSES** a threat to the public health or safety.

(3) The Board may not renew a license if the criminal history record information required under § 8–303 of this subtitle has not been received.

8–315.

(a) The Board may issue a temporary license to any applicant who:

(1) Submits to a criminal history records check in accordance with § 8–303 of this subtitle;

(2) Is licensed by any other state;

(3) Submits to the Board:

(i) An application on the form required by the Board;

(ii) Written, verified evidence that the requirement of item (1) of this subsection is being met; and

(iii) Any other document required by the Board; and

(4) Pays the fee required by the Board.

(b) (1) A temporary license issued to an individual who is authorized to practice registered nursing in another state authorizes the holder to practice registered nursing in this State while the temporary license is effective.

(2) A temporary license issued to an individual who is authorized to practice licensed practical nursing in another state authorizes the holder to practice licensed practical nursing in this State while the temporary license is effective.

(c) (1) The Board may issue a temporary practice letter to a certified nurse practitioner or certified nurse–midwife who:

(i) Has been issued a temporary license under this subsection and has submitted a written agreement to the Board for formal approval;

(ii) Is authorized to practice as a registered nurse and has submitted an initial written agreement to the Board for formal approval; or

(iii) 1. Has had a written agreement approved by the Board;

2. Is changing practices or locations; and

3. Has submitted to the Board for formal approval a new written agreement for the new practice or location.

(2) The Board may not issue a temporary practice letter to a certified nurse practitioner or certified nurse–midwife under paragraph (1) of this subsection unless:

(i) The State Board of Physicians has received a written agreement submitted to the Board for formal approval of the scope of practice for which the temporary practice letter is requested; and

(ii) The State Board of Physicians has approved the issuance of the temporary practice letter.

(3) A temporary practice letter does not:

(i) Create any interest, right, or entitlement for the certified nurse practitioner, certified nurse–midwife, or collaborating physician that extends beyond the ending date of the practice letter;

(ii) Abrogate any procedures required by statute or regulation for approval of collaboration agreements; or

(iii) Establish any fact or any presumption concerning the final approval of a collaboration agreement.

(d) (1) **[A] EXCEPT AS PROVIDED IN THIS SUBTITLE, A** temporary license and temporary practice letter may not be renewed.

(2) Unless the Board **SUSPENDS OR** revokes a temporary license or temporary practice letter, each temporary license or temporary practice letter expires 90 days after the date of issue.

(3) A TEMPORARY LICENSE MAY BE EXTENDED UP TO AN ADDITIONAL 90 DAYS IF THE APPLICANT IS AWAITING THE COMPLETION OF CRIMINAL HISTORY RECORD INFORMATION.

(e) The Board shall revoke a temporary license or temporary certificate if the criminal history record information forwarded to the Board in accordance with § 8–303 of this subtitle reveals that the applicant, certificate holder, or licensee has been convicted or pled guilty or nolo contendere to a felony or to a crime involving moral turpitude, whether or not any appeal or other proceeding is pending to have the conviction or plea set aside.

8–317.

(a) Except as otherwise provided in the Administrative Procedure Act and in subsection (g) of this section, before the Board takes any action under § 8–312[,], **OR § 8–316[,]** **OF THIS SUBTITLE OR § 8–404[,]** or § 8–6A–10 of this title, it shall give the person against whom the action is contemplated an opportunity for a hearing before the Board.

(b) The Board shall give notice and hold the hearing in accordance with the Administrative Procedure Act.

(c) The hearing notice to be given to the person shall be sent by certified mail, return receipt requested, bearing a postmark from the United States Postal Service, to the last known address of the person at least 30 days before the hearing.

(d) The person may be represented at the hearing by counsel.

(e) If after due notice the individual against whom the action is contemplated fails or refuses to appear, nevertheless the Board may hear and determine the matter.

(f) (1) Over the signature of the [president or] **PRESIDENT**, the executive director, **OR THE DEPUTY DIRECTOR AS AUTHORIZED BY THE EXECUTIVE DIRECTOR** of the Board, the Board may issue subpoenas and administer oaths in connection with any investigation under this title and any hearings or proceedings before it.

(2) If a person, without lawful excuse, disobeys a subpoena from the Board or an order by the Board to take an oath, testify, or answer questions, on petition of the Board a court of competent jurisdiction may compel compliance with the subpoena and hold the individual in contempt of court.

(g) The Board may immediately suspend the license of a registered nurse or licensed practical nurse who is expelled from the rehabilitation program under § 8–208 of this title for noncompliance with the nurse’s agreement if:

(1) Prior to suspending the license, the Board provides the nurse with an opportunity to show cause by written communication or nontestimonial presentation as to why the suspension should not occur; and

(2) The Board provides the nurse with an opportunity for a hearing, which:

(i) Shall occur within 30 days of written request by the nurse; and

(ii) Shall impose on the licensee the burden of proving by a preponderance of the evidence that the licensee is not addicted to drugs or alcohol.

(h) (1) After the Board conducts an investigation under this title, the Board may issue an advisory letter to the licensee or certificate holder.

(2) The Board may disclose an advisory letter issued under this subsection to the public.

(3) The issuance of an advisory letter under this subsection may not:

(i) Be considered a disciplinary action under §§ 8–316 and 8–6A–10 of this title; and

(ii) Be reported to any licensing entity, employer, or insurance company as a disciplinary action.

8–6A–05.

(a) The Board shall adopt regulations establishing:

(2) Categories of skilled nursing assistants in the following settings:

(i) Licensed nursing homes; and

(ii) Licensed developmental disabilities administration [alternative living units] **GROUP HOMES**;

8-6A-07.

(a) Subject to subsection (g) of this section, the Board shall issue a certificate to any applicant who meets the requirements of this subtitle.

(b) The certificate of an individual who has met the requirements for a certified nursing assistant shall include the title "certified nursing assistant".

(c) The certificate of an individual who routinely performs nursing tasks delegated by a registered nurse or licensed practical nurse for compensation and has also completed a Board-approved course in medication administration shall also include the title "certified medicine aide".

(d) The certificate of an individual who has met the requirements for a certified medication technician shall include the title "certified medication technician".

(e) The Board may issue a certificate to replace a lost, destroyed, or mutilated certificate, if the certificate holder pays the certificate replacement fee set by the Board.

(f) (1) The Board may issue a temporary practice certificate to an applicant who:

(i) Has met the appropriate certification requirements of this subtitle to the satisfaction of the Board;

(ii) Does not have a criminal record and has not been the subject of a health professional disciplinary action in this State or another jurisdiction; and

(iii) Does not have a criminal charge or a health professional disciplinary action pending in this State or another jurisdiction.

(2) Unless the Board **SUSPENDS OR** revokes a temporary practice certificate, the temporary practice certificate expires [60] **90** days after issuance.

(3) A TEMPORARY PRACTICE CERTIFICATE MAY BE EXTENDED UP TO AN ADDITIONAL 90 DAYS IF THE APPLICANT IS AWAITING THE COMPLETION OF CRIMINAL HISTORY RECORD INFORMATION.

(G) A MEDICATION TECHNICIAN GRADUATE MAY PRACTICE FOR NO MORE THAN ~~60~~ 90 DAYS FROM THE DATE OF COMPLETION OF A MEDICATION TECHNICIAN TRAINING PROGRAM WITHOUT CERTIFICATION BY THE BOARD.

[(g)](H) (1) On receipt of the criminal history record information of an applicant for certification as a certified nursing assistant forwarded to the Board in accordance with § 8-303 of this title, in determining whether to grant a certificate, the Board shall consider:

- (i) The age at which the crime was committed;
- (ii) The circumstances surrounding the crime;
- (iii) The length of time that has passed since the crime;
- (iv) Subsequent work history;
- (v) Employment and character references; and

(vi) Other evidence that demonstrates [that] **WHETHER** the applicant [does not pose] **POSES** a threat to the public health or safety.

(2) The Board may not issue a certificate if the criminal history record information required under § 8-303 of this title has not been received.

8-6A-08.

(a) A certificate expires on the 28th day of the birth month of the nursing assistant or medication technician, unless the certificate is renewed for a 2-year term as provided in this section.

(b) At least 3 months before the certificate expires, the Board shall send to the nursing assistant or medication technician a renewal notice that states:

- (1) The date on which the current certificate expires;
- (2) The date by which the renewal application must be received by the Board for the renewal to be issued and mailed before the certificate expires; and
- (3) The amount of the renewal fee.

(c) Before a certificate expires, a nursing assistant periodically may renew it for an additional term, if the certificate holder:

- (1) Otherwise is entitled to be certified;

(2) Submits to the Board a renewal application on the form that the Board requires;

(3) Pays to the Board a renewal fee set by the Board; and

(4) Provides satisfactory evidence of completion of:

(i) 16 hours of active nursing assistant practice within the 2-year period immediately preceding the date of renewal; or

(ii) An approved nursing assistant training program.

(d) In addition to the requirements in subsection (c)(1), (2), and (3) of this section, a skilled nursing assistant shall:

(1) Provide satisfactory evidence of completion of 1,000 hours of practice as a skilled nursing assistant within the individual's specific category of nursing assistant, in the 2-year period preceding the date of renewal; and

(2) Successfully complete a Board-approved refresher course within the individual's specific category of nursing assistant.

(e) In addition to the requirements in subsection (c)(1), (2), and (3) of this section, a certified medicine aide shall:

(1) Provide satisfactory evidence of completion of 100 hours of practice as a certified medicine aide in the 2-year period preceding the date of renewal; and

(2) Successfully complete a Board-approved medicine aide continuing education program.

(f) Before a certificate expires, a medication technician periodically may renew it for an additional term, if the certificate holder:

(1) Otherwise is entitled to be certified;

(2) Submits to the Board a renewal application on the form that the Board requires;

(3) Pays to the Board a renewal fee set by the Board;

(4) Every 2 years, provides satisfactory evidence of completion of a Board-approved clinical refresher course; and

(5) Provides satisfactory evidence of completion of 100 hours of practice as a certified medication technician within the 2-year period preceding the date of renewal.

(g) (1) The Board may grant a 30-day extension, beyond a certificate's expiration date, to a certificate holder so that the certificate holder may renew the certificate before it expires.

(2) THE BOARD MAY GRANT TWO 90-DAY EXTENSIONS BEYOND A CERTIFICATE'S EXPIRATION DATE PENDING RECEIPT OF CRIMINAL HISTORY RECORD INFORMATION.

(h) The Board shall reinstate the certificate of a former certificate holder who has failed to renew the certificate for any reason if the former certificate holder meets the applicable renewal requirements of subsections (c) through (f) and (l)(1)(i)2 of this section.

(i) Subject to subsection (j) of this section, the Board shall renew the certificate of each nursing assistant or medication technician who meets the requirements of this section.

(j) (1) Within 30 days after a change has occurred, each certificate holder shall notify the Board in writing of any change in a name or address.

(2) If the certificate holder fails to notify the Board within the time required under this subsection, the Board may impose an administrative penalty of \$25 on the certificate holder.

(k) The Board shall pay any penalty collected under this subsection to the General Fund of the State.

(l) (1) (i) Beginning [January 2008] **JULY 2009**, the Board shall begin a process requiring criminal history records checks in accordance with § 8-303 of this title on:

1. Selected applicants for certification as a certified nursing assistant who renew their certificates every 2 years as determined by regulations adopted by the Board; and

2. Each former certified nursing assistant who files for reinstatement under subsection (h) of this section after failing to renew the license for a period of 1 year or more.

(ii) An additional criminal history records check shall be performed every 10 years thereafter.

(2) On receipt of the criminal history record information of a certificate holder forwarded to the Board in accordance with § 8-303 of this title, in determining whether to renew the certificate, the Board shall consider:

- (i) The age at which the crime was committed;
- (ii) The circumstances surrounding the crime;
- (iii) The length of time that has passed since the crime;
- (iv) Subsequent work history;
- (v) Employment and character references; and
- (vi) Other evidence that demonstrates [that] **WHETHER** the certificate holder [does not pose] **POSES** a threat to the public health or safety.

(3) The Board may not renew a certificate if the criminal history record information required under § 8-303 of this title has not been received.

8-6A-11.

Any person aggrieved by a final decision of the Board under [§ 8-6A-12] **§ 8-6A-10** of this subtitle may only take a direct judicial appeal as allowed by the Administrative Procedure Act.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act is an emergency measure, is necessary for the immediate preservation of the public health or safety, has been passed by a yea and nay vote supported by three-fifths of all the members elected to each of the two Houses of the General Assembly, and shall take effect from the date it is enacted.

Approved by the Governor, May 22, 2008.