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Re: Agenda Topics for 10/28/21 Video Call with Nursing Home Division

- **Temporary Nurse Aides Should Meet All Regulatory Requirements Before Being Accepted as Certified Nurse Aides**
- **CMS Should End Waiver of Nurse Aide Certification Requirements**

Dear Dr. Fleisher and Mr. Shulman:

Nursing facility residents depend on the quality and professionalism of nurse aides. In addition, the nurse aides themselves — who are largely low-income women of color — benefit from meaningful professional standards.

Given the complicated care needs of nursing facility residents, nurse aide training and certification requirements should be reinstated as soon as possible. In addition, those requirements should be applied in full, without any misguided exemptions for persons who have worked as temporary nurse aides during the COVID emergency. A proper reward for temporary nurse aides might be increased pay or sick leave — but reducing training standards is counterproductive for both aides and residents.

We have discussed these issues with CMS multiple times, as shown by previous letters dated February 25 and May 11, 2021. The February 25 letter was entitled “Need to Immediately Reinstate Nurse Aide Training Standards, and Require Compliance By the ‘Temporary Nurse Aides’ Who Have Worked Under the Emergency Waiver.” Eight months later, action on these two issues has become even more important, as well as overdue. As schools conduct in-person

classes, restaurants offer on-site dining, and sporting events bring together tens of thousands of spectators, there is no practical reason why nurse aides (and their nursing facilities) cannot, likewise, be expected to comply with all federal certification requirements.

On April 8, CMS issued guidance that addressed in part the resumption of training and certification standards for certified nurse aides (CNAs).¹ The guidance was helpful to the extent that it reaffirmed CNA certification requirements. The guidance, however, watered down the certification requirements by “recommend[ing] that states evaluate their NATCEP [training and evaluation programs] and consider allowing some of the time worked by the nurse aides during the PHE [emergency period] to count towards the 75-hour training requirement.”

As documented below, many states have taken the hint from CMS and, in response, have hollowed out their nurse aide certification requirements for persons currently working as temporary nurse aides. This is counterproductive and dangerous, for both residents and aides. Particularly after the ongoing COVID catastrophe, all stakeholders agree that nurse aide positions should be professionalized. But, by reducing certification standards, CMS and many states are taking the opposite tack.

CMS and the states do aides and residents a disservice by lowering certification standards. CMS should step in immediately to require non-compliant states to maintain federal certification standards for persons transitioning from temporary-nurse-aide status. Also, CMS should end the use of temporary nurse aides, by immediately reinstating nurse aide certification requirements.

1. Under Federal Regulations, Nurse Aide Certification Requires At Least 75 Hours of Training During First Four Months of Employment, Plus Passing Competency Evaluations.

In nursing facilities, nurse aides provide most of the direct care. As a result, quality of care depends heavily upon nurse aides receiving comprehensive, professional training.

Under federal regulations, nurse aide training and competency evaluation programs must be approved by the state. Training is performed by or under the general supervision of a registered nurse with at least two years of experience. Instructors must be educated in teaching adults, or have experience in teaching adults or supervising nurse aides.²

Nurse aides must receive 75 hours of training by no later than four months after they begin work, including at least 16 hours of hands-on training supervised by a nurse.³ Of the 75 total hours, at least 16 hours must be provided before the aide has any direct contact with residents; this initial training must include communication and interpersonal skills, infection control, safety/emergency procedures (including the Heimlich maneuver), promoting residents'

¹ CMS, Updates to Long-Term Care (LTC) Emergency Regulatory Waivers Issued in Response to COVID-19, QSO-21-17-NH, at 3-4 (April 8, 2021).

² 42 C.F.R. § 483.152(a).

³ 42 U.S.C. §§ 1395i-3(b)(5)(A)(i)(I), 1396r(b)(5)(A)(i)(I); 42 C.F.R. §§ 483.35(d)(1)(ii)(A), 483.152(a).

independence, and respecting residents' rights. Subsequent training (the remaining 59 or more hours) must include basic nursing skills, personal care skills, mental health and social service needs, care of cognitively impaired residents, basic restorative services, and residents' rights. For these topics, the regulations specify that the training must address 36 separate sub-topics.⁴

In addition, nurse aide certification requires satisfactory performance on a competency evaluation and a skills demonstration. The competency evaluation must be performed by either the state directly, or by a state-approved entity (that must not be a nursing facility).⁵

This level of training is vital, although widely regarded as insufficient to meet all resident needs. The HHS Office of Inspector General concluded nearly 20 years ago that the federal standards were inadequate to address the increasing needs of nursing facility residents.⁶ In accord, in 2008 the Institute of Medicine recommended that mandatory minimum training be increased to 120 hours.⁷ Indeed, some states require significantly more training than is required by federal law: for example, California requires that nurse aides complete 160 hours of training.⁸

2. Nurse Aide Certification Requirements Have Been Waived Since March 2020.

Under the current COVID waiver, however, a person can work as a temporary nurse aide without any specified training. CMS requires only that the person be competent to provide nursing and nursing-related services and (in a related requirement) be able to demonstrate competence in skills and techniques necessary to care for residents' needs.⁹ As a practical matter, many persons have begun working as nurse aides after receiving no more training than the eight-hour on-line course created by the American Health Care Association.¹⁰ Some may have received even less training.

Furthermore, the current waiver also has eliminated federal law's competency evaluation standards, instead permitting each facility to make an ad hoc decision as to whether an aide is competent.

Thus, particularly given the chaos of the past year, temporary nurse aides (TNAs) likely possess little of the knowledge and skills required of certified nurse aides. On-the-job training is tenuous in the best of circumstances, and the pandemic presents the worst of circumstances. Notably, CMS evidently has no data regarding the use of TNAs, since CMS is allowing facilities to report

⁴ 42 C.F.R. § 483.152(a), (b).

⁵ 42 C.F.R. § 483.154.

⁶ HHS Office of Inspector General, [Nurse Aide Training](#), OEI-05-01-00030 (Nov. 2002).

⁷ Institute of Medicine Committee on the Future Health Care Workforce for Older Americans, *Retooling for an Aging America: Building the Health Care Workforce*, ch. 5 (The Direct-Care Workforce), Recommendation 5-1 (2008).

⁸ Cal. Health & Safety Code § 1337.1(b).

⁹ CMS, [COVID-19 Emergency Declaration Blanket Waivers for Health Care Providers](#), Training and Certification of Nurse Aides.

¹⁰ AHCA, [Temporary Nurse Aide Course](#).

TNAs as CNAs in their reporting to the public of staffing levels.¹¹ In addition to undermining CMS's ability to properly track and evaluate the use of TNAs, this policy results in residents and families being kept in the dark – now for an extended period of time – on the qualifications of those who provide essential care.

3. For Nurse Aide Certification, CMS Must Require Temporary Nurse Aides to Complete Training and Competency Evaluation Requirements.

As outlined above, federal regulations set detailed requirements for nurse aide training and competency evaluation programs. Notably, these regulations are built upon the detailed statutory requirements of the Nursing Home Reform Law and cannot be changed without undergoing a new rulemaking process. Under the Reform Law, states must approve individual training and competency evaluation programs,¹² which must include at least 75 hours of training within the first four months of employment.¹³ Facilities are prohibited from operating a training program if they operate under a nurse staffing waiver, have an extended or partial extended survey, or have been assessed a civil money penalty of at least \$5,000 (since increased to reflect the cost of living).¹⁴ A state can waive such a prohibition only if there is no other training program “within a reasonable distance from the facility” and certain other conditions are met.¹⁵ In addition, CMS can waive the prohibition if the money penalty “was not related to the quality of care provided to residents.”¹⁶

In short, the training and competency evaluation standards are detailed and clear. And once the emergency period has ended, the Reform Law and the federal regulations requires that nurse aides meet certification standards. Otherwise, if those standards are not followed, the pandemic will lead to the doubly perverse result of lowering facility quality of care for months and years to come.

Emergency authority only gives CMS authority to alter legal standards through administrative guidance during the emergency. After the emergency, that authority for good reason evaporates, and CMS can alter regulatory standards only by formally amending the relevant regulations.

4. States Are Violating Federal Law by Reducing Certification Requirements for Persons Who Have Worked as Temporary Nurse Aides.

Multiple states currently are granting permanent certification to nurse aides who have not come close to meeting statutory and regulatory requirements.¹⁷ In general, the training requirements

¹¹ See 42 C.F.R. § 483.70(q) (submission of staffing information through payroll based journal).

¹² 42 U.S.C. §§ 1395i-3(e)(1), 1396r(e)(1).

¹³ 42 U.S.C. §§ 1395i-3(b)(5)(A)(i)(I), (f)(2)(A)(i), 1396r(b)(5)(A)(i)(I), (f)(2)(A)(i).

¹⁴ 42 U.S.C. §§ 1395i-3(f)(2)(B)(i)-(iii), 1396r(f)(2)(B)(i)-(iii).

¹⁵ 42 U.S.C. §§ 1395i-3(f)(2)(C), 1396r(f)(2)(C).

¹⁶ 42 U.S.C. §§ 1395i-3(f)(2)(D), 1396r(f)(2)(D).

¹⁷ See Center for Medicare Advocacy, [Who Provides Care for Nursing Home Residents? An Update on Temporary Nurse Aides](#) (Sept. 15, 2021).

are hollowed out, and the applicant is given multiple opportunities to pass certification examinations. **Virginia**, for example, allows a temporary nurse aide to take the competency examination as long as the applicant has worked as a temporary nurse aide and has been given a competency verification from the employer nursing facility. The temporary nurse aide is given three opportunities to receive a passing score.¹⁸ Similarly, **Pennsylvania** allows certification if a person has worked as a temporary nurse aide for a mere 80 hours, and the temporary nurse aide either successfully completes the state nurse aide examination, is certified by the “site administrator” as part of an approved apprenticeship program, or is assessed by the facility as competent in all areas of required nurse aide training.¹⁹

Tennessee likewise has policies that rush temporary nurse aides into certification. Under emergency rules, a temporary nurse aide is deemed certified if the aide 1) has worked at least 200 hundred hours in a nursing facility, 2) “passed a written or oral test, which can be the initial online test the TNA took to become a TNA (i.e., part of the 8-hour AHCA TNA Training Program);” and 3) established supposed competency in all aspects of nurse aide training, based on an assessment performed by the nursing facility. Compliance is not documented by a neutral party, but through attestations submitted by the temporary nurse aide and the facility.²⁰

New Jersey defers to federal standards to a certain extent but, because CMS has largely deferred to the states, the result is that a temporary nurse aide can become permanently certified with little or no additional training. Under state law, the temporary nurse aide is required only to 1) complete the “temporary” training required during the COVID emergency “and, if so required by the CMS, such additional training as may be required to satisfy the requirements of 42 C.F.R. § 483.152 or any other provision of federal law or regulation,” 2) work at least 80 hours, with attestation of competency from the facility’s director of nursing, 3) qualify under criminal background check requirements, and 4) pass the nurse aide written examination in no more than three attempts.²¹

North Carolina also allows work to substitute for training, with little or no effort to ensure that a temporary nurse aide has been trained in federally-required subject matters. The state established “a new temporary pathway available for individuals who worked in nursing homes during the COVID-19 pandemic as temporary nurse aides to be listed on the Nurse Aide I Registry.”²² Under this pathway, “[e]ligible nursing home staff may use their on-the-job training and experience as an equivalency to the traditional classroom training and take the Nurse Aide I competency examination and be listed on the registry after successfully completing it.”²³

¹⁸ [Va. House Bill H7001\(1\)\(G\)](#); Va. Dep’t of Health Professions, Board of Nursing, [Temporary Nurse Aides to Certified Nurse Aides \(“TNA2CNA”\)](#).

¹⁹ [Pa. Act of Nov. 25, 2020](#), P.L. 1301, No. 138 (called the Nurse Aide Resident Abuse Prevention Training Act – Certification of COVID-19 Temporary Nurse Aides) (approved 11/25/20).

²⁰ Tenn. Dep’t of Health, [Temporary Nurse Aide Bridge Program](#).

²¹ [N.J. Assembly Bill 5353](#) (enrolled 6/3/21).

²² N.C. Dep’t of Health and Human Services, [NCDHHS Creates Pathway for Temporary Nursing Home Staff to Receive Higher Credentialing](#) (April 29, 2021).

²³ *Id.*

Likewise, **Oklahoma** allows temporary nurse aides to count work hours as training hours, with little or no assurance that the required training topics were covered. A state memorandum explains that emergency waiver “does not exempt the minimum 75 hours of training, but does allow consideration of time worked by the nurse aide to count towards the 75-hour training requirement.”²⁴ Temporary nurse aides must apply no later than 120 days after the emergency period ends, submit a training exceptions request, and take the competency examination. An applicant must submit a Skills Performance Checklist, Affirmation of 16 Hours of Training, and 10 hours of Alzheimer’s disease training.²⁵ The training affirmation is a one-page document, signed by the applicant, that lists the facility, and the asserted start date and completion date of training.²⁶

Louisiana has established similar requirements. A temporary nurse aide is eligible to take the certification examination if they have had at least eight hours of temporary nurse aide training, at least 16 hours of “skills competency verification,” and at least 60 hours of “on the job training/work.”²⁷ The applicant is given up to three attempts to pass the examination. In **New York**, likewise, a temporary nurse aide is given an automatic credit of 35 training hours, if the aide has even minimal work experience as a nurse aide (either 30 days or 150 hours).²⁸

5. Some States Are Appropriately Requiring Temporary Nurse Aides to Comply with Certification Requirements to Work After the Emergency Ends.

Importantly, **nothing prevents states from doing the right thing** — requiring that temporary nurse aides complete nurse aide training in order to become certified. **Wisconsin**, for example, clearly explains that waivers are unnecessary and counterproductive once the emergency ends:

Temporary nurse aides are not certified nurse aides. Temporary aides will need to cease working in their roles as nurse aides immediately upon termination of the 1135 federal waivers and federal Public Health Emergency (PHE) and will not have a path to test and get on the nurse aide registry.²⁹

In **Illinois**, similarly, temporary nurse aide positions are “only authorized for the duration of the Governor’s COVID Disaster Proclamation, after which time facilities are required to transition to certified staff only (Certified Nursing Assistants).”³⁰ Accordingly, temporary nurse aides in Illinois “are not eligible to take the Certified Nursing Assistant competency exam and will not be employed as an aide after the pandemic emergency.”³¹ According to the Illinois Health Care

²⁴ Okla. State Dep’t of Health, [Memorandum to All Long Term Care Facilities Re: Nursing Aide Waiver](#) (Aug. 24, 2021).

²⁵ Okla. State Dep’t of Health, [Nurse Aide Emergency Rule Training Exception Application](#).

²⁶ Okla. State Dep’t of Health, [Nurse Aide Training Exemption Application](#).

²⁷ Louisiana Dep’t of Health, [Transition from Temporary Nurse Aide \(TNA\) to Certified Nurse Aide \(CNA\)](#).

²⁸ N.Y. Dep’t of Health, [Memorandum to Nursing Home Administrators Re: DAL NH-21-18 Temporary Nurse Aide to Certified Nurse Aide](#) (Aug. 23, 2021).

²⁹ Wis. Dep’t of Health Services, [COVID-19: Nurse Aide](#).

³⁰ Illinois Dep’t of Public Health, [Temporary Nursing Assistant \(TNA\) Training Program](#).

³¹ *Id.*

Association, the temporary nurse aide program expired on January 18, 2021, with all temporary aides being required to register for CNA training programs within 45 days.³²

Other states have similar procedures. A “Bridge Project” in Mississippi gives temporary nurse aides justifiable credit for the initial 8-hour on-line course and for 16 clinical hours. The temporary nurse aide is responsible for completing additional classroom hours prior to taking the competency examinations.³³ Likewise, once the emergency period ends, Georgia will allow temporary nurse aides some additional time to complete the required training for nurse aide certification.³⁴ In Connecticut, a temporary nurse aide is allowed 120 days to complete 100 hours of training, and then to take a certification examination.³⁵

6. Certification Training Can Be Provided Now.

As set forth immediately above, some states already are requiring nurse aides to comply with certification requirements. Furthermore, community colleges and various other entities currently offer nurse aide certification training, as shown in a listing provided as an attachment to this letter. And many nursing facilities also would be able to provide nurse aide training, once the waiver ends.

Schools at every level, in every state, are offering in-person classes. Why should nursing aide certification be an exception? There is no reason why certification classes also could be offered now to all persons seeking to work as nurse aides, including but not limited to those persons who have worked as temporary nurse aides during the pandemic.

³² Illinois Health Care Ass’n, [Temporary Nursing Assistant Program](#).

³³ Miss. State Dep’t of Health, [Memorandum to Participants in the Temporary Nurse Aide Waiver Program](#) (Dec. 8, 2020).

³⁴ Ga. Dep’t of Community Health, [COVID-19 Temporary Nurse Aide Training Program](#).

³⁵ Conn. Dep’t of Pub. Health, Blast Fax 2021-20 Re: Temporary Nurse Aide Bridge to Certified Nurse Aide Program (July 14, 2021).

7. Conclusion.

Federal certification standards have been waived since March 2020. Furthermore, starting in late 2020, states have reduced certification standards below what federal law requires, for those persons seeking to move from temporary status to full certification.

We have raised these issues since February 2021. Yet, in late October 2021, the federal certification standards remain waived, and the CMS has taken no action against those states that have reduced certification standards.

Residents and nurse aides deserve the immediate restoration of certification standards. Some states require full certification now, and there is no reason why other states should not be expected to follow suit.

Sincerely,

Center for Medicare Advocacy
Long Term Care Community Coalition
Justice in Aging
Michigan Elder Justice Initiative
National Consumer Voice for Quality Long-Term Care

cc: Chiquita Brooks-LaSure, Administrator
Jonathan Blum, Principal Deputy Administrator
Will Harris, Senior Advisor, Office of the Administrator
David Wright, Director, Quality and Safety Oversight Group

Examples of Certified Nurse Aide Training in States: October 2021

1. California
 - Bellevue Career College of Nursing. 160 hours of training including 100 hours of clinical training; <https://www.bellevuecareercollege.com/classes-2>
 - Sierra Community College. – 160 hours of training including 100 hours of clinical training; <https://catalog.sierracollege.edu/departments/nursing-assistant/>
2. Idaho
 - College of Western Idaho. 120 hours of training including 32 hours of clinical training; <https://cwi.edu/program/certified-nursing-assistant-cna-preparation-classes#overview>
3. Illinois
 - Bloomington – Western Polytechnic Institute LLC. 120 hours of training including 40 hours of clinical training; <http://www.wpihealth.com/healthcare-training-programs>
 - Illinois Central College. 132 hours of training including 12 hours of Alzheimer’s Class and 50 hours of clinical training; <https://icc.edu/academics/catalog/academic-departments/health-careers/nursing-assistant/> (see link on page to Nursing Assistant Student Handbook)
4. Iowa
 - Iowa Western Community College. 79 hours of training including 15 hours of lab work and 30 hours of clinical training; “79 Hour Course is offered monthly in a variety of locations and taught by Registered Nurses;” <https://www.iwcc.edu/ce/health/cna-programs/>
 - Des Moines Area Community College. 75 hours of training including 30 hours of clinical training; <https://www.dmac.edu/programs/health/cna/Pages/nurse-aide.aspx>
5. Kansas
 - Allied Health Career Training. 90 hours of training including 25 hours of clinical training; <https://alliedhealthcareertraining.com/kscna>
6. Massachusetts
 - MassBay Community College. 120 hours of training including 80 hours of lecture/lab and 40 hours of clinical training; <https://www.massbay.edu/cce/nursing-assistant>
 - Middlesex Community College – 100 hours of training including 24 hours of clinical training; <https://www.middlesex.mass.edu/careertraining/nahhc.aspx>

7. Michigan

- Michigan Healthcare Academy. 90 hours of training including lecture/theory, laboratory, and clinical training; <https://mihealthcareacademy.com/courses/certified-nurse-assistant-nat-101/>
- Goodwill Industries of Greater Grand Rapids. 115 hours of training including 30 hours of clinical training; <https://www.goodwillgr.org/cna/>

8. Mississippi

- Pearl River Community College. 96 hours of training including 16 hours of clinical training; <http://www.prcc.edu/files/woodall-center/CNA-Application.pdf>

9. Montana

- University of Montana – Bitterroot College. 102 hours of training including 28 hours of clinical training; <https://www.umt.edu/bitterroot-college/offer/health/pg-cna.php>

10. Nevada

- University of Nevada Las Vegas. 96 hours of training including 24 hours of theory, laboratory, and clinical training; https://continuingeducation.unlv.edu/sites/default/files/2021-10/CNACatalog_UNLV_10072021.pdf
- Saint Therese Learning Institute. 125 hours of training including 40 hours of skills lab and 21 hours of clinical training; <https://saintthereselearning.com/programs-offered/>

11. New Mexico

- New Mexico Junior College. 125 hours of training including 80 hours of lab/clinical training; <https://www.nmjc.edu/program/nursing/cna.aspx>
- San Juan College. 135 hours of training including 90 hours of lab/clinical training; <https://www.sanjuancollege.edu/health-science/nursing/nurse-aid-certification/>

12. North Carolina

- American Academy of Healthcare. 119 hours of training including 32 hours of clinical training; <http://americanacademyofhealthcare.com/faqs>
- Alamance Community College. 160 hours of training; <https://www.alamancecc.edu/nursing-assistant-department/>

13. Ohio

- RN and Associates, LLC. 75 hours of training including 16 hours of clinical training; <http://www.rnassociates.org/STNA-Training.html>
- Ohio Medical Career College; 75 hours of training including 16 hours of clinical training; <http://ohiomcc.com/prostna.html>

14. Oregon

- Avalon Health Care. 172 hours of training including 84 hours of clinical training. For limited time, free tuition for accepted applicants;
<https://www.avalonhealthcare.com/na/>
- Chemeketa Community College. 155 hours of training including 75 hours of clinical training; <https://www.chemeketa.edu/programs-classes/program-finder/nursing/basic-nursing-assistant/>

15. Pennsylvania

- Harrisburg Area Community College. 120 hours of training including 32.75 hours of lab and 38.5 hours of clinical training;
<https://www.hacc.edu/ProgramsandCourses/Programs/HealthCareers/Nurse-Aide.cfm>

16. Tennessee

- Nashville General Hospital School of Health Sciences. 96 hours of training including 36 hours of clinical training;
<https://www.nghschoolofhealthsciences.com/academics-certified-nursing-assistant>

17. Texas

- Houston - Dotson Healthcare Institute. 100 hours of training including 40 hours of clinical training; <https://www.dotsonhealthcareinstitute.org/basic-01>

18. Wisconsin

- Southwest Wisconsin Technical College. 120 hours including 16 hours of lab work and 60 hours of clinical training;
<https://www.swtc.edu/academics/programs/health-occupations/nursing-assistant#outcomes> (hourly requirements explained in video on website)