Technical Amendment
November 28, 2022
CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
(Technical Amendment)

907 KAR 1:450. Nurse aide training criteria and registry.

RELATES TO: KRS 205.520, 42 C.F.R. 438.75, 438.150 -438.158, 42 U.S.C. 1395i-3 and 1396r

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 42 U.S.C. 1396r

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services, has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation establishes requirements for the nurse aide training and competency evaluation program and specifies the establishment and function of the nurse aide registry.

Section 1. Definitions.

(1) "Cabinet" means the Cabinet for Health and Family Services.

(2) "Competency examination" means a written or oral examination that is:

(a) Described by 42 C.F.R. 483.154; and

(b) Used as a standard for determining satisfactory completion of a nurse aide training and competency evaluation program.

(3) "Department" means the Department for Medicaid Services or its designee.

(4) "Licensed health professional" means a:

(a) Physician;

(b) Physician assistant;

(c) Nurse practitioner;

(d) Physical, speech, or occupational therapist;

(e) Registered nurse;

(f) Licensed practical nurse;

(g) Registered dietician; or

(h) Licensed or certified social worker.

(5) "Nurse aide" means an individual who has successfully completed the nurse aide training and competency evaluation program and may include a nursing student, medication aide, or a person employed through a nursing pool who provides nursing or nursing-related services to a resident in a nursing facility, excluding:

(a) An individual who is a licensed health professional;

(b) A volunteer who provides the nursing or nursing-related services without monetary compensation; or

(c) A person who is hired by the resident or family to sit with the resident and who does not perform nursing or nursing-related services.

(6) "Nurse aide training and competency evaluation program" means a competency evaluation program that meets the requirements of 42 C.F.R. 483.152.

(7) "Supervised practical training" means training in a laboratory or other setting in which the trainee demonstrates knowledge while performing tasks on an individual under the direct supervision of a registered nurse or a licensed practical nurse.

Section 2. General Requirements.

(1) A nursing facility shall not use an individual working in the facility as a nurse aide for more than four (4) months, on a full-time basis, unless the individual:

(a) Is competent to provide nursing and nursing-related services; and

(b)

1. Has satisfactorily completed a nurse aide training and competency evaluation program; or

2. Has been deemed or determined competent in accordance with 42 C.F.R. 483.150(a) and (b).

(2) If an employee is used on a temporary, per diem, leased, or other nonpermanent basis, a nursing facility shall not use the employee as a nursing aide unless the employee meets the requirements of subsection (1) of this section.

(3) A nursing facility shall not use an individual who has worked less than four (4) months as a nurse aide in that facility unless the individual:

(a) Is a full-time employee participating in a department-approved nurse aide training and competency evaluation program;

(b) Has demonstrated competence through satisfactory participation in a department-approved nurse aide training and competency evaluation program; or

(c) Has been deemed or determined competent in accordance with 42 C.F.R. 483.150(a) and (b).

Section 3. Course Requirements for the Nurse Aide Training and Competency Evaluation Programs and Instructor Qualifications. In accordance with 42 C.F.R. 483.152 and the Medicaid Services Manual for Nurse Aide Training and Competency Evaluation Program, a nurse aide training and competency evaluation program shall:

(1) Consist of a minimum of seventy-five (75) clock hours of nurse aide instructional training;

(2) Include at least sixteen (16) hours of supervised practical training; and

(3) Require that the program's instructor:

(a) Demonstrate completion of a course in teaching adults or have experience teaching adults; and

(b) Be a registered nurse who possesses a minimum of two (2) years of nursing experience, at least one (1) year of which shall be in the provision of long-term care services; or

(c) Be a licensed practical nurse who:

1. Has at least one (1) year of experience; and

2. Provides instruction as a supplement to the registered nurse instructor.

Section 4. Regular In-service Education and Ongoing Staff Development. A nursing facility shall provide and document that at least twelve (12) hours of ongoing staff development training is given annually to each nurse aide who:

(1) Is employed by the facility; and

(2) Has satisfactorily completed the nurse aide training and competency evaluation program.

Section 5. Approval, Initial Postapproval Review, and Ongoing Review of Nurse Aide Training Programs.

(1) The following may request approval from the department to provide a nurse aide training and competency evaluation program:

(a) The Kentucky Community and Technical College System (KCTCS);

(b) The Office of Career and Technical Education, Department for Workforce Development, Education and Labor Cabinet;

(c) A nursing facility;

(d) A community college;

(e) A university program;

(f) A licensed proprietary education program;

(g) A health care facility that is licensed in accordance with KRS 216B.015(12) and offers a nurse aide training and competency evaluation program to its own employees; or

(h) A nonprofit, church-related or tax-supported program that is not identified in paragraphs (a) through (g) of this subsection.

(2) In order to provide a nurse aide training and competency evaluation program, an entity identified in subsection (1) of this section shall be approved by the department in accordance with Section XI of the Medicaid Services Manual for Nurse Aide Training and Competency Evaluation Program.

(3) In accordance with 42 C.F.R. 483.151(c), the department shall, within ninety (90) days of receipt of a request for approval or receipt of additional information:

(a) Advise a requesting entity if its nurse aide training and competency evaluation program has been approved or denied; or

(b) Request additional information from the requesting entity.

(4) The department shall conduct an on-site review of each nurse aide training and competence evaluation program that is approved:

(a) Within one (1) year of initial approval; and

(b) Annually thereafter.

Section 6. Withdrawal of Approval.

(1) The department shall withdraw approval of a nurse aide training and competency evaluation program, if the entity providing the program does not:

(a) Meet the minimum requirements of 42 C.F.R. 483.152 or 483.154;

(b) Permit an unannounced visit by the department; or

(c) Submit an acceptable plan of correction if requested by the department upon completion of an on-site review.

(2) The department shall not approve a nurse aide training and competency evaluation program offered by, or in a nursing facility that, within the previous two (2) years,:

(a) Operated under a waiver in accordance with section 1819(b)(4)(C)(ii)(ll) of the Social Security Act, 42 U.S.C. 1395i-3(b)(4)(C)(ii)(II), by which the facility was not required to engage the services of a registered professional nurse for more than forty (40) hours per week;

(b) Operated under a waiver in accordance with section 1919(b)(4)(C)(ii) of the Social Security Act, 42 U.S.C. 1396r(b)(4)(C)(ii), that was granted on the basis of a demonstration by the facility of its inability to provide nursing care for more than forty-eight (48) hours per week;

(c) Has been subject to an extended, or partial extended, survey conducted by the cabinet under sections 1819(g)(2)(B)(i) or 1919(g)(2)(B)(i) of the Social Security Act, 42 U.S.C. 1395i-3(g)(2)(B)(ii) or 1396r(g)(2)(B)(ii);

(d) Has been assessed a civil money penalty described in section 1819(h)(2)(B)(ii) or 1919(h)(2)(A)(ii) of the Social Security Act, 42 U.S.C. 1395i-3(h)(2)(B)(ii) or 1396r(g)(2)(A)(ii), of no less than $5,000; or

(e) Has been subject to one (1) of the following actions:

1. Denial of payment in accordance with section 1819(h)(2)(B)(i) of the Social Security Act, 42 U.S.C. 1395i-3(h)(2)(B)(i), for individuals entitled to benefits under Title XIII of the Act, 42 U.S.C. 1395 to 1395hhh;

2. Appointment of temporary management to oversee operation of the facility in accordance with section 1819(h)(2)(B)(iii) or 1919(h)(2)(A)(iii) of the Social Security Act, 42 U.S.C. 1395i-3(h)(2)(B)(iii) or 1396r(h)(2)(A)(iii);

3. Termination of the facility's participation:

a. In accordance with section 1819(h)(4) of the Social Security Act, 42 U.S.C. 1395i-3(h)(4); or

b. In the Medicaid Program in accordance with section 1919(h)(1)(B)(i) of the Social Security Act, 42 U.S.C. 1396r(h)(1)(B)(i);

4. Denial of payment under Medicaid's Title XIX State plan in accordance with section 1919(h)(1)(B)(i) of the Social Security Act, 42 U.S.C. 1396r(h)(1)(B)(i), for any individual admitted to the nursing facility after notice of the denial has been made to the public and the facility; or

5. Closure of the facility or transfer of residents to other facilities in accordance with section 1919(h)(2)(A)(iv) of the Social Security Act, 42 U.S.C. 1396r(h)(2)(A)(iv).

(3) If the department withdraws approval of a nurse aide training and competency evaluation program, the department shall, in accordance with 42 C.F.R. 483.151(e)(4):

(a) Notify the nurse aide training and competency evaluation program in writing;

(b) Indicate the reason for withdrawal of approval; and

(c) Allow each student who has started a nurse aide training and competency evaluation program for which approval has been withdrawn to complete the course.

(4) In accordance with section 1919(f)(2)(C) of the Social Security Act, 42 U.S.C. 1396r(f)(2)(C) the department may allow a nurse aide training and competency evaluation program to be provided in, but not by, a nursing facility that meets one (1) of the conditions of subsection (2) of this section if the department:

(a) Determines that there is not another training and competency evaluation program offered within a reasonable distance of the facility;

(b) Assures, through an effort to oversee operation of the facility, that an adequate environment exists for operating the training and competency evaluation program in the facility; and

(c) Provides notice to the cabinet's long-term care ombudsman of the determination required by paragraph (a) of this subsection and assurance required by paragraph (b) of this subsection.

Section 7. Competency Examination and Competency Evaluation.

(1) KCTCS or another department-approved entity that is not a nursing facility shall administer and evaluate the final examination, including the skills demonstration portion of the nurse aide training and competency evaluation.

(2) In accordance with 42 C.F.R. 483.154(b)(1):

(a) An individual who obtains nurse aide training from an entity identified in Section 5(1) of this administrative regulation shall be permitted to choose between a final written or oral competency examination; and

(b) The competency examination shall:

1. Address each course requirement:

a. As specified in 42 C.F.R. 483.152(b); and

b. Identified in the Medicaid Services Manual for Nurse Aide Training and Competency Evaluation Program;

2. Be developed from a pool of test questions, only a portion of which shall be used in any one (1) competency examination;

3. Use a system that prevents disclosure of both the pool of questions and the individual competency examinations; and

4. If oral, be read from a prepared text in a neutral manner.

(3) In accordance with 42 C.F.R. 483.154(c)(4), the skills demonstration portion of the nurse aide training and competency evaluation shall be:

(a) Performed in a facility or laboratory setting comparable to the setting in which the individual shall function as a nurse aide; and

(b) Administered by a registered nurse with at least one (1) year's experience in providing care for the elderly or chronically ill of any age.

(4) A competency examination candidate shall submit the following to the nurse aide training and competency evaluation program proctor:

(a) An unexpired state or federally-issued photo identification; and

(b) A Social Security card that has not been laminated.

(5) If a competency examination candidate's Social Security card states, "Not valid for employment without Immigration and Customs enforcement authorization", or contains a similar statement, the candidate shall present an employment authorization document issued by the Department of Homeland Security.

(6) A competency examination candidate's full name and middle initial shall be the same on each personal document presented to the nurse aide training and competency evaluation program proctor.

(7) In accordance with 42 C.F.R. 483.154(e):

(a) An individual shall pass the written or oral competency examination and the skills demonstration for satisfactory completion of the nurse aide training and competency evaluation program; and

(b) A record of successful completion of the nurse aide training and competency evaluation program shall be included in the nurse aide registry within thirty (30) days of the date of completion.

(8) In accordance with 42 C.F.R. 483.154(f), an agency that administers the competency examination shall advise each individual who does not complete the examination satisfactorily:

(a) Of the areas which the individual did not pass; and

(b) That the individual has at two (2) additional opportunities to take the examination.

Section 8. State Nurse Aide Registry.

(1) The department, through an interagency agreement with the Kentucky Board of Nursing, shall be responsible for establishing and maintaining a registry of all nurse aides who have:

(a) Satisfactorily completed a nurse aide training and competency evaluation program upon successful completion of the competency examination; or

(b) Been granted an exception pursuant to 42 C.F.R. 483.150(c).

(2) A finding of resident or patient neglect, abuse, or misappropriation of resident or patient property by a nurse aide shall be maintained on an abuse registry pursuant to 906 KAR 1:100.

Section 9. Reciprocity.

(1) The department shall grant reciprocity for a nurse aide who is on another state's nurse aide registry if:

(a) The other state provides documentation that the individual is on its registry;

(b) An employment record provided to the department's nurse aide registry verifies that twenty-four (24) months have not elapsed since the individual worked for pay as a nurse aide; and

(c) The individual is not listed on the other state's registry of resident abuse, neglect, or misappropriation of resident property.

(2) The department shall not grant reciprocity for an individual whose name appears on any state's abuse registry.

Section 10. Reimbursement for Costs Incurred in Administering a Nurse Aide Training and Competency Evaluation Program.

(1) Reimbursement to a nursing facility for costs associated with a nurse aide training and competency evaluation program shall be available:

(a) In an amount specified in subsection (2) of this section; and

(b) For a nurse aide who:

1. Is employed by the facility; or

2. Receives an offer of employment from the facility within twelve (12) months of completing a nurse aide training and competency evaluation program.

(2) The maximum amount of reimbursement available to a nursing facility for costs incurred by an individual who completes the nurse aide training and competency evaluation program shall be forty-five (45) cents per Medicaid patient day.

(3) To receive reimbursement, a nursing facility shall report:

(a) The number of Medicaid patient days on the Nursing Facility Supplemental Medicaid Schedule NF-7 (included in the Medicaid Services Manual for Nurse Aide Training and Competency Evaluation Program) for the twelve (12) month period preceding October 1 of the current fiscal year; and

(b) The costs incurred for an aide to complete the nurse aide training and competency evaluation program on the MAP-576, Nurse Aide Training Expense Report and Authorization for Payment Form included in the Medicaid Services Manual for Nurse Aide Training and Competency Evaluation Program.

(4) The department shall not reimburse a nursing facility for a nurse aide if the nurse aide has been employed by another facility that received reimbursement for the aide's nurse aide training and competency evaluation program costs.

Section 11. Incorporation by Reference.

(1) The "Medicaid Services Manual for Nurse Aide Training and Competency Evaluation Program, March 2005 edition"; is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

(16 Ky.R. 311; 551; eff. 9-20-1989; 19 Ky.R. 1457; 1810; 2062; eff. 2-17-1993; 23 Ky.R. 2889; 3601; 3784; eff. 4-16-1997; 33 Ky.R. 994; 1328; eff. 12-1-2006; Crt eff. 12-6-2019; TAm eff. 11-28-2022.)

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