

ISSUE BRIEF

States Are Weakening Training Standards for Nursing Facility Aides, With No Response By CMS

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INTRODUCTION

Federal nurse aide training standards have been largely waived during the COVID emergency. When the emergency declarations end, however, all “temporary nurse aides” are required by federal law to receive training and pass tests in order to work as permanent nurse aides.

It is in the interests of both nurse aides and nursing facility residents that aides receive all required training. But the nursing facility lobby has argued for “grandfathering” of temporary nurse aides into permanent certification, and the federal government unfortunately has moved in that direction.

Specifically, the Centers for Medicare & Medicaid Services (CMS) has given states and nursing facilities leeway to retroactively count nurse aide work hours as training hours, and some states have exploited that leeway to significantly weaken nurse aide training requirements for permanent certification. This is a public policy mistake, as illustrated by the flimsy mechanisms used by some states to claim that past work in likely understaffed facilities during the pandemic was actually meaningful and comprehensive training. In some states, these mechanisms allow for certification with no actual training aside from the aide’s initial on-line class.

After two years of the COVID emergency, there is broad agreement in the nursing facility world that nurse aides deserve more respect and support for their difficult, vital work. That respect is best shown by increasing wages, benefits, sick leave, and opportunities for professional advancement. Reducing nurse aide training requirements — by claiming after the fact that training was completed during routine work hours in likely understaffed facilities — is counterproductive, and harmful to nursing facility residents and staff.

“Reducing training standards is harmful to both residents and staff.”

CMS should require the real training required by the relevant regulations, and states should withdraw their procedures that allow work to be retroactively and perfunctorily classified as “training.” In practice, this will require CMS to assert its oversight authority on this issue, rather than looking away.

EXAMPLES OF STATES WEAKENING TRAINING STANDARDS

STATE	STATE WAIVES MANY OF THE 75 TRAINING HOURS REQUIRED
LA	Waives 51 hours of specified training if person has worked as temporary nurse aide for at least 60 hours.
NJ	Waives 67 or more hours of training for person who
NY	Waives 35 hours of training if person has worked as temporary nurse aide for at least
TN	Waived 67 or more hours of training if person had worked at least 200 hours as temporar
VA	Waives 67 or more hours of training if temporary nurse aide is given

NURSE AIDE TRAINING REQUIREMENTS ARE VITAL, BUT CMS HAS ALLOWED STATES TO WEAKEN THOSE REQUIREMENTS

Nurse aides provide most of the hands-on care in nursing facilities. Federal regulations require nurse aides within their first four months of employment to complete at least 75 hours of training in specified topics, and then to pass tests of knowledge and hands-on competence.¹ The training must be performed by or under the general supervision of a registered nurse with at least two years of nursing experience, at least one of which must be in a nursing facility.²

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’ 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 federal regulations specify that the training must address 36 separate sub-topics.³

These training and testing standards have been waived by CMS during the COVID-19 pandemic in order to bolster staffing levels, leaving only the requirement that an aide be considered “competent” by the nursing facility.⁴ Often, a current nurse aide’s only “formal” training is an 8-hour on-line course offered by a major national nursing facility trade association.⁵

CMS likely will end the training/testing waiver in the foreseeable future, once the public health emergency is over. Once the waiver ends, the nurse aide regulations again will become effective in their entirety. Specifically, nurse aides will have four months to complete the required training, and then will be required to pass knowledge and competence tests.

Nursing facility lobbyists have argued that temporary nurse aides should be allowed to “grandfather” into permanent status.⁶ Unfortunately — and likely in response to such lobbying — CMS has signaled to states and nursing facilities that they can evade all or a portion of the training standards. Through a guidance document, CMS now “recommends that states evaluate their [nurse aide training and testing programs], and consider allowing some of the time worked by the nurse aides during the [public health emergency] to count towards the 75-hour training requirement.” At the same time, and in a nod to its longstanding regulations, the CMS guidance notes that states “must ensure” that training include all topics required by the federal regulations, and that nurse aides must pass the required tests.⁷

As drafted — a recommendation to “consider ... some” work time as training time, plus an invocation of regulatory requirements — the guidance document gives CMS some ability to claim that it continues to honor the relevant law. In practice, however, the guidance document, along with continued CMS silence, has allowed states to significantly weaken nurse aide training standards in violation of longstanding federal law. On multiple occasions in the past 12 months, advocates for residents have raised these issues with CMS officials.⁸ Most recently, within the first few days of February, advocates specifically pointed out that New Jersey has eliminated virtually all of the training hours while claiming that it would require additional hours “if so required by the CMS.” Regardless, CMS has not expressed any intention to take action. In short, states are weakening the training standards while CMS remains silent.

SOME STATES ARE WEAKENING TRAINING STANDARDS

The past two years have made it clear that nurse aides deserve more respect and support for their difficult, vital work. That respect is best shown by increasing wages, benefits, sick leave, and opportunities for professional advancement. Reducing nurse aide training requirements is disrespectful to nurse aides, by failing to provide them with necessary skills and suggesting that their work is relatively simple. Reducing standards also is unfair to nursing facility residents, since their care depends on nurse aides’ expertise and professionalism.

This alert discusses five states — Louisiana, New Jersey, New York, Tennessee, and Virginia — that have improperly reduced training standards for temporary nurse aides who seek permanent certification. There may well be others — the authors have not examined the policies of all 50 states.

Louisiana

Louisiana requires only that a temporary nurse aide complete an 8-hour class (such as the national on-line course mentioned above) along with 16 hours of “lab/skills checkoffs), and then work at least 60 hours as a temporary nurse aide. The temporary nurse aide still must take and pass the required tests, and has three opportunities to do so.⁹

The training requirements (the 8-hour class, the 16-hour lab/skills checkoff, and the 60 hours of employment) are documented on a form submitted to the state by the nursing facility. The form is extremely limited, asking only for contact information for the facility and its administrator, a listing of the temporary nurse aides who have met the training standards, and a signature.¹⁰

New Jersey

Under state law, the temporary nurse aide must complete the “temporary” training required during the COVID emergency and work at least 80 hours in a nursing facility, with a letter from the facility’s director of nursing documenting the aide’s “adequate competency.” The aide has three opportunities to pass the required tests.¹¹

The aide potentially also must complete, “if so required by the CMS, such additional training as may be required to satisfy [federal nurse aide training requirements].”¹² CMS evidently has not required such additional training from New Jersey temporary nurse aides. In early February, resident advocates explicitly raised the New Jersey law with CMS officials, who gave no indication that they intended to take any action.

The New Jersey law is conspicuously contrary to a recent state-commissioned report: “Recommendations to Strengthen the Resilience of New Jersey’s Nursing Homes in the Wake of COVID-19.” In order to “Recognize, Stabilize, & Resource the Workforce,” the report recommends that the state “[s]trengthen training and certification requirements and opportunities, including annual in-service education requirements to build skills and expand scopes of practice.” By contrast, the state’s nurse aide certification policy will shrink nurse aide expertise and scope of practice.¹³

New York

New York requires 75 hours of training, but a temporary nurse aide is given automatic credit for 35 of those hours if (in a minimal standard) the aide has worked for at least 30 days or 150 hours. Then, the temporary nurse aide has at least three attempts to pass the required tests.¹⁴

Tennessee

A temporary nurse aide is given permanent certified status if the aide has 1) “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),” 2) worked at least 200 hours in a nursing facility, and 3) established supposed competency in all aspects of nurse aide training, based on an assessment performed by the nursing facility. Compliance thus is not documented by a neutral party, but through attestations submitted by the temporary nurse aide and the facility. The aide is not required to complete any of the tests that are normally required for nurse aide certification.¹⁵

The Tennessee Bridge Program ended on December 15, 2021; all attestations were required to be submitted by that date.¹⁶

Virginia

Virginia allows a temporary nurse aide to take the required tests if the aide has been given a competency verification from the employer nursing facility. In the attestation letter, the facility simply affirms that the aide “has been deemed competent and is working at this facility as a Temporary Nurse Aide.” The temporary nurse aide then is given three opportunities to receive a passing score on the tests.¹⁷

CONCLUSION: CMS AND OFFENDING STATES ARE FAILING AIDES AND RESIDENTS

Importantly, nothing prevents states from doing the right thing — requiring that temporary nurse aides complete nurse aide training in order to become certified. Many states are doing exactly that, with no indication that the training requirements have hurt facilities’ ability to attract or retain staff.¹⁸

The law is clear, as are its benefits. States and facilities should not pretend that work during the pandemic was actually training, and CMS should not allow them to make such claims. Reducing the training standards is penny-wise but pound-foolish, and hurts both aides and residents. Furthermore, as CMS stated when the regulations were first issued, CMS does not have “the flexibility to ignore the nurse aide training requirements or delegate the responsibility for establishing these requirements to States.”¹⁹

Comments or questions should be directed to Eric Carlson of Justice in Aging, ecarlson@justiceinaging.org, or Toby Edelman of the Center for Medicare Advocacy, tedelman@medicareadvocacy.org.

ENDNOTES

- 1 Code of Federal Regulations, Title 42, sections [483.35\(d\)](#) and [483.152](#).
- 2 Code of Federal Regulations, Title 42, section [483.152\(a\)\(5\)](#).
- 3 Code of Federal Regulations, Title 42, section [483.152\(a\), \(b\)](#).
- 4 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).
- 5 American Health Care Ass'n (AHCA), [Temporary Nurse Aide Course](#); *see, e.g.*, Tenn. Dep't of Health, [Temporary Nurse Aide Bridge Program](#) (reference to AHCA's 8-hour on-line course).
- 6 *See, e.g.*, [Letter to Pedro Rivera](#), PA Sec'y of Education Dep't, from LeadingAge PA, Healthcare Council of Western Pennsylvania, Pennsylvania Health Care Ass'n, and Pennsylvania Coalition of Affiliated Healthcare & Living Communities (June 8, 2020) (arguing for waiver of training and testing requirements for persons working as temporary nurse aide for at least one month).
- 7 CMS, Updates to Long-Term Care (LTC) Emergency Regulatory Waivers Issued in Response to COVID-19, [QSO-21-17-NH](#), at 4 (April 8, 2021).
- 8 *See, e.g.*, [Consumer advocate letter re: nurse aide training](#) to Lee Fleisher, M.D., CMS Chief Medical Officer, and Evan Shulman, Director of Division of Nursing Homes (Feb. 25, 2021); [Consumer advocate letter re: nurse aide training](#) to Dr. Fleisher & Mr. Shulman (May 11, 2021); [Consumer advocate letter re: nurse aide training](#) to Dr. Fleisher & Mr. Shulman (Oct. 26, 2021).
- 9 Louisiana Dep't of Health, [Transition from Temporary Nurse Aide \(TNA\) to Certified Nurse Aide \(CNA\)](#), including memorandum entitled LA Response to CNA Shortage.
- 10 Louisiana Dep't of Health, [TNA to CNA Verification Form](#).
- 11 [N.J. Assembly Bill 5353](#) (enrolled 6/3/21).
- 12 [N.J. Assembly Bill 5353](#) (enrolled 6/3/21).
- 13 Manatt Health, [Recommendations to Strengthen the Resilience of New Jersey's Nursing Homes in the Wake of COVID-19](#), at 33 (June 2, 2020).
- 14 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).
- 15 Tenn. Dep't of Health, [Temporary Nurse Aide Bridge Program](#).
- 16 Tenn. Dep't of Health, [Temporary Nurse Aide Bridge Program](#).
- 17 [Va. House Bill H7001\(1\)\(G\)](#); Va. Dep't of Health Professions, Board of Nursing, [Temporary Nurse Aides to Certified Nurse Aides \("TNA2CNA"\)](#).
- 18 *See, e.g.*, Conn. Dep't of Pub. Health, Blast Fax 2021-20 Re: [Temporary Nurse Aide Bridge to Certified Nurse Aide Program](#) (July 14, 2021); Ga. Dep't of Community Health, [COVID-19 Temporary Nurse Aide Training Program](#); Illinois Dep't of Public Health, [Temporary Nursing Assistant \(TNA\) Training Program](#); Illinois Health Care Ass'n, [Temporary Nursing Assistant Program](#); Miss. State Dep't of Health, [Memorandum to Participants in the Temporary Nurse Aide Waiver Program](#) (Dec. 8, 2020); Wis. Dep't of Health Services, [COVID-19: Nurse Aide](#).
- 19 [56 Federal Register 48,880, 48,884](#) (Sep. 26, 1991).