

NEBRASKA DEPARTMENT OF HEALTH AND HUMAN SERVICES
NOTICE OF PUBLIC HEARING

February 14, 2022
10:00 a.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 comments on proposed changes to Title 172, Chapter 108 of the Nebraska Administrative Code (NAC) – *Approval of Training Programs and Qualifications for Nursing Assistants in Nursing Homes*. The proposed changes remove duplicate statutory, unnecessary, and inconsistent language from the regulations; update chapter name; update definitions; update terminology; specify the requirements for conducting competency evaluations; update section headings; correct punctuation and update formatting; and restructure the regulatory chapter.

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 in person or by participating via phone conference line by calling 888-820-1398; Participant code: 3213662#.

Interested persons may attend the hearing and provide verbal or written comments, or mail, fax or email written comments, 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 who are deaf or hard of hearing may call DHHS via 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 Respeliars, Paralegal I
Legal Services
Department of Health and Human Services (DHHS)

DATE: January 3, 2022

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

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

TITLE: 172 Professional and Occupational Licensure
CHAPTER: 108 Approval of Training Programs and Qualifications for Nursing Assistants in Nursing Homes

These regulations are scheduled for public hearing February 14, 2022.

The purpose of this hearing is to receive comments on proposed changes to Title 172, Chapter 108 of the Nebraska Administrative Code (NAC) – *Approval of Training Programs and Qualifications for Nursing Assistants in Nursing Homes*. The proposed changes remove duplicate statutory, unnecessary, and inconsistent language from the regulations; update chapter name; update definitions; update terminology; specify the requirements for conducting competency evaluations; update section headings; correct punctuation and update formatting; and restructure the regulatory chapter.

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: Dan Taylor, RN
Chapter:108	Date prepared: 9/23/2021
Subject: APPROVAL OF TRAINING PROGRAMS AND QUALIFICATIONS FOR NURSE AIDES IN NURSING HOMES	Telephone: 402-471-4969

Type of Fiscal Impact:

	State Agency	Political Sub.	Regulated Public
No Fiscal Impact	(<input checked="" type="checkbox"/>)	(<input checked="" type="checkbox"/>)	(<input checked="" type="checkbox"/>)
Increased Costs	(<input type="checkbox"/>)	(<input type="checkbox"/>)	(<input 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: None

State Agency:

Political Subdivision:

Regulated Public:

If indeterminable, explain why:

TITLE 172 PROFESSIONAL AND OCCUPATIONAL LICENSURE

CHAPTER 108 APPROVAL OF TRAINING PROGRAMS AND QUALIFICATIONS FOR
~~NURSING ASSISTANTS~~ NURSE AIDES IN NURSING HOMES

~~108-001. SCOPE AND AUTHORITY:~~ These regulations govern the qualifications and training requirements for ~~nursing assistants~~ nurse aides employed in nursing homes. Statutory authority for ~~these regulations this chapter~~ is Nebraska Revised Statutes (Neb. Rev. Stat.) §§ 71-6038, 71-6039, and 71-6040 to 71-6042. These regulations are ~~also~~ consistent with federal requirements ~~developed by the United States Department of Health and Human Services in~~ at 42 CFR § 483, Subpart D, as it existed on the effective date of these regulations.

~~108-002. DEFINITIONS.~~ Definitions are found in Neb. Rev. Stat. § 71-6038 and this chapter.

~~002.01 ADMINISTRATOR.~~ Administrator means ~~T~~the operating officer for the health care facility, ~~regardless of whether and may be~~ titled as administrator, manager, superintendent, ~~or~~ director, or ~~may have~~ with a similar designation. The administrator of a licensed intermediate care facility, nursing facility, skilled nursing facility, or intermediate care facility for ~~the mentally retarded~~ individuals with intellectual disabilities must be licensed by the State of Nebraska.

~~002.02 CURRICULUM.~~ Curriculum means a ~~A~~ detailed course outline, description, or syllabus submitted to the Department as part of the course approval process by an association, hospital, nursing home, educational institution, or health care facility sponsoring a ~~nursing assistant~~ nurse aide training course program.

~~Department means the Department of Health and Human Services.~~

~~Employee means an individual under hire to a nursing home to perform any duty required to be performed regularly on the premises, whether on a full-time or part-time basis.~~

~~Intermediate care facility means a facility where shelter, food, and nursing care or related services are provided for a period of more than 24 consecutive hours to persons residing at such facility who are ill, injured, or disabled and do not require hospital or skilled nursing care.~~

~~Intermediate care facility for the mentally retarded or ICF/MR means a facility where shelter, food, and training or habilitation services, advice, counseling, diagnosis, treatment, nursing care, or related services are provided for a period of more than 24 consecutive hours to four or more persons residing at such facility who have mental retardation or related conditions, including epilepsy, cerebral palsy, or other developmental disabilities.~~

~~Long-term care hospital means a hospital or any distinct part of a hospital that provides the care and services of an intermediate care facility, a nursing facility, or a skilled nursing facility.~~

~~Nursing assistant means any person, other than a paid dining assistant or a licensed registered or practical nurse, employed by a nursing home for the purpose of aiding a licensed registered or practical nurse through the performance of nonspecialized tasks related to the personal care and comfort of residents. Federal regulations in 42 CFR § 483, Subpart D, refer to these nursing home employees as "nurse aides".~~

~~Nursing facility means a facility where medical care, nursing care, rehabilitation, or related services and associated treatment are provided for a period of more than 24 consecutive hours to persons residing at such facility who are ill, injured, or disabled.~~

~~Nursing home means any facility or distinct part of any facility that provides care as defined in Neb. Rev. Stat. § 71-420 (intermediate care facility), § 71-421 (ICF/MR), § 71-422 (long-term care hospital), § 71-424 (nursing facility), and § 71-429 (skilled nursing facility).~~

~~Registered nurse means an individual who has a current active Nebraska license, issued by the Department upon the recommendation of the State Board of Nursing, to practice professional nursing and to use the title "Registered Nurse" and the abbreviation "R.N." or has the authority to practice in this state as a registered nurse under the provisions of the Nurse Licensure Compact.~~

~~002.03 NURSE AIDE REGISTRY. Registry means the central data bank established by 471 NAC 12-002.04 of individuals who have met the training and competency evaluation requirements eligible to function as nurse aides in certified facilities established by 471 Nebraska Administrative Code (NAC) 12 in 172 NAC 108-003.~~

~~002.04 PROGRAM OR COURSE. The terms program and course are used synonymously in these regulations. The Nurse Aide Training Program consists of one course.~~

~~002.05 RESIDENT. Resident means any person domiciled, residing, or receiving care and treatment, for a period in excess of 24 hours, in a nursing home.~~

~~Skilled nursing facility means a facility where medical care, skilled nursing care, rehabilitation, or related services and associated treatment are provided for a period of more than 24 consecutive hours to persons residing at such facility who are ill, injured, or disabled.~~

~~108-003. NURSEING AIDE ASSISTANT TRAINING PROGRAMS REQUIREMENTS.~~

~~003.01 PRACTICE. To act as a nurse aide, individuals must meet the requirements of Neb. Rev. Stat. § 71-6039 and the following:~~

- ~~(A) Successfully complete a Department-approved training program;~~
- ~~(B) Demonstrate at least the minimum acceptable proficiency in tasks or duties connected with each skill in the curriculum prescribed in 172 NAC 108-004, as determined by the registered nurse administering the course and the course instructor; and~~

(C) Successfully complete a competency evaluation as described in 172 NAC 108-006.

003.02 FINDINGS OF CONVICTION. The Department will document convictions of crimes involving moral turpitude rationally related to the practice of a nurse aide by placing a finding of conviction on the Nurse Aide Registry.

003.02(A) WRITTEN NOTICE. Nurse aides will be notified in writing of a finding of conviction.

003.02(B) DISCIPLINARY ACTION. A nursing home is subject to disciplinary action against its license under Neb. Rev. Stat. § 71-6042 or this chapter.

108-0034. NURSING ASSISTANT NURSE AIDE TRAINING PROGRAMS.

108-0034.01 NURSING HOME NURSE AIDE TRAINING PROGRAM. Courses of training for all ~~nursing homes except ICF/MR's facility types outlined in Neb. Rev. Stat. § 71-6039 except Intermediate Care Facilities for Individuals with Intellectual Disabilities (ICF/IID)~~ must be given by a single sponsor or organization and include, at a minimum, 75 clock hours of instruction, including at least 16 hours of supervised practical training. In addition, the course must include at least ~~one~~ 1 hour of instruction on the responsibility of each ~~nursing assistant nurse aide~~ to report suspected abuse or neglect ~~pursuant to Neb. Rev. Stat. §§ 28-372 and 28-711.~~ The curriculum for a nursing assistant training course must include, At a minimum, the curriculum must include the following:

- 1.(A) At least 16 hours of training in the following areas prior to any direct contact with ~~a~~ residents:
 - ~~a.(i)~~ Communication and interpersonal skills;
 - ~~b.(ii)~~ Infection control;
 - ~~c.(iii)~~ Safety ~~and~~ emergency procedures, including emergency measures for choking;
 - ~~d.(iv)~~ Promoting residents' independence; ~~and~~
 - ~~e.(v)~~ Respecting residents' rights;
- 2.(B) Basic nursing skills:
 - ~~a.(i)~~ Taking and recording vital signs;
 - ~~b.(ii)~~ Measuring and recording height and weight;
 - ~~c.(iii)~~ Caring for ~~the~~ residents' environment;
 - ~~d.(iv)~~ Recognizing abnormal changes in body functioning and the importance of reporting ~~such~~ changes to ~~a~~ supervisors; ~~and~~
 - ~~e.(v)~~ Caring for residents when death is imminent;
- 3.(C) Personal care skills, including, but not limited to:
 - ~~a.(i)~~ Bathing;
 - ~~b.(ii)~~ Grooming, including mouth care;
 - ~~c.(iii)~~ Dressing;
 - ~~d.(iv)~~ Toileting;
 - ~~e.(v)~~ Assisting with eating and hydration;
 - ~~f.(vi)~~ Proper feeding techniques;
 - ~~g.(vii)~~ Skin care; ~~and~~
 - ~~h.(viii)~~ Transfers, positioning, and turning;

- 4-(D) Mental health and social service needs:
- a-(i) Modifying ~~nursing assistant's~~ behavior in response to residents' behavior;
 - b-(ii) Awareness of developmental tasks associated with the aging process;
 - c-(iii) ~~How to r~~ Responding to resident behavior;
 - d-(iv) Allowing ~~the~~ residents to make personal choices, providing and reinforcing other behavior consistent with ~~the resident's~~ residents' dignity; ~~and~~
 - e-(v) Using ~~the resident's~~ residents' family as a source of emotional support-;
- 5-(E) Care of cognitively impaired residents:
- a-(i) Techniques for addressing ~~the~~ unique needs and behaviors of individual residents with dementia, ~~(Alzheimer's and others)~~ diseases affecting cognitive functioning;
 - b-(ii) Communicating with cognitively impaired residents;
 - c-(iii) Understanding ~~the~~ behavior of cognitively impaired residents;
 - d-(iv) Appropriate responses to ~~the~~ behavior of cognitively impaired residents; ~~and~~
 - e-(v) Methods of reducing ~~the~~ effects of cognitive impairments-;
- 6-(F) Basic restorative services:
- a-(i) Training ~~the~~ residents in self-care according to their resident's abilities;
 - b-(ii) Use of assistive devices in transferring, ambulation, eating and dressing;
 - c-(iii) ~~Maintenance of~~ Maintaining range of motion;
 - d-(iv) Proper turning and positioning in bed and chair;
 - e-(v) Bowel and bladder training; ~~and~~
 - f-(vi) Care and use of prosthetic and orthotic devices-;
- 7-(G) Residents' rights:
- a-(i) Providing privacy and ~~maintenance of~~ maintaining confidentiality;
 - b-(ii) Promoting the resident's ss' right to make personal choices to accommodate ~~his/her~~ their needs;
 - c-(iii) ~~Giving assistance~~ Assisting in resolving grievances and disputes;
 - d-(iv) Providing ~~needed~~ assistance in getting to and participating in resident and family groups and ~~other~~ activities;
 - e-(v) Maintaining care and security of resident personal possessions;
 - f-(vi) Promoting ~~the~~ resident's ss' right to be free from abuse, mistreatment, and neglect and ~~the need to report~~ reporting any instances of such treatment to appropriate facility staff; and
 - g-(vii) Avoiding ~~the need for~~ restraints in accordance with current professional standards.

108-0034.02 INTERMEDIATE CARE FACILITIES FOR INDIVIDUALS WITH INTELLECTUAL DISABILITIES NURSE AIDE TRAINING PROGRAM. Courses of training for ~~nursing assistants~~ nurse aides employed by ~~ICF/MR's~~ intermediate care facilities for individuals with intellectual disabilities (ICF/IID) must be given by a single sponsor or organization and include, at a minimum, 15 hours of classroom instruction in basic personal care and ~~five~~ 5 hours of classroom instruction in basic therapeutic and emergency procedures. In addition, the course must include at least ~~one~~ 1 hour of instruction on the responsibility of each ~~nursing assistant~~ nurse aide to report suspected abuse or neglect ~~pursuant to Neb. Rev. Stat. §§ 28-372 and 28-711.~~ The At a minimum, the curriculum ~~for the course~~ must include,

~~at a minimum, the following components of classroom instruction including appropriate practical training:~~

~~108-003.02(A)~~ At least 15 hours of basic personal care training in the following areas:

- ~~1.(i)~~ Personal care:
 - ~~a.(1)~~ Bathing;
 - ~~b.(2)~~ Oral hygiene;
 - ~~c.(3)~~ Backrubs;
 - ~~d.(4)~~ Nail care;
 - ~~e.(5)~~ Shaving;
 - ~~f.(6)~~ Hair care;
 - ~~g.(7)~~ Dressing; **and**
 - ~~h.(8)~~ Bed-making, (both occupied and unoccupied);_i
- ~~2.(ii)~~ Active range of motion:
 - ~~a.(1)~~ Ambulation;
 - ~~b.(2)~~ Positioning;
 - ~~c.(3)~~ Transfer techniques; **and**
 - ~~d.(4)~~ Use of physical restraints;_i
- ~~3.(iii)~~ Foods and fluids:
 - ~~a.(1)~~ Basic nutrition;
 - ~~b.(2)~~ Diet descriptions;
 - ~~c.(3)~~ Preparation of residents for meals;
 - ~~d.(4)~~ Feeding techniques;
 - ~~e.(5)~~ Reporting intake and output; **and**
 - ~~f.(6)~~ Weighing techniques;_i
- ~~4.(iv)~~ Elimination:
 - ~~a.(1)~~ Appropriate use of urinal and bedpan;
 - ~~b.(2)~~ Bowel and bladder retraining;
 - ~~c.(3)~~ Incontinent care; **and**
 - ~~d.(4)~~ Enemas;_i
- ~~5.(v)~~ Safety and accident prevention:
 - ~~a.(1)~~ Lighting;
 - ~~b.(2)~~ Siderails;
 - ~~c.(3)~~ Call lights;
 - ~~d.(4)~~ Wheelchairs; **and**
 - ~~e.(5)~~ Smoking;_i
- ~~6.(vi)~~ Infection prevention techniques:
 - ~~a.(1)~~ Handwashing; **and gloving;**
 - ~~b.(2)~~ Care of linen and equipment; **and**
 - ~~c.(3)~~ Introduction to isolation techniques;_i
- ~~7.(vii)~~ Aging process:
 - ~~a.(1)~~ Basic principles;
 - ~~b.(2)~~ Psychosocial needs; **and**
 - ~~c.(3)~~ Communication skills;_i

~~108-003.02(B)~~ At least **five 5** hours of therapeutic and emergency procedures training in at least the following areas:

- ~~1.(i)~~ Fire and disaster safety and procedures;

- 2-(ii) Basic emergency care:
 - a-(1) Recognition of signs and symptoms of emergencies including bleeding, burns, convulsions, fainting, falls, and choking; ~~and~~
 - b-(2) Procedures for reporting; ~~and~~
- 3-(iii) Measuring vital signs:
 - a-(1) Temperature;
 - b-(2) Pulse;
 - c-(3) Respirations; ~~and~~
 - d-(4) Blood pressure;

~~108-003.02(C)~~ At least ~~one~~ 1 hour of training in procedures for reporting suspected abuse or neglect, including:

- 1-(i) The requirements of ~~Neb. Rev. Stat. §§ 28-372 and 28-714~~ the Adult Protective Services Act and the Child Protection and Family Safety Act; and
- 2-(ii) Resident rights as set forth in 175 NAC 12 and 175 NAC 17.

~~108-003.03~~ ~~Individuals completing a nursing assistant training course must demonstrate at least the minimum acceptable proficiency in tasks or duties connected with each unit of the components set forth in 172 NAC 108-003. This minimum acceptable proficiency must be determined by the registered nurse administering the course and the instructor for the course.~~

~~108-003.04~~ ~~Individuals completing a 75-hour nursing assistant training course must successfully complete an approved competency evaluation program consisting of a written or oral examination and a demonstration of skills. The competency evaluation program will be administered by the Department or a Department-approved entity that is not a nursing home that participates in Medicare or Medicaid.~~

~~108-003.05~~ ~~Courses may exceed the minimum hour or training requirements set forth in these regulations.~~

~~108-003.06~~04.03 PROGRAM ADMINISTRATION. Courses must be administered by registered nurses who hold a current license to practice as ~~a registered nurse~~ such in this state Nebraska or have the authority to practice ~~in this state as a registered nurse~~ as such in Nebraska under the provisions of the Nurse Licensure Compact.

~~108-003.07~~04.04 COURSE ADMINISTRATION DOCUMENTATION. The A registered nurse administering ~~the nursing assistant~~ a nurse aide course must document an individual's successful completion of the course in a document ~~certificate or letter~~, the original of which must be given to the individual, containing the following information:

- 1-(A) ~~The~~ individual's name;
- 2-(B) ~~The~~ individual's date of birth;
- 3-(C) ~~The~~ date of successful completion of the course;
- 4-(D) ~~The~~ eCourse sponsor; and
- 5-(E) ~~The~~ eCourse instructor.

~~108-003.08~~04.05 REQUIRED DOCUMENTATION. The information required by 172 NAC 108-004.04 ~~108-003.07~~ must also be submitted to the Department in a form or letter ~~document~~

signed by the administrator, ~~and must also include~~ that also includes the individual's Ssocial Ssecurity Nnumber.

108-004.005. APPROVAL OF NURSE AIDE TRAINING PROGRAMS. Any association, educational institution, skilled nursing facility, nursing facility, intermediate care facility, or intermediate care facilities for individuals with intellectual disabilities (ICF/IID) may apply for approval to conduct a training course for nurse aides.

~~108-004.01 Applications for Nursing Assistant Training Course: Any association, educational institution, skilled nursing facility, nursing facility, including a skilled or intermediate care facility or ICF/MR may apply to the Department for approval to conduct a course for nursing assistants.~~

108-004.01A005.01 APPLICATION FORM AND CONTENT. Applications ~~for approval of a nursing assistant training course~~ must be made on a form provided by the Department, ~~together and submitted~~ with the curriculum for the course as defined in ~~108-003~~ 172 NAC 108-004. The application must include the following information:

- ~~1.(A)The title of the course~~ Course title;
- ~~2.(B)The sSponsor's name~~;
- ~~3.(C)The names and authors of all textbooks to be used, if any, including the publisher and edition, Title, author, publisher, and edition of any textbook to be used or, if no textbook is to be used, a list of written materials to be used, including and the source of such materials~~;
- ~~4.(D)The sSpecific objectives for the course~~;
- ~~5.(E)The units Units to be covered in the course, as determined by the components required by 108-003.01 172 NAC 108-004.01, items 1-7 A-G, and 108-003.02A-C 172 NAC 108-004.02, items A-C, and the hours to be spent on each unit~~;
- ~~6. The hours to be spent on each unit within the components required by 108-003.01, items 1-7, and 108-003.02A-C~~;
- ~~7.(F)The mMethod(s) of instruction for each unit listed in 108-004.01, item 5 (for example, 172 NAC 108-004, such as lecture, demonstration, simulation, slide presentation, film strip, etc.) or other electronic methods~~;
- ~~8.(G)A description Description of the practical training to be provided for each unit listed in 108-004.01A, item 5~~;
- ~~9.(H)The reading assignment Reading assignments in the text or in other materials, if any, for each unit~~;
- ~~10.(I)The evaluation Evaluation method for each unit (for example, written examination, student presentation or demonstration, competency check-off, etc.), such as written examination, student presentation or demonstration, or competency check-off~~;
- ~~11.(J)An explanation of when students will be evaluated Timing of evaluations, such as (for example, after each unit, or comprehensively at the end of the course)~~;
- ~~12.(K)An explanation of the grading Grading system to be used for written examinations and proficiency evaluations; and~~
- ~~13.(L)A list of tasks connected with each unit listed in 108-003.01, items 1-7, or 108-003.02A-C on which students will be evaluated for competency, and guidelines for examinations to be used, which must include, at a minimum Tasks and duties that~~

students will be evaluated for competency on for each unit and the examinations to be used, including, at a minimum:

- ~~a.~~(i) Procedures ~~to be followed in for~~ administering examinations;
- ~~b.~~(ii) Procedures ~~to be followed to ensure for ensuring the~~ security of examinations, ~~both~~ during administration and otherwise, ~~including but not limited to~~ the number of times ~~a~~ particular examinations will be used;
- ~~c.~~(iii) Procedures ~~to be followed to validate the for validating that~~ examinations ~~as testing measure~~ competency in the unit being tested; and
- ~~d.~~(iv) Procedures ~~to be followed in reporting the for reporting~~ grades to the sponsor and ~~the~~ Department.

~~108.004.01B005.02 APPLICATION SUBMISSION. The application and curriculum must be submitted The administrator for the entity conducting the course must submit the application at least 30 days prior to the date on which when the course is to be given.~~

~~108.004.01C The application must be submitted by the administrator or operating officer for the entity conducting the course.~~

~~108.004.01D005.03 COMPLETE APPLICATIONS. Only applications which are complete applications will be considered. In order to be considered complete, a applications must include:~~

- ~~1.~~(A) All of the information requested on the application;
- ~~2.~~(B) A complete curriculum as defined in ~~108-002.02 this chapter~~; and
- ~~3.~~(C) The signature of the administrator ~~or operating officer~~ of the entity making application.

~~An applicant may submit such additional documents or information as the applicant may consider relevant to the application and compliance with the provisions of these regulations. In the event that an application is determined to be incomplete, the Department will notify the applicant of the information necessary to complete the application and retain the application submitted pending receipt of the additional information.~~

~~108-004.02005.04 Continuing Approval: CONTINUING APPROVAL. Once an application for approval for a nursing assistant course has been granted by the Department, reapproval is not required for each occasion on which the course is administered so long as the course is not changed, or so long as the course requirements are not changed by law. If the course, or any portion of a course thereof is changed, reapplication must be made in accordance with 108-004.01A this chapter. In cases where When only a portion of a course is changed, the applicant may submit only documentation and information only as to regarding the changes made, but must clearly indicate identify those portions that are unchanged by so stating on the application.~~

~~108-004.03005.05 Applications to Conduct Approved Courses Developed by Others: APPLICATIONS TO CONDUCT APPROVED COURSES DEVELOPED BY OTHERS. Associations, educational institutions, and health care facilities skilled nursing facilities, nursing facilities, intermediate care facilities, and intermediate care facilities for individuals~~

~~with intellectual disabilities (ICF/IID)~~ may, with the consent of the developer(s), conduct ~~nursing assistant nurse aide~~ training courses developed by others ~~which that~~ have ~~received approval from~~ been approved by the Department. Such facilities must apply for approval in accordance with ~~108-004.01A~~ this chapter, but need not submit curriculum materials required by ~~108-003.01 or 108-003.02~~ this chapter except to the extent that the course will ~~be varied vary~~ in any manner from the approved course. Applicants must indicate on the application the title of the approved course to be used, name of the entity whose approved course will be used, and the date on which such course was approved.

~~108-004.04005.06~~ CHANGES TO APPROVED COURSES. Any changes in approved courses must be submitted to the Department for ~~prior~~ approval.

~~108-004.05~~ 005.07 ONSITE INSPECTION. All ~~nursing assistant nurse aide~~ training courses are subject to ~~on-site~~ periodic on-site review by the Department. Sponsors of approved courses must ~~provide written notice to the Department of the date(s) and location that a basic course will be held at least five working days before each occasion on which an approved course is scheduled to begin~~ give the Department at least 5 days' written notice of the date when a course will be held and the location of the course.

~~108-004.06~~ 005.08 ATTENDANCE RECORDS. The ~~approved course~~ sponsor must maintain attendance records for ~~such~~ courses for a minimum of ~~two~~ 2 years from the date of completion ~~of each course.~~ Attendance records are subject to review by the Department upon request.

~~108-004.07 Attendance records are subject to review by the Department upon request.~~

~~108-004.08005.09 Denial, Suspension, or Revocation of Approval:~~ DENIAL, SUSPENSION, OR REVOCATION OF APPROVAL. The Department ~~will~~ may deny, suspend, or revoke approval of a ~~nursing assistant nurse aide~~ training course for failure to meet the requirements of ~~Neb. Rev. Stat. Neb. Rev. Stat. §§ 71-6038 to 71-6042 and this chapter as applicable, or the provisions of these regulations.~~ If the Department determines to deny, suspend, or revoke approval of a nursing assistant training course, the Department will send the applicant a notice identifying the reasons for the determination. The notice will be sent by either registered or certified mail. The denial, suspension, or revocation will become final 30 days after the mailing of the notice unless the applicant, within that 30-day period, gives written notice of a request for a hearing. Hearings will be conducted in accordance with the Administrative Procedure Act and 184 NAC 1.

108-005 NURSING ASSISTANT ELIGIBILITY AND REQUIREMENTS

~~108-005.01~~ In order for an individual to be eligible for employment as a nursing assistant in a nursing home, the individual:

- ~~1.— Must be at least 16 years of age;~~
- ~~2.— Cannot have been convicted of a crime involving moral turpitude rationally related to his or her practice;~~

~~3. Must be able to speak and understand the English language or a language understood by a substantial portion of the facility's residents; and~~

~~4. Must successfully complete, within 120 days of employment, a nursing assistant training course approved by the Department.~~

~~108-005.02 A registered nurse or licensed practical nurse whose license has been revoked, suspended, or voluntarily suspended in lieu of discipline may not act as a nursing assistant in a nursing home.~~

~~108-005.03 If a person registered as a nursing assistant becomes licensed as a registered nurse or licensed practical nurse, his or her registration as a nursing assistant becomes null and void as of the date of licensure.~~

006. COMPETENCY EVALUATIONS. The Department may administer and evaluate competency evaluations; contract for the administration and evaluation of competency evaluations; or request applications for approval to administer and evaluate competency evaluations. Skilled nursing facilities that participate in Medicare and nursing facilities that participate in Medicaid are not eligible to administer and evaluate competency evaluations. A nurse aide course instructor cannot teach a student in the nurse aide course and administer the competency evaluation to the same student. Any applications for approval must include a copy of the evaluation plan and procedures and assurances that the requirements of this section will be met.

006.01 CONTENT. A competency evaluation must contain a written or oral portion and a skills demonstration portion.

006.01(A) WRITTEN PORTION. The written or oral portion must:

- (i) Address each course requirement listed in section 004 of these regulations;
- (ii) Be developed from a pool of questions, only a portion of which is used in any one examination;
- (iii) Use a system that prevents disclosure of both the question pool and the individual competency evaluations;
- (iv) If oral, be read from a prepared text in a neutral manner;
- (v) Be tested for reliability and validity using nationally recognized standards; and
- (vi) Meet all other requirements set forth in 42 CFR § 483, Subpart D.

006.01(B) SKILLS DEMONSTRATION. The skills demonstration portion must:

- (i) Address each personal care skill listed in section 004 of these regulations;
- (ii) Consist of demonstration of randomly selected items drawn from a pool of tasks generally performed by nurse aides;
- (iii) Be performed in a setting comparable to the setting in which the nurse aide will operate and be administered and evaluated by a registered nurse with at least one year's experience in providing care for the elderly or the chronically ill of any age; and
- (iv) Meet all other requirements set forth in 42 CFR § 483, Subpart D.

006.02 NOTIFICATION. Persons taking the competency evaluation will be advised in advance that a record of the successful completion of the examination will be included in the state's nurse aide registry.

006.03 SUCCESSFUL COMPLETION. A score of PASS must be achieved for both the written, oral, and skills demonstration parts of the test. The competency testing entity will inform the nurse aide of the test score within 5 calendar days of the completion of the test and will inform the nurse aide registry of the nurse aide's scores within 14 calendar days after the test is completed.

006.04 UNSUCCESSFUL COMPLETION. Any person who does not complete the evaluation satisfactorily will be advised in writing within 5 calendar days after the test is scored of the areas which the person did not pass and that the person has 3 opportunities to take the evaluation. The competency testing entity will inform the nurse aide registry of the nurse aide's scores within 14 calendar days after the test is completed.

006.05 STORAGE OF EVALUATION INSTRUMENT. Evaluation instruments must be securely stored when they are not being administered or processed.

006.06 DATA MANAGEMENT AND TRANSMISSION. Any contractor or provider of competency evaluations must meet state and federal requirements for nurse aide certification testing. This includes a secure system for data management and transmission of data to the Department, as well as the maintenance and security of questions in the written and skills examination pool.

006.06(A) QUALITY ASSURANCE. Any contractor or provider of competency evaluations shall conduct a standard quality assurance program measuring elements of structure, process, and outcomes of all components of the nurse aide competency evaluation. Written and skills exams must be linked to the nurse aide job analysis and supported by psychometric data determining the validity of all testing items on an ongoing basis.

006.06(B) DATA COLLECTION AND REPORTING. Data collection and reporting shall include the following reports as requested by the Department:

- (i) Pass and fail rates by program or contract;
- (ii) Psychometric analysis of exam items;
- (iii) Candidate satisfaction rates;
- (iv) Americans with Disabilities Act (ADA) accommodations provided;
- (v) Quality assurance data; and
- (vi) Data that supports intra- and inter rater-reliability of the nurse aide tester.

~~108-006 FINDINGS OF CONVICTION.~~

~~108-006.01 The Department will document convictions of crimes involving moral turpitude rationally related to the practice of a nursing assistant by placing a finding of conviction on the Registry. A finding of conviction will make the nursing assistant ineligible for employment in a nursing home.~~

DRAFT
10-07-2021

NEBRASKA DEPARTMENT OF
HEALTH AND HUMAN SERVICES

172 NAC 108

~~108-006.02~~ A person listed on the Registry for whom a finding of conviction has been placed on the Registry may petition the Department to have the finding removed at any time after one year has elapsed since the date the finding was placed on the Registry.

~~108-006.03~~ If the Department proposes to place a finding in accordance with 108-006.01 or to deny a petition made in accordance with 108-006.02, the Department will send the nursing assistant or petitioner written notice identifying the reasons for the proposed finding. The Department will place the finding on the Registry 30 days after receipt of the notice unless the petitioner, within that 30-day period, gives written notice of a request for a hearing. Hearings will be conducted in accordance with the Administrative Procedure Act and 184 NAC 1.

~~108-007~~ **DISCIPLINARY ACTION:** Pursuant to Neb. Rev. Stat. §§ 71-6042, a nursing home is subject to disciplinary action against its license for violations of Neb. Rev. Stat. §§ 71-6038 to 71-6042 or these regulations.