
Colorado Revised Statutes 2017

TITLE 12

Professions and Occupations

ARTICLE 38.1

Nurse Aides

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TITLE 12
Professions and Occupations

ARTICLE 38.1
Nurse Aides

PART 1

GENERAL PROVISIONS

12-38.1-101. Legislative declaration. It is declared to be the policy of the state of Colorado that, in order to safeguard life, health, property, and the public welfare of the people of the state of Colorado, and in order to protect the people of the state of Colorado against unauthorized, unqualified, and improper application of services by nurse aides in a medical facility, it is necessary that a proper regulatory authority be established. The general assembly further declares it to be the policy of this state to regulate the practice of nurse aides in medical facilities through a state agency with the power to enforce the provisions of this article. Any person who practices as a nurse aide in a medical facility without qualifying for proper certification and without submitting to the regulations provided in this article endangers the public health thereby. The general assembly hereby finds and declares that this article will meet the requirements of the federal "Omnibus Budget Reconciliation Act of 1987".

Source: L. 89, 1st Ex. Sess.: Entire article added, p. 5, § 1, effective July 7.

Cross references: For the federal "Omnibus Budget Reconciliation Act of 1987", see Pub.L. 100-203, 101 Stat. 1330.

12-38.1-102. Definitions. As used in this article, unless the context otherwise requires:

- (1) "Approved education program" means:
 - (a) A course of training conducted by an educational or health care institution which implements the basic nurse aide curriculum prescribed and approved by the board.
 - (b) Repealed.
- (2) "Board" means the state board of nursing in the division of professions and occupations in the department of regulatory agencies, created in section 12-38-104.
- (3) "Certified nurse aide" means a person who meets the qualifications specified in this article and who is currently certified by the board. Only a person who holds a certificate to practice as a nurse aide in this state pursuant to the provisions of this article shall have the right to use the title "Certified Nurse Aide" and its abbreviation, "C.N.A."
- (3.5) "Home health agency" means a provider of home health services, as defined in section 25.5-4-103 (7), C.R.S., that is certified by the department of public health and environment.
- (4) "Medical facility" means a nursing facility licensed by the department of public health and environment or home health agencies certified to receive medicare or medicaid funds, pursuant to the federal "Social Security Act", as amended, distinct part nursing facilities, or home health agencies or entities engaged in nurse aide practices as such practices are defined in subsection (5) of this section. "Medical facility" does not include hospitals and other facilities

licensed or certified pursuant to section 25-1.5-103 (1)(a), C.R.S.

(4.5) "Nursing facility" shall have the same meaning as set forth in section 25.5-4-103 (14), C.R.S.

(5) "Practice of a nurse aide" or "nursing aide practice" means the performance of services requiring the education, training, and skills specified in this article for certification as a nurse aide. Such services are performed under the supervision of a dentist, physician, podiatrist, professional nurse, licensed practical nurse, or other licensed or certified health care professional acting within the scope of his license or certificate.

Source: L. 89, 1st Ex. Sess.: Entire article added, p. 5, § 1, effective July 7. **L. 93:** (3) and (4) amended, p. 1745, § 2, effective July 1. **L. 2002:** (3.5) and (4.5) added, p. 1287, § 1, effective June 7; (1) amended, p. 958, § 2, effective July 1. **L. 2003:** (4) amended, p. 702, § 16, effective July 1. **L. 2006:** (3.5) and (4.5) amended, p. 2000, § 43, effective July 1.

Editor's note: Subsection (1)(b)(II) provided for the repeal of subsection (1)(b), effective July 1, 2008. (See L. 2002, p. 958.)

12-38.1-103. Certification - state board of nursing - rules. (1) In addition to all other powers and duties conferred and imposed upon the board by law, the board shall have the authority to certify nurse aides to practice in the state of Colorado, and the board shall implement the provisions of this article.

(2) The department of public health and environment, which is otherwise responsible for the regulation of certain medical facilities, shall, as necessary, assist the board in implementing the provisions of this article.

(3) The board shall promulgate rules and regulations to carry out the purposes of this article and to ensure compliance with federal law and regulation relating to nurse aides.

(4) The board shall maintain a registry of all certified nurse aides as well as a record of all final disciplinary action taken against persons under the provisions of this article. Such registry shall conform to all requirements of federal law and regulation.

(5) (a) The board shall not issue a certificate to a former holder of a certificate whose certificate was revoked unless the applicant meets the requirements of this article, has successfully repeated an approved education program as required by the board, and has repeated and passed a competency evaluation.

(b) No nurse aide certificate holder who has had a certificate revoked may apply for recertification before a one-year waiting period after such revocation.

(6) Funding for the nurse aide certification program, as operated by the department of regulatory agencies, shall be provided by the federal medicaid and medicare programs. Medicaid funding shall be secured by the department of health care policy and financing and medicare funding shall be secured by the department of public health and environment. All such funding shall be forwarded to the department of regulatory agencies for its use in operating the nurse aide certification program. The departments of health care policy and financing and public health and environment shall take all reasonable and necessary steps to secure such funding from the federal medicaid and medicare programs.

Source: L. 89, 1st Ex. Sess.: Entire article added, p. 6, § 1, effective July 7. **L. 93:** (5) and (6) added, p. 1746, § 3, effective July 1. **L. 94:** (2) and (6) amended, pp. 2728, 2623, §§ 337, 39, effective July 1.

12-38.1-104. Application for certification - fee. (1) Every applicant for certification as a nurse aide, whether qualifying by competency evaluation or by endorsement, shall submit the application on forms provided by the board.

(2) (a) The application submitted pursuant to subsection (1) of this section shall be accompanied by an application fee established pursuant to section 24-34-105, C.R.S.

(b) The board may reduce the application fee if federal funds are available. Such fee shall not be subject to the provisions of section 24-34-104.4, C.R.S.

(3) (a) Repealed.

(b) (Deleted by amendment, L. 2003, p. 2631, § 5, effective June 5, 2003.)

Source: L. 89, 1st Ex. Sess.: Entire article added, p. 6, § 1, effective July 7. L. 95: Entire section amended, p. 1028, § 3, effective October 1. L. 2002: (3) amended, p. 959, § 3, effective July 1. L. 2003: (3) amended, p. 2631, § 5, effective June 5. L. 2005: (3)(a) repealed, p. 1021, § 5, effective August 8.

12-38.1-105. Application for certification by competency evaluation. (1) Every applicant for certification by competency evaluation shall pay the required application fee and shall submit written evidence that said applicant:

(a) Has not committed any act or omission that would be grounds for discipline or denial of certification under this article; and

(b) Has successfully completed an approved education program.

(c) Repealed.

Source: L. 89, 1st Ex. Sess.: Entire article added, p. 6, § 1, effective July 7. L. 95: Entire section amended, p. 1028, § 4, effective October 1. L. 2002: (1)(c) amended, p. 959, § 4, effective July 1. L. 2005: (1)(c) repealed, p. 1022, § 6, effective August 8.

12-38.1-106. Application for certification by endorsement. (1) Every applicant for certification by endorsement shall pay the required application fee, shall submit the information required by the board in the manner and form specified by the board, and shall submit written evidence that said applicant:

(a) Is certified to practice as a nurse aide by another state or territory of the United States with requirements that are essentially similar to the requirements for certification set out in this article and that such certification is in good standing;

(b) Has not committed any act or omission that would be grounds for discipline or denial of certification under this article;

(c) Has successfully completed an education program approved by the board or a nurse aide training program that meets the standards for such programs specified in this article and those standards set by the board; and

(d) Has no record of abuse, negligence, or misappropriation of resident's property or any disciplinary action taken or pending in any other state or territory against such certification.

(e) Repealed.

Source: L. 89, 1st Ex. Sess.: Entire article added, p. 7, § 1, effective July 7. L. 95: (1)(e) added, p. 1028, § 5, effective October 1. L. 2002: (1)(e) amended, p. 959, § 5, effective July 1. L. 2005: (1)(e) repealed, p. 1022, § 7, effective August 8.

12-38.1-107. Certification by competency evaluation. (1) All applicants except those certified by endorsement shall be required to pass a clinical competency evaluation. Such evaluation shall be in a written or oral form and shall include the following areas:

- (a) Basic nursing skills;
- (b) Personal care skills;
- (c) Recognition of mental health and social services needs;
- (d) Basic restorative services;
- (e) Resident or patient rights.

(2) Competency evaluations shall be held at such times and places as the board determines but shall be held at least four times per year.

Source: L. 89, 1st Ex. Sess.: Entire article added, p. 7, § 1, effective July 7.

12-38.1-108. Approved nurse aide training programs. (1) Except for any medical facility or program that has been explicitly disapproved by the department of public health and environment, the board may approve any nurse aide training program offered by or held in a medical facility or offered and held outside a medical facility. Such approval by the board shall be sufficient to authorize and permit the operation of such training program.

(2) The curriculum content for nurse aide training must include material which will provide a basic level of both knowledge and demonstrable skills for each individual completing the program and be presented in such a manner which will take into consideration individuals with limited literacy skills. The curriculum content must include needs of populations which may be served by an individual medical facility.

(3) The following topics shall be included in the curriculum:

- (a) Communication and interpersonal skills;
- (b) Infection control;
- (c) Safety and emergency procedures;
- (d) Promoting residents' and patients' independence;
- (e) Respecting residents' and patients' rights.

(4) The training program shall be designed to enable participants to develop and demonstrate competency in the following areas:

- (a) Basic nursing skills;
- (b) Personal care skills;
- (c) Recognition of mental health and social services needs;
- (d) Basic restorative services;
- (e) Resident or patient rights.

(5) The board or its designee shall inspect and survey each nurse aide training program it approves during the first year following such approval and every two years thereafter. Such inspection or survey may be made in conjunction with surveys of medical facilities conducted by the department of public health and environment.

(6) The board may require a nurse aide training program to include up to twenty-five percent more hours than the minimum requirements established in the federal "Omnibus Budget Reconciliation Act of 1987", as amended, Pub.L. 100-203, 101 Stat. 1330 (1987). Any additional training hours shall be within the subject areas required by federal law.

Source: L. 89, 1st Ex. Sess.: Entire article added, p. 7, § 1, effective July 7. **L. 94:** (1) and (5) amended, p. 2728, § 338, effective July 1. **L. 2009:** (6) amended, (SB 09-138), ch. 400, p. 2163, § 11, effective July 1.

12-38.1-108.5. Scope of practice - rules. (1) In addition to any nursing tasks delegated to a certified nurse aide pursuant to section 12-38-132, a certified nurse aide who is deemed competent by a registered nurse licensed pursuant to article 38 of this title may perform the following tasks:

(a) Digital stimulation, insertion of a suppository, or the use of an enema, or any other medically acceptable procedure to stimulate a bowel movement;

(b) Gastrostomy-tube and jejunostomy-tube feedings; and

(c) Placement in a client's mouth of presorted medication that has been boxed or packaged by a registered nurse, a licensed practical nurse, or a pharmacist.

(2) The board shall promulgate rules concerning the competency requirements for a certified nurse aide to perform the tasks listed in subsection (1) of this section.

(3) The duties performed by a certified nurse aide in paragraphs (a), (b), and (c) of subsection (1) of this section are not considered a delegation of nursing tasks pursuant to section 12-38-132.

(4) A registered nurse who in good faith determines that a certified nurse aide is competent to perform the tasks listed in subsection (1) of this section is not liable for the actions of the certified nurse aide in the performance of the tasks.

Source: L. 2015: Entire section added, (HB 15-1182), ch. 66, p. 182, § 1, effective August 5.

12-38.1-109. Renewal of certification. Each certificate to practice as a nurse aide shall be renewed or reinstated pursuant to a schedule established by the director of the division of professions and occupations within the department of regulatory agencies and shall be renewed or reinstated pursuant to section 24-34-102 (8), C.R.S. The director of the division of professions and occupations within the department of regulatory agencies may establish renewal fees and delinquency fees for reinstatement pursuant to section 24-34-105, C.R.S. If a person fails to renew his or her certification pursuant to the schedule established by the director of the division of professions and occupations, such certificate shall expire. Any person whose certificate has expired shall be subject to the penalties provided in this article or section 24-34-102 (8), C.R.S.

Source: L. 89, 1st Ex. Sess.: Entire article added, p. 8, § 1, effective July 7. **L. 93:** Entire section amended, p. 1746, § 4, effective July 1. **L. 2003:** Entire section amended, p. 2631, § 6, effective June 5. **L. 2004:** Entire section amended, p. 1837, § 81, effective August 4.

12-38.1-110. Advisory committee. (1) To assist in the performance of its duties under this article, the board may designate an advisory committee, which shall report to the board. Such committee shall be composed of seven members who have expertise in an area under review. One member shall be a certified nurse aide; one member shall be a licensed professional nurse or a licensed practical nurse as defined in section 12-38-103, who supervises certified nurse aides; one member shall represent a home health agency; one member shall represent a nursing facility; one member shall be a department of public health and environment employee;

and two members shall be members of the public. Committee members shall receive a per diem allowance pursuant to section 24-34-102 (13), C.R.S., for their services and shall be reimbursed for the actual and necessary expenses in the performance of their duties from the division of professions and occupations cash fund by the general assembly.

(2) (Deleted by amendment, L. 93, p. 1747, § 5, effective July 1, 1993.)

Source: L. 89, 1st Ex. Sess.: Entire article added, p. 8, § 1, effective July 7. **L. 93:** (1) and (2) amended, p. 1747, § 5, effective July 1. **L. 94:** (1) amended, p. 2728, § 339, effective July 1. **L. 2003:** (1) amended, p. 2632, § 7, effective June 5. **L. 2009:** (1) amended, (SB 09-138), ch. 400, p. 2158, § 4, effective July 1.

12-38.1-110.3. Medication administration advisory committee - created - department of regulatory agencies - report. (Repealed)

Source: L. 2002: Entire section added, p. 1287, § 2, effective June 7. **L. 2003:** (5) added, p. 2632, § 8, effective June 5. **L. 2006:** (5) repealed, p. 2000, § 44, effective July 1. **L. 2009:** Entire section repealed, (SB 09-138), ch. 400, p. 2158, § 5, effective July 1.

12-38.1-110.5. Medication aides - training - scope of duties - rules. (1) Prior to a certified nurse aide obtaining authority as a medication aide to administer medications, the certified nurse aide shall meet all applicable requirements as established by rules of the board. The board shall promulgate rules regarding the scope of practice, education, experience, and certification requirements for a nurse aide to obtain authority to administer medications. The board shall consider, but not be limited to, reducing the number of required hours of education, expanding the allowable routes of administration, reducing or eliminating the required hours of work experience, and developing different scopes of practice depending on practice setting, if appropriate.

(2) and (3) (Deleted by amendment, L. 2009, (SB 09-138), ch. 400, p. 2161, § 10, effective July 1, 2009.)

(4) The board shall promulgate rules regarding the supervision requirements for a medication aide, the requirements for a registered nurse to perform a patient assessment before a medication aide administers medications to the patient, and requirements for a registered nurse to review medications to be administered by a medication aide.

(5) The administration of medications by medication aides shall not alter any requirement or limitation applicable to the delegation of nursing tasks pursuant to section 12-38-132.

(6) (Deleted by amendment, L. 2009, (SB 09-138), ch. 400, p. 2161, § 10, effective July 1, 2009.)

Source: L. 2005: Entire section added, p. 1019, § 1, effective August 8. **L. 2009:** (1), (2), (3), and (6) amended, (SB 09-138), ch. 400, p. 2161, § 10, effective July 1.

12-38.1-111. Grounds for discipline. (1) The board may suspend, revoke, or deny any person's certification to practice as a nurse aide or authority to practice as a medication aide, or may issue to the person a letter of admonition, upon proof that the person:

(a) Has procured or attempted to procure a certificate by fraud, deceit, misrepresentation,

misleading omission, or material misstatement of fact;

(b) Has been convicted of a felony or has had a court accept a plea of guilty or nolo contendere to a felony. A certified copy of such conviction or plea from a court of competent jurisdiction shall be prima facie evidence of such conviction or plea. In considering discipline based on the grounds specified in this paragraph (b), the board shall be governed by the provisions of section 24-5-101, C.R.S.

(c) (Deleted by amendment, L. 2003, p. 2633, § 10, effective June 5, 2003.)

(d) Has had a certification to practice as a nurse aide or to practice any other health care occupation suspended or revoked in any jurisdiction. A certified copy of the order of suspension or revocation shall be prima facie evidence of such suspension or revocation.

(e) Has violated any provision of this article or has aided or knowingly permitted any person to violate any provision of this article;

(f) (Deleted by amendment, L. 2003, p. 2633, § 10, effective June 5, 2003.)

(g) Has negligently or willfully violated any order, rule, or regulation of the board pertaining to practice or certification as a nurse aide;

(h) Has verbally or physically abused a person under the care of the certified nurse aide;

(i) Has an alcohol use disorder, as defined in section 27-81-102, or a substance use disorder, as defined in section 27-82-102, or excessively uses any habit-forming drug or any controlled substance, as defined in section 18-18-102 (5), or other drugs having similar effects, or is diverting controlled substances, as defined in section 18-18-102 (5), or other drugs having similar effects from the person's place of employment;

(j) Has misused any drug or controlled substance, as defined in section 18-18-102 (5), C.R.S.;

(k) Has a physical or mental disability which renders him unable to practice as a certified nurse aide with reasonable skill and safety to the patients and which may endanger the health or safety of persons under his care;

(l) Has violated the confidentiality of information or knowledge as prescribed by law concerning any patient;

(m) Has misappropriated patient or facility property;

(n) Has engaged in any conduct that would constitute a crime as defined in title 18, C.R.S., if such conduct relates to the person's ability to practice as a nurse aide. In considering discipline based upon the grounds specified in this paragraph (n), the board shall be governed by the provisions of section 24-5-101, C.R.S.

(o) Has neglected a person under the care of the certified nurse aide;

(p) Has willfully or negligently acted in a manner inconsistent with the health or safety of persons under his or her care;

(q) Has willfully or negligently practiced as a medication aide in a manner that does not meet generally accepted standards for such practice;

(r) Has willfully or negligently violated any order or rule of the board pertaining to the practice or authorization as a medication aide;

(s) Has practiced in a medical facility as a nurse aide except as provided in this article;

(t) (Deleted by amendment, L. 2009, (SB 09-138), ch. 400, p. 2160, § 6, effective July 1, 2009.)

(u) Has practiced as a nurse aide during any period when his or her certificate has been suspended or revoked;

(v) Has sold or fraudulently obtained or furnished a certificate to practice as a nurse aide or has aided or abetted therein;

(w) Has failed to respond in a materially factual and timely manner to a complaint as grounds for discipline pursuant to section 12-38.1-114;

(x) Has failed to report a criminal conviction to the board within forty-five days after the conviction.

(2) Except as otherwise provided in subsection (1) of this section, the board need not find that the actions which form the basis for the disciplinary action were willful. However, the board, in its discretion, may consider whether such action was willful in determining the sanctions it imposes on the nurse aide.

(3) (Deleted by amendment, L. 2003, p. 2633, § 10, effective June 5, 2003.)

(4) An employer of a medication aide shall report conduct that constitutes grounds for discipline pursuant to this section to the board and any disciplinary action taken by the employer against a medication aide or the resignation of a medication aide in lieu of a disciplinary action resulting from such conduct.

Source: L. 89, 1st Ex. Sess.: Entire article added, p. 8, § 1, effective July 7. **L. 93:** (1)(m) amended and (3) added, p. 1747, § 6, effective July 1. **L. 95:** (1)(n) added, p. 1029, § 6, effective October 1. **L. 2003:** IP(1), (1)(c), (1)(f), (1)(h) to (1)(j), and (3) amended and (1)(o) added, p. 2633, § 10, effective June 5. **L. 2004:** IP(1) amended, p. 1837, § 82, effective August 4; (1)(i) amended, p. 1195, § 38, effective August 4. **L. 2005:** IP(1) amended and (1)(p), (1)(q), (1)(r), and (4) added, p. 1021, §§ 2, 3, effective August 8. **L. 2006:** (1)(s) to (1)(v) added with relocated provisions, p. 89, § 33, effective August 7. **L. 2009:** IP(1), (1)(i), and (1)(t) amended and (1)(w) and (1)(x) added, (SB 09-138), ch. 400, p. 2160, § 6, effective July 1. **L. 2012:** (1)(i) amended, (HB 12-1311), ch. 281, p. 1613, § 20, effective July 1. **L. 2017:** IP(1) and (1)(i) amended, (SB 17-242), ch. 263, p. 1276, § 63, effective May 25.

Editor's note: Subsections (1)(s), (1)(t), (1)(u), and (1)(v) are similar to former § 12-38.1-118 (1)(a), (1)(b), (1)(c), and (1)(d) as they existed prior to 2006.

Cross references: For the legislative declaration in SB 17-242, see section 1 of chapter 263, Session Laws of Colorado 2017.

12-38.1-112. Withholding or denial of certification. (1) If the board determines that an applicant for an initial certificate to practice as a nurse aide does not possess the qualifications specified in section 12-38.1-105 or 12-38.1-106, that section 12-38.1-111 (1)(n) is applicable, or that there is reasonable cause to believe that the applicant has committed any of the acts set forth in section 12-38.1-111 as grounds for discipline, it may deny the applicant a certificate. When the board denies a certificate, it shall comply with the following procedures:

(a) The provisions of section 24-4-104, C.R.S., shall apply, and the board shall provide the applicant with a written statement that sets forth the basis for the board's determination.

(b) If the applicant requests a hearing pursuant to section 24-4-104 (9), C.R.S., the following shall apply:

(I) An applicant whose certification has been denied on the basis of a lack of qualifications has the burden of proof to show that he possesses the qualifications required under this article.

(II) For an applicant whose certification has been denied on the basis of reasonable cause to believe that grounds for discipline exist, the board has the burden of proof to show the

commission of acts constituting grounds for discipline under this article.

(c) If a hearing is conducted, the board shall affirm, modify, or reverse its prior determination and action in accordance with the findings resulting from such hearing.

(d) If an applicant who has requested a hearing pursuant to section 24-4-104 (9), C.R.S., fails to appear at such hearing, absent a determination by the board that there was good cause for such failure to appear, the board may affirm its prior action of withholding certification without conducting a hearing on the matter.

(e) If the board withholds certification without a hearing in accordance with the provisions of this section, it shall be immune from suit concerning such withholding unless it has acted unreasonably or has failed to act in good faith.

Source: L. 89, 1st Ex. Sess.: Entire article added, p. 9, § 1, effective July 7. **L. 95:** IP(1) amended, p. 1029, § 7, effective October 1.

12-38.1-113. Mental and physical competency of nurse aides. (1) If a certified nurse aide is determined by a court of competent jurisdiction to have a mental health disorder, the board shall automatically suspend his or her certification, and the suspension must continue until the certified nurse aide is determined by the court to be restored to competency; duly discharged as restored to competency; or otherwise determined to be competent in any other manner provided by law.

(2) (a) If the board has reasonable cause to believe that a certified nurse aide's physical or mental health has resulted in the nurse aide being unable to practice with reasonable skill or that the practice of the nurse aide is a threat to the safety of his or her patients, the board may require the nurse aide to submit to a mental or physical examination by a physician or other licensed health care provider designated by the board.

(b) If a nurse aide fails to submit to a mental or physical examination, the board may suspend the nurse aide's certification until the required examination or examinations are conducted.

(3) Every person who applies to the board for certification as a nurse aide shall be deemed by virtue of such application to have given his consent to undergo a physical or mental examination at any time if the board so requests. Any request by the board to a nurse aide to submit to such an examination shall be in writing and shall contain the basis upon which the board determined that reasonable cause to believe the condition specified in paragraph (a) of subsection (2) of this section exists.

(4) A certified nurse aide who has been requested to submit to a physical or mental examination may provide the board with information concerning his or her physical or mental health from a physician of the nurse aide's own choice. The board may consider such information in conjunction with, but not in lieu of, testimony and information provided by the physician designated by the board to examine the nurse aide.

(5) The results of any mental or physical examination requested by the board pursuant to this section shall not be used as evidence in any proceeding except a proceeding conducted pursuant to this article. The results of such examination shall not be deemed to be public records and shall not be made available to the public.

Source: L. 89, 1st Ex. Sess.: Entire article added, p. 10, § 1, effective July 7. **L. 2009:** (2) amended, (SB 09-138), ch. 400, p. 2161, § 8, effective July 1. **L. 2017:** (1), (2)(a), and (4) amended, (SB 17-242), ch. 263, p. 1277, § 64, effective May 25.

Cross references: For the legislative declaration in SB 17-242, see section 1 of chapter 263, Session Laws of Colorado 2017.

12-38.1-114. Disciplinary proceedings - hearing officers. (1) The board, through the department of regulatory agencies, may employ hearing officers to conduct hearings as provided by this article or to conduct hearings on any matter within the board's jurisdiction, upon such conditions and terms as the board determines to be appropriate.

(2) A proceeding for discipline of a certified nurse aide may be commenced when the board has reasonable grounds to believe that a nurse aide certified by the board has committed acts which may violate the provisions of this article.

(3) The license of a person certified by the board as a nurse aide may be revoked or such person may otherwise be disciplined upon written findings by the board that the licensee has committed acts that violate the provisions of this article.

(4) Any certified nurse aide disciplined under subsection (3) of this section shall be notified by the board, by a certified letter to the most recent address provided to the board by the certified nurse aide, no later than thirty days following the date of the board's action, of the action taken, the specific charges giving rise to the action, and the certified nurse aide's right to request a hearing on the action taken.

(5) (a) Within thirty days after notification is sent by the board, the certified nurse aide may file a written request with the board for a hearing on the action taken. Upon receipt of the request the board shall grant a hearing to the certified nurse aide. If the certified nurse aide fails to file a written request for a hearing within thirty days, the action of the board shall be final on that date.

(b) (Deleted by amendment, L. 93, p. 1747, § 7, effective July 1, 1993.)

(6) The attendance of witnesses and the production of books, patient records, papers, and other pertinent documents at the hearing may be summoned by subpoenas issued by the board, which shall be served in the manner provided by the Colorado rules of civil procedure for service of subpoenas.

(7) Disciplinary proceedings shall be conducted in the manner prescribed by article 4 of title 24, C.R.S., and the hearing and opportunity for review shall be conducted pursuant to said article by the board or a hearing officer at the board's discretion.

(8) Failure of the certified aide to appear at the hearing without good cause shall be deemed a withdrawal of his or her request for a hearing, and the board's action shall be final on that date. Failure, without good cause, of the board to appear at the hearing shall be deemed cause to dismiss the proceeding.

(9) (a) No previously issued certificate to engage in practice as a nurse aide shall be revoked or suspended except under the procedure set forth in this section, except in emergency situations as provided by section 24-4-104, C.R.S.

(b) The denial of an application to renew an existing certificate shall be treated in all respects as a revocation.

(10) (a) The board or an administrative law judge shall have the power to administer oaths, take affirmations of witnesses, and issue subpoenas to compel the attendance of witnesses and the production of all relevant papers, books, records, documentary evidence, and materials in any hearing, investigation, accusation, or other matter coming before the board. The board may appoint an administrative law judge pursuant to part 10 of article 30 of title 24, C.R.S., to take evidence and to make findings and report them to the board. The person providing documents

shall prepare them from the original record and shall delete from the copy provided pursuant to the subpoena the name of the patient, but the patient shall be identified by a numbered code to be retained by the custodian of the records from which the copies were made. Upon certification of the custodian that the copies are true and complete except for the patient's name, they shall be deemed authentic, subject to the right to inspect the originals for the limited purpose of ascertaining the accuracy of the copies. No privilege of confidentiality shall exist with respect to such copies, and no liability shall lie against the board or the custodian or the custodian's authorized employee for furnishing or using such copies in accordance with this subsection (10).

(b) Upon failure of any witness to comply with such subpoena or process, the district court of the county in which the subpoenaed person or licensee resides or conducts business, upon application by the board or director with notice to the subpoenaed person or licensee, may issue to the person or licensee an order requiring that person or licensee to appear before the board or director; to produce the relevant papers, books, records, documentary evidence, or materials if so ordered; or to give evidence touching the matter under investigation or in question. Failure to obey the order of the court may be punished by the court as a contempt of court.

(10.5) When a complaint or investigation discloses an instance of conduct that does not warrant formal action by the board and, in the opinion of the board, the complaint should be dismissed, but the board has noticed indications of possible errant conduct by the certificate holder that could lead to serious consequences if not corrected, a confidential letter of concern may be issued and sent to the certificate holder.

(11) Any member of the board, any member of the board's staff, any person acting as a witness or consultant to the board, any witness testifying in a proceeding authorized under this article, and any person who lodges a complaint pursuant to this article shall be immune from liability in any civil action brought against him or her for acts occurring while acting in his or her capacity as board member, staff, consultant, or witness, respectively, if such individual was acting in good faith within the scope of his or her respective capacity, made a reasonable effort to obtain the facts of the matter as to which he or she acted, and acted in the reasonable belief that the action taken by him or her was warranted by the facts. Any person participating in good faith in the making of a complaint or report or participating in any investigative or administrative proceeding pursuant to this article shall be immune from any criminal or civil liability that otherwise might result by reason of such participation.

(12) An employer of a nurse aide shall report to the board any disciplinary action taken against the nurse aide or any resignation in lieu of a disciplinary action for conduct which constitutes a violation of this article.

(13) Except when a decision to proceed with a disciplinary action has been agreed upon by a majority of the board or its designee and notice of formal complaint is drafted and served on the licensee by first-class mail, any investigations, examinations, hearings, meetings, or any other proceedings of the board related to discipline that are conducted pursuant to the provisions of this section shall be exempt from the open records provisions of article 72 of title 24, C.R.S., requiring that the proceedings of the board be conducted publicly or that the minutes or records of the board with respect to action of the board taken pursuant to the provisions of this section be open to public inspection.

(14) (a) If it appears to the board, based upon credible evidence as presented in a written complaint by any person, that a certificate holder is acting in a manner that is an imminent threat to the health and safety of the public, or a person is acting or has acted without the required

certificate, the board may issue an order to cease and desist such activity. The order shall set forth the statutes and rules alleged to have been violated, the facts alleged to have constituted the violation, and the requirement that all unlawful acts or uncertified practices immediately cease.

(b) Within ten days after service of the order to cease and desist pursuant to paragraph (a) of this subsection (14), the respondent may request a hearing on the question of whether acts or practices in violation of this part 1 have occurred. Such hearing shall be conducted pursuant to sections 24-4-104 and 24-4-105, C.R.S.

(15) (a) If it appears to the board, based upon credible evidence as presented in a written complaint by any person, that a person has violated any other portion of this part 1, then, in addition to any specific powers granted pursuant to this part 1, the board may issue to such person an order to show cause as to why the board should not issue a final order directing such person to cease and desist from the unlawful act or uncertified practice.

(b) A person against whom an order to show cause has been issued pursuant to paragraph (a) of this subsection (15) shall be promptly notified by the board of the issuance of the order, along with a copy of the order, the factual and legal basis for the order, and the date set by the board for a hearing on the order. Such notice may be served by personal service, by first-class United States mail, postage prepaid, or as may be practicable upon any person against whom such order is issued. Personal service or mailing of an order or document pursuant to this subsection (15) shall constitute notice thereof to the person.

(c) (I) The hearing on an order to show cause shall be commenced no sooner than ten and no later than forty-five calendar days after the date of transmission or service of the notification by the board as provided in paragraph (b) of this subsection (15). The hearing may be continued by agreement of all parties based upon the complexity of the matter, number of parties to the matter, and legal issues presented in the matter, but in no event shall the hearing commence later than sixty calendar days after the date of transmission or service of the notification.

(II) If a person against whom an order to show cause has been issued pursuant to paragraph (a) of this subsection (15) does not appear at the hearing, the board may present evidence that notification was properly sent or served upon such person pursuant to paragraph (b) of this subsection (15) and such other evidence related to the matter as the board deems appropriate. The board shall issue the order within ten days after the board's determination related to reasonable attempts to notify the respondent, and the order shall become final as to that person by operation of law. Such hearing shall be conducted pursuant to sections 24-4-104 and 24-4-105, C.R.S.

(III) If the board reasonably finds that the person against whom the order to show cause was issued is acting or has acted without the required certificate, or has or is about to engage in acts or practices constituting violations of this part 1, a final cease-and-desist order may be issued, directing such person to cease and desist from further unlawful acts or uncertified practices.

(IV) The board shall provide notice, in the manner set forth in paragraph (b) of this subsection (15), of the final cease-and-desist order within ten calendar days after the hearing conducted pursuant to this paragraph (c) to each person against whom the final order has been issued. The final order issued pursuant to subparagraph (III) of this paragraph (c) shall be effective when issued and shall be a final order for purposes of judicial review.

(16) If it appears to the board, based upon credible evidence presented to the board, that a person has engaged in or is about to engage in any uncertified act or practice, any act or

practice constituting a violation of this part 1, any rule promulgated pursuant to this part 1, any order issued pursuant to this part 1, or any act or practice constituting grounds for administrative sanction pursuant to this part 1, the board may enter into a stipulation with such person.

(17) If any person fails to comply with a final cease-and-desist order or a stipulation, the board may request the attorney general or the district attorney for the judicial district in which the alleged violation exists to bring, and if so requested such attorney shall bring, suit for a temporary restraining order and for injunctive relief to prevent any further or continued violation of the final order.

(18) A person aggrieved by the final cease-and-desist order may seek judicial review of the board's determination or of the board's final order as provided in section 12-38.1-116.

Source: L. 89, 1st Ex. Sess.: Entire article added, p. 11, § 1, effective July 7. **L. 93:** (3) to (9) amended and (10) to (13) added, p. 1747, § 7, effective July 1. **L. 2003:** (3) and (13) amended, p. 2633, §§ 11, 12, effective June 5. **L. 2004:** (10) and (11) amended, p. 1837, § 83, effective August 4. **L. 2006:** (10.5) and (14) to (18) added, p. 801, § 32, effective July 1.

12-38.1-115. Surrender of certificate. (1) Prior to the initiation of an investigation or hearing, any certified nurse aide may surrender his certificate to practice as a nurse aide to the board.

(2) Following the initiation of an investigation or hearing and upon a finding that to conduct such an investigation or hearing would not be in the public interest, the board may allow a certified nurse aide to surrender his certificate to practice.

(3) The board shall not issue a certificate to a former holder of a certificate whose certificate has been denied, revoked, or surrendered unless a two-year waiting period has passed since the date of the surrender and the applicant has met the requirements of this article, has successfully repeated an approved education program, and has repeated and passed a competency evaluation.

(4) The surrender of a certificate in accordance with this section removes all rights and privileges to practice as a nurse aide, including the right to apply for renewal of a certificate.

Source: L. 89, 1st Ex. Sess.: Entire article added, p. 12, § 1, effective July 7. **L. 93:** (3) amended, p. 1750, § 8, effective July 1. **L. 2009:** (3) amended, (SB 09-138), ch. 400, p. 2163, § 13, effective July 1.

12-38.1-116. Judicial review. The court of appeals shall have initial jurisdiction to review all final actions and orders of the board that are subject to judicial review. Such proceedings shall be conducted in accordance with section 24-4-106 (11), C.R.S.

Source: L. 89, 1st Ex. Sess.: Entire article added, p. 12, § 1, effective July 7.

12-38.1-117. Exclusions. (1) This article shall not be construed to affect or apply to:
(a) The gratuitous care of friends or family members;
(b) A person for hire who does not represent himself or herself as or hold himself or herself out to the public as a certified nurse aide. However, no person for hire who is not a nurse aide certified under this article shall perform the duties of or hold himself or herself out as being able to perform the full duties of a certified nurse aide.

(c) Nursing assistance in the case of an emergency;

(d) A person who is directly employed by a medical facility while acting within the scope and course of such employment for the first four consecutive months of such person's employment at such medical facility if such person is pursuing initial certification as a nurse aide. A person may utilize this exclusion only once in any twelve-month period. This exclusion shall not apply to any person who has allowed his or her certification to lapse, had his or her certification as a nurse aide suspended or revoked, or had his or her application for such certification denied.

(e) Any person licensed, certified, or registered by the state of Colorado who is acting within the scope of such license, certificate, or registration;

(f) Any person performing services pursuant to sections 12-38-132, 25.5-10-204 (2)(j), 27-10.5-103 (2)(i), C.R.S., and part 3 of article 1.5 of title 25, C.R.S.

Source: L. 89, 1st Ex. Sess.: Entire article added, p. 12, § 1, effective July 7. **L. 93:** (1)(f) added, p. 1750, § 9, effective July 1. **L. 2003:** (1)(b) and (1)(d) amended, p. 2634, § 13, effective June 5; (1)(f) amended, p. 703, § 17, effective July 1. **L. 2009:** (1)(d) amended, (SB 09-138), ch. 400, p. 2163, § 12, effective July 1. **L. 2013:** (1)(f) amended, (HB 13-1314), ch. 323, p. 1801, § 22, effective March 1, 2014.

12-38.1-118. Unauthorized practices - penalties.

(1) Repealed.

(2) Any person who practices or offers or attempts nursing aide practice or medication administration without an active certificate of authority issued under this article; practices in a medical facility as a nurse aide except as provided in this article; uses any designation in connection with his or her name that tends to imply that he or she is a certified nurse aide unless he or she is so certified under this article; practices as a nurse aide during any period when his or her certificate has been suspended or revoked; or sells or fraudulently obtains or furnishes a certificate to practice as a nurse aide or aids or abets therein commits a class 2 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S., for the first offense, and any person committing a second or subsequent offense commits a class 6 felony and shall be punished as provided in section 18-1.3-401, C.R.S.

Source: L. 89, 1st Ex. Sess.: Entire article added, p. 13, § 1, effective July 7. **L. 93:** (2) amended, p. 1750, § 10, effective July 1. **L. 2002:** (2) amended, p. 1480, § 81, effective October 1. **L. 2006:** (1) repealed and (2) amended, p. 89, §§ 35, 34, effective August 7. **L. 2009:** (2) amended, (SB 09-138), ch. 400, p. 2160, § 7, effective July 1.

Editor's note: Subsections (1)(a), (1)(b), (1)(c), and (1)(d) were relocated to § 12-38.1-111 (1)(s), (1)(t), (1)(u), and (1)(v) in 2006.

Cross references: For the legislative declaration contained in the 2002 act amending subsection (2), see section 1 of chapter 318, Session Laws of Colorado 2002.

12-38.1-119. Injunctive proceedings. The board may apply for injunctive relief through the attorney general in any court of competent jurisdiction to enjoin any person who does not possess a current valid certificate as a nurse aide issued under the provisions of this article from

committing any act declared to be unlawful under or prohibited by this article. Such injunctive proceedings shall be in addition to and not in lieu of all penalties and other remedies provided for in this article.

Source: L. 89, 1st Ex. Sess.: Entire article added, p. 13, § 1, effective July 7.

12-38.1-120. Repeal of article. This article is repealed, effective September 1, 2020. Prior to such repeal, the certification functions of the state board of nursing shall be reviewed as provided for in section 24-34-104, C.R.S.

Source: L. 89, 1st Ex. Sess.: Entire article added, p. 13, § 1, effective July 7. **L. 91:** Entire section amended, p. 683, § 28, effective April 20. **L. 93:** Entire section amended, p. 1751, § 11, effective July 1. **L. 2003:** Entire section amended, p. 2630, § 1, effective June 5. **L. 2004:** Entire section amended, p. 348, § 10, effective July 1. **L. 2009:** Entire section amended, (SB 09-138), ch. 400, p. 2157, § 1, effective July 1.

PART 2

DIRECT CARE PROVIDER CAREER PATH PILOT PROGRAM

12-38.1-201 to 12-38.1-208. (Repealed)

Editor's note: (1) This part 2 was added in 2002. For amendments to this part 2 prior to its repeal in 2008, consult the 2007 Colorado Revised Statutes and the Colorado statutory research explanatory note beginning on page vii in the front of this volume.

(2) Section 12-38.1-208 provided for the repeal of this part 2, effective July 1, 2008. (See L. 2002, p. 958.)