

OKLAHOMA STATE SENATE
CONFERENCE
COMMITTEE REPORT

May 18, 2022

Mr. President:

Mr. Speaker:

The Conference Committee, to which was referred

SB1436

By: Garvin of the Senate and Wallace and Randleman of the House

Title: Long-term care; modifying certain restrictions on employment of nurse aide; stating requirements for employer-based training and competency evaluation program; modifying authority of certified medication aide. Effective date.

together with Engrossed House Amendments thereto, beg leave to report that we have had the same under consideration and herewith return the same with the following recommendations:

1. That the House recede from all Amendments.
2. That the attached Conference Committee Substitute be adopted.

Respectfully submitted,

SENATE CONFEREES:



Garvin



Haste

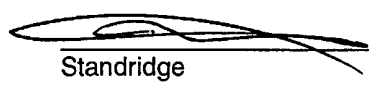


Hicks

Pugh



Fosino



Standridge

Young

HOUSE CONFEREES:

Conference Committee on Health Services and Long-Term Care

STATE OF OKLAHOMA

2nd Session of the 58th Legislature (2022)

CONFERENCE COMMITTEE SUBSTITUTE
FOR ENGROSSED

SENATE BILL NO. 1436

By: Garvin of the Senate

and

McEntire of the House

CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to long-term care; amending 63 O.S. 2021, Section 1-1950.1, which relates to criminal history background check for nurse aide; modifying time period of certain requirement; modifying certain restrictions on employment; creating certain exemption from additional background check; amending 63 O.S. 2021, Section 1-1950.3, which relates to nurse aides; adding exception to certain employment prohibition; broadening applicability of certain requirements; modifying requirement for direct contact with residents; specifying certain supervision requirements; allowing certified nurse aide to begin certain training immediately upon certification; authorizing certified medication aide to administer oxygen under specified condition; directing promulgation of certain rules; amending 63 O.S. 2021, Section 1-1951, which relates to certification, training, and registration of nurse aide; stipulating period of approval for training and competency programs; requiring, permitting, and prohibiting withdrawal of training program under specified conditions; providing for reapplication of withdrawn program; directing State Department of Health to administer competency examinations to certain nurse aides; authorizing certain contracts; directing certification of certain individuals; requiring provision of certain form; stating requirements for employer-based long term care aide training program; stipulating certain recertification

1 procedures; clarifying applicability of certain
2 provisions; directing promulgation of certain rules;
3 updating statutory language; and providing an
4 effective date.

5 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

6 SECTION 1. AMENDATORY 63 O.S. 2021, Section 1-1950.1, is
7 amended to read as follows:

8 Section 1-1950.1. A. For purposes of this section:

9 1. "Nurse aide" means any person who provides, for
10 compensation, nursing care or health-related services to residents
11 in a nursing facility, a specialized facility, a residential care
12 home, continuum of care facility, assisted living center or an adult
13 day care center and who is not a licensed health professional. Such
14 term also means any person who provides such services to individuals
15 in their own homes as an employee or contract provider of a home
16 health or home care agency, or as a contract provider of the
17 Medicaid State Plan Personal Care Program;

18 2. "Employer" means any of the following facilities, homes,
19 agencies or programs which are subject to the provision of this
20 section:

21 a. a nursing facility or specialized facility as such
22 terms are defined in the Nursing Home Care Act,

23 b. a residential care home as such term is defined by the
24 Residential Care Act,

- c. an adult day care center as such term is defined in the Adult Day Care Act,
- d. an assisted living center as such term is defined by the Continuum of Care and Assisted Living Act,
- e. a continuum of care facility as such term is defined by the Continuum of Care and Assisted Living Act,
- f. a home health or home care agency,
- g. the Department of Human Services, in its capacity as an operator of any hospital or health care institution or as a contractor with providers under the Medicaid State Plan Personal Care Program,
- h. any facility operated by the Oklahoma Department of Veterans Affairs, and
- i. any facility approved and annually reviewed by the United States Department of Veterans Affairs as a medical foster home in which care is provided exclusively to three or fewer veterans;

3. "Home health or home care agency" means any person, partnership, association, corporation or other organization which administers, offers or provides health care services or supportive assistance for compensation to three or more ill, disabled, or infirm persons in the temporary or permanent residence of such persons, and includes any subunits or branch offices of a parent home health or home care agency;

1 4. "Bureau" means the Oklahoma State Bureau of Investigation;

2 and

3 5. "Completion of the sentence" means the last day of the
4 entire term of the incarceration imposed by the sentence including
5 any term that is deferred, suspended or subject to parole.

6 B. Before ~~any employer makes an offer to employ or to contract~~
7 ~~with~~ a nurse aide begins employment or a contract to provide nursing
8 care, health-related services or supportive assistance to any
9 individual, the employer shall provide for a criminal history
10 background check to be made on the nurse aide pursuant to the
11 provisions of the Long-Term Care Security Act. If the employer is a
12 facility, home or institution which is part of a larger complex of
13 buildings, the requirement of a criminal history background check
14 shall apply only to an offer of employment or contract made to a
15 person who will work primarily in the immediate boundaries of the
16 facility, home, or institution.

17 Where the provisions of the Long-Term Care Security Act
18 pertaining to registry screenings and national criminal history
19 record ~~check~~ checks are not in effect pending an effective date
20 established in rulemaking, an employer is authorized to obtain any
21 criminal history background records maintained by the Bureau
22 pursuant to the following:

23 1. The employer shall request the Bureau to conduct a criminal
24 history background check on the nurse aide and shall provide to the

Bureau any relevant information required by the Bureau to conduct the check. The employer shall pay a fee of Fifteen Dollars (\$15.00) to the Bureau for each criminal history background check that is conducted pursuant to such a request;

2. An employer may make an offer of temporary employment to a nurse aide pending the results of the criminal history background check. The employer in such instance shall provide to the Bureau the name and relevant information relating to the person within seventy-two (72) hours after the date the person accepts temporary employment. The employer shall not hire or contract with the nurse aide on a permanent basis until the results of the criminal history background check are received;

3. An employer may accept a criminal history background report less than one (1) year old of a person to whom such employer makes an offer of employment. The report shall be obtained from the previous employer or contractor of such person and shall only be obtained upon the written consent of such person; and

4. Every employer while subject to the provisions of this subsection shall inform each applicant for employment, or each prospective contract provider, as applicable, that the employer is required to obtain a criminal history background record before making an offer of permanent employment or contract to a nurse aide.

C. 1. If the results of a criminal history background check reveal that the subject person has been convicted of, pled guilty or

1 no contest to, or received a deferred sentence for, a felony or
2 misdemeanor offense for any of the following offenses in any state
3 or federal jurisdiction, the employer shall not hire or contract
4 with the person:

5 a. abuse, neglect, or financial exploitation of any
6 person entrusted to the care or possession of such
7 person,

8 b. rape, incest, or sodomy, or any crime that resulted in
9 the person being registered on a sex offender registry
10 at any time,

11 c. child abuse,

12 d. murder or attempted murder,

13 e. manslaughter,

14 f. kidnapping,

15 g. human trafficking,

16 h. aggravated assault and battery,

17 ~~h.~~ i. assault and battery with a dangerous weapon, or

18 ~~i.~~ j. arson in the first degree.

19 2. If less than ~~seven (7)~~ five (5) years have elapsed since the
20 completion of sentence, and the results of a criminal history check
21 reveal that the subject person has been convicted of, or pled guilty
22 or no contest to, a felony or misdemeanor offense for any of the
23 following offenses, in any state or federal jurisdiction, the
24 employer shall not hire or contract with the person:

- a. assault,
- b. battery,
- c. indecent exposure and indecent exhibition, except
where such offense disqualifies the applicant as a
registered sex offender,
- d. pandering,
- e. burglary in the first or second degree,
- f. robbery in the first or second degree,
- g. robbery or attempted robbery with a dangerous weapon,
or imitation firearm,
- h. arson in the second degree,
- i. unlawful manufacture, distribution, prescription, or
dispensing of a Schedule I through V drug as defined
by the Uniform Controlled Dangerous Substances Act,
- j. grand larceny, or
- k. petit larceny or shoplifting.

D. An employer shall not employ or continue employing a person addicted to any Schedule I through V drug as specified by the Uniform Controlled Dangerous Substances Act unless the person produces evidence that the person has successfully completed a drug rehabilitation program.

E. All employment eligibility determination records received by the employer pursuant to this section are confidential and are for the exclusive use of the State Department of Health and the employer

1 which requested the information. Except on court order or with the
2 written consent of the person being investigated, the records shall
3 not be released or otherwise disclosed to any other person or
4 agency. These records shall be destroyed after one (1) year from
5 the end of employment of the person to whom such records relate.

6 F. As part of the inspections required by the Nursing Home Care
7 Act, Continuum of Care and Assisted Living Act, the Residential Care
8 Act, and the Adult Day Care Act, the State Department of Health
9 shall review the employment files of any facility, home or
10 institution required to obtain a criminal history background
11 determination to ensure such facilities, homes or institutions are
12 in compliance with the provisions of this section.

13 G. A nurse aide who has undergone a criminal history background
14 check and been deemed eligible for employment by the Department and
15 who is currently employed or contracted by a facility and works not
16 less than one hundred sixty (160) hours per month for the facility
17 may be employed or contracted by one or more secondary facilities
18 without an additional criminal history background check if:

19 1. The criminal history record check is dated not more than one
20 (1) year from the date the nurse aide begins employment or contract
21 at each applicable secondary facility;

22 2. Each secondary facility has common ownership with the
23 primary facility;
24

1 3. The nurse aide works a total of not more than eighty (80)
2 hours per month in all secondary facilities combined; and

3 4. The determination of eligibility from the Department is on
4 file at each secondary facility.

5 The hours worked by a nurse aide at a secondary facility shall
6 be available upon by request by the Department for review or audit.

7 SECTION 2. AMENDATORY 63 O.S. 2021, Section 1-1950.3, is
8 amended to read as follows:

9 Section 1-1950.3. A. 1. A Except as provided by paragraph 2
10 or 3 of this subsection, a nursing facility, specialized facility,
11 continuum of care facility, assisted living center, adult day care
12 or residential home, or facility operated by the Oklahoma Department
13 of Veterans Affairs, shall not employ as a nurse aide, on a full-
14 time, temporary, per diem, or any other basis, any individual who is
15 not certified as a nurse aide in good standing and is not eligible
16 for placement on the nurse aide registry maintained by the State
17 Department of Health.

18 2. The Department may grant a temporary emergency waiver to the
19 provisions of ~~this~~ paragraph 1 of this subsection to any nursing
20 facility, continuum of care facility, assisted living center ~~or,~~
21 adult day care, or residential home which can demonstrate that such
22 facility, home or institution has been unable to successfully meet
23 its staffing requirements related to the provisions of ~~this~~
24 paragraph 1 of this subsection.

1 3. Until November 1, 2025, to the extent allowed under federal
2 regulations, a nursing facility, continuum of care facility,
3 assisted living center, adult day care, or residential home that
4 utilizes an employer-based training and competency evaluation
5 program approved by the State Department of Health may employ nurse
6 aides who are not yet certified if the nurse aides are enrolled in
7 the facility's training and competency evaluation program.

8 B. ~~Such~~ The temporary emergency waiver described in paragraph 2
9 of subsection A of this section or an employer-based training and
10 competency evaluation program described in paragraph 3 of subsection
11 A of this section shall require the following:

12 1. ~~An~~ The individual who is employed as a nurse aide ~~who is~~
13 must be enrolled in a Department-approved educational-based or
14 employer-based training and competency evaluation program for nurse
15 aides and shall successfully complete such training and competency
16 evaluations within four (4) months of entering the training program,
17 after which time no employer may use as a nurse aide an individual
18 who has not completed the training and competency evaluation
19 program. The Department may grant a trainee a one-time extension of
20 the four-month training requirement if:

21 a. such requirement causes an undue hardship for the
22 trainee due to unusual circumstances or illness,

23 b. the trainee has demonstrated a good faith effort to
24 complete the competency evaluation program, and

1 c. the extension meets such conditions as may be required
2 by rules promulgated by the Commissioner;

3 2. The individual shall obtain certification, and the
4 Department shall place the nurse aide on the registry within thirty
5 (30) days after demonstration of competency; and

6 3. Any nursing facility, specialized facility, continuum of
7 care facility, assisted living center, adult day care, or
8 residential care home that employs an individual who is in nurse
9 aide training, as provided in this section, shall ensure that the
10 trainee shall:

11 a. complete the ~~required training and competency program~~
12 ~~as provided in rules~~ specified by 42 CFR 483.152(b)(1)
13 prior to any direct contact with a resident or client,

14 ~~b.~~ not perform any service for which the trainee has not
15 trained and been determined proficient by the
16 instructor, and

17 ~~c.~~ b. be supervised at all times by no less than a licensed
18 practical nurse; ~~and.~~

19 ~~4. No employer may use as a nurse aide an individual who has~~
20 ~~not completed the nurse aide training and competency program within~~
21 ~~the required four-month period.~~

22 ~~C. For purposes of this section, "four (4) months" means the~~
23 ~~equivalent of four (4) months of full-time employment as a nurse~~
24 ~~aide by any employer in any nursing facility, specialized facility,~~

~~continuum of care facility, assisted living center, adult day care
or residential care home.~~

~~D. 1. The Department may grant a trainee a one-time extension
of the four-month training requirement if:~~

~~a. such requirement causes an undue hardship for the
trainee due to unusual circumstances or illness, and~~

~~b. the trainee has demonstrated a good faith effort to
complete the training and competency evaluation
program.~~

~~2. The State Board of Health shall promulgate rules related to
the review of and the process and conditions for such an extension~~

(1) If the facility is subject to federal regulations
governing supervision of nurse aides, the
facility shall comply with the federal
regulations.

(2) If the facility is not subject to federal
regulations governing supervision of nurse aides,
the facility shall ensure that the trainee is
assigned a certified nurse aide as a mentor. A
licensed practical nurse or greater shall oversee
the training program, shall conduct all
evaluations of the trainee, and shall provide
initial direction and periodic inspection of the
trainee's and mentoring certified nurse aide's

1 work. The plan of care shall not be altered by
2 the trainee or mentoring certified nurse aide
3 without prior consultation with and approval of
4 the supervising licensed practical nurse or
5 greater. The supervising licensed practical
6 nurse or greater need not always be physically
7 present or on the premises when the trainee is
8 providing care for which the trainee has been
9 found competent; however, except in cases of
10 emergency, the licensed practical nurse or
11 greater shall be available for consultation with
12 and direction of the trainee and mentoring
13 certified nurse aide.

14 ~~E.~~ C. 1. Certified nurse aides may begin an education-based or
15 employer-based training and competency evaluation and examination
16 program to become a certified medication aide immediately after
17 receiving certification as a nurse aide and being listed on the
18 nurse aide registry.

19 2. Certified medication aides, upon successful completion of
20 competency standards or prescribed training courses, shall be
21 eligible to distribute medications or treatments provided by
22 paragraph ~~2~~ 3 of this subsection within a:

- 23 a. correctional facility, as set forth in Section 623 of
24 Title 57 of the Oklahoma Statutes,

- b. correctional facility operated by a contractor of the Department of Corrections,
- c. county or municipal jail,
- d. nursing facility,
- e. specialized facility,
- f. continuum of care facility,
- g. assisted living center,
- h. adult day care,
- i. residential care home, or
- j. facilities operated by the Oklahoma Department of Veterans Affairs.

~~2.~~ 3. Certified medication aides may:

- a. perform fingerstick blood sugars,
- b. administer diabetic medications~~7~~ including subcutaneous injections of insulin, provided that the certified medication aide has completed a Department-approved advanced training program on diabetes and the administration of diabetes medications~~7~~ including injections,
- c. administer medications, first aid treatments and nutrition; by oral, rectal, vaginal, otic, ophthalmic, nasal, skin, topical, transdermal, and nasogastric/gastrostomy tubes routes, ~~and~~

- 1 d. administer oral metered dose inhalers and nebulizers~~+~~.
- 2 and
- 3 e. administer oxygen as prescribed by a physician or
- 4 other licensed practitioner with the authority to
- 5 prescribe oxygen.

6 ~~3.~~ 4. The ~~State Board of Health~~ Commissioner shall establish

7 rules necessary to ensure the safety of medication administration by

8 certified medication aides~~,~~ including but not limited to:

- 9 a. competency and practice standards for medication
- 10 aides,
- 11 b. maintaining a list of skills and functions that
- 12 medication aides will be able to perform upon
- 13 completion of certification course work,
- 14 c. certification and recertification requirements for
- 15 medication aides,
- 16 d. development of criteria and procedures for approval or
- 17 disapproval of training and competency evaluation
- 18 programs, and
- 19 e. procedures for denying, suspending, withdrawing, or
- 20 refusing to renew certification for a medication
- 21 aide~~+~~.

22 ~~4.~~ 5. Each facility shall develop policies and procedures that

23 comply with the provisions of this subsection and rules promulgated

24 by the ~~State Board of Health~~ Commissioner. This policy shall be

1 reviewed and approved by the facility Medical Director, Director of
2 Nurses and/or Registered Nurse Consultant.

3 ~~F.~~ D. Any person convicted of violating any of the provisions
4 of this section or Section 1-1950.1 of this title shall be guilty of
5 a misdemeanor, punishable by a fine of not less than One Hundred
6 Dollars (\$100.00) nor more than Three Hundred Dollars (\$300.00),
7 imprisonment in the county jail for not more than thirty (30) days,
8 or by both such fine and imprisonment.

9 E. Not later than November 1, 2025, the State Commissioner of
10 Health shall promulgate rules governing employer-based training
11 programs including but not limited to rules that allow the
12 employment of noncertified nurse aides enrolled in an employer-based
13 training program, subject to the conditions allowed in such rules.

14 SECTION 3. AMENDATORY 63 O.S. 2021, Section 1-1951, is
15 amended to read as follows:

16 Section 1-1951. A. The State Department of Health shall have
17 the power and duty to:

18 1. Issue certificates of training and competency for nurse
19 aides;

20 2. a. Approve training and competency programs including,
21 but not limited to, education-based programs and
22 employer-based programs, including those programs
23 established pursuant to Section 223.1 of Title 72 of
24 the Oklahoma Statutes. The period of approval shall

1 be for the maximum duration allowed under federal
2 regulation.

3 b. The Department may withdraw approval of the program if
4 the program or in the case of an employer-based
5 program, the program or facility, is in violation of
6 rules promulgated by the State Commissioner of Health
7 that govern the program.

8 c. Until November 1, 2025, the Department shall
9 immediately withdraw approval of an employer-based
10 program if:

11 (1) the facility's temporary emergency waiver under
12 paragraph 2 of subsection A of Section 1-1950.3
13 of this title is withdrawn due to one or more
14 deficiencies cited during an investigation or
15 inspection; however, the Department shall not
16 withdraw approval of the employer-based program
17 if the facility's temporary emergency waiver is
18 withdrawn solely due to having a sufficiency of
19 staffing that makes the facility ineligible for a
20 temporary emergency waiver, or

21 (2) the facility is cited for one or more
22 deficiencies of causing immediate jeopardy to
23 resident health or safety.

1 d. Until November 1, 2025, the Department shall not
2 withdraw approval of an employer-based program solely
3 on the basis of the amount of monetary penalties the
4 facility has accrued unless the facility is assessed
5 the maximum civil monetary penalty stipulated under
6 federal regulation, in which case the Department shall
7 immediately withdraw approval of the employer-based
8 training program.

9 e. Until November 1, 2025, if an employer-based program
10 is withdrawn for any reason, the facility may reapply
11 for approval of an employer-based program after
12 completion of a plan of correction and certification
13 by the Department that the facility is in compliance
14 with all applicable laws and rules and the approval
15 may be reinstated as provided by rules promulgated by
16 the Commissioner;

17 3. Determine curricula and standards for training and
18 competency programs. The Department shall require such training to
19 include a minimum of ten (10) hours of training in the care of
20 Alzheimer's patients;

21 4. Establish and maintain a registry for certified nurse aides
22 and for nurse aide trainees;
23
24

1 5. Establish categories and standards for nurse aide
2 certification and registration, including feeding assistants as
3 defined in 42 CFR Parts 483 and 488;

4 6. Exercise all incidental powers as necessary and proper to
5 implement and enforce the provisions of this section; ~~and~~

6 7. Suspend or revoke any certification issued to any nurse
7 aide, if:

8 a. the nurse aide is found to meet any of the
9 requirements contained in subsection D of Section 1-
10 1947 of this title,

11 b. the nurse aide is found to meet any of the
12 requirements contained in subsection C of Section 1-
13 1950.1 of this title, or

14 c. the nurse aide is found to have committed abuse,
15 neglect or exploitation of a resident or
16 misappropriation of resident or client property
17 pursuant to the requirements contained in paragraph 7
18 of subsection ~~D~~ E of this section. The action to
19 revoke or suspend may be included with the filing of
20 any action pursuant to the requirements of paragraph 7
21 of subsection ~~D~~ E of this section; and

22 8. Administer competency examinations to nurse aides who have
23 completed a Department-approved employer-based training program.
24 Until November 1, 2025, the Department shall offer both an online

1 competency examination and an in-person competency examination. The
2 Department may contract with one or more vendors to administer
3 either type or both types of competency examination. An individual
4 who has received a passing score on the competency examination and
5 has met all other requirements for certification as a nurse aide
6 including but not limited to training requirements shall be granted
7 certification and shall be placed on the nurse aide registry. The
8 provisions of this paragraph shall not be construed to exempt a
9 nurse aide from in-person evaluation by a licensed practical nurse
10 before the nurse aide is eligible to take a competency examination.
11 The Department shall provide a form appropriate for the care
12 provided in each different type of licensed care facility for in-
13 person skills competency evaluation by no less than a licensed
14 practical nurse overseeing the training program.

15 B. The State ~~Board~~ Commissioner of Health shall promulgate
16 rules to implement the provisions of this section and shall have
17 power to assess fees.

18 1. Each person certified as a nurse aide pursuant to the
19 provisions of this section shall be required to pay certification
20 and recertification fees in amounts to be determined by the ~~State~~
21 ~~Board of Health~~ Commissioner, not to exceed Fifteen Dollars
22 (\$15.00).

23 2. In addition to the certification and recertification fees,
24 the ~~State Board of Health~~ Commissioner may impose fees for training

1 or education programs conducted or approved by the Department,
2 except for those programs operated by the Oklahoma Department of
3 Veterans Affairs.

4 3. All revenues collected as a result of fees authorized in
5 this section and imposed by the ~~Board~~ Commissioner shall be
6 deposited into the Public Health Special Fund.

7 C. Only a person who has qualified as a certified nurse aide
8 and who holds a valid current nurse aide certificate for use in this
9 state shall have the right and privilege of using the title
10 Certified Nurse Aide and to use the abbreviation CNA after the name
11 of such person. Any person who violates the provisions of this
12 section shall be subject to a civil monetary penalty to be assessed
13 by the Department.

14 D. A person qualified by the Department as a certified nurse
15 aide shall be deemed to have met the requirements to work as a home
16 health aide pursuant to the provisions of the Home Care Act and
17 shall require no further licensure for performing services within
18 the scope of practice of home health aides.

19 E. 1. The State Department of Health shall establish and
20 maintain a certified nurse aide, nurse aide trainee and feeding
21 assistant registry that:

22 a. is sufficiently accessible to promptly meet the needs
23 of the public and employers, and
24

b. provides a process for notification and investigation of alleged abuse, exploitation or neglect of residents of a facility or home, clients of an agency or center, or of misappropriation of resident or client property.

2. The registry shall contain information as to whether a nurse aide has:

- a. successfully completed a certified nurse aide training and competency examination,
- b. met all the requirements for certification, or
- c. received a waiver from the Board.

3. The registry shall include, but not be limited to, the following information on each certified nurse aide or nurse aide trainee:

- a. the full name of the individual,
- b. information necessary to identify each individual.

Certified nurse aides and nurse aide trainees shall maintain with the registry current residential addresses and shall notify the registry, in writing, of any change of name. Notification of change of name shall require certified copies of any marriage license or other court document which reflects the change of name. Notice of change of address or telephone number shall be made within ten (10) days of the effected change. Notice shall not be accepted over the phone,

- 1 c. the date the individual became eligible for placement
2 in the registry, and
- 3 d. information on any finding of the Department of abuse,
4 neglect or exploitation by the certified nurse aide or
5 nurse aide trainee⁷ including:
- 6 (1) documentation of the Department's investigation⁷
7 including the nature of the allegation and the
8 evidence that led the Department to confirm the
9 allegation,
- 10 (2) the date of the hearing, if requested by the
11 certified nurse aide or nurse aide trainee, and
- 12 (3) statement by the individual disputing the finding
13 if the individual chooses to make one.

14 4. The Department shall include the information specified in
15 subparagraph d of paragraph 3 of this subsection in the registry
16 within ten (10) working days of the substantiating finding and it
17 shall remain in the registry, unless:

- 18 a. it has been determined by an administrative law judge,
19 a district court or an appeal court that the finding
20 was in error, or
- 21 b. the ~~Board~~ Commissioner is notified of the death of the
22 certified nurse aide or nurse aide trainee.

23 5. Upon receipt of an allegation of abuse, exploitation or
24 neglect of a resident or client, or an allegation of

1 misappropriation of resident or client property by a certified nurse
2 aide or nurse aide trainee, the Department shall place a pending
3 notation in the registry until a final determination has been made.
4 If the investigation, or administrative hearing held to determine
5 whether the certified nurse aide or nurse aide trainee is in
6 violation of the law or rules promulgated pursuant thereto, reveals
7 that the abuse, exploitation or neglect, or misappropriation of
8 resident or client property was unsubstantiated, the pending
9 notation shall be removed within twenty-four (24) hours of receipt
10 of notice by the Department.

11 6. The Department shall, after notice to the individuals
12 involved and a reasonable opportunity for a hearing, make a finding
13 as to the accuracy of the allegations.

14 7. If the Department after notice and opportunity for hearing
15 determines with clear and convincing evidence that abuse, neglect or
16 exploitation, or misappropriation of resident or client property has
17 occurred and the alleged perpetrator is the person who committed the
18 prohibited act, notice of the findings shall be sent to the nurse
19 aide and to the district attorney for the county where the abuse,
20 neglect or exploitation, or misappropriation of resident or client
21 property occurred and to the Medicaid Fraud Control Unit of the
22 Attorney General's Office. Notice of ineligibility to work as a
23 nurse aide in a long-term care facility, a residential care
24 facility, assisted living facility, day care facility, or any entity

1 that requires certification of nurse aides, and notice of any
2 further appeal rights shall also be sent to the nurse aide.

3 8. In any proceeding in which the Department is required to
4 serve notice or an order on an individual, the Department may send
5 written correspondence to the address on file with the registry. If
6 the correspondence is returned and a notation of the United States
7 Postal Service indicates "unclaimed" or "moved" or "refused" or any
8 other nondelivery markings and the records of the registry indicate
9 that no change of address as required by this subsection has been
10 received by the registry, the notice and any subsequent notices or
11 orders shall be deemed by the court as having been legally served
12 for all purposes.

13 9. The Department shall require that each facility check the
14 nurse aide registry before hiring a person to work as a nurse aide.
15 If the registry indicates that an individual has been found, as a
16 result of a hearing, to be personally responsible for abuse, neglect
17 or exploitation, that individual shall not be hired by the facility.

18 10. If the state finds that any other individual employed by
19 the facility has neglected, abused, misappropriated property or
20 exploited in a facility, the Department shall notify the appropriate
21 licensing authority and the district attorney for the county where
22 the abuse, neglect or exploitation, or misappropriation of resident
23 or client property occurred.

1 11. Upon a written request by a certified nurse aide or nurse
2 aide trainee, the ~~Board~~ Commissioner shall provide within twenty
3 (20) working days all information on the record of the certified
4 nurse aide or nurse aide trainee when a finding of abuse,
5 exploitation or neglect is confirmed and placed in the registry.

6 12. Upon request and except for the names of residents and
7 clients, the Department shall disclose all of the information
8 relating to the confirmed determination of abuse, exploitation and
9 neglect by the certified nurse aide or nurse aide trainee to the
10 person requesting such information, and may disclose additional
11 information the Department determines necessary.

12 13. A person who has acted in good faith to comply with state
13 reporting requirements and this section of law shall be immune from
14 liability for reporting allegations of abuse, neglect or
15 exploitation.

16 F. Each nurse aide trainee shall wear a badge which clearly
17 identifies the person as a nurse aide trainee. Such badge shall be
18 furnished by the facility employing the trainee. The badge shall be
19 nontransferable and shall include the first and last name of the
20 trainee.

21 G. 1. For purposes of this section, "feeding assistant" means
22 an individual who is paid to feed residents by a facility or who is
23 used under an arrangement with another agency or organization and
24 meets the requirements cited in 42 CFR Parts 483 and 488.

1 2. Each facility that employs or contracts employment of a
2 feeding assistant shall maintain a record of all individuals, used
3 by the facility as feeding assistants, who have successfully
4 completed a training course approved by the state for paid feeding
5 assistants.

6 H. 1. Until November 1, 2025, an employer-based training
7 program for long term care aides shall consist of at least eighty-
8 five (85) hours of training or the equivalent if the facility is
9 subject to regulation by the Centers for Medicare and Medicaid
10 Services. Of the total required hours of training or the equivalent
11 as specified in this paragraph, the program shall include:

12 a. at least sixteen (16) hours of supervised practical
13 training that is documented and signed by the nurse
14 aide trainee,

15 b. all of the curriculum specified in 42 CFR 483.152(b),
16 and

17 c. pursuant to paragraph 3 of subsection A of this
18 section, a minimum of ten (10) hours of training in
19 the care of Alzheimer's patients.

20 2. Until November 1, 2025, an employer-based training program
21 for long term care aides shall consist of at least one hundred
22 twenty (120) hours of training or the equivalent if the facility is
23 not subject to regulation by the Centers for Medicare and Medicaid
24

1 Services. Of the total required hours of training or the equivalent
2 as specified in this paragraph, the program shall include:

3 a. at least sixteen (16) hours of supervised practical
4 training that is documented and signed by the nurse
5 aide trainee,

6 b. all of the curriculum specified in 42 CFR 483.152(b),

7 c. pursuant to paragraph 3 of subsection A of this
8 section, a minimum of ten (10) hours of training in
9 the care of Alzheimer's patients,

10 d. completion of a restorative nurse aide training
11 program, and

12 e. the following subjects:

13 (1) ethics and ethical conduct,

14 (2) social media behavior and privacy,

15 (3) organizational structure of various care provider
16 settings,

17 (4) trauma informed care,

18 (5) basic legal statuses of residents or patients
19 including but not limited to guardianship, power
20 of attorney, advance directive, and living will,

21 (6) understanding basic cultural competency and
22 religious preferences,

23 (7) resident sexuality in care settings,

- 1 (8) understanding state rules and regulations for
2 reportable incidents to the Department and the
3 nurse aide registry,
4 (9) personal liability,
5 (10) possible career progression, and
6 (11) professional soft skills including time
7 management, problem solving, teamwork, stress
8 management, decision making, critical thinking,
9 conflict management, receiving criticism,
10 adaptability, and professionalism.

11 I. 1. The recertification requirements of the Department shall
12 allow nurse aides to renew certification if the nurse aide works or
13 volunteers the equivalent of a single eight-hour shift.

14 2. For a nurse aide who volunteers, the nurse aide must have
15 undergone a criminal history background check as provided by Section
16 1-1947 of this title prior to volunteering and shall only be
17 eligible for recertification if the nurse aide would not be
18 disqualified for employment or contract based on the criteria of
19 subsection C of Section 1-1950.1 of this title. The facility may
20 require a nurse aide who volunteers to pay the cost of his or her
21 own criminal history background check.

22 3. The provisions of this subsection shall only apply to
23 recertification procedures and shall not apply to initial
24

1 certification or employment by or contracting with a facility by a
2 nurse aide.

3 J. Not later than November 1, 2025, the State Commissioner of
4 Health shall promulgate rules governing employer-based training
5 programs including but not limited to rules governing approval and
6 withdrawal of employer-based training programs, administration of
7 competency examinations to nurse aides who have completed a
8 Department-approved employer-based training program, and employer-
9 based training program requirements including but not limited to
10 curriculum.

11 SECTION 4. This act shall become effective July 1, 2023.

12
13 58-2-3924 DC 5/19/2022 7:15:45 AM

14
15
16
17
18
19
20
21
22
23
24