

NEBRASKA DEPARTMENT OF HEALTH AND HUMAN SERVICES
NOTICE OF PUBLIC HEARING

February 7, 2022
1:00 p.m. Central Time
Nebraska State Office Building – Lower Level A
301 Centennial Mall South, Lincoln, Nebraska
Phone call information: 888-820-1398; Participant code: 3213662#

The purpose of this hearing is to receive additional comments on the proposed adoption of Title 172, Chapter 87 of the Nebraska Administrative Code (NAC) – *Licensure of Surgical First Assistant*. The proposed adoption of this chapter specifies the definitions; establishes the acceptable documentation to verify education requirements; sets out the required continuing education hours and types; sets out the requirements for passing score, education, acceptable examinations, and continuing education for licensure; defines the supervising physician must be licensed in Nebraska; specifies actions or behaviors of unprofessional conduct; set out the fee requirements; and clarify language for obtaining a license based on reciprocity.

Authority for these regulations is found in Neb. Rev. Stat. § 81-3117(7).

In order to encourage participation in this public hearing, a phone conference line will be set up for any member of the public to call in and provide oral comments. Interested persons may provide verbal comments by participating in person or via phone conference line by calling 888-820-1398; Participant code: 3213662#.

Interested persons may provide written comments by mail, fax, or email, no later than the day of the hearing to: DHHS Legal Services, PO Box 95026, Lincoln, NE 68509-5026, (402) 742-2382 or dhhs.regulations@nebraska.gov, respectively.

A copy of the proposed changes is available online at <http://www.sos.ne.gov>, or by contacting DHHS at the mailing address or email above, or by phone at (402) 471-8417. The fiscal impact statement for these proposed changes may be obtained at the office of the Secretary of State, Regulations Division, 1201 N Street, Suite 120, Lincoln, NE 68508, or by calling (402) 471-2385.

Auxiliary aids or reasonable accommodations needed to participate in a hearing can be requested by calling (402) 471-8417. Individuals with hearing impairments may call DHHS at (402) 471-9570 (voice and TDD) or the Nebraska Relay System at 711 or (800) 833-7352 TDD at least 2 weeks prior to the hearing.



TO: Executive Board
Room 2108 State Capitol
Legislative Council

FROM: Marge Respeliers, Paralegal I
Legal Services
Department of Health and Human Services (DHHS)

DATE: December 27, 2021

RE: Notice of Rulemaking under Neb. Rev. Stat. § 84-907.06

The Department of Health and Human Services (DHHS) will be holding a second public hearing on the proposed adoption to the following regulations:

TITLE: 172 Professional and Occupational Licensure
CHAPTER: 87 Licensure of Surgical First Assistant

These regulations are scheduled for public hearing on February 7, 2022.

The purpose of this hearing is to receive additional comments on the proposed adoption of Title 172, Chapter 87 of the Nebraska Administrative Code (NAC) – *Licensure of Surgical First Assistant*. The proposed adoption of this chapter specifies the definitions; establishes the acceptable documentation to verify education requirements; sets out the required continuing education hours and types; sets out the requirements for passing score, education, acceptable examinations, and continuing education for licensure; defines the supervising physician must be licensed in Nebraska; specifies actions or behaviors of unprofessional conduct; set out the fee requirements; and clarify language for obtaining a license based on reciprocity.

The following items are enclosed for your referral to the chair of the relevant standing committee of the Legislature:

1. A copy of the notice of public hearing;
2. A copy of the proposed regulations;
3. A copy of the Policy Pre-Review Checklist; and
4. The estimated fiscal impact of this rulemaking action on state agencies, political subdivisions or persons being regulated.

FISCAL IMPACT STATEMENT

Agency: Department of Health and Human Services	
Title: 172	Prepared by: Jesse Cushman
Chapter: 87	Date prepared: 7-19-2021
Subject: Licensure Of Surgical First Assistant	Telephone: (402) 471-4915

Type of Fiscal Impact:

	State Agency	Political Sub.	Regulated Public
No Fiscal Impact	(<input checked="" type="checkbox"/>)	(<input checked="" type="checkbox"/>)	(<input type="checkbox"/>)
Increased Costs	(<input type="checkbox"/>)	(<input type="checkbox"/>)	(<input checked="" type="checkbox"/>)
Decreased Costs	(<input type="checkbox"/>)	(<input type="checkbox"/>)	(<input type="checkbox"/>)
Increased Revenue	(<input type="checkbox"/>)	(<input type="checkbox"/>)	(<input type="checkbox"/>)
Decreased Revenue	(<input type="checkbox"/>)	(<input type="checkbox"/>)	(<input type="checkbox"/>)
Indeterminable	(<input type="checkbox"/>)	(<input type="checkbox"/>)	(<input type="checkbox"/>)

Provide an Estimated Cost & Description of Impact:

State Agency: **No Change.**

Political Subdivision: **No Change.**

Regulated Public: **This is a new license type established by statute. The fees were set by the Department through regulation.**

If indeterminable, explain why:

TITLE 172 PROFESSIONAL AND OCCUPATIONAL LICENSURE

CHAPTER 87 LICENSURE OF SURGICAL FIRST ASSISTANT

001. AUTHORITY. These regulations govern the license of the practice as a Surgical First Assistant under the Surgical First Assistant Practice Act as provided in Nebraska Revised Statute (Neb. Rev. Stat.) §§ 38-3501 to 38-3517, the Uniform Credentialing Act (UCA), and Neb. Rev. Stat. §§ 38-101 to 38-1,142.

002. DEFINITIONS. Definitions are set out in the Uniform Credentialing Act, the Surgical First Assistant Practice Act, 172 Nebraska Administrative Code (NAC) 10, and this chapter.

002.01 ~~MODIFIED ANGOFF METHOD.~~ ~~A method of determining passing scores based on aggregate information obtained by having judges predict the probability that a hypothetical minimally competent candidate will correctly answer items in a test is the Angoff Method, a modified angoff method has several review rounds.~~

002.02 APPROVED CERTIFYING BODIES. Approved certifying bodies include, National Board of Surgical Technology and Surgical Assisting, ~~National Surgical Assistant Association,~~ or a certifying body recognized by the Board of Medicine and Surgery.

002.032 APPROVED EDUCATION PROGRAMS. Programs who are accredited by the Commission on Accreditation of Allied Health Education Programs or approved as equivalent by the Board of Medicine and Surgery.

002.03 ~~DELEGATE.~~ ~~Assign another individual the authority, responsibility, and accountability to perform tasks or functions based on demonstrated knowledge, skill, or ability.~~

003. LICENSE REQUIREMENTS. To obtain a license to practice as a Surgical First Assistant, an individual must submit a completed application provided by the Department and provide documentation demonstrating the applicant meets the licensing requirements of Neb. Rev. Stat. § 38-3512, 172 NAC 10, and this chapter.

003.01 EDUCATION. The applicant must submit the following:

- (A) Official transcripts sent from the issuing approved education program; and
- (B) Copy of high school diploma or a diploma of high school equivalency issued by the Nebraska Commissioner of Education or a similar government official.

003.02 EXAMINATION. The individual must have sent directly to the Department from the issuing institution one of the following:

- (A) Proof of having passed the National Board of Surgical Technology and Surgical Assisting (NBSTSA) examination with a passing score as determined using the modified Angoff method of 112 or above;
- (B) Proof of having passed the National Commission for the Certification of Surgical Assistants (NCCSA) ~~National Surgical Assistant Association (NSAA)~~ examination with a passing score as determined using the modified Angoff method of 118 or above;
- (C) Proof of having passed the American Board of Surgical Assistants (ABSA) examination with a minimum score of 70% on the General Knowledge Section and 75% on the Specialty and Practical Skills Section or above; or
- (D) Proof of having passed an equivalent nationally recognized Surgical First Assistant examination approved by the Board of Medicine and Surgery.

003.03 CERTIFICATION. Submit to the Department a copy of their certification from an approved certifying body.

003.04 RECIPROCITY. To obtain a license based on reciprocity, an applicant must submit a complete application provided by the Department and provide documentation demonstrating that the applicant meets the requirements of Neb. Rev. Stat. § 38-129.02, 172 NAC 10, and this chapter. Applicants must provide documentation of the following:

- (A) Possession of a current and valid credential as a (license type), for at least one year in another state, a territory of the United States, or the District of Columbia;
- (B) The education required to obtain the credential;
- (C) The minimum work experience and clinical supervision requirements, if any, required for the credential and the applicant's completion of the experience and clinical supervision;
- (D) Passage of an examination for the credential, if required to obtain the credential in the other jurisdiction;
- (E) That the credential has not been subject to revocation or any other disciplinary action or voluntarily surrendered while the applicant was under investigation for unprofessional conduct or any other conduct which would be subject to Neb. Rev. Stat. §38-178 if the conduct occurred in Nebraska; and
- (F) Information about any other credential the applicant has held and whether any disciplinary action has been taken against such credential. If disciplinary action has been taken documentation must be submitted showing the status of the action and whether the cause for the action has been corrected.

003.04 RECIPROCITY. To obtain a license based on reciprocity, an applicant must submit a complete application provided by the Department and provide documentation demonstrating the applicant meets the requirements of Neb. Rev. Stat. § 38-129.02 and submit:

- (A) Verification of holding a current and valid credential as a surgical first assistant, for at least one year in another state, a territory of the United States, or the District of Columbia;
- (B) A copy of the regulations and statutes that specify the educational requirements, minimum work experience and clinical supervision requirements, if any, required for the credential when it was issued and verification of the applicant's completion of the requirements, including:

- ~~(i) An official transcript verifying completion of the education required, directly from the issuing institution; and~~
- ~~(ii) Evidence of the work experience and clinical supervision, if required, directly from the other jurisdiction;~~
- ~~(C) Verification of passage of an examination for the credential, if required to obtain the credential in the other jurisdiction, sent directly by the issuing institution; or the other jurisdiction to the Department;~~
- ~~(D) Verification that the credential has not been subject to revocation or any other disciplinary action or voluntarily surrendered while the applicant was under investigation for unprofessional conduct or any other conduct which would be subject to Neb. Rev. Stat. § 38-178 if the conduct occurred in Nebraska or any other disciplinary action; and~~
- ~~(E) Information about any other credential the applicant has held and whether any disciplinary action has been taken against such credential. If disciplinary action has been taken documentation must be submitted showing the status of the action and whether the cause for the action has been corrected.~~

003.05 RESIDENCY. All applicants receiving a license pursuant to 172 NAC 87-003.04 must submit documentation of establishing residency in Nebraska as required by Neb. Rev. Stat. § 38-129.02. Such documentation must be submitted within 30 days of establishment of residency and consist of a rental or lease agreement with the signature of the owner or landlord and the applicant, a deed or title to residential real property with the name of the applicant as an owner, or documents with the name and address of the applicant such as mortgage bills, home utility bills, medical or employee documents or similar documents that show the applicant residing in Nebraska.

004. RENEWAL. The individual must meet the requirements set out in 172 NAC 10. All licenses issued by the Department to Surgical First Assistants will expire on October 1 of each even-numbered year.

005. CONTINUING EDUCATION. On or before the license expiration date, each Surgical First Assistant holding an active license in the State of Nebraska must complete 40 hours of acceptable continuing education during the preceding 24 month period.

005.01 ACCEPTABLE CONTINUING EDUCATION. Attendance at an educational course provided by an approved continuing education provider.

005.02 APPROVED CONTINUING EDUCATION PROVIDERS.

- ~~(A) The Accreditation Council for Continuing Medical Education (ACCME) Category 1 continuing education from institutions accredited by the Accreditation Council for Continuing Medical Education (ACCME);~~
- ~~(B) The National Board of Surgical Technology and Surgical Assisting (NBSTSA) Association of Surgical Technologist and Surgical First Assist (AST);~~
- ~~(C) The National Surgical Assistant Association (NSAA);~~
- ~~(D) The Association of Surgical Assistants (ASA); or~~
- ~~(D) The American Board of Surgical Assistants (ABSA); or~~
- (E) A nationally recognized continuing education provider approved by the Board of Medicine and Surgery.

005.03 OTHER CONTINUING EDUCATION PROVIDERS. Other providers may be approved by the Board of Medicine and Surgery if using nationally recognized quality continuing education standards.

005.04 DOCUMENTATION. Evidence of acceptable continuing education may be demonstrated by documentation that the applicant has maintained certification through the ~~National Board of Surgical Technology, Surgical Assisting Association of Surgical Technologists and Surgical First Assist, the Association of Surgical Assistants, or the National Surgical Assistant Association, or the American Board of Surgical Assistants.~~

006. SUPERVISION. ~~The delegation and personal s~~Supervision must be provided by a physician who is authorized to practice medicine and surgery in the state of Nebraska in accordance with Neb. Rev. Stat. § 38-3508.

006.01 SUPERVISION BY MORE THAN ONE PHYSICIAN. Nothing in these regulations will be construed to prohibit a Surgical First Assistant from being supervised by more than one physician at any time.

007. UNPROFESSIONAL CONDUCT. Unprofessional conduct is set out in Neb. Rev. Stat. § 38-179, 172 NAC 88 as applicable to the profession of surgical first assistant, and this chapter.

- (A) Practicing as a Surgical First Assistant under a false or assumed name;
- (B) Knowingly or unknowingly, perform functions requiring professional judgment and licensure that ~~is was~~ not part of the scope of practice for a Surgical First Assistant specifically delegated by and under the personal supervision of a physician;
- (C) Harvesting of specimens; and
- (D) Claiming credit for any continuing education activities not actually participated in and earned.

008. REINSTATEMENT. The applicant must meet the requirements set out in 172 NAC 10.

009. FEES. Fees are set out in 172 NAC 2 and this chapter:

- (A) Initial license is \$150; and
- (B) Renewal of a license is \$110.