

certified and in good standing on Louisiana's nurse aide registry.

Department—the Louisiana Department of Health and Hospitals.

Misappropriation—taking possession without the permission of the resident who owns the personal belongings, or the deliberate misplacement, exploitation or wrongful temporary or permanent use of a resident's belongings or money without the resident's consent.

Neglect—the failure to provide goods and services to the resident that are necessary to avoid physical harm, mental anguish or mental illness.

Nursing Homes or Nursing Facilities—any entity or facility serving two or more persons, who are not related to the operator by blood or marriage, that undertakes to provide maintenance, personal care or nursing for persons who are unable to properly care for themselves by reason of illness, age or physical infirmity.

Trainee—an individual who is at least 16 years old and is enrolled in a nurse aide training and competency evaluation program, whether at a nursing facility or educational facility, with a goal of becoming a certified nurse aide.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and P.L. 100-203.

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Chapter 100. Nurse Aide Training and Competency Evaluation Program

Subchapter A. General Provisions

§10001. Definitions

Abuse—

1. the willful infliction of physical or mental injury;
2. causing deterioration by means including, but not limited to:
 - a. sexual abuse;
 - b. exploitation; or
 - c. extortion of funds or other things of value to such an extent that the resident's health, moral or emotional well-being is endangered; or
3. the willful infliction of injury, unreasonable confinement, intimidation or punishment which results in or which could reasonably be expected to result in physical or mental harm, pain or mental anguish. Lack of awareness or knowledge by the victim of the act which produced or which could have reasonably been expected to produce physical or mental injury or harm shall not be a defense to the charge of abuse.

Approved Setting—a provider entity licensed and regulated by the department, a school serving children with special needs, or a correctional facility in which the certified nurse aide performs nursing or nursing-related duties.

Certified Nurse Aide—an individual who has completed a nurse aide training and competency evaluation program (NATCEP) approved by the state as meeting the requirements of 42 Code of Federal Regulations (CFR) 483.151-483.154, or has been determined competent as provided in 42 CFR 483.150(a) and (b), and is listed as

Subchapter B. Training and Competency Requirements

§10011. General Provisions

- A. All nurse aide training and competency evaluation programs shall be approved by the department.
- B. Training and competency evaluation programs may be provided by:
 1. community colleges;
 2. vocational-technical programs; and
 3. other educational entities.
- C. Nursing facilities may provide the classroom and clinical training portion of the program but the competency evaluation shall be administered by an entity approved by the department.
- D. Each training and competency evaluation program shall:
 1. maintain qualified, approved personnel for classroom and clinical instruction;
 2. protect the integrity of the competency evaluations by keeping them secure;
 3. utilize a pass rate of a least 70 percent for each individual student; and

4. assure the curriculum meets federal and state requirements.

E. Clinical instruction shall be conducted in a nursing home or a hospital-based skilled nursing facility unit.

F. Training programs that do not meet the minimum standards and cannot provide an acceptable plan for correcting deficiencies shall be eliminated from participation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and P.L. 100-203.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:2075 (November 2006), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:1242 (May 2012).

§10013. Certification Criteria for Nursing Professionals, Nursing Students and Military Personnel

A. Individuals applying for nurse aide certification shall complete the application form designated by the department and submit documentation as deemed necessary by the department to determine eligibility.

B. Registered nurses (RNs) and licensed practical nurses (LPNs) who have completed online courses shall provide an official transcript to determine eligibility to test.

C. Registered nurse (RN) and licensed practical nurse (LPN) students shall provide an official transcript and any other documentation needed to determine eligibility.

D. Registered nurses (RNs) and licensed practical nurses (LPNs) who trained in other countries, and are requesting certification to the registry, shall be required to test.

E. RN and LPN students who have completed a nursing course, or have completed sufficient course content to meet eligibility criteria for certification, shall be required to test if their request for certification is received within three years of taking the nursing course.

F. An individual who trained in another state but did not test, shall test and certify to the registry in that state before transferring to Louisiana, or shall retrain and test in Louisiana.

G. Military personnel shall provide a copy of their military transcript and any other documentation needed to determine eligibility.

H. Licensed nurses on probation or suspended status shall provide documentation as deemed necessary by the department to determine eligibility.

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§10015. Training Curriculum/Program Approval

A. Training Curriculum

1. Providers applying to have a training program after the effective date of this Rule shall use one of the state approved curriculums or any subsequent editions issued by the publisher or any future state approved curriculums.

2. The curriculum shall be a minimum of 80 hours in length, which includes 40 classroom hours and 40 clinical hours.

3. Each additional unit objective added to the approved curriculum, above the minimum 80 hours, shall be behaviorally-stated for each topic of instruction. Each objective shall state performance criteria which are measurable and shall serve as a basis for the competency evaluation.

a. The unit objectives shall be reviewed with the trainees at the beginning of each unit so each trainee will know what is expected of him/her in each part of the training.

B. Curriculum Goals and Content

1. The goal of the nurse aide training and competency evaluation program is the provision of quality services to residents by nurse aides who are able to:

a. communicate and interact competently on a one-to-one basis with residents as part of the team implementing resident care;

b. demonstrate sensitivity to the emotional, social and mental health needs of resident's through skillful, directed interactions;

c. assist residents in attaining and maintaining functional independence;

d. exhibit behavior to support and promote the rights of residents; and

e. demonstrate proficiency in the skills needed to support the assessment of the health, physical condition and well-being of residents.

2. Facility and non-facility based training programs shall provide at least 16 hours of instruction prior to a trainee's direct involvement with a resident. The 16 hours of instruction shall be devoted to areas listed in Subsection C of this Section.

C. The training program shall be conducted to ensure that each nurse aide, at a minimum, is able to demonstrate competencies in the following areas:

1. basic nursing skills including, but not limited to:

a. bed-making;

b. taking vital signs;

c. measuring height and weight;

d. caring for the resident's environment;

e. measuring fluid and nutrient intake and output;

f. assisting in the provision of proper nutritional care;

- g. ambulating and transferring residents;
 - h. using body mechanics;
 - i. maintaining infection control and safety standards;
 - j. understanding the protocols in facility policy for the performance of and attaining/maintaining proficiency in basic cardio-pulmonary resuscitation including one hour of in-service training that shall be provided by the facility annually;
 - k. caring for residents when death is imminent;
 - l. recognizing abnormal signs and symptoms of common diseases and conditions; and
 - m. caring for residents suffering from Alzheimer's disease or dementia;
2. personal care skills including, but not limited to:
 - a. bathing, including mouth care;
 - b. grooming and dressing;
 - c. toileting;
 - d. assisting with feeding and hydration; and
 - e. skin care;
 3. mental health and social service needs including, but not limited to:
 - a. modifying his/her own behavior in response to a resident's behavior;
 - b. identifying developmental tasks associated with the aging process and using task analysis to increase independence;
 - c. providing training in and the opportunity for self-care according to a resident's capabilities;
 - d. demonstrating principles of behavior modification by reinforcing appropriate behavior and causing inappropriate behavior to be reduced or eliminated;
 - e. demonstrating skills which support age-appropriate behavior by allowing the resident to make personal choices;
 - f. providing and reinforcing behavior consistent with maintaining a resident's dignity; and
 - g. utilizing a resident's family as a source of emotional support;
 4. basic restorative services including, but not limited to:
 - a. the use of assistive devices in ambulation, eating and dressing;
 - b. maintenance of range of motion;
 - c. proper turning and positioning in a bed and a chair;
 - d. transferring a resident;

- e. bowel and bladder training; and
 - f. care and use of prosthetic devices, such as hearing aids, artificial eyes or artificial limbs;
5. maintaining a resident's rights including, but not limited to:
 - a. assisting a resident to vote;
 - b. providing privacy and maintaining confidentiality;
 - c. allowing the resident to make personal choices to accommodate individual needs;
 - d. giving assistance in resolving grievances;
 - e. providing needed assistance in getting to, and participating in, resident and family groups and other activities;
 - f. maintaining reasonable care of a resident's personal possessions;
 - g. providing care which frees the resident from abuse, mistreatment or neglect and reporting any instances of poor care to appropriate facility staff; and
 - h. maintaining the resident's environment and care so as to minimize the need for physical and chemical restraints;
 6. communication and interpersonal skills;
 7. safety and emergency procedures;
 8. promoting residents' independence; and
 9. the Heimlich maneuver.

D. Program Approval

1. All training programs shall meet the guidelines established by the department.
2. To get a nurse aide training program approved, the facility or school shall submit to the department the application, completed in its entirety, which denotes the state approved curriculum that shall be used and all required documentation stipulated in the nurse aide training packet.
3. All schools applying for approval shall identify the physical locations used for classroom instruction and for the clinical experience. Non-facility based programs shall also submit clinical contracts which meet the guidelines established by the department.
4. Approval to provide nurse aide training is granted specifically for the provider who submitted the application. There is no provision for subcontracting the training program.
5. If an approved program ceases to provide a nurse aide training and competency evaluation program for a two year period, the program shall be closed. The provider must reapply if they wish to provide training at a later date.
6. All approved providers shall maintain a current address, telephone and fax number, and e-mail address. The provider shall report to the department any changes in this

information or other aspects of the approved program within five working days.

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§10017. Coordinators, Instructors and Trainers

A. Program Coordinator. Every nurse aide training program shall have a program coordinator who provides general supervision of the training received by the nurse aide trainees.

1. The program coordinator shall be a registered nurse (RN) and shall have the following experience and qualifications:

a. a minimum of two years of nursing experience, of which at least one year must be in caring for the elderly or chronically ill, obtained through employment in any of the following:

- i. a nursing facility/unit;
- ii. a geriatrics department;
- iii. a chronic care hospital;
- iv. other long-term care setting; or

v. experience in varied responsibilities including, but not limited to, direct resident care or supervision and staff education; and

b. completion of VTIE, CTTIE, "train-the-trainer" type program or a master's degree or higher.

2. The program coordinator shall supervise no more than two nurse aide training programs simultaneously and shall be on the premises where the program is being conducted for at least 50 percent of the duration of the program.

B. Instructors. Instructors shall be RN's or LPN's and shall hold a current Louisiana nursing license. Licensed practical (vocational) nurses, under the general supervision of the coordinator, may provide classroom and clinical skills instruction and supervision of trainees if they have two years of experience in caring for the elderly and/or chronically ill of any age or have equivalent experience.

1. Such experience is normally obtained through employment in:

- a. a nursing facility;
- b. a geriatrics department;
- c. a chronic care hospital; or
- d. other long-term care setting.

2. Experience in resident care, supervision and staff education is preferred.

3. The ratio of instructors to trainees in clinical training shall not exceed 1:10 and the ratio of instructors to trainees in the classroom shall not exceed 1:23.

C. Program Trainers. Qualified resource personnel from the health field may participate as program trainers as needed for discussion or demonstration of specialized care procedures.

1. Qualified resource personnel shall have a minimum of one year of experience in their field and shall be licensed, registered and/or certified, if applicable, and may include:

- a. registered nurses;
- b. licensed practical/vocational nurses;
- c. pharmacists;
- d. dietitians;
- e. social workers;
- f. sanitarians;
- g. fire safety experts;
- h. nursing home administrators;
- i. gerontologists;
- j. psychologists;
- k. physical and occupational therapists;
- l. activities specialists; and
- m. speech/language/hearing therapists.

2. All program trainers shall have a minimum of one year of current experience in caring for the elderly and/or chronically ill of any age or have equivalent experience.

3. The training program may utilize other persons such as residents, experienced aides and ombudsmen as resource personnel if these persons are needed to meet the planned program objectives or a specific unit of training.

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§10019. Training Program Responsibilities

A. Each nurse aide trainee shall be at least 16 years old.

B. Each nurse aide trainee shall be clearly identified as a trainee at all times during clinical training. Identification shall be recognizable to residents, family members, visitors and staff.

C. Each nurse aide training program shall provide all trainees with an orientation of the clinical training site of at least four hours that is not included in the required 80 hours of core curriculum. The orientation shall include but is not limited to:

1. an explanation of the facility's organizational structure;
2. the facility's policies and procedures;
3. discussion of the facility's philosophy of care;
4. description of the resident population;
5. employee rules; and
6. what constitutes abuse, neglect, and misappropriation, including the consequences imposed if found guilty of such.

D. The facility/school shall not accept a nurse aide trainee into a training program until the facility or school conducts a statewide criminal history background check which includes a check of the national sex offender public registry.

1. A trainee shall not be eligible to participate in a training program if convicted or found guilty by a court of law of:

- a. abusing, neglecting or mistreating the elderly or infirm as defined by R.S. 40:2009.20;
- b. misappropriating a resident's property; or
- c. has not had a finding of abuse, neglect, mistreatment or misappropriation of a resident's property placed on the Nurse Aide Registry or the Direct Service Worker Registry.

2. If a criminal history background check cannot be legally obtained by a training program, trainees may obtain a certified copy of their criminal history from the Louisiana State Police by requesting that a "right to review" be conducted.

E. Trainees shall not be prohibited from completing training due to:

- a. criminal history that is not related to abuse, neglect or misappropriation; or
- b. the Louisiana State Police not being able to complete a criminal history check due to the age of the trainee.

F. For facility-based training programs, the facility shall assure that trainees do not perform any care and services for which they have not trained and been found proficient by the instructor. Trainees providing services to residents shall be under the general supervision of a licensed nurse approved to work in a nurse aide training program.

1. Trainees enrolled in facility-based training programs, shall complete training and test within 60 days of hire.

2. Nursing facilities may provide the classroom instruction and clinical instruction but the competency evaluation shall be administered by an entity approved by the department.

3. A class roster as well as the beginning and ending dates of each training class shall be available for review by

the department at all times. This shall be available for both classroom and clinical instruction.

G. Providers shall issue a certificate of completion to nurse aide trainees who successfully complete a training and competency evaluation program. The certificate shall contain the following:

1. the name of the nurse aide training program or school;
2. the date the program began;
3. the date the program ended;
4. the notation that this is a "DHH Approved Program;"
5. the name of the instructor; and
6. the signature of the coordinator and the date signed

H. Any entity responsible for the nurse aide training and competency evaluation program shall report to the Nurse Aide Registry within 30 days the names of all individuals who have satisfactorily passed the competency evaluation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and P.L. 100-203.

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§10021. Competency Evaluation

A. Written or oral examinations shall be provided by an entity or organization approved by the department. The examination shall reflect the content and emphasis of the training program and shall be developed in accordance with accepted educational principles.

B. The written evaluation component shall be given in English unless the aide will be working in a facility in which the predominant language is something other than English. In this case, the examination may be taken in the written predominant language used in the facility, dependent upon the availability of a translator who shall maintain the integrity of the examination.

C. A substitute examination, including an oral component, shall be developed for those nurse aides with limited literacy skills. This examination shall contain all of the content that is included in the written examination and shall include a written reading comprehension portion that shall determine competency to read job-related information.

D. Trainees of non-facility based programs shall take the competency evaluation (through skills demonstration and either written or oral examination) within 30 days after completion of the training program.

E. Trainees shall be provided a maximum of three opportunities within one year following completion of the training program to successfully complete the competency evaluation.

F. The evaluation program shall be developed and conducted to ensure that each nurse aide, at a minimum, is able to demonstrate competencies listed in §10015.C.

G. For the skills training component of the evaluation program, each nurse aide training program shall develop a performance record of duties/skills taught which shall verify proficiency attained.

1. The performance record shall consist of, at a minimum:

a. a listing of the duties/skills expected to be learned in the program; and

b. space to note satisfactory or unsatisfactory performance of each task including:

i. the date of the performance; and

ii. the name of the instructor supervising the performance.

2. At the completion of the nurse aide training program, the nurse aide and his/her employer shall receive a copy of this record. If the individual did not successfully perform all duties/skills on this performance record, he/she shall receive training for all duties and skills not satisfactorily performed until satisfactory performance is confirmed.

H. The skills demonstration of the competency evaluation program shall consist of a minimum performance of five tasks, all of which are included in the performance record. These five tasks shall be selected for each aide from a pool of evaluation tasks which have been ranked according to degree of difficulty. A random selection of tasks shall be made with at least one task from each degree of difficulty being selected. Such evaluation tasks may include, but are not limited to:

1. making an occupied bed;
2. taking and recording a resident's blood pressure, temperature, pulse and respirations;
3. orienting a new resident to the facility;
4. performing a range of motion exercises;
5. giving a bed bath;
6. positioning a resident on his/her side; and
7. responding to a demented resident who is calling out, yelling or indicating distress or anger.

I. Task-related evaluation items shall be developed to evaluate communication and psychosocial skills. The skills demonstration portion of the competency evaluation may be held in either a nursing facility or in a laboratory equipped for this purpose.

J. In the case of nursing facilities that provide their own training programs, the facility shall contact an approved entity to administer competency evaluation. The clinical portion of the competency evaluation shall be given in a nursing facility, but shall be administered by personnel not

associated with the facility. The competency evaluation may be proctored by facility personnel if the competency evaluation is:

1. secured from tampering;
2. standardized;
3. scored by a testing, educational or other organization approved by the state or scored by the state itself; and
4. not administered or scored by facility personnel.

K. The examiner conducting the clinical competency evaluation for any individual trainee shall be approved by the department.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and P.L. 100-203.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:2077 (November 2006), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:1245 (May 2012).

§10023. Compliance with Federal and State Regulations

A. The department shall review all components of a training and competency evaluation program for compliance with federal and state regulations.

B. Programs not meeting minimum requirements may be terminated if the program does not provide an acceptable plan for correcting deficiencies.

C. Programs not accessible or refusing to permit unannounced visits by the department shall be terminated.

D. A program that has not conducted training or certified trainees to the registry within a two year period shall be closed.

E. Operational Requirements

1. In order to be considered operational and retain approval to conduct a training program, providers shall have at least one employee on duty at the business location during the hours of operation reported on the training program application submitted to the DHH Health Standards Section.

2. All nurse aide training providers (facility based and non-facility based) shall maintain a current, operational telephone number, fax number and e-mail address and shall keep the department informed of any changes.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and P.L. 100-203.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:2078 (November 2006), amended by the Department of Health and Hospitals, Bureau of Health Financing, LR 38:1246 (May 2012).

§10025. Nurse Aide Responsibilities

A. A nurse aide shall be responsible for notifying the registry of current contact information such as address, telephone number, and e-mail address.

B. A nurse aide shall perform at least eight hours of nursing or nursing-related services in an approved setting during every consecutive 24-month period for pay after completion of a training and competency evaluation program to maintain certification.

C. If a nurse aide does not have proof of the required eight hours of paid employment in an approved setting in a 24-month period needed for recertification, he/she may retest with the two years immediately following the expiration. If the nurse aide fails to retest within the allotted time period, they shall retrain.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and P.L. 100-203.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:2078 (November 2006), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:1246 (May 2012).

Subchapter C. Nurse Aide Registry

§10033. General Provisions

A. The Department of Health and Hospitals shall develop and maintain a registry for individuals who have successfully completed a nurse aide training and/or competency evaluation program. Each individual listed on the registry will have the following information maintained and retrievable:

1. name;
2. address;
3. Social Security number;
4. phone number;
5. place of employment;
6. date of employment;
7. date employment ceased;
8. state certification number;
9. documentation of any investigation including codes for specific findings of a resident's:
 - a. abuse;
 - b. neglect;
 - c. misappropriated property; and
 - d. an accurate summary of findings only after actions on findings are final;
10. current e-mail address; and
11. status of certification, which includes the:
 - a. certified date;
 - b. recertified date; and
 - c. expiration date.

B. The registry shall renew certification in accordance with the provisions of §10025 of this Chapter.

C. Employers shall use the registry to determine if a prospective hire is a certified nurse aide and if there is a finding placed on the registry that he/she has abused or neglected a resident or misappropriated a resident's property or funds.

D. If there is a final and binding administrative decision to place a finding on the registry or if there is a final conviction, guilty plea or no contest plea to a crime(s) by a nurse aide against the elderly, infirmed or a nursing facility resident, the department shall place the adverse finding on the registry. Record of the occurrence and associated findings shall remain permanently on the registry.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and P.L. 100-203.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:2078 (November 2006), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:1246 (May 2012).

§10035. Certification by Reciprocity

A. Nurse aides may become certified by reciprocity from other states. Applicants shall, at a minimum, submit to the Nurse Aide Registry the following information either on forms or via electronic submissions approved by the department:

1. his/her name;
2. his/her Social Security number;
3. the certification number in the other state;
4. the address of the other state's registry;
5. his/her former place of employment;
6. the date of employment and termination;
7. his/her e-mail address;
8. a copy of his/her social security card; and
9. a copy of his/her official Louisiana identification, such as a driver's license, identification card, etc.

B. After verification of certification in the other state, the registry shall certify the aide in Louisiana. Likewise, the registry will be responsible for granting reciprocity to other states.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and P.L. 100-203.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:2079 (November 2006), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:1246 (May 2012).

Subchapter D. Provider Participation

§10045. Employer Responsibilities

A. A person shall not be employed as a nurse aide or nurse aide trainee by a nursing facility or hospital based SNF unit for more than 60 days unless he/she has satisfactorily completed an approved training and competency evaluation program.

B. A person shall not be employed as a nurse aide or nurse aide trainee if there is a final administrative or judicial court decision that the nurse aide or trainee has:

1. committed abuse, neglect or mistreatment of the elderly, infirm or nursing facility resident;
2. misappropriated a resident's property; or
3. as specified in R.S 40:1300.53.

C. The provider shall complete and send the appropriate form or approved electronic submission to the registry to verify employment or termination of a certified nurse aide. Failure to send notification to the registry within five working days of employment or termination may result in further adverse action against the provider. The provider shall maintain documentation to verify compliance.

D. All facilities shall continue to provide on-going training on a routine basis in groups and, as necessary in specific situations, on a one-to-one basis.

1. Each nurse aide shall receive and be compensated for 12 hours of on-going training per year.
2. Training may be conducted in the unit as long as it is:

- a. directed toward skills improvement;
- b. provided by appropriately trained staff; and
- c. documented.

E. When a change of ownership (CHOW) occurs, the new owner or the administrator/designee is responsible for ensuring that all reporting of employment and termination to the registry is current. In the event that a request for verification of work history is received after the CHOW occurs, the current owner is responsible for compliance.

F. The facility administrator/designee is responsible for reporting employment and termination to the registry for nurse aides employed by staffing agencies. This shall be done at least monthly.

G. No nurse aide who is employed by, or who has received an offer of employment from a facility on the date on which the aide begins a nurse aide competency evaluation program may be charged for any portion of the program.

H. If an individual who is not employed, or does not have an offer to be employed, as a nurse aide becomes employed by, or receives an offer of employment from, a facility not later than 12 months after completing a nurse aide competency evaluation program, the state shall provide for the reimbursement of costs incurred in completing the program on a pro rata basis during the period in which the individual is employed as a nurse aide.

I. If a training program is facility based, the administrator or their designee shall reconcile with the nurse aide registry at least monthly, their CNA's that are currently employed or have been terminated. Accuracy of the information held by the registry is dependent upon the

information received from the facility. Failure to maintain current data shall result in adverse action by the department.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and P.L. 100-203.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:2079 (November 2006), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:1247 (May 2012).

Subchapter E. Violations

§10055. Disqualification of Training Programs

A. The department prohibits nursing facilities from offering nurse aide training programs when the facilities have:

1. been determined to be out of compliance by the Medicaid or Medicare Programs until the end of a two-year period during which time no survey or investigation finds any deficiencies; or
2. operated under a waiver granted on the basis of a demonstration that the facility is unable to provide RN coverage in excess of 48 hours during a week.

B. The department may prohibit nursing facilities from offering nurse aide training programs when the facilities have been sanctioned with:

1. civil monetary penalties of \$5,000 or more;
2. termination of vendor payments;
3. a ban on new admissions;
4. placement under temporary management or closure of a facility with transfer of residents; or
5. extended or partial extended survey.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and P.L. 100-203.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:2079 (November 2006), amended LR 38:1247 (May 2012).

§10057. Allegations of Nurse Aide Wrong-Doing

A. The department, through its Division of Administrative Law or successor entity, has provided for a process for the review and investigation of all allegations of wrong-doing by nurse aides employed in nursing facilities. Certified nurse aides and nurse aide trainees must not:

1. use verbal, mental, sexual or physical abuse, corporal punishment or involuntary seclusion on a resident in a nursing facility; nor
2. neglect a resident or commit misappropriation of a resident's property or funds.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and P.L. 100-203.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:2079 (November 2006), amended by the

Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:1247 (May 2012).

§10059. Notice of Violation

A. When there are substantiated charges against the nurse aide, either through oral or written evidence, the department shall notify the individual(s) implicated in the investigation of the following information by certified mail:

1. the nature of the violation(s) and the date and time of each occurrence;
2. the department's intent to report the violation(s) to the Nurse Aide Registry; and
3. the right to request an informal dispute resolution and/or the right to an administrative hearing.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and the Omnibus Budget Reconciliation Act of 1987, P.L. 100-203.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:2079 (November 2006), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:1247 (May 2012).

§10061. Informal Dispute Resolution

A. When a nurse aide feels that he/she has been wrongly accused, the following procedure shall be followed.

1. The nurse aide may request an informal dispute resolution (IDR) within 15 calendar days of the receipt of the agency's notice of violation. The request for an IDR must be made to the department in writing.

2. The IDR is designed:

- a. to provide an opportunity for the nurse aide to informally review the situation;
- b. for the agency to offer alternatives based on corrections or clarifications, if any; and
- c. for the nurse aide to evaluate the necessity for seeking an administrative hearing.

3. An IDR meeting shall be arranged within 20 days of the request.

4. During the IDR, the nurse aide shall be afforded the opportunity to:

- a. talk with agency personnel involved in the situation;
- b. review pertinent documents on which the alleged violation is based;
- c. ask questions;
- d. seek clarifications; and
- e. provide additional information.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and P.L. 100-203.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:2080 (November 2006), amended by the

Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:1247 (May 2012).

Subchapter F. Administrative Hearings

§10071. General Provisions

A. Within 30 calendar days after receipt of the department's notice of violation or the notice of the results of an informal dispute resolution, the nurse aide may request an administrative hearing.

1. The request for an administrative hearing must be made in writing to the department's Division of Administrative Law or successor entity.

2. The request shall contain a statement setting forth the specific charges with which the nurse aide disagrees and the reasons for this disagreement.

3. Unless a timely and proper request is received by the Division of Administrative Law or successor entity, the findings of the department shall be considered a final and binding administrative determination.

a. Notification of the finding of abuse, neglect and/or misappropriation shall then be sent to the Nurse Aide Registry to be recorded.

B. When an administrative hearing is scheduled, the Division of Administrative Law or successor entity shall notify the nurse aide, his/her representative and the agency representative in writing.

1. The notice shall be mailed no later than 15 calendar days before the scheduled date of the administrative hearing and shall contain the:

- a. date of the hearing;
- b. time of the hearing; and
- c. the place of the hearing.

C. The administrative hearing shall be conducted by an administrative law judge from the Division of Administrative Law or successor entity as authorized by the Administrative Procedure Act, R.S. 49:950 et seq., and according to the following procedures.

1. An audio recording of the hearing shall be made.

2. A transcript shall be prepared and reproduced at the request of a party to the hearing, provided he bears the cost of the copy of the transcript.

3. Testimony at the hearing shall be taken only under oath, affirmation or penalty of perjury.

4. Each party shall have the right to:

- a. call and examine parties and witnesses;
- b. introduce exhibits;

c. question opposing witnesses and parties on any matter relevant to the issue, even though the matter was not covered in the direct examination;

d. impeach any witness regardless of which party first called him to testify; and

e. rebut the evidence against him/her.

5. Any relevant evidence shall be admitted if it is the sort of evidence upon which responsible persons are accustomed to rely on in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make the admission of such evidence improper over objection in civil or criminal actions.

a. Documentary evidence may be received in the form of copies or excerpts.

6. The administrative law judge may question any party or witness and may admit any relevant and material evidence.

7. Each party has the burden of proving whatever facts he/she must establish to sustain his/her position.

a. The burden of producing evidence to substantiate the written allegation(s) shall be on the department and the provider of services.

b. When the charge of abuse, neglect or misappropriation is substantiated, the nurse aide may not rest on the mere denial in his/her testimony and pleading(s) but must set forth specific facts and produce evidence to disprove or contest the charge(s).

D. Any party may appear, and be heard, at any appeals proceeding through an attorney or a designated representative. The representative shall have a written authorization to appear on behalf of the provider.

1. A person appearing in a representative capacity shall file a written notice of appearance on behalf of a provider identifying:

- a. his/her name;
- b. address;
- c. telephone number; and
- d. the party being represented.

E. At the conclusion of the administrative hearing, the administrative law judge shall:

1. take the matter under advisement; and
2. shall prepare a written proposed decision which will contain:
 - a. findings of fact;
 - b. a determination of the issues presented;
 - c. a citation of applicable policy and regulations;
 and
 - d. an order.

F. The written proposed decision is provided to the secretary of the department. The secretary may:

1. adopt the proposed decision;

2. reject the proposed decision based upon the record; or

3. remand the proposed decision to the administrative law judge to take additional evidence:

a. If the proposed decision is remanded, the administrative law judge shall submit a new proposed decision to the secretary.

G. The decision of the secretary shall be final and binding upon adoption, subject only to judicial review by the courts. A copy of the decision shall be mailed to the nurse aide at his/her last known address and to any representative thereof.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and P.L. 100-203.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:2080 (November 2006), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:1248 (May 2012).

§10073. Preliminary Conferences

A. Although not specifically required, the Division of Administrative Law or successor entity may schedule a preliminary conference. The purposes of the preliminary conference include, but are not limited to:

1. clarification, formulations and simplification of issues;
2. resolution of controversial matters;
3. exchange of documents and information;
4. stipulations of fact to avoid unnecessary introduction of evidence at the formal review;
5. the identification of witnesses; and
6. other matters as may aid disposition of the issues.

B. When the Division of Administrative Law or successor entity schedules a preliminary conference, all parties shall be notified in writing. The notice shall direct any parties and their attorneys to appear on a specific date and at a specific time and place.

C. When the preliminary conference resolves all or some of the matters in controversy, a summary of the findings agreed to at the conference shall be provided by the administrative law judge. When the preliminary conference does not resolve all of the matters in controversy, an administrative hearing shall be scheduled on those matters still in controversy.

1. The hearing shall be scheduled within 30 calendar days following the completion of the preliminary conference or at a time mutually convenient to all parties.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and P.L. 100-203.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:2081 (November 2006), amended by the

Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:1248 (May 2012).

§10075. Witnesses and Subpoenas

A. Each party shall arrange for the presence of their witnesses at the hearing.

B. A subpoena to compel the attendance of a witness may be issued by the administrative law judge:

1. upon written request by a party and a showing of the need for such action; or
2. on his own motion.

C. An application for subpoena duces tecum for the production by a witness of books, papers, correspondence, memoranda or other records shall be made in writing to the administrative law judge. The written application shall:

1. give the name and address of the person or entity upon whom the subpoena is to be served;
2. precisely describe the material that is desired to be produced;
3. state the materiality thereof to the issue involved in the proceeding; and
4. include a statement that, to the best of the applicant's knowledge, the witness has such items in his possession or under his control.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and P.L. 100-203.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:2081 (November 2006).

§10077. Continuances or Further Hearings

A. The administrative law judge may continue a hearing to another time or place, or order a further hearing on his own motion or at the request of any party who shows good cause.

B. Where the administrative law judge, at his/her discretion, determines that additional evidence is necessary for the proper determination of the case, he/she may:

1. continue the hearing to a later date and order the party(s) to produce additional evidence; or
2. close the hearing and hold the record open in order to permit the introduction of additional documentary evidence:
 - a. any evidence submitted shall be made available to both parties and each party shall have the opportunity for rebuttal.

C. Written notice of the time and place of a continued or further hearing shall be given. When a continuance of further hearing is ordered during an administrative hearing, oral notice of the time and place of the continued hearing may be given to each party present.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and P.L. 100-203.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:2081 (November 2006).

§10079. Failure to Appear at Administrative Hearings

A. If a nurse aide fails to appear at an administrative hearing, a notice/letter of abandonment may be issued by the Division of Administrative Law or successor entity dismissing the appeal. A copy of the notice shall be mailed to each party.

B. Any dismissal may be rescinded upon order of the Division of Administrative Law or successor entity if the nurse aide:

1. makes written application within 10 calendar days after the mailing of the dismissal notice; and
2. provides evidence of good cause for his/her failure to appear at the hearing.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and P.L. 100-203.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:2081 (November 2006), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:1248 (May 2012).

Subchapter G. Medication Attendant Certified

§10080. Definitions

Abuse—

1. the willful infliction of injury;
2. unreasonable confinement;
3. intimidation; or
4. punishment with resulting physical harm, pain, or mental anguish.

Department—the Louisiana Department of Health (LDH).

LBP—the Louisiana Board of Pharmacy.

LSBN—the Louisiana State Board of Nursing.

LSBPNE—the Louisiana State Board of Practical Nurse Examiners.

Licensed Nurse—a licensed registered nurse or a licensed practical nurse or a RN or LPN practicing in the state under a multistate license from a compact state with a privilege to practice (PTP) in Louisiana in accordance with applicable state statutes and regulations.

Licensed Practical Nurse—a person licensed by the LSBPNE to practice practical nursing in Louisiana or a RN or LPN practicing in the state under a multistate license from a compact state with a PTP in Louisiana.

Medication Attendant Certified (MAC)—a person certified by LDH to administer medications to nursing facility residents, hereafter referred to as a MAC.