



Department of Health

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DAL #: DRS #25-06
Subject: Nurse Aide Training and
Competency Evaluation Program
Waiver and Appeal Requirements

Dear Nursing Home Administrators:

This correspondence clarifies existing statutory and regulatory authorities about the prohibition or loss (i.e., “ban”) of a Nurse Aide Training and Competency Evaluation Program and to raise awareness of the waiver opportunity and appeal requirements related to the Nurse Aide Training and Competency Evaluation Program ban.

Sections 1819(f)(2)(B)(iii)(I) and 1919(f)(2)(B)(iii)(I) of the Social Security Act ban a Nurse Aide Training and Competency Evaluation Program for two (2) years when a skilled nursing facility (“facility”):

- Is operating under a waiver for coverage by registered nurses, which is a CMS approved temporary or permanent deviation from the requirement that a Registered Nurse (RN) be present and available 24/7;
- Has been subject to an extended survey or partial extended survey;
- Has been subject to a survey resulting in an assessment of a Civil Money Penalty of at least \$13,343 as adjusted by federal regulations in 45 CFR Part 102; or
- Has been subject to imposition of a denial of payment, temporary manager or termination.

If a facility loses the authority to operate a Nurse Aide Training and Competency Evaluation Program, it may apply for a waiver to regain the ability to offer a program in the facility prior to the end of the two-year ban.

The New York State Department of Health (“Department”) has limited authority to review and approve Nurse Aide Training and Competency Evaluation Program ban waivers. If the facility does not meet the criteria for Department approval, outlined below, and the **Civil Monetary penalty was not related to the quality of care furnished to residents**, a waiver request may be submitted to the Department who will refer the request to CMS for final determination.

State Authority to Waive Nurse Aide Training and Competency Evaluation Program Ban

Sections 1819(f)(2)(C) and 1919(f)(2)(C) of the Social Security Act provide waiver authority to the State, i.e., the New York State Department of Health (“Department”).

As such, a Nurse Aide Training and Competency Evaluation Program may be offered in a facility (but not by the facility) if the Department:

- i. determines that no other such program is offered within a reasonable distance of the facility; **and,**
- ii. assures, through an oversight effort, that an adequate environment exists for operating a program in the facility; **and,**
- iii. provides notification of such determination and assurances to the State long-term care ombudsman.

Considerations for "Reasonable Distance":

- **Urban vs. Rural Factors**

In densely populated urban areas, a reasonable distance may be much smaller (perhaps 5-10 miles). Depending on local travel conditions and infrastructure, the distance could extend to 30 miles or more in rural areas.

- **Transportation Availability**

It is important to consider whether residents or trainees can access reliable transportation. If public transportation is available, a greater distance might be deemed reasonable, but if individuals rely on private vehicles or costly transport services, the distance may need to be shorter.

- **Number of Programs**

The availability of other nearby training programs plays a crucial role in the "reasonable distance" determination. If several programs are within a certain radius, the "reasonable distance" might be shorter. If there is only one or none, the distance could be extended.

- **Availability of Slots**

Even if programs exist within a certain distance, the Department may also consider whether those programs have open slots or availability for new students. If nearby programs are full or have lengthy waiting lists, this could factor into the "reasonable distance" determination.

In this case, the facility must submit a waiver request to the Department via email at natp.doh@health.ny.gov. If approved, the facility may partner with another New York State approved training program to provide training in the facility; that is, the Nurse Aide Training and Competency Evaluation Program may be offered **in** the facility, but not **by** the facility.

If the facility requests the Department to waive the ban, they must submit the name of the entity proposed to conduct the training in the banned facility and evidence that no other such program is offered within a reasonable distance of the facility.

Centers for Medicare and Medicaid Services (CMS) Authority to Waive Ban of Nurse Aide Training and Competency Evaluation Program Due to Civil Money Penalties

Sections 1819(f)(2)(D) and 1919(f)(2)(D) of the Social Security Act and 42 CFR § 483.151(c) provide waiver authority to CMS for a Nurse Aide Training and Competency Evaluation Program based on a Civil Money Penalty amount imposed of at least \$13,343 as adjusted by 45 CFR Part 102 and the Civil Money Penalty was **not** related to the quality of care

furnished to residents. “Quality of care furnished to residents” means the direct hands-on care and treatment that a health care professional or direct care staff member furnished to a resident. Please understand that this definition is not exclusive to Substandard Quality of Care deficiencies.

Written request to waive the ban must be submitted via email to natp.doh@health.ny.gov.

Appeal Rights in Cases for Nurse Aide Training and Competency Evaluation Program Banned Due to Extended/Partial Extended Survey

When a Nurse Aide Training and Competency Evaluation Program is banned due to an extended or partial extended survey as a result of Substandard Quality of Care deficiencies, the facility may request an appeal of these deficiencies directly to the Human Services Departmental Appeals Board at <https://dab.efile.hhs.gov/>.

Questions regarding this correspondence may be emailed to natp.doh@health.ny.gov.

Sincerely,

Kristen Pergolino, Director
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