SENATE FLOOR VERSION
February 28, 2022
AS AMENDED

SENATE BILL NO. 1518 By: Garvin of the Senate

and

McEntire of the House

[long-term care - temporary emergency waiver - educational-based or employer-based training and competency evaluation program - period of approval for training and competency programs - recertification procedure - effective date]

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

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

Section 1-1950.3. A. ~~1. A~~ Except in the case of a nurse aide participating in an educational-based or employer-based training and competency evaluation program approved by the State Department of Health, a nursing facility, specialized facility, continuum of care facility, assisted living center, adult day care or residential home, or facility operated by the Oklahoma Department of Veterans Affairs, shall not employ as a nurse aide, on a full-time, temporary, per diem, or any other basis, any individual who is not certified as a nurse aide in good standing and is not eligible for

placement on the nurse aide registry maintained by the ~~State Department of Health~~ Department.

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

B. ~~Such waiver~~ An educational-based or employer-based training and competency evaluation program shall require the following:

1. ~~An~~ The individual who is employed as a nurse aide ~~who is~~ and enrolled in ~~a Department-approved~~ the training and competency evaluation program for nurse aides shall successfully complete such training and competency evaluations within four (4) months of entering the training program, after which time no employer may use as a nurse aide an individual who has not completed the training and competency evaluation program. For the purposes of this paragraph, "four (4) months" means the equivalent of four (4) months of full-time employment as a nurse aide by any employer in any facility listed in subsection A of this section. 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,

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

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

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

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

a. ~~complete the required training and competency program as provided in rules prior to any direct contact with a resident or client,~~

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

~~c.~~

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

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

~~C. For purposes of this section, "four (4) months" means the equivalent of four (4) months of full-time employment as a nurse 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~~ facility based ~~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~~ by either:

(1) direct supervision by no less than a licensed practical nurse, or

(2) direct supervision by no less than a certified nurse aide and general supervision by no less than a licensed practical nurse who also supervises the supervising certified nurse aide. As used in this division, "general supervision" means responsible supervision and control, with the licensed practical nurse or greater providing

both initial direction and periodic inspection of the trainee's work. Such plan of care shall not be altered by the trainee without prior consultation with and approval of the supervising licensed practical nurse or greater. The supervising licensed practical nurse or greater need not always be physically present or on the premises when the trainee is providing care; however, except in cases of emergency, supervision shall require the availability of the supervising licensed practical nurse or greater for consultation with and direction of the supervised individual.

As used in this subparagraph, "direct supervision" means personal supervision and specific delineation of tasks by the direct supervisor and shall include the responsibility for personally reviewing the work by the trainee. It is the responsibility of the direct supervisor to be on site during direct contact between the trainee and residents.

~~E.~~ C. 1. Certified medication aides, upon successful completion of competency standards or prescribed training courses, shall be eligible to distribute medications or treatments provided by paragraph 2 of this subsection within a:

a. correctional facility, as set forth in Section 623 of 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. Certified medication aides may:

a. perform fingerstick blood sugars,

b. administer diabetic medications, 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, 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

d. administer oral metered dose inhalers and nebulizers~~;~~.

3. The ~~State Board of Health~~ Commissioner shall establish rules necessary to ensure the safety of medication administration by certified medication aides, including but not limited to:

a. competency and practice standards for medication aides,

b. maintaining a list of skills and functions that medication aides will be able to perform upon completion of certification course work,

c. certification and recertification requirements for medication aides,

d. development of criteria and procedures for approval or disapproval of training and competency evaluation programs, and

e. procedures for denying, suspending, withdrawing, or refusing to renew certification for a medication aide~~;~~.

4. Each facility shall develop policies and procedures that comply with the provisions of this subsection and rules promulgated by the ~~State Board of Health~~ Commissioner. This policy shall be reviewed and approved by the facility Medical Director, Director of Nurses and/or Registered Nurse Consultant.

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

SECTION 2. AMENDATORY 63 O.S. 2021, Section 1-1951, is amended to read as follows:

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

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

2. Approve training and competency programs including, but not limited to, education-based programs and employer-based programs, including those programs established pursuant to Section 223.1 of Title 72 of the Oklahoma Statutes. The period of approval shall be for the maximum duration allowed under federal regulation. The Department may suspend or revoke approval of the program if the program, or in the case of an employer-based program the program or facility, is in violation of rules of the Commissioner. However, the Department shall not suspend or revoke approval of an employer-based program solely on the basis of the amount of administrative money penalties the facility has accrued;

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

4. Establish and maintain a registry for certified nurse aides and for nurse aide trainees;

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

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

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

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

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

c. the nurse aide is found to have committed abuse, neglect or exploitation of a resident or misappropriation of resident or client property pursuant to the requirements contained in paragraph 7 of subsection ~~D~~ E of this section. The action to

revoke or suspend may be included with the filing of any action pursuant to the requirements of paragraph 7 of subsection ~~D~~ E of this section.

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

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

2. In addition to the certification and recertification fees, the ~~State Board of Health~~ Commissioner may impose fees for training or education programs conducted or approved by the Department, except for those programs operated by the Oklahoma Department of Veterans Affairs.

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

C. Only a person who has qualified as a certified nurse aide and who holds a valid current nurse aide certificate for use in this state shall have the right and privilege of using the title Certified Nurse Aide and to use the abbreviation CNA after the name of such person. Any person who violates the provisions of this

section shall be subject to a civil monetary penalty to be assessed by the Department.

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

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

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

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, or

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,

c. the date the individual became eligible for placement in the registry, and

d. information on any finding of the Department of abuse, neglect or exploitation by the certified nurse aide or nurse aide trainee, including:

(1) documentation of the Department's investigation, including the nature of the allegation and the evidence that led the Department to confirm the allegation,

(2) the date of the hearing, if requested by the certified nurse aide or nurse aide trainee, and

(3) statement by the individual disputing the finding if the individual chooses to make one.

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

a. it has been determined by an administrative law judge, a district court or an appeal court that the finding was in error, or

b. the ~~Board~~ Commissioner is notified of the death of the certified nurse aide or nurse aide trainee.

5. Upon receipt of an allegation of abuse, exploitation or neglect of a resident or client, or an allegation of misappropriation of resident or client property by a certified nurse aide or nurse aide trainee, the Department shall place a pending notation in the registry until a final determination has been made. If the investigation, or administrative hearing held to determine whether the certified nurse aide or nurse aide trainee is in violation of the law or rules promulgated pursuant thereto, reveals that the abuse, exploitation or neglect, or misappropriation of resident or client property was unsubstantiated, the pending

notation shall be removed within twenty-four (24) hours of receipt of notice by the Department.

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

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

8. In any proceeding in which the Department is required to serve notice or an order on an individual, the Department may send written correspondence to the address on file with the registry. If the correspondence is returned and a notation of the United States Postal Service indicates "unclaimed" or "moved" or "refused" or any other nondelivery markings and the records of the registry indicate

that no change of address as required by this subsection has been received by the registry, the notice and any subsequent notices or orders shall be deemed by the court as having been legally served for all purposes.

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

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

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

12. Upon request and except for the names of residents and clients, the Department shall disclose all of the information relating to the confirmed determination of abuse, exploitation and neglect by the certified nurse aide or nurse aide trainee to the

person requesting such information, and may disclose additional information the Department determines necessary.

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

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

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

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

H. 1. The training program for long term care aides shall include:

a. at least **seventy-five (75)** hours of training or the equivalent,

b. at least sixteen (16) hours of training, which may include direct contact with residents, in the following areas that is documented and signed by the nurse aide trainee:

(1) communication and interpersonal skills,

(2) infection control,

(3) safety and emergency procedures including the Heimlich maneuver,

(4) promoting a resident's independence, and

(5) respecting a resident's rights, and

c. at least sixteen (16) hours of supervised practical training that is documented and signed by the nurse aide trainee.

2. The long term care aide training program shall include:

a. the subjects specified in paragraphs (b)(2) through (7) of 42 CFR 483.152(b),

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

c. completion of a restorative nurse aide training program, and

d. the following subjects:

(1) ethics and ethical conduct,

(2) social media behavior and privacy,

(3) organizational structure of various care provider settings,

(4) trauma informed care,

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

(6) understanding basic cultural competency and religious preferences,

(7) resident sexuality in care settings,

(8) understanding state rules and regulations for reportable incidents to the Department and the nurse aide registry,

(9) personal liability,

(10) possible career progression, and

(11) professional soft skills including time management, problem solving, teamwork, stress management, decision making, critical thinking, conflict management, receiving criticism, adaptability, and professionalism.

3. Training programs may offer up to two (2) hours of observation at a facility which may count toward course completion of the total **seventy-five (75)** hours required by this subsection, if:

a. the facility has an established policy and procedure for a localized criminal history background check that searches for convictions of, or pleadings of guilty or no contest to, a felony or misdemeanor offense for the offenses listed in subsection C of Section 1-1950.1 of this title, and

b. the trainee would not be disqualified for employment or contract based on the criteria of subsection C of Section 1950.1 of this title.

4. The recertification requirements of the Department shall allow nurse aides to renew certification through a facility if:

a. the nurse aide works or volunteers the equivalent of a single eight-hour shift,

b. if the facility has an established policy and procedure for a localized criminal history background check that searches for convictions of, or pleadings of guilty or no contest to, a felony or misdemeanor offense for the offenses listed in subsection C of Section 1-1950.1 of this title, and

c. the nurse aide would not be disqualified for employment or contract based on the criteria of subsection C of Section 1-1950.1 of this title.

The provisions of this paragraph shall only apply to recertification procedures, and shall not apply to initial

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

SECTION 3. This act shall become effective November 1, 2022.

COMMITTEE REPORT BY: COMMITTEE ON HEALTH AND HUMAN SERVICES
February 28, 2022 - DO PASS AS AMENDED