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Citation

4.38 Nurse Aide Training and Competency Evaluation  
for Nursing Facilities

42 CFR 483.75;  
42 CFR 483 Subpart D;  
Secs. 1902(a)(28),  
1919(e)(1) and (2),  
and 1919(f)(2),  
P.L. 100-203 (Sec.  
4211(a)(3)); P.L.  
101-239 (Secs.  
6901(b)(3) and  
(4)); P.L. 101-508  
(Sec. 4801(a)).

- (a) The State assures that the requirements of 42 CFR 483.150(a), which relate to individuals deemed to meet the nurse aide training and competency evaluation requirements, are met.
- (b) The State waives the competency evaluation requirements for individuals who meet the requirements of 42 CFR 483.150(b)(1).
- (c) The State deems individuals who meet the requirements of 42 CFR 483.150(b)(2) to have met the nurse aide training and competency evaluation requirements.
- (d) The State specifies any nurse aide training and competency evaluation programs it approves as meeting the requirements of 42 CFR 483.152 and competency evaluation programs it approves as meeting the requirements of 42 CFR 483.154.
- (e) The State offers a nurse aide training and competency evaluation program that meets the requirements of 42 CFR 483.152.
- (f) The State offers a nurse aide competency evaluation program that meets the requirements of 42 CFR 483.154

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42 CFR 483.75; 42 CFR 483 Subpart D; Secs. 1902(a)(28), 1919(e)(1) and (2), and 1919(f)(2), P.L. 100-203 (Sec. 4211(a)(3)); P.L. 101-239-(Secs. 6901(b)(3) and (4)); P.L. 101-508 (Sec. 4801(a)).

- (g) If the State does not choose to offer a nurse aide training and competency evaluation program or nurse aide competency evaluation program, the State reviews all nurse aide training and competency evaluation programs and competency evaluation programs upon request.
- (h) The State survey agency determines, during the course of all surveys, whether the requirements of 483.75(e) are met.
- (i) Before approving a nurse aide training and competency evaluation program, the State determines whether the requirements of 42 CFR 483.152 are met.
- (j) Before approving a nurse aide competency evaluation program, the State determines whether the requirements of 42 CFR 483.154 are met.
- (k) For program reviews other than the initial review, the State visits the entity providing the program.
- (l) The State does not approve a nurse aide training and competency evaluation program or competency evaluation program offered by or in certain facilities as described in 42 CFR 483.151(b)(2) and (3).

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42 CFR 483.75; 42 CFR 483 Subpart D; Secs. 1902(a)(28), 1919(e)(1) and (2), and 1919(f)(2), P.L. 100-203 (Sec. 4211(a)(3)); P.L. 101-239 (Secs. 6901(b)(3) and (4)); P.L. 101-508 (Sec. 4801(a)).

- (m) The State, within 90 days of receiving a request for approval of a nurse aide training and competency evaluation program or competency evaluation program, either advises the requestor whether or not the program has been approved or requests additional information from the requestor.
- (n) The State does not grant approval of a nurse aide training and competency evaluation program for a period longer than 2 years.
- (o) The State reviews programs when notified of substantive changes (e.g., extensive curriculum modification).
- (p) The State withdraws approval from nurse aide training and competency evaluation programs and competency evaluation programs when the program is described in 42 CFR 483.151(b)(2) or (3).
- (q) The State withdraws approval of nurse aide training and competency evaluation programs that cease to meet the requirements of 42 CFR 483.152 and competency evaluation programs that cease to meet the requirements of 42 CFR 483.154.
- (r) The State withdraws approval of nurse aide training and competency evaluation programs and competency evaluation programs that do not permit unannounced visits by the State.

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- (s) When the State withdraws approval from a nurse aide training and competency evaluation program or competency evaluation program, the State notifies the program in writing, indicating the reasons for withdrawal of approval.
- (t) The State permits students who have started a training and competency evaluation program from which approval is withdrawn to finish the program.
- (u) The State provides for the reimbursement of costs incurred in completing a nurse aide training and competency evaluation program or competency evaluation program for nurse aides who become employed by or who obtain an offer of employment from a facility within 12 months of completing such program.
- (v) The State provides advance notice that a record of successful completion of competency evaluation will be included in the State's nurse aide registry.
- (w) Competency evaluation programs are administered by the State or by a State-approved entity which is neither a skilled nursing facility participating in Medicare nor a nursing facility participating in Medicaid.
- (x) The State permits proctoring of the competency evaluation in accordance with 42 CFR 483.154(d).
- (y) The State has a standard for successful completion of competency evaluation programs.

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P.L. 105-15  
(Sec. 4132.2(e))

- (z) The State includes a record of successful completion of a competency evaluation within 30 days of the date an individual is found competent.
- (aa) The State imposes a maximum upon the number of times an individual may take a competency evaluation program (any maximum imposed is not less than 3).
- (bb) The State maintains a nurse aide Registry that meets the requirements in 42 CFR 483.156.
- (cc) The State includes home health aides on the registry.
- (dd) The State contracts the operation of the registry to a non-State entity.
- (ee) ATTACHMENT 4.38 contains the State's description of registry information to be disclosed in addition to that required in 42 CFR 483.156(c)(1)(iii) and (iv).
- (ff) ATTACHMENT 4.38-A contains the State's description of information included on the registry in addition to the information required by 42 CFR 483.156(c).
- (gg) The State waives the prohibition of nurse aide training and competency evaluation program offered in (but not by) certain nursing homes if the State determines the facility meets specified exception criteria.

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- (hh) The State:
- (1) assures there is no other such program offered within a reasonable distance of the facility;
    - a. the facility must make a diligent effort to locate other approved NATCEPs within a reasonable distance (1/2 hour travel time each way from the facility) unless the facility can demonstrate distance or program availability would create a hardship for program participants.
    - b. the facility must provide evidence that classes are not currently being offered at an approved site within a reasonable distance.
    - c. the facility must provide evidence that classes are not currently being offered within a reasonable distance during time frames to meet student and facility needs.
  - (2) assures, through an oversight effort, an adequate environment exists for operating the program in the facility; and
    - a. the facility must be in substantial compliance with the Federal requirements for participation in §483.13 Resident Behavior and Facility Practices, §483.15 Quality of Life, §483.25 Quality of Care, and §483.75(f) Proficiency of Nurse Aides.
 

"Substantial compliance" means compliance with the federal requirements of participation as set forth in 42 CFR §§483.13, 483.15, 483.25 and 483.75(f).
    - b. the facility must not be determined to be a poor performing facility.
 

A "poor performing facility" is a facility cited for substandard quality of care on the current standard survey and for substandard quality of care or immediate jeopardy on at least one of the previous two standard surveys. See, Survey and Certification Regional Letter No. 97-02.

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- c. employees of the facility cannot function as instructors for the program. If the approved NATCEP is experiencing difficulty in finding qualified instructors, the state may, in limited hardship situations, allow the NATCEP to use facility employees to serve as instructors if they meet the qualifications for instructors and the individual is paid and supervised by the NATCEP.
- d. the sponsoring NATCEP must describe the evaluation process used to determine an adequate teaching/learning environment exists for conducting the course (i.e., adequacy of classroom, availability of equipment and oversight of the entire course). The NATCEP is responsible for program administration and assuring program requirements are met.
- e. The facility must notify students and the instructor of their right to register any concerns with the state agency at any time during the course and be given information on how to contact the state agency. The state agency may make unannounced visits to any courses offered to determine compliance with the criteria for the waiver or to investigate complaints.
- e. The facility and NATCEP instructor/coordinator must have policies for communicating and resolving problems encountered during the course.
- g. At the end of the course, the NATCEP instructor/coordinator and all of the students are required to submit an evaluation of the course. The state agency will review and evaluate course evaluations for determination of future waivers.

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- (3) provides notice of such determination and assurances to the state long term care ombudsman.
  - a. The state agency will notify the ombudsman by state agency letter of all facilities granted waivers and oversight efforts to assure compliance with the law.
  - b. Assurances to the state long term care ombudsman will include:
    - The state agency requires the NATCEP to submit the evaluation process used to determine an adequate teaching/learning environment exists for conducting the course and assuring program requirements are met.
    - The state agency requires the NATCEP to submit the policies developed for communicating and resolving problems encountered during the course.
    - The state agency has the right to make unannounced visits to any courses offered in a facility under waiver. Students or the instructor have the right to register any concerns with the state agency at any time during the program and must be given information on how to contact the agency.

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