

R432. Health, Family Health and Preparedness, Licensing.

R432-45. Nurse Aide Training and Competency Evaluation Program.

R432-45-1. Introduction and Authority.

The Nurse Aide Training and Competency Evaluation Program is authorized by the Omnibus Budget Reconciliation Act of 1987 (OBRA), Pub. L. No. 100 203, 101 Stat. 1330, Sec. 4211, (b) (5) (A) (B) (C) (D) (E) (F) (G), (e) (1) (2), f(2) (A) (B), which the Department adopts and incorporates by reference. The purpose of this program is to allow a certified nurse aide (CNA) to provide quality nursing services to nursing facility residents.

R432-45-2. Definitions.

(1) "Certified nurse aide" means any person who completes a nurse aide training and competency evaluation program (NATCEP) and passes the state certification examination.

(2) "Competency evaluation" means a written or oral examination that addresses each requirement of OBRA for a nurse aide and a demonstration of the tasks the nurse aide is expected to perform as part of the aide's function.

(3) "Nurse aide" means any individual who provides nursing or nursing-related services to residents in a nursing facility, but does not include an individual who is a licensed professional or who volunteers to provide these services without monetary consideration.

(4) "Nurse Aide Training and Competency Evaluation Program" (NATCEP) means any program that the Utah Nursing Assistant Registry (UNAR) approves to offer training to an individual who is interested in becoming a certified nurse aide.

(5) "Nursing facility" means any institution that is licensed and Medicare or Medicaid-certified to provide long-term care.

(6) "Resident" means an individual who resides in and receives medical long-term nursing services in a Medicare or Medicaid-certified nursing facility.

(7) "Renewal" means a two-year renewal for a CNA who has performed paid services for at least 200 hours of nursing or nursing-related services under the direction of a licensed nurse during the 24 months following the completion date of the NATCEP or certification renewal.

(8) "Retraining" means training for a CNA who has not performed paid services for a total of 200 hours of nursing or nursing-related services under the direction of a licensed nurse during the 24 months following the completion date of the state-approved nursing assistant training or certification renewal.

(9) "State survey agency" means the Bureau of Health Facility Licensing, Certification and Resident Assessment, within

the Department of Health, which is responsible for nursing facility certification and for conducting surveys to determine compliance with Medicare and Medicaid requirements.

(10) "Supervised practical training" means training in a nursing facility in which the trainee demonstrates knowledge while performing tasks on an individual under the direct supervision of a licensed nurse, who is a UNAR-approved instructor.

(11) "Train-the-Trainer program" means a UNAR-approved program that consists of formal instructions to potential instructors on how to train a CNA candidate who is at least 16 years old through demonstrations and lectures.

(12) "Waiver of CNA Training Program" means a waiver that allows a qualified nursing professional and qualified in-state expired CNA to challenge the state written and skill examination.

(13) "Utah Nursing Assistant Registry" means the state agency that approves nurse aide training programs, monitors all UNAR test sites, maintains an abuse registry for all substantiated allegations of resident neglect, abuse or misappropriation of resident property by a CNA in a nursing, Medicare or Medicaid facility, certifies nurse aides who have completed a NATCEP, and renews certifications of qualified CNAs.

R432-45-3. Program Access Requirements.

(1) A nurse aide is required to complete a NATCEP and become certified within 120 days of the first date of employment.

(2) An individual who was certified as a nurse aide on or before July 1, 1989, meets the OBRA requirement upon completion of the approved in-service training on mental retardation and mental illness.

(3) If specific requirements are met in the following cases, the UNAR office may grant a waiver to:

(a) a nursing student who has completed the first semester of nursing school within the past two years with a passing grade. An official transcript of a nursing fundamentals class must accompany the Application for Certification Testing. If the candidate does not pass either the skills or written portion of the CNA examination after three attempts, the candidate must complete a NATCEP;

(b) a nurse with an expired license who can show proof of previous licensure in any state and who was in good standing with that state's professional board. UNAR shall grant the candidate 3 attempts to pass both the skills and written portion of the examination. If the candidate does not pass either portion, the candidate must complete a NATCEP;

(c) a CNA with an expired certificate from Utah who is in good standing with UNAR. UNAR shall grant the candidate 3

attempts to pass both the skills and written portion of the examination within two years of the certification expiration date. If the candidate does not pass either portion, the candidate must retrain; or

(d) any out-of-state CNA who is certified and in good standing with another state's survey agency. UNAR grants reciprocity upon the CNA providing proof of certification in that other state.

(4) An out-of-state CNA with an expired certificate must complete a NATCEP in the state of Utah.

R432-45-4. Competency Evaluation.

(1) An entity that proctors competency evaluations using both written or oral examinations and demonstrations of skills to nurse aides must be UNAR-approved.

(a) An individual shall perform the skills demonstration component in a facility or laboratory setting comparable to the setting in which the individual will function as a nurse aide, and a UNAR-approved representative must administer and evaluate the demonstration.

(b) The examiner must be a registered nurse (RN) with a current active license to practice nursing as an RN, who is in good standing with the Division of Occupational and Professional Licensing (DOPL) in the state of Utah, with at least one year of experience in providing care for the elderly or chronically ill of any age;

(c) If the individual fails to satisfactorily complete the skills or written examination after three attempts at either, the candidate must be advised of the areas in which the candidate is inadequate and must retrain at an approved NATCEP;

(d) UNAR shall advise an individual who takes the competency evaluation that a record of the outcome of the evaluation will be included in the nursing assistant registry. Further, UNAR shall require the individual to sign a Release of Information form that indicates the nurse aide's understanding of information that UNAR requires to be entered into the registry;

(e) UNAR shall periodically update and validate the competency evaluations;

(f) UNAR shall establish a written and oral examination that addresses each requirement as prescribed in OBRA. UNAR must develop this examination from a pool of test questions, only a portion of which to use in any one evaluation, under a system that maintains the integrity of both the pool of questions and individual evaluations;

(g) The competency evaluation must include a demonstration of the tasks the nurse aide is expected to perform as part of the nurse aide's function as a CNA;

(h) For the skills training component of the evaluation, UNAR shall establish a performance record for each NATCEP of major duties and skills that include:

(i) a list of the duties and skills that UNAR expects a CNA to learn in the program in accordance with this section;

(ii) a record that documents when the nurse aide performs this duty or skill;

(iii) documentation of satisfactory or unsatisfactory performance;

(iv) the date of the performance; and

(v) the instructor supervising the performance.

(2) At the completion of the NATCEP, the NATCEP shall give the nurse aide a copy of this record.

(3) The demonstration aspect of the skills training portion of the competency evaluation must have at least five performance tasks, all of which are included in the performance record. UNAR shall select five tasks for each nurse aide from a pool of evaluation items ranked according to degree of difficulty. UNAR shall make a random selection of tasks with at least one task from each degree of difficulty.

R432-45-5. Nurse Aide Training Requirements Under UNAR.

(1) UNAR shall administer a NATCEP through a contract with the Department of Health.

(2) An agency that conducts a NATCEP must be UNAR-approved.

(3) Applicants for approval of a NATCEP and all new NATCEP instructors must successfully complete a background clearance.

(a) A NATCEP must submit required information to UNAR to initiate a background clearance for each applicant and instructor.

(b) UNAR shall ensure:

(i) required information is entered into the Direct Access Clearance System to initiate a clearance for each applicant and instructor;

(ii) each applicant and instructor signs a criminal background screening authorization form which must be available for review by the department;

(iii) each applicant and instructor submits fingerprints; and

(iv) the Direct Access Clearance System reflects the current status of the applicant and instructor.

(c) If the Department determines an applicant or instructor are not eligible, based on information obtained through the Direct Access Clearance System, the Department shall send a Notice of Agency Action to UNAR and the individual explaining the action and the individual's right of appeal as defined in R432-30.

(4) In accordance with this section, UNAR shall review and render a determination of approval or disapproval of any NATCEP when a Medicare or Medicaid participating nursing facility requests the determination. UNAR at its option, may also agree to review and render approval or disapproval of any private NATCEP.

(5) UNAR must, within 90 days of the date of an application, either advise the requestor of UNAR's determination, or must seek additional information from the requesting entity with respect to the program for which it is seeking approval.

(6) UNAR shall approve a NATCEP that meets the criteria specified in OBRA, the Centers for Medicare and Medicaid Service's guidelines, guidelines designated by the Department of Health, and all UNAR requirements.

(a) UNAR shall admit a student who is at least 16 years old on or before the first day the student begins class; and

(b) shall include an orientation to the training program.

(7) The nurse aide training program must meet certain content requirements to be UNAR-approved.

(a) NATCEP must consist of at least 100 hours of supervised and documented training by a licensed nurse.

(b) The curriculum of the training program must include the following subjects:

(i) communication and interpersonal skills;

(ii) infection control;

(iii) safety and emergency procedures;

(iv) promoting resident independence;

(v) respecting resident rights; and

(vi) basic nursing skills.

(c) The trainee must complete at least 24 hours of supervised practical training in a long-term care facility, and complete all skill curriculum and skill competencies before training in any facility. The skills training must ensure that each nurse aide demonstrates competencies in the following areas:

(i) Basic nursing skills:

(A) taking and recording vital signs;

(B) measuring and recording height;

(C) caring for residents' environment; and

(D) recognizing abnormal signs and symptoms of common diseases and conditions.

(ii) Personal care skills:

(A) bathing that includes mouth care;

(B) grooming;

(C) dressing;

(D) using the toilet;

(E) assisting with eating and hydration;

(F) proper feeding techniques; and

- (G) skin care.
- (iii) Basic restorative services:
 - (A) use of assistive devices in ambulation, eating, and dressing;
 - (B) maintenance of range of motion;
 - (C) proper turning and positioning in bed and chair;
 - (D) bowel and bladder training;
 - (E) care and use of prosthetic and orthotic devices; and
 - (F) transfer techniques.
- (iv) Mental Health and Social Service Skills:
 - (A) modifying one's behavior in response to the resident's behavior;
 - (B) identifying developmental tasks associated with the aging process;
 - (C) training the resident in self-care according to the resident's ability;
 - (D) behavior management by reinforcing appropriate resident behavior and reducing or eliminating inappropriate behavior;
 - (E) allowing the resident to make personal choices, providing and reinforcing other behavior consistent with the resident's dignity; and
 - (F) using the resident's family as a source of emotional support.
- (v) Resident's rights:
 - (a) providing privacy and maintaining confidentiality;
 - (b) promoting the resident's right to make personal choices to accommodate the resident's needs;
 - (c) giving assistance in solving grievances;
 - (d) providing needed assistance in getting to and participating in resident and family groups and other activities;
 - (e) maintaining care and security of resident's personal possessions;
 - (f) providing care that keeps a resident free from abuse, mistreatment, or neglect, and reporting any instances of poor care to appropriate facility staff; and
 - (g) maintaining the resident's environment and care through appropriate nurse aide behavior to minimize the need for physical and chemical restraints.
- (8) Qualification of Instructors:
 - (a) a NATCEP must have a program coordinator who is a registered nurse with a current and active Utah license to practice;
 - (b) who is in good standing with DOPL;
 - (c) with two years of nursing experience, at least one of which is the provision of long-term care facility services or caring for the elderly or chronically ill of any age; and
 - (d) must have at least three hours of documented consulting

time per month with the respective program.

(9) Nursing facility-based programs:

(a) the program coordinator in a nursing facility-based program may be the director of nursing for the facility as long as the facility remains in full compliance with OBRA requirements;

(b) the primary instructor must be a licensed nurse with a current and active Utah license to practice and must be in good standing with DOPL; and

(c) must have two years of nursing experience, at least one of which is the provision of long-term care facility services or caring for the elderly or chronically ill of any age.

(10) Before approval of a NATCEP, the program coordinator and primary instructor must successfully complete a UNAR-approved "Train-the-Trainer" program or demonstrate competence to teach a CNA candidate who is at least 16 years old. All high school instructors must be certified to teach in the classroom by completing a "Train the Trainer" program or be certified to teach as defined by the Utah State Office of Education before providing instruction in the classroom.

(11) Students who provide services to residents must be under the direct supervision of a licensed nurse who is a UNAR-approved clinical instructor and whose clinical time is separate from her facility employment.

(12) Qualified personnel from the health professions may supplement the program coordinator and primary instructor. The program coordinator or primary instructor must be present during all provided supplemental training.

(13) Qualified personnel include registered nurses, licensed practical or vocational nurses, pharmacists, dietitians, social workers, sanitarians, fire safety experts, nursing home administrators, gerontologists, psychologists, physical and occupational therapists, activities specialists, speech or language therapists, and any other qualified personnel.

(14) UNAR requires qualified personnel to have at least one year of current experience in the care of the elderly or chronically ill of any age, or to have equivalent experience. Qualified personnel must also meet current licensure requirements, whether they are registered or certified in their field.

(15) A NATCEP must have a student-to-instructor ratio of 12:1 for clinical instruction and shall not exceed a 30:1 ratio for theory instruction. UNAR requires an instructor assistant when the program has more than 20 students.

(16) A NATCEP must provide a classroom with the following:

(a) adequate space and furniture for the number of students;

- (b) adequate lighting and ventilation;
- (c) comfortable temperature;
- (d) appropriate audio-visual equipment;
- (e) skills lab equipment to simulate a resident's unit;
- (f) clean and safe environment; and
- (g) appropriate textbooks and reference materials.

(17) Initial post-approval and ongoing reviews:

(a) After the initial approval of a NATCEP, UNAR grants a one-year probationary period;

(b) During the probationary period, UNAR may withdraw program approval if there is a violation of OBRA, state, federal, or UNAR requirements;

(c) After the probationary period, UNAR shall complete an on-site review and then complete subsequent on-site reviews at least every two years;

(d) The CNA training program shall submit a self-evaluation to UNAR during the interim year that UNAR does not complete an on-site review;

(e) In the event that UNAR does not complete an on-site review within two years, the CNA training program is responsible to send a self-evaluation to UNAR for the applicable two-year period;

(f) If UNAR does not make an on-site visit within two years and the CNA training program sends in a self-evaluation, UNAR must make an on-site visit within one year of the self-evaluation.

(18) The training and evaluation program review must include:

(a) skills training experience;

(b) maintenance of qualified faculty members for both classroom and skills portions of the nurse aide training program;

(c) maintenance of the security of the competency evaluation examinations;

(d) a record of complaints received about the program;

(e) a record that each nursing facility has provided certified nurse aides with at least 12 hours of staff development training each year with the compensation for the training;

(f) curriculum content that meets state and federal requirements; and

(g) classroom facilities and required equipment that meet state, federal, and UNAR requirements.

R432-45-6. Certified Nurse Aide Misconduct.

CNA misconduct that adversely affects the health, safety or welfare of the public may result in loss of nurse aide certification.

(1) CNA misconduct related to client safety and integrity

includes:

(a) leaving a nursing assistant assignment without properly notifying appropriate supervisory personnel;

(b) failing to report information regarding incompetent, unethical or illegal practice of any health care provider to proper authorities;

(c) failing to respect client rights and dignity regardless of social or economic status, personal attributes, or nature of health problems or disability; or

(d) failing to report actual or suspected incidents of client abuse.

(2) Engaging in sexual misconduct related to the client or to the workplace includes:

(a) engaging in sexual relations if the patient is receiving care from an institution or entity that employs the CNA;

(b) engaging in sexual relations with a client for a period when a generally recognized caregiver and patient relationship exists; or

(c) engaging in sexual relations for an extended period when a patient has reasonable cause to believe a professional relationship exists between the patient or anyone certified under the provisions of this rule (Rule R432-45).

(3) CNA misconduct related to administrative rules and state and federal law includes:

(a) knowingly aiding, abetting or assisting an individual to violate or circumvent any rule or regulation intended to guide the conduct of health care providers;

(b) violating the privacy rights and confidentiality of a client, unless disclosure of client information is required by law;

(c) discriminating against a client on the basis of age, race, religion, sex, sexual preference, national origin, or disability;

(d) abusing a client by intentionally causing physical harm or discomfort, or by striking a client, intimidating a client, threatening a client, or harassing a client;

(e) neglecting a client by allowing a client to be injured or remain in physical pain and discomfort;

(f) engaging in other unacceptable behavior or verbal abuse towards or in the presence of a client by using derogatory names or gestures or profane language;

(g) using the client relationship to exploit the client by gaining property or other items of value from the client either for personal gain or sale, beyond the compensation for services;

(h) possessing, obtaining, attempting to obtain, furnishing or administering prescription or controlled drugs to any person,

including oneself, except as directed by a health care professional authorized by law to prescribe drugs; or

(i) removing or attempting to remove drugs, supplies, property, or money from the workplace without authorization.

(4) CNA misconduct related to communication includes:

(a) inaccurate recordkeeping in client or agency records;

(b) incomplete recordkeeping regarding client care that includes failure to document care given or other information important to the client's care or documentation which is inconsistent with the care given;

(c) falsifying a client or agency record that includes filling in someone else's omissions, signing someone else's name, recording care not given, or fabricating data and values;

(d) altering a client or agency record that includes changing words, letters and numbers from the original document to mislead the reader of the record, and adding to the record after the original time and date without indicating a late entry;

(e) destroying a client or agency record;

(f) failing to maintain client records in a timely manner which accurately reflect management of client care, including failure to make a late entry within a reasonable time period; or

(g) failing to communicate information regarding the client's status to the supervising nurse or other appropriate person in a timely manner.

(5) CNA misconduct related to the client's family includes:

(a) failing to respect the rights of the client's family regardless of social or economic status, race, religion, or national origin;

(b) using the CNA-client relationship to exploit the family for the CNA's personal gain or for any other reason;

(c) stealing money, property, services, or supplies from the family; or

(d) soliciting or borrowing money, materials or property from the family.

(6) CNA misconduct related to co-workers that includes violent, abusive, threatening, harassing, or intimidating behavior towards a co-worker, which either occurs in the presence of clients or otherwise relates to the delivery of safe care to clients.

(7) CNA misconduct related to achieving and maintaining clinical competency includes:

(a) failing to competently perform the duties of a nursing assistant;

(b) performing acts beyond the authorized duties for which the individual is certified; or

(c) assuming duties and responsibilities of a nursing assistant without nursing assistant training or when competency

has not been established or maintained.

(8) CNA misconduct related to impaired function includes:

(a) using drugs, alcohol or mind-altering substances to an extent or in a manner dangerous or injurious to the nursing assistant or others, or to an extent that such use impairs the ability to safely conduct the duties of a nursing assistant; or

(b) having a physical or mental condition that makes the nursing assistant unable to safely perform the duties of a nursing assistant.

(9) CNA misconduct related to certificate violations includes:

(a) providing, selling, applying for, or attempting to procure a certificate by willful fraud or misrepresentation;

(b) functioning as a medication assistant without current certification as a medication assistant;

(c) altering a certificate of completion of training or nursing assistant certification;

(d) disclosing contents of the competency examination or soliciting, accepting or compiling information regarding the contents of the examination before, during or after its administration;

(e) allowing another person to use one's nursing assistant certificate for any purpose;

(f) using another's nursing assistant certificate for any purpose; or

(g) representing oneself as a CNA without current, valid CNA certification.

R432-45-7. Nurse Aide Registry.

(1) UNAR is the central registry for all certified nurse aides. This registry must identify all individuals who have successfully completed a NATCEP with a passing score of 75.

(2) A NATCEP must report to UNAR, within five days after the program ends, the names of all individuals who satisfactorily completed the program.

(3) UNAR processes all renewals for each nurse aide who has performed paid services for at least 200 hours of nursing or nursing-related services under the direction of a licensed nurse during the 24 months following the completion date of the NATCEP or certification renewal.

(4) The state survey agency shall enforce the standards of UNAR described in OBRA, Secs. 4211 and 4212.

(5) The state survey agency shall investigate all complaints of resident neglect, abuse or misappropriation of resident property by a CNA. A CNA is entitled to a hearing through the Division of Medicaid and Health Financing before a substantiated claim can be entered into the registry.

(6) After notification from the health facility licensing, certification and resident assessment agency of a substantiated claim of abuse, neglect or misappropriation of property of a vulnerable adult by a CNA, the name of the CNA and an accurate summary of the findings are placed in the abuse registry in accordance with UNAR protocol.

R432-45-8. Limitations.

(1) UNAR may approve a facility-based NATCEP only if the facility's participation in the Medicare and Medicaid programs has not been terminated within the last two years.

(2) UNAR must review and reapprove a NATCEP at least every two years.

(3) A skilled nursing facility that participates in a Medicare or Medicaid facility may not administer the written and skills components of the competency evaluation.

(4) A nursing facility may employ a nurse aide for more than 120 days only if the aide has completed a NATCEP.

(5) Upon review of program performance standards, UNAR shall terminate a program that does not provide an acceptable plan to correct deficiencies.

KEY: health care facilities

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