

CHAPTER 33-07-06
NURSE AIDE TRAINING, COMPETENCY EVALUATION, AND REGISTRY

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33-07-06-01. Definitions.

1. "Abuse" includes mental, physical, sexual, and verbal abuse. "Mental abuse" includes humiliation, harassment, threats of punishment, or deprivation. "Physical abuse" includes hitting, slapping, pinching, and kicking and controlling behavior through corporal punishment. "Sexual abuse" includes sexual harassment, sexual coercion, sexual contact, or sexual assault. "Verbal abuse" includes any use of oral, written, or gestured language that includes disparaging and derogatory terms to residents or their families, or within their hearing distance, to describe residents, regardless of their age, ability to comprehend, or disability.
2. "Certified nurse aide" means an individual who has successfully completed the requirements for the department-approved nurse aide training and competency evaluation program, or department-approved competency evaluation program and is entered on the department's nurse aid registry.
3. "Department" means the state department of health.
4. "Facility" means skilled nursing facility or nursing facility licensed by the department, and does not include any institution that is for the care and treatment of mental diseases or for the mentally retarded or persons with related conditions.
5. "Misappropriation of resident property" means the deliberate misplacement, exploitation, or wrongful temporary or permanent taking or use of a resident's belongings or money, or both, without the resident's consent.
6. "Neglect" includes failure to carry out resident services as directed or ordered by the physician or other authorized personnel, failure to give proper attention to residents, or failure to carry out resident services through careless oversight.
7. "Nurse aide" means any individual providing nursing or nursing-related services to individuals in a nursing facility or other health care facility, who is not a licensed health professional or someone who volunteers to provide such services without pay.
8. "Nurse aide competency evaluation" means a department-approved testing mechanism consisting of both a written or oral and a manual skills component, testing the necessary knowledge needed by a nurse aide to provide safe care in a nursing facility or other health care facility.

9. "Nurse aide registry" means a listing of all individuals who have satisfactorily completed a department-approved competency evaluation program who have submitted the required initial or renewal information for inclusion on the department's registry and individuals with documented findings of abuse, neglect, or misappropriation of resident property.
10. "Nurse aide training program" means a program to train nurse aides offered by a public or private organization that has been approved by the department.
11. "Qualified instructor" for a nursing facility nurse aides means a registered nurse with a minimum of two years of nursing experience, at least one year of which must be in the provision of long-term care facility services. Instructors must have completed a course in teaching adults or have experience in teaching adults or supervising nurse aides. In a facility based program, the director of nursing is prohibited from performing the actual training. However, a director of nursing who meets the qualified instructor requirements may provide the general supervision for the program. Other health-related professions who have a minimum of one year experience in their field may supplement the instructor.
12. "Significant requirements" means federal certification or state licensure requirements that have a serious or measurable impact on the health and safety of the resident in the facility. This includes a nursing waiver. Significant requirements shall be determined to be out of compliance based on the following considerations: severity of the noncompliance issue, frequency of the noncompliance issue, and history of prior noncompliance issues.
13. "Supervised practical skills training" means manual skills training provided through a department-approved nurse aide training program in a laboratory or other setting in which the nurse aide demonstrates knowledge while performing tasks on an individual under the direct supervision of a qualified instructor or a licensed nurse under the general supervision of a qualified instructor.

History: Effective October 1, 1993.

General Authority: NDCC 23-01-03, 28-32-02

Law Implemented: NDCC 23-16-01, 23-17.3-08

33-07-06-02. Nurse aide training.

1. Any nurse aide employed by a nursing facility or pursuing nurse aide certification and entry on the nurse aid registry must successfully complete a department-approved training program consisting of a minimum of seventy-five hours and a department-approved competency evaluation or a department-approved competency evaluation.
2. Nurse aides employed by nursing facilities pursuing nurse aid certification must complete a minimum of sixteen hours of classroom training in the following areas from a department-approved nurse aide training program prior to any hands-on contact with residents or patients. The areas are:
 - a. Communication and interpersonal skills;
 - b. Infection control;
 - c. Safety and emergency procedures, including the Heimlich maneuver;
 - d. Promoting residents' independence; and
 - e. Respecting residents' rights.

3. The remainder of the seventy-five hour approved training and competency evaluation program must be completed within four months of the date of first employment in the facility as a nurse aide and must include at least sixteen hours of supervised practical training.
4. Nurse aides may not perform tasks for which competence has not been determined unless under the direct supervision of a licensed nurse.
5. Nurses aides trained and determined proficient by the instructor to provide specific services to residents who have not completed the competency evaluation program shall provide these services under the general supervision of a licensed or registered nurse.
6. The nurse aide training program must ensure that nurse aides employed by or having an offer of employment from a nursing facility are not charged for any portion of the nurse aide training program including fees for textbooks or other required course materials.

History: Effective October 1, 1993.

General Authority: NDCC 23-01-03, 28-32-02

Law Implemented: NDCC 23-16-01, 23-17.3-08

33-07-06-03. Nurse aide competency evaluation programs.

1. The department-approved competency evaluation program must allow a nurse aide the option of establishing competency through written or oral and manual skills examination.
2. The written or oral examination must address all areas required in the department-approved training program.
3. The written or oral examination must be developed from a pool of test questions, only a portion of which may be utilized in any one examination.
4. The competency evaluation program must include a demonstration of the randomly selected tasks the individual will be expected to perform as part of the individual's function as a nurse aide.
5. The competency evaluation program must provide for a system that prevents disclosure of both pool questions and the individual competency evaluations.
6. The competency evaluation program must ensure that nurse aides employed by or having an offer of employment from a facility are not charged for any portion of the competency evaluation program.

History: Effective October 1, 1993.

General Authority: NDCC 23-01-03, 28-32-02

Law Implemented: NDCC 23-16-01, 23-17.3-08

33-07-06-04. Administration of competency evaluation.

1. The competency evaluation must be administered and evaluated by the department or a department-approved entity that is neither a skilled nursing facility or a nursing facility licensed by the department.
2. The entity that administers the competency evaluation must advise the nurse aide in advance that a record of the successful completion of the evaluation will be included on the department's nurse aide registry.
3. The skills demonstration portion of the test must be administered in the facility or laboratory setting comparable to the setting in which the nurse aide will function.

4. The skills demonstration portion of the test must be administered and evaluated by a registered nurse with at least one year of experience in providing care for the elderly or chronically ill of any age.
5. The department may permit the written or oral examination to be proctored by facility personnel if the department determines that the procedure adopted assures the competency evaluation is:
 - a. Secure from tampering.
 - b. Standardized and scored by a testing, educational, or other organization approved by the department.
 - c. Exempt from any scoring by facility personnel.
6. The department shall retract the right to proctor nurse aide competency evaluations from facilities in which the department finds any evidence of impropriety, including tampering by facility personnel.

History: Effective October 1, 1993.

General Authority: NDCC 23-01-03, 28-32-02

Law Implemented: NDCC 23-16-01, 23-17.3-08

33-07-06-05. Withdrawal and approval of training program status.

1. The department shall withdraw approval of a facility based program when a determination has been made that the facility has been found to be out of compliance with significant federal certification or state licensure requirements. The facility may apply for reinstatement after providing evidence of remaining in compliance with significant requirements for a period of twenty-four consecutive months.
2. The department shall withdraw approval of a nurse aide training and competency evaluation program if the entity providing the program refuses to permit unannounced visits by the department to ascertain compliance with program requirements.
3. Approval of a nurse aide training and competency evaluation program shall be granted by the department for a period not to exceed two years.
4. The department may approve only nurse aide training and competency evaluation programs meeting at least the following criteria:
 - a. Consists of no less than seventy-five hours of training.
 - b. Includes training in at least the following subject areas:
 - (1) Infection control.
 - (2) Safety and emergency procedures.
 - (3) Promoting resident or patient independence.
 - (4) Respecting resident rights.
 - (5) Basic nursing skills.
 - (6) Personal care skills.
 - (7) Mental health and social service needs.

- (8) Care of cognitively impaired residents or patients.
- (9) Basic restorative services.
- (10) Resident or patient rights.
- (11) Communication and interpersonal skills.

History: Effective October 1, 1993.

General Authority: NDCC 23-01-03, 28-32-02

Law Implemented: NDCC 23-16-01, 23-17.3-08

33-07-06-06. Completion of the competency evaluation program.

1. To complete the competency evaluation successfully the individual shall, at a minimum, successfully demonstrate written or oral competence in the areas listed under subdivision b of subsection 4 of section 33-07-06-05 and successfully demonstrate competence in performing a random selection of personal care skills.
2. A record of successful completion of the competency evaluation for nurse aides seeking certification must be included in the nurse aide registry within thirty days of the date the individual was found to be competent.
3. If the individual fails to complete the evaluation satisfactorily, the competency evaluation program must advise the individual of the areas in which the individual was adequate, and that the individual has not more than three opportunities to take the examination.
4. If the individual seeking certification fails the examination on the third attempt, the individual must enroll in and complete a department approved training program prior to taking the competency evaluation again.

History: Effective October 1, 1993.

General Authority: NDCC 23-01-03, 28-32-02

Law Implemented: NDCC 23-16-01, 23-17.3-08

33-07-06-07. Registry information.

1. The department is responsible for the entering of individual names on the nurse aide registry upon receipt of information verifying completion of a department-approved training and competency evaluation program or a department-approved competency evaluation.
2. Information included on the registry must include name, address, social security number, birth date, the date the nurse aide became eligible for entry on the registry, and the place of employment.
3. The department shall include documentation of findings of abuse, neglect, or misappropriation of resident property by the nurse aide on the registry when validated by the department.
4. Applicants for the nurse aide registry who submit proof of meeting the requirements of another jurisdiction will be granted reciprocity and entered on the nurse aide registry and may use the title "certified nurse aide". The individual must meet North Dakota requirements for active registry status.
5. Nurse aides meeting the waiver provisions of twenty-four months of continuous employment as a nurse aide prior to December 19, 1989, granted by the department will be listed on the registry with a special designation. This designation will signify the nurse aide has been waived from training and testing requirements but is not certified.

History: Effective October 1, 1993.

General Authority: NDCC 23-01-03, 28-32-02

Law Implemented: NDCC 23-16-01, 23-17.3-08

33-07-06-08. Disclosure of information.

1. Information contained in the registry will be disclosable to any medicare or medicaid participating facility, nursing facility, home health agency, hospital, ombudsman, other representative of an official agency or other individuals requesting information, upon request.
2. Upon request, the department shall provide the requester with the following information regarding individuals on the registry:
 - a. The date the individual's name was eligible for entry on the registry.
 - b. Any documented findings of abuse, neglect, or misappropriation, including the nature of the allegation and evidence supporting the allegation, the date and outcome of the hearing if one occurred, and any statement by the individual disputing the allegation.
 - c. Any additional information that the department deems necessary.
3. All information contained on the registry regarding a nurse aide will be provided to the nurse aide upon written request of the department.

History: Effective October 1, 1993.

General Authority: NDCC 23-01-03, 28-32-02

Law Implemented: NDCC 23-16-01

33-07-06-09. Registry renewal.

1. Registry status is limited to twenty-four months. Upon receipt of a completed renewal application, and verification of employment within the immediate past twenty-four months, the certified nurse aide will be issued a renewal certificate indicating current status.
2. An individual who has not performed at least eight hours of nursing or nursing-related services for pay within a continuous twenty-four month period, shall complete a department-approved training and competency evaluation program or a department-approved competency evaluation to obtain current registry status.

History: Effective October 1, 1993.

General Authority: NDCC 23-01-03, 28-32-02

Law Implemented: NDCC 23-16-01, 23-17.3-08

33-07-06-10. Complaint appeals process for nurse aides on the state registry.

1. Nurse aides against whom allegations of abuse, neglect, or theft of resident funds or property are made shall be:
 - a. Informed by the department of the allegations;
 - b. Informed of the investigation results; and
 - c. Provided the opportunity to request a hearing to rebut the charges.
2. If a hearing is requested, the department will apply to the office of administrative hearings for appointment of an administrative law judge. The office of administrative hearings will notify the accused of the date set for the hearing. If no hearing is requested, the department will submit information specific to validated allegations to the registry.

3. The administrative law judge will conduct the hearing and prepare recommended findings of fact and conclusions of law, as well as a recommended order. If, through the department's investigation process, there is evidence abuse, neglect, or misappropriation of resident property has occurred, the department shall notify law enforcement officials as determined appropriate.
4. Allegations validated by the department or through the hearing process of abuse, neglect, or misappropriation of resident property by a nurse aide, shall:
 - a. Be identified in the nurse aide registry within ten days of the finding; and
 - b. Remain on the registry permanently, unless the finding was made in error, the individual was found not guilty in a court of law, or the department is notified of the nurse aide's death. After a period of one year, an individual with a finding of neglect placed on the individual's registry listing may petition the state to have the finding removed from the individual's registry listing consistent with the process identified in section 33-07-06-11, if determined eligible by the department.
5. The department shall provide the nurse aide, against whom an allegation has been validated, with a copy of all information which will be maintained in the registry within thirty days following the addition of the information to the registry.
6. Within thirty days of mailing the notification of a finding adverse to a nurse aide, the nurse aide may contact the department and correct any misstatements or inaccuracies in the information being maintained by the registry on that individual.
7. Any medicare or medicaid participating nursing facility, home health agency, hospital, ombudsman, other representative of an official agency, or other individual with a need to know may receive information contained in the registry by making a written request.

History: Effective October 1, 1993; amended effective October 1, 1998.

General Authority: NDCC 28-32-02(1)

Law Implemented: NDCC 23-01-03

33-07-06-11. Review process for findings of neglect placed on an individual nurse aide's registry listing.

1. An individual with a finding of neglect placed on the individual's nurse aide registry listing after January 1, 1995, may petition the department in writing to have the finding removed from the individual's registry listing. The individual must provide the department with authorization for any releases of information the department deems appropriate in conducting the investigation. The department will not consider whether to remove the finding from the registry except upon determination by the department that:
 - a. The employment and personal history of the nurse aide does not reflect a pattern of abusive behavior or neglect. For the purposes of this section, a pattern is defined as two or more occurrences of abusive or neglectful behavior towards another individual which resulted in the potential for a negative outcome or an actual negative outcome to the other individual;
 - b. The neglect involved in the original finding was a singular occurrence that resulted in a potential or actual negative resident outcome; and
 - c. A background check, including a criminal history investigation or report, reveals no history of mistreatment findings, including instances of domestic abuse, the granting of a restraining order which has not been overturned, an adverse finding entered on any child

abuse information index, or any conviction of any crime involving violence or the threat of violence.

2. Once a determination has been made by the department that the individual has met the criteria identified in subsection 1 and is eligible for review, the following steps will be taken:
 - a. The individual requesting the review must submit a written statement to the department, in a format prescribed by the department, which includes:
 - (1) An explanation of the incident;
 - (2) Why the individual believes the individual would not repeat the incident;
 - (3) Why the individual believes the individual was a competent nurse aide; and
 - (4) Why the department should remove the finding from the individual's nurse aid registry listing, including any education or rehabilitation efforts that the individual has completed since the finding of neglect was placed on the individual's registry listing.
 - b. The original incident, the written information submitted to the department under subdivision a, and any other information collected by the department shall be reviewed by a committee consisting of a staff member of the health department, a nursing facility provider representative, and the state ombudsman.
 - (1) The committee may consult with the department's attorney as deemed necessary.
 - (2) Information obtained by the department from sources other than the petitioning individual and the department's file regarding the original incident will be provided to the individual, who will have thirty days after mailing to respond to the committee in writing.
 - c. The petition, all information contained in the department's file regarding the original incident, and information received by the department will be reviewed by the committee with consideration given to the following factors:
 - (1) The degree of negligence;
 - (2) The severity of the potential negative resident outcome;
 - (3) The severity of the actual negative resident outcome;
 - (4) The forthrightness and cooperation of the individual;
 - (5) The opinion of the individual's employer at the time of the incident regarding removing the finding from the individual's registry listing, including the employer's willingness to rehire the individual;
 - (6) The resident's opinion as to willingness to be cared for by this individual again, if available;
 - (7) Any rehabilitation or education completed by the individual since the incident; and
 - (8) Any other factors or considerations the committee determines to be pertinent to its decision. The committee may request additional information from the individual if more information is required to make a determination or deems a matter not addressed by the individual to be relevant.

- d. Based on the review by the committee, with consideration given to the factors identified in subdivision c, the committee may:
 - (1) Remove the finding from the individual's registry listing;
 - (2) Require the individual demonstrate successful completion of a state-approved training and competency evaluation program prior to the finding being removed from the registry;
 - (3) Require the individual to complete a rehabilitation or education program as identified by the committee prior to the finding being removed from the registry;
 - (4) Require the individual to provide the committee with documentation that a nursing facility has offered to employ the individual once the finding is removed from the individual's registry listing and that the nursing facility is willing to monitor the resident care services provided by the individual;
 - (5) Identify an additional timeframe the finding will remain on the registry. The additional timeframe identified by the committee may range anywhere from one month to permanent placement on the registry;
 - (6) Take other action as identified appropriate by the committee; or
 - (7) Implement any combination of the above actions.
3. The department must provide the individual and the registry with written results of the review within one hundred twenty days from the time the department has determined the individual is eligible for review and has received the written information submitted by the individual consistent with subdivisions a and b of subsection 1 and any additional information collected by the department.
4. The individual has only one opportunity to request the department to review the permanent placement of the neglect finding on their registry and to request the department remove the finding.
5. The review must be conducted based on written documentation submitted to the department. A face-to-face meeting with the individual may be requested by the committee as determined necessary.
6. The committee shall issue a written statement of fact, conclusions of law, and its order based upon findings and conclusions. This statement must be mailed to the individual requesting the review. An appeal from the order must be filed within thirty days from the date the order is mailed. The department may allow a petition for reconsideration of the order if the petition is received within fifteen days after the statement is mailed. If the department is petitioned for reconsideration, the determination upon review will become the final order for purposes of appeal.
7. If a new finding of neglect is placed on the individual's registry listing after the previous finding of neglect has been removed, the new finding will remain on the registry permanently with no opportunity for review.

History: Effective October 1, 1998.

General Authority: NDCC 28-32-02(1)

Law Implemented: NDCC 23-01-03, 28-32-05.2