
Medicare

State Operations Manual

Provider Certification

Department of Health and
Human Services (DHHS)
HEALTH CARE FINANCING
ADMINISTRATION (HCFA)

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HEADER SECTION NUMBERS

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4116.1 - 4132.2 (Cont.)

4-27 - 4-30.2 (6 pp.)

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NEW/REVISED MATERIAL--EFFECTIVE DATE: March 25, 2000

Section 4132, Nurse Aide Training and Competency Evaluation Programs and Competency Evaluation Programs, is revised to reflect statutory changes to §§1819(f)(2) and 1919(f)(2) of the Social Security Act (the Act), and to provide interpretive guidance relative to those changes. Public Law 105-15 revised the Act to permit a waiver of nurse aide training program disapproval in certain nursing homes if the State determines that the facility meets specified exception criteria.

DISCLAIMER: The revision date and transmittal number only apply to the redlined material. All other material was previously published in the manual and is only being reprinted.

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03-00 PROGRAM ADMINISTRATION AND FISCAL MANAGEMENT 4116.1

4102. ACTIVITIES WITH ACCREDITED ENTITIES DEEMED TO MEET PARTICIPATION REQUIREMENTS

Section 1865 of the Act allows HCFA to find that if the accreditation of the following entities by any national accreditation organization provides reasonable assurance that the CoPs or Conditions for Coverage, or Requirements for SNFs, are met for these entities, then HCFA may deem these entities by virtue of their accreditation as meeting the Medicare conditions. The entities covered by the law that can be deemed are hospitals, psychiatric hospitals, ASCs, RHCs, laboratories, hospices, HHAs, SNFs, CORFs, and clinic rehabilitation agencies or public health agency providers of OPT (including speech pathology services) or occupational therapy services. Section 353 of the Public Health Service Act also provides the same recognition for accreditation organizations and State licensure programs of CLIA laboratories. HCFA published a notice in the Federal Register to notify the public of any organizations whose accredited specified types of providers or suppliers are deemed to meet Medicare or CLIA participation requirements. Sample validation or substantial allegation surveys of entities accredited by accreditation organizations approved by HCFA are acceptable reimbursement activity. See §1018 for those facilities that may participate by virtue of their accreditation by an approved accrediting body.

4111. HIGHER THAN NATIONAL STANDARDS

Section 1863 of the Act permits, at the request of a State, higher requirements for that State than the Federal Conditions or Requirements if approved under a State plan. If approved by the Secretary, the Secretary will impose like requirements in entities within that State. When a State has higher standards (approved by the Secretary) than those imposed nationally, the costs of certification activities necessary to apply the higher requirements are paid by Federal trust fund and grant monies.

4115. NON-FACILITY-RELATED ACTIVITIES

In addition to activities that are related to individual facilities, there are other activities necessary to the proper functioning of the survey and certification program. These activities include relationships with other programs and organizations which permit effective accomplishment of program goals as they relate to individual facilities.

4116. SA PROMOTIONAL AND PUBLIC INFORMATIONAL ACTIVITIES

Most of the promotional and public informational activities are carried out by HCFA, primarily through CO and ROs and, to a lesser extent, by intermediaries. However, §§1819(g)(1)(B) and 1919(g)(1)(B) of the Act require each State to conduct periodic educational programs for the staff and residents (and their representatives) of SNFs and NFs in order to present current regulations, procedures, and policies. Persons having general questions about Medicare/Medicaid are referred to the RO for information. Certain professional relations activities on the part of the SA's personnel are necessary and proper for maintaining ongoing relationships in the health professions. Participation by SA employees as speakers, panelists, or consultants at meetings of professional organizations (hospital associations, medical societies) in the interest of furthering compliance with Medicare/Medicaid standards and objectives would be proper activities for survey and certification funding.

4116.1 Medical Societies.--

Contacts by SA officials with medical societies are desirable to clarify the objectives of survey and certification program and enlist the cooperation of the medical societies in meeting those objectives that are certification-related.

Objectives may relate to a specific CoP or Condition for Coverage or to broader objectives such as effective use of the different levels of care offered through hospitals, LTC facilities, HHAs, and other medical facilities.

4117. RELATIONS WITH OTHER PROGRAMS

It is incumbent on each State to maintain effective liaison with other programs having activities similar to those performed for the survey and certification program. The need for establishing and maintaining relationships is particularly obvious with reference to licensure programs. In addition to licensure, examples of other programs with goals closely related to those of certification are hospital survey and construction programs, health facilities planning programs, and mental health and chronic ESRD programs. These programs, while not bearing the same relationship to survey and certification as does licensure, include activities that approximate health insurance activities. Additionally, the SA should consider joint activities with mutually benefitting programs on an "ad hoc" basis. This assumes that each State makes protracted and frequent contacts at an administrative level in the interest of the survey and certification program.

4131. DEEMING AND WAIVER OF NURSE AIDE TRAINING AND COMPETENCY EVALUATION REQUIREMENTS

OBRA 1987 prohibits skilled nursing facilities and nursing facilities from using as nurse aides any individuals who have not successfully completed a nurse aide training and competency evaluation program or competency evaluation program approved by the State. OBRA 1987 and 1989 deemed some individuals to meet this requirement and permitted States to waive this requirement for others. All individuals who are deemed to meet the nurse aide training and competency evaluation program requirements, or for whom the State waives the requirement to complete a competency evaluation program, must be included in the nurse aide registry described in §4141.

A nurse aide is deemed to satisfy the requirement of completing a nurse aide training and competency evaluation program if, before July 1, 1989, he or she completed a nurse aide training and competency evaluation program of at least 60 hours and made up at least the difference between the number of hours in the program he or she completed and 75 hours in supervised practical nurse aide training, or in regular in-service nurse aide education.

A nurse aide is deemed to satisfy the requirement of completing a nurse aide training and competency evaluation program if, before July 1, 1989, the individual was found competent (whether or not by the State) after completing nurse aide training of at least 100 hours duration.

The State may deem an individual to have completed a nurse aide training and competency evaluation program if the individual completed, before July 1, 1989, a nurse aide training and competency evaluation program that it determines would have met the requirements for approval at the time it was offered.

The State may waive the requirement for an individual to complete a competency evaluation program for any individual who can demonstrate to its satisfaction that he or she has served as a nurse aide at one or more facilities of the same employer in the State for at least 24 consecutive months before December 19, 1989.

| Any individual described above may be employed as a nurse aide by a nursing home if that individual is also competent to perform nursing or nursing-related services.

4132. NURSE AIDE TRAINING AND COMPETENCY EVALUATION PROGRAMS AND COMPETENCY EVALUATION PROGRAMS

| The Omnibus Budget Reconciliation Act of 87 requires the State to specify those nurse aide training and competency evaluation programs and competency evaluation programs it approves. The State

should follow the requirements detailed in §§4132.1 through 4132.3 when reviewing and approving programs, and when withdrawing approval from programs. The State may offer its own nurse aide training and competency evaluation program and/or competency evaluation program as long as the program meets these requirements.

4132.1 Approval of Nurse Aide Training and Competency Evaluation Programs and Competency Evaluation Programs.--

If the State does not offer a nurse aide training and competency evaluation program or competency evaluation program, the State should review and approve or disapprove all nurse aide training and competency evaluation programs, upon request. The State should approve nurse aide training and competency evaluation programs and competency evaluation programs offered by any entity as long as the requirements for approval are met.

A. Requirements for Program Approval.--Before approving a nurse aide training and competency evaluation program or competency evaluation program, the State should:

- o For nurse aide training and competency evaluation programs, determine whether the requirements of §4132.2 are met;
- o For competency evaluation programs, determine whether the requirements of §4132.3 are met; and
- o In all reviews other than the initial review, visit the entity providing the program.

B. Time Frames for Review.--Within 90 days of a request to review a program or receipt of additional information from a requester, the State must:

- o Advise the requestor whether the program has been approved; or
- o Request additional information.

The State may not grant approval of a program for more than 2 years. The State should require programs to notify the State when there are substantive changes to the program within the 2-year period, and the State should review programs to which substantive changes are made.

C. Prohibition of Program Approval.--Unless program disapproval is waived in accordance with subsection E below, the State must not approve a nurse aide training and competency evaluation program or nurse aide competency evaluation program offered by or in a nursing home if, in the 2 years prior to the State's review, that facility:

- o In the case of a skilled nursing facility, has operated under a waiver under §1819(b)(4)(C)(ii)(II) of the Act;
- o In the case of a nursing facility, has operated under a waiver under §1919(b)(4)(C)(ii) of the Act that as granted on the basis of a demonstration that the nursing facility is unable to provide nursing care required under §1919(b)(4)(C)(i) of the Act for a period in excess of 48 hours a week;
- o Has been subject to an extended (or partial extended) survey under §§1819(g)(2)(B)(i) or 1919(g)(2)(B)(i) of the Act;
- o Has been assessed a civil money penalty described in §§1819(h)(2)(B)(ii) or 1919(h)(2)(A)(ii) of the Act of not less than \$5,000. This requirement applies to civil money penalties for

Federal citations only after the facility has had an opportunity to a hearing as specified in §1128A of the Act and the penalty is determined due and payable; or

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o Has been subject to a remedy described in §§1819(h)(2)(B)(i) or (iii), 1819(h)(4), 1919(h)(1)(B)(i), or 1919(h)(2)(A)(i), or (iii), or (iv) of the Act.

D. Withdrawal of Program Approval.--Unless the State waives program disapproval in accordance with subsection E below, the State must withdraw approval from:

o Any nurse aide training and competency evaluation program or competency evaluation program described in subsection C, and

o Any nurse aide training and competency evaluation program or competency evaluation program if the entity offering the program refuses to permit unannounced State visits. (Also, any facility that refuses to permit unannounced State visits is subject to having its provider agreement terminated, and being excluded from the program by the Office of the Inspector General.)

The State may withdraw approval of a nurse aide training and competency evaluation program or competency evaluation program if the State determines that any of the requirements described in §§4132.2 and 4132.3 are not met by the program. The State may also withdraw approval from any program that does not meet any requirements the State may have in excess of the minimum Federal requirements, or that otherwise fails to meet State standards.

When withdrawing approval from a nurse aide training and competency evaluation program or a competency evaluation program, the State should:

- o Notify the program in writing, indicating the reason(s) for withdrawal of approval; and
- o In the case of a nurse aide training and competency evaluation program, permit students who have already started the program to finish it.

E. Waiver of Program Prohibition.--

1. A State may waive the disapproval of programs offered in (but not by), certain nursing homes if the State does all of the following:

a. Determines that there is no other such program offered within a reasonable distance of the facility. Generally, “reasonable distance” is considered as any distance that could be traveled within approximately 1 hour from the facility, factoring in the typical mode of transportation for staff in the area. Exceptions to what generally is considered to be “reasonable distance” would be at the discretion of the State;

b. Assures, through an oversight effort that an adequate environment exists for operating the program in the facility. States are encouraged to accomplish this oversight effort in consultation with, for example, a local school of nursing. An “adequate environment” is considered to exist if the facility has no deficiencies that constitute substandard quality of care at the time of its request for a disapproval waiver. An “oversight effort” is considered to exist if the State has a process in place to assure that the facility has no deterioration in care that results in substandard quality of care during the waiver period, and that the facility otherwise continues to meet the waiver criteria during the waiver period; and

c. Provides notice of such determination and assurances to the State long term care ombudsman. States are encouraged to also publish such a notice for residents and potential residents.

2. Duration of Waiver.--A waiver may not exceed 2 years, but must be withdrawn earlier if the facility is subsequently found to no longer meet the waiver criteria. If 2-year disapproval periods overlap, any non-waived disapproval in the earlier period will control waiver

rights in the second until the two periods no longer overlap. Below are examples describing the effect of a series of survey findings on a facility's ability to have a waiver.

EXAMPLE: Year 1:

A survey conducted at Facility X identifies substandard quality of care. The finding of substandard quality of care results in nurse aide training and competency evaluation program disapproval for 2 years. The facility requests and is granted a waiver after the State has confirmed that the facility has removed the substandard quality of care. The waiver may not exceed 2 years.

Year 2:

The survey of Facility X identifies substandard quality of care. Based on this current finding of substandard quality of care, the facility loses its existing waiver. This nurse aide training and competency evaluation program disapproval, based on this survey, is effective for 2 years. Additionally, the facility forfeits the waiver granted in year 1 due to its inability to continue to meet waiver criteria at E.1.b. (i.e., to be free of deficiencies which constitute substandard quality of care.

Year 3:

The survey of Facility X identifies deficiencies which do not constitute substandard quality of care, but result in the imposition of denial of payment for new admissions. The imposition of this remedy results in nurse aide training and competency evaluation program disapproval for 2 years. The facility requests and is granted a waiver. The waiver may not exceed 2 years. However, since the facility is currently operating under a nurse aide training and competency evaluation program disapproval for 2 years, based on its year 2 survey, the waiver resulting from this current survey will not apply until the remainder of the disapproval period (which overlaps with part of the waiver period) is satisfied.

F. Conflicts of Interest.--States are governed by their respective conflict of interest laws and are free to develop their own policies or rules about what may or may not constitute a conflict of interest relative to nurse aide training and competency evaluation programs. This gives States the ability to define their programs so that they can meet their needs relative to nurse aide training and competency evaluation programs while meeting the intent of the law. Factors States may consider in making conflict of interest determinations may include, but are not limited to, the following:

- o Whether the training program being offered is owned and operated independently of the ownership and operation of the nursing home that has lost its ability to train;
- o Whether facility staff, who are also employees of an approved outside training program, should be permitted to train in the facility (as employees of the outside training program) if the facility loses its ability to train; and
- o Any other factors the State believes to be relevant in making conflict of interest determinations.

4132.2 Requirements for Nurse Aide Training and Competency Evaluation Programs.--

A. Hours of Training.--A nurse aide training and competency evaluation program must consist of a minimum of 75 clock hours of training in order to be approved by the State. The State has the discretion to require additional hours of training.

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B. Restrictions on Activities of Students in a Nurse Aide Training and Competency Evaluation Program.--The State should not approve a program unless it ensures that:

- o Students do not perform any services for which they have not trained and been found proficient by the instructor; and

- o Students providing services to residents are under the general supervision of a licensed nurse or an RN.

C. Instructor Qualifications.--The training of nurse aides must be performed by or under the general supervision of a registered professional nurse who possesses a minimum of 2 years of nursing experience, at least 1 year of which must be in the provision of long-term care facility services. Instructors of nurse aides must have completed a course in teaching adults or have experience in teaching adults or supervising nurse aides. In a facility-based program, the training of nurse aides may be performed under the general supervision of the Director of Nursing, who is prohibited from performing the actual training.

Other individuals may supplement the instructor. Following are examples of those who might be useful in a nurse aide training and competency evaluation program:

- o RNs;
- o Licensed practical/vocational nurses;
- o Pharmacists;
- o Dietitians;
- o Social workers;
- o Sanitarians;
- o Fire safety experts;
- o Nursing home administrators;

