

CR 91-177

CERTIFICATE

STATE OF WISCONSIN)
) SS
DEPARTMENT OF HEALTH AND SOCIAL SERVICES)

I, Gerald Whitburn, Secretary of the Department of Health and Social Services and custodian of the official records of the Department, do hereby certify that the annexed rules relating to certification of training and testing programs for hospice aides working for Medicare-certified hospice programs were duly approved and adopted by this Department on April 29, 1992.

I further certify that this copy has been compared by me with the original on file in the Department and that this copy is a true copy of the original, and of the whole of the original.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the Department at the State Office Building, 1 W. Wilson Street, in the city of Madison, this 29th day of April, 1992.



SEAL:

Gerald Whitburn, Secretary
Department of Health and Social Services

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ORDER OF THE DEPARTMENT
OF HEALTH AND SOCIAL SERVICES
REPEALING, RENUMBERING, AMENDING, REPEALING AND RECREATING
AND CREATING RULES

To repeal HSS 129.11(1)(c) and (e); to renumber HSS 129.11(1)(d) and (f) to (h) and Note; to amend HSS 129 (title), 129.01, 129.02, 129.03(3), (5), (13) and 17, 129.05(1)(a) and (2)(c)4, 129.06(3)(a), 129.07(2)(b)(intro.), (c)(intro.), (d)(intro.), (e)(intro.), (f)2(intro.) and (3)(intro.) and (g)7, 129.08(2)(b)2 and (c) and 129.10(1), (2)(a) and (j) and (3)(b) and (5); to repeal and recreate HSS 129.08(3)(a)4 and 129.11; and to create HSS 129.03(11m) and (11r) and 129.11 Note #2, relating to certification of training and testing programs for hospice aides working in Medicare-certified hospices.

Analysis Prepared by the Department of Health and Social Services

Amendments made to s.146.40, Stats., by 1991 Wisconsin Act 39 make hospices certified for Medicare under 42 USC 1395 to 1395 ccc subject to the same requirements for having trained and tested hospice aides as hospitals, nursing homes and facilities for the developmentally disabled are subject to for nurse assistants and home health agencies for home health aides. The amendments also make hospice aides with evidence of appropriate training and testing eligible to be listed in the Department's registry of qualified nurse assistants and aides under s.146.40(4g), Stats.

This rulemaking order amends ch. HSS 129, the Department's rules for certification of training and testing programs for nurse assistants and aides and operation of the registry of nurse assistants and aides to add hospice aides wherever nurse assistants and home health aides are mentioned.

Similar emergency rules for certification of training and testing programs for hospice aides have been in effect since October 1, 1991.

This order also amends ch. HSS 129 to permit the Department to impose a plan of correction on a training and testing program as an alternative to suspending or revoking certification, with a deadline set for corrections to be made, and to provide that any appeal of a decision by the Department to suspend or revoke certification or to impose a plan of correction be directed not to the Department's Office of Administrative Hearings but to the Department of Administration's Division of Hearings and Appeals. These amendments bring the rules into conformity with changes made in s. 146.40(3), (3m) and (4m), Stats., by Act 39.

The Department's authority to repeal, renumber, amend, repeal and recreate and create these rules is found in s. 146.40(5), Stats., as amended by 1991 Wisconsin Act 39, The rules interpret s. 146.40, Stats., as amended by 1991 Wisconsin Act 39.

SECTION 1. Chapter HSS 129 (title) is amended to read:

Chapter HSS 129 (title)

CERTIFICATION OF PROGRAMS FOR TRAINING AND
TESTING NURSE ASSISTANTS AND HOME HEALTH AIDES
AND HOSPICE AIDES

SECTION 2. HSS 129.01 is amended to read:

HSS 129.01 AUTHORITY AND PURPOSE. This chapter is promulgated under the authority of ss. 146.40(3) and (5) and 227.11(2)(a), Stats., to provide conditions of certification for instructional programs and competency evaluation programs for persons who work as nurse assistants in hospitals, nursing homes or facilities for the developmentally disabled ~~or~~ as home health aides with home health agencies or as hospice aides with hospices certified under 42 USC 1395 to 1395ccc, and conditions for including persons in the department's registry of nurse assistants and home health aides and hospice aides.

SECTION 3. HSS 129.02 is amended to read:

HSS 129.02 APPLICABILITY. This chapter applies to any facility, agency or other organization that proposes to train or undertake competency evaluation testing of nurse assistants ~~or~~ home health aides or hospice aides under a program certified by the department under this chapter, and to all persons automatically included or eligible for inclusion and requesting inclusion in the department's registry of nurse assistants and home health aides and hospice aides.

SECTION 4. HSS 129.03 (3) and (5) are amended to read:

HSS 129.03(3) "Client" means a person receiving care, treatment or diagnostic services from a hospital, nursing home, facility for the developmentally disabled ~~or~~ home health agency or hospice.

(5) "Competency evaluation program" means a testing program

for nurse assistants ~~or~~ home health aides or hospice aides that applies for certification under this chapter or is certified under this chapter and that consists of a written or oral examination and a skills demonstration examination.

SECTION 5. HSS 129.03(11m) and (11r) are created to read:

HSS 129.03(11m) "Hospice" means a hospice that is licensed under subch. IV of ch. 50, Stats., and that is certified as a provider of services under 42 USC 1395 to 1395ccc.

(11r) "Hospice aide" means an individual employed by or under contract with a hospice to provide hospice aide services under the supervision of a registered nurse. "Hospice aide" does not mean an individual who is licensed, permitted, certified or registered under ch. 441, 448, 449, 450, 455 or 459, Stats., or who is a volunteer.

SECTION 6. HSS 129.03(13) and (17) are amended to read:

HSS 129.03(13) "Instructional program" means a training program for nurse assistants ~~or~~ home health aides or hospice aides that applies for certification under this chapter or is certified under this chapter.

(17) "Registrant" means a nurse's assistant ~~or~~ home health aide or hospice aide included in the registry.

SECTION 7. HSS 129.05(1)(a) and (2)(c)4 are amended to read:

HSS 129.05 CERTIFICATION PROCEDURES. (1) APPLICATION. (a) Application for certification of an instructional program for nurse assistants ~~or~~ home health aides or hospice aides shall be made on a form provided by the department.

(2)(c)4 If at any time the department determines that a program has failed to comply with a requirement of this chapter, it may, after providing written notice, suspend or revoke certification of the program or impose a plan of correction on the program.

SECTION 8. HSS 129.06(3)(a) is amended to read:

HSS 129.06(3)(a) The instructor shall be a registered nurse licensed to practice in Wisconsin who has a minimum of 2 years of experience as an instructor of nursing practice or as an instructor of nurse assistants ~~or~~ home health aides or hospice aides.

SECTION 9. HSS 129.07(2)(b)(intro.), (c)(intro.), (d)(intro.), (e)(intro.), (f)2(intro.) and 3(intro.) and (g)7 are amended to read:

HSS 129.07(2)(b) Interpersonal communication and social interaction. (intro.) The program shall include the theory of and practice in communicating and interacting on a one-to-one basis with a client; serving as part of a team implementing client care objectives; demonstrating sensitivity to clients' emotional, social and psychological needs through directed interactions; and skills which enable expressions of age-appropriate behavior by allowing clients to make personal choices and by reinforcing behavior that supports a client's sense of dignity. A nurse's assistant ~~or~~, home health aide or hospice aide shall be able to:

(c) Basic nursing skills. (intro.) The program shall include the theory of and practice in basic nursing skills, including bed making, taking vital signs, measuring height and weight, caring for the client's environment, measuring fluid and nutrient intake and output, assisting in the provision of proper nutritional care, walking or transferring the client using body mechanics, and maintaining infection control and safety standards. A nurse's assistant ~~or~~, home health aide or hospice aide shall be able to:

(d) Personal care skills. (intro.) The program shall include the theory of and practice in basic personal care skills, including bathing, mouth care, grooming, dressing and toileting, and assisting with eating, hydration and skin care. A nurse's assistant ~~or~~, home health aide or hospice aide shall demonstrate an ability to:

(e) Basic restorative services. (intro.) The program shall include the theory of and practice in providing restorative services, including the application of assistive devices for ambulation, eating and dressing; maintenance of range of motion through appropriate exercises; proper turning and positioning both in bed and chair; proper transferring techniques; bowel and bladder training; and care and use of prosthetic devices such as hearing aids, artificial eyes and artificial limbs. A nurse's assistant ~~or~~, home health aide or hospice aide shall demonstrate the ability to:

(f)2(intro.) The nurse's assistant ~~or~~, home health aide or hospice aide shall demonstrate behavior that indicates he or she recognizes at least the following obligations in relation to clients' rights:

3(intro.) The nurse's assistant ~~or~~, home health aide or hospice aide shall demonstrate behavior that recognizes that

clients have rights and that the assistant or aide must respect those rights. The nurse's assistant ~~or~~, home health aide or hospice aide shall:

(g)7 The stress involved for the client, family and nurse's assistant ~~or~~, home health aide or hospice aide in caring for a client with dementia and techniques for coping with this stress.

SECTION 10. HSS 129.08(2)(b)2 and (c) are amended to read:

HSS 129.08(2)(b)2 The written and oral examinations shall be given in English, except that if a nurse's assistant ~~or~~, home health aide or hospice aide will be working in a provider setting in which the predominant language is other than English, the examination for that person may be given in the predominant language used in the facility.

(c) The competency evaluation program may develop an oral examination for nurse assistants ~~and~~, home health aides and hospice aides who have limited literacy skills. The oral examination shall cover the same subject areas that are included in the original written examination adapted for oral testing, and shall include a component to determine the assistant's or aide's ability to read basic, objective job-related information, such as reading a client's name band or a client's flow sheet.

SECTION 11. HSS 129.08(3)(a)4 is repealed and recreated to read:

HSS 129.08(3)(a)4 Basic restorative services. Skill demonstration exercises shall include:

- a. Ambulation;
- b. Positioning;
- c. Range of motion exercises; and
- d. Transferring.

SECTION 12. HSS 129.10(1), (2)(a) and (j) and (3)(b) and (5) are amended to read:

HSS 129.10 REGISTRY. (1) ESTABLISHMENT AND MAINTENANCE.
(a) The department shall establish and maintain a registry of persons who have satisfactorily completed a nurse's assistant ~~or~~, home health aide or hospice aide instructional program and competency evaluation program or only a competency evaluation program, or who otherwise meet the requirements of or are exempt under s. 146.40(2), Stats., and request inclusion in the registry.

(b) If an individual has satisfactorily completed in another state a nurse's assistant ~~or~~, home health aide or hospice aide instructional program and competency evaluation program, or only a competency evaluation program, which meets federal requirements for the program and which provides training and evaluation equivalent to Wisconsin's program, that individual shall be eligible for listing in the registry under par.(a).

(2)(a) Eligibility for employment in a department-approved hospital or a department-licensed nursing home or facility for the developmentally disabled, or with a department-licensed home health agency or a hospice certified under 42 USC 1395 to 1395ccc;

(j) Any finding by the department under s. 146.40(4r)(b), Stats., or, if appealed, by a hearing officer under s. 146.40(4r)(d), Stats., that the nurse's assistant ~~or~~, home health aide or hospice aide has neglected, abused or misappropriated the property of a client, and any statement by the affected nurse's assistant ~~or~~, home health aide or hospice aide under s. 146.40(4r)(e), Stats., disputing that finding.

(3)(b) A person who is eligible under sub.(1) for inclusion in the registry but for whom notification is not required under par.(a), or a hospital, nursing home, facility for the developmentally disabled ~~or~~, home health agency or hospice on behalf of that person, may apply to the department to include that person in the registry. Application shall be made on a form provided by the department.

(5) RELEASE OF REGISTRY INFORMATION. The registry shall serve as an official record of persons who are qualified by training and testing, or experience, to work as nurse assistants in hospitals, nursing homes or facilities for the developmentally disabled, ~~or~~ as home health aides with home health agencies or as hospice aides with hospices certified under 42 USC 1395 to 1395ccc. The department may use registry information in its surveys of facilities and agencies. The information that a person is included in the registry is public information. The information included in the registry about registrants is public information. The department shall respond promptly to inquiries concerning registry information from prospective employers and other parties. A written request for registry information shall be accompanied by a self-addressed, stamped envelope.

SECTION 13. HSS 129.11(1)(c) is repealed.

SECTION 14. HSS 129.11(1)(d) is renumbered HSS 129.11(1)(c).

SECTION 15. HSS 129.11(1)(e) is repealed.

SECTION 16. HSS 129.11(1)(f) to (h) are renumbered HSS 129.11(1)(d) to (f).

SECTION 17. HSS 129.11 (Note) is renumbered HSS 129.11 (Note #1).

SECTION 18. HSS 129.11 (Note #2) is created to read:

HSS 129.11 Note #2: As provided in s. 146.40(4m), Stats., an aggrieved party wanting to appeal a suspension or revocation of certification or the imposition of a plan of correction under s. HSS 129.05(2)(c)4 should ask the Department of Administration's Division of Hearings and Appeals in writing for a hearing. The address of the Department of Administration's Division of Hearings and Appeals is 5005 University Avenue, Suite 201, Madison, Wisconsin 53705-5400.

The rules contained in this order shall take effect on the first day of the month following publication in the Wisconsin Administrative Register as provided in s. 227.22(2), Stats.

Wisconsin Department of Health
and Social Services

By: 
Gerald Whitburn
Secretary

Dated: April 29, 1992

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