

## Chapter HSS 129

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

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**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, 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, home health aides and hospice aides.

**History:** Cr. Register, June, 1991, No. 426, eff. 7-1-91; emerg. am. eff. 10-1-91; am. Register, June, 1992, No. 438, eff. 7-1-92.

**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, 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, home health aides and hospice aides.

**History:** Cr. Register, June, 1991, No. 426, eff. 7-1-91; emerg. am. eff. 10-1-91; am. Register, June, 1992, No. 438, eff. 7-1-92.

#### **HSS 129.03 Definitions.** In this chapter:

(1) "Abuse" means any single or repeated act of force, violence, harassment, deprivation, neglect or mental pressure which reasonably could cause physical pain or injury, or mental anguish or fear.

(2) "Basic nursing course" means a course or combination of courses which contain the basic nursing skills, competencies and knowledges that the department is satisfied are generally equivalent in content to the items contained in s. HSS 129.07 (2).

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

(4) "Clinical setting" means a practice setting where care and treatment of clients occur.

(5) "Competency evaluation program" means a testing program for nurse assistants, 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.

(6) "Department" means the Wisconsin department of health and social services.

(7) "Employment" means working for another for compensation on a full-time, part-time, temporary, per diem, contractual or other basis.

(8) "Facility for the developmentally disabled" means a residential facility with a capacity of 3 or more clients in which nursing care is provided to any client and which primarily serves clients who are developmentally disabled and who require and receive active treatment. In this subsection, "active treatment" has the meaning prescribed in s. HSS 134.13 (2).

(9) "Handicapping condition" means a physical or mental impairment which makes ability to care for oneself unusually difficult or limits the capacity to work.

(10) "Home health agency" has the meaning specified in s. 141.15 (1) (a), Stats.

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

(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.

(12) "Hospital" has the meaning specified in s. 50.33 (2), Stats.

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

(14) "Nurse's assistant" means an individual who performs routine patient care duties delegated by the registered nurse or licensed practical nurse who supervises the individual, for the direct health care of a client. "Nurse's assistant" does not mean a person who is licensed, receives a permit, is certified or is registered under ch. 441, 448, 449, 450, 451, 455 or 459, Stats., or an individual whose duties primarily involve skills that are different from those taught in instructional and competency evaluation programs certified under s. HSS 129.05. In this subsection, "registered nurse" means a nurse licensed as a registered nurse under s. 441.06, Stats., or who has a temporary permit under s. 441.08, Stats., and "licensed practical nurse" means a nurse who is licensed or has a temporary permit under s. 441.10, Stats.

(15) "Nursing home" has the meaning specified in s. 50.01 (3), Stats.

(16) "Program" means an instructional program, a competency evaluation program or an instructional and competency evaluation program, or the facility, agency or other organization or individual that administers the instructional, competency evaluation or instructional and competency evaluation program.

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

(18) "Registry" means the department's record, in the form of a list, of persons who have successfully completed an instructional and competency evaluation program or a competency evaluation program or are otherwise eligible under s. HSS 129.10 (3) to be included in the list.

(19) "Student nurse" means an individual who is currently enrolled in a school for professional nurses or a school for licensed practical nurses that meets standards established under s. 441.01 (4), Stats., and ch. N 1, or who has successfully completed the course work of a basic nursing course of the school but has not successfully completed the examination under s. 441.05 or 441.10 (2), Stats.

**History:** Cr. Register, June, 1991, No. 426, eff. 7-1-91; emerg. am. (3), (5), (13) and (17), cr. (11m) and (11r), eff. 10-1-91; am. (3), (5), (13) and (17), cr. (11m) and (11r), Register, June, 1992, No. 438, eff. 7-1-92.

**HSS 129.04 Waivers and variances. (1) DEFINITIONS.** In this section:

(a) "Variance" means the granting of an alternate requirement in place of a requirement of this chapter.

(b) "Waiver" means the granting of an exemption from a requirement of this chapter.

(2) **REQUIREMENTS FOR WAIVERS OR VARIANCES.** A waiver or variance may be granted if the department finds that the waiver or variance will not adversely affect the health, safety or welfare of any client and that:

(a) Strict enforcement of a requirement would result in unreasonable hardship on the instructional program or competency evaluation program; or

(b) An alternative to a rule, including new concepts, methods, procedures, techniques, equipment, personnel qualifications or the conducting of a pilot project, is in the interest of more effective training or testing programs or management.

(3) **PROCEDURES.** (a) *Requests.* 1. All requests for waiver of or variance from a requirement of this chapter shall be made in writing to the department, specifying the following:

- a. The rule from which the waiver or variance is requested;
- b. The time period for which the waiver or variance is requested;
- c. If the request is for a variance, the specific alternative action which the program proposes;
- d. The reasons for the request; and
- e. Assurances that sub. (2) would be satisfied.

2. A request for a waiver or variance may be made at any time.

3. The department may require additional information from the program prior to acting on the request.

(b) *Grants and denials.* 1. The department shall grant or deny in writing each request for a waiver or variance. The notice of denial shall contain reasons for the denial. If a notice of denial is not issued within 60 days after the receipt of a complete request, the waiver or variance shall be automatically approved.

2. The terms of a requested waiver or variance may be modified upon agreement between the department and a program.

3. The department may impose whatever conditions it considers necessary on the granting of a waiver or variance.

4. The department may limit the duration of any waiver or variance.

(c) *Hearings.* 1. A program may contest the denial of a requested waiver or variance by requesting a hearing under ch. 227, Stats., as provided in s. HSS 129.11.

2. The program shall sustain the burden of proving that the denial of a waiver or variance was unreasonable.

(d) *Revocation.* The department may revoke a waiver or variance if:

1. It is determined that the waiver or variance is adversely affecting the outcome of the program;

2. The program has failed to comply with the waiver or variance as granted;

3. The program notifies the department in writing that it wishes to relinquish the waiver or variance and be subject to the rule previously waived or varied; or

4. Required by a change in law.

History: Cr. Register, June, 1991, No. 426, eff. 7-1-91.

**HSS 129.05 Certification procedures.** (1) **APPLICATION.** (a) Application for certification of an instructional program for nurse assistants, home health aides or hospice aides or a competency evaluation program for nurse assistants or home health aides shall be made on a form provided by the department.

Note: To obtain a copy of the application form for certification of instructional programs or the application form for certification of competency evaluation programs, write to the Bureau of Quality Compliance, Division of Health, P.O. Box 309, Madison, Wisconsin 53701.

(b) The applicant shall provide any additional information requested by the department during its review of the application.

(c) The program shall have an individual designated as responsible for the operation of the program and responsible for compliance of the program with all applicable provisions of this chapter, and that designation shall be noted on the application for certification. When the designee changes, the program is responsible for notifying the department within 10 days after the change takes place. The program shall provide written notification to the department as soon as the identity of the permanent

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replacement designee is known. A program may not operate without this designated individual.

(d) All aspects of the program shall be in compliance with all applicable federal, state and local laws.

(2) ACTION BY THE DEPARTMENT. (a) *Initial review of an instructional program.* 1. Upon receiving an application for certification of an instructional program, the department shall review the program to determine the applicant's compliance with ss. HSS 129.06 and 129.07. The department shall review the applicant's program for the following:

a. Program content, length and ratio of classroom instruction to skills training;

b. Qualifications of instructors;

c. Type of clinical supervision;

d. Provision for written evaluation of the program;

e. Reasonable accommodations for students and prospective students with handicapping conditions;

f. Criteria for successful completion; and

g. Appropriate furnishing of physical facilities to meet classroom instruction and skills training needs.

2. Within 90 days after receiving an application for certification of an instructional program, the department shall either approve the application and issue a certificate of approval or deny the application. If the application for certification is denied, the department shall give the applicant reasons, in writing, for the denial and describe the process for appealing the denial.

(b) *Initial review of a competency evaluation program.* 1. Upon receiving an application for certification of a competency evaluation program, the department shall investigate the program to determine the applicant's compliance with s. HSS 129.08. The department shall review the applicant's program for the following:

a. Qualifications of the examiners;

b. Examples of test questions from the written or oral examination and the skills demonstration examination;

c. Standards for determination of successful and unsuccessful completion of the written or oral and skills demonstration examinations;

d. Reasonable accommodations for students and prospective students with handicapping conditions;

e. Effective procedures for maintenance of the security of the written or oral and skills demonstration examinations; and

f. Provision for written evaluation of the program on an annual basis.

2. The program shall have physical facilities that are appropriately furnished, safe and otherwise adequate to meet the written and oral examination and skills demonstration needs of the program.

3. Within 90 days after receiving an application for certification of a competency evaluation program, the department shall either approve the application and issue a certificate of approval or deny the application. If the application for certification is denied, the department shall give the applicant reasons, in writing, for the denial and describe the process for appealing the denial.

(c) *Post-approval review and monitoring.* 1. The department shall conduct a post-approval review of a program within one year after the date on which the department initially approved the program. The department may conduct an on-site review of the program at that time or at any other time to verify that the program remains in compliance with this chapter.

2. The program shall submit an annual report to the department on a form provided by the department at least 30 days before expiration of the anniversary date of the approval and shall provide any additional information requested by the department during its review of the program. The program shall provide reasonable means for the department to examine records and gather requested information.

3. Any substantial change in the program shall be reported to the department in writing within 10 days after it takes place. In this subdivision, "substantial change" means any change in the program designee under s. HSS 129.05 (1) (c), any change in primary instructor under s. HSS 129.06 (1) (d), any change in the training course instructor under s. HSS 129.06 (3) (b), any change in curriculum under s. HSS 129.07 (2), any change in examiner under s. HSS 129.08 (1) (b), any change in the competency examination under s. HSS 129.08 (2) and (3) or any change in the program's site under s. HSS 129.07 (3) (a) 5 or 129.08 (4) (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.

**History:** Cr. Register, June, 1991, No. 426, eff. 7-1-91; emerg. am. (1) (a), eff. 10-1-91; am. (1) (a) and (2) (c) 4., Register, June, 1992, No. 438, eff. 7-1-92.

**HSS 129.06 Standards for instructors of instructional programs.** (1) **PRIMARY INSTRUCTOR.** (a) The primary instructor for an instructional program shall be a registered nurse licensed to practice in Wisconsin who has a minimum of 2 years of experience working as a registered nurse.

(b) The primary instructor shall provide to the program a resume documenting his or her education and clinical experience in meeting clients' psychosocial, behavioral, cognitive and physical needs, and the program shall maintain that resume on file and shall include a copy of that resume with its application for certification.

(c) The primary instructor shall attend a training course for instructors that is approved by the department under sub. (3), except that the department may waive this requirement for an instructor who has had a substantially equivalent course or substantially equivalent training or clinical experience.

(d) When the program loses a primary instructor, the program shall notify the department of the loss within 10 days after it takes place. The Register, June, 1992, No. 438

ing program or a competency testing program, the department shall review the applicant's program for the following:

1. For an instructional and competency testing program, classroom and clinical setting instruction to total a 75-hour curriculum;
2. For an instructional and competency testing program, curriculum content that includes basic nursing skills, personal care skills, basic restorative services, interpersonal communication and social interaction, and client rights;
3. An instructor or examiner who is a registered nurse;
4. An evaluation process which includes a written or oral testing component and a skills demonstration component along with criteria for successful completion of the program; and
5. Adequate physical facilities and equipment available for use by the program.

(b) Within 90 days after receiving an application for approval of a comparable instructional and competency testing program or a competency evaluation program, the department shall either approve the application or deny the application. If the application for approval is denied, the department shall give the applicant reasons, in writing, for the denial and describe the process for appealing the denial.

(c) An instructional and competency testing program or a competency testing program is eligible to be considered for approval as a comparable instructional and competency evaluation program or a competency evaluation program if the program was in operation prior to October 1, 1990.

History: Cr. Register, June, 1991, No. 426, eff. 7-1-91.

**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, 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, 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) **CONTENT OF REGISTRY.** Information in the registry shall include the registrant's:

(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;

(b) Social security number;

(c) Full name, including middle initial;



- (d) Mailing address;
- (e) Date of birth;
- (f) Date of completion of instructional program, if applicable;
- (g) Date of completion of competency evaluation program, if applicable;
- (h) Competency evaluation program number, if applicable;
- (i) Date of completion of program approved under s. HSS 129.09, if applicable; and
- (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, 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, home health aide or hospice aid under s. 146.40 (4r) (e), Stats., disputing that finding.

(3) NOTIFICATION OR APPLICATION. (a) The examiner of a competency evaluation program shall notify the department when an individual has satisfactorily completed the program. The notification shall be in writing on a form provided by the department and shall be submitted to the department within 30 days after the individual satisfactorily completes the program.

(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, 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.

Note: To obtain a copy of the notification/application form for adding a nurse's assistant, home health aide or hospice aide to the registry, write to the Bureau of Quality Compliance, Division of Health, P.O. Box 309, Madison, Wisconsin 53701.

(4) ACTION BY THE DEPARTMENT. (a) Upon receiving an application under sub. (3) (b) to list a person in the registry, the department shall review the application and make whatever inquiries are necessary to determine if the person is eligible to be included in the registry.

(b) Within 30 days after receiving an application, the department shall either approve the application and include the person in the registry or deny the application. If the application for inclusion is denied the department shall give the person, or the facility or agency that submitted the application on behalf of that person, reasons, in writing, for the denial.

(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, 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



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prospective employers and other parties. A written request for registry information shall be accompanied by a self-addressed, stamped envelope.

**Note:** Written requests for registry information should be sent to the Bureau of Quality Compliance, Division of Health, P.O. Box 309, Madison, Wisconsin 53701.

**History:** Cr. Register, June, 1991, No. 426, eff. 7-1-91; emerg. am. (1) (a) and (b), (2) (a) and (j), (3) (b) and (5), eff. 10-1-91, am. (1), (2) (a), (j), (3) (b) and (5), Register, June, 1992, No. 438, eff. 7-1-92.

**HSS 129.11 Appeals.** (1) An aggrieved party may appeal to the department's office of administrative hearings any of the following:

(a) A denial of a request for a waiver or variance under s. HSS 129.04 (3) (b) or the revocation of a waiver or variance under s. HSS 129.04 (3) (d);

(b) A denial of an application for certification of an instructional program under s. HSS 129.05 (2) (a) 2;

(c) A denial of an application for certification of a competency evaluation program under s. HSS 129.05 (2) (b) 3;

(d) A denial of an application under s. HSS 129.06 (3) for approval of a training course for primary instructors;

(e) A denial of an application under s. HSS 129.09 (2) (b) for approval of a comparable program; or

(f) A denial under s. HSS 129.10 (4) (b) of an application to include a person in the registry.

(2) An appeal shall be in writing and shall take the form of a request for a hearing. The request for a hearing shall be filed with the department's office of administrative hearings no later than 30 days after the date of the denial, suspension or revocation, and is considered filed when received by that office.

**Note: 1:** The address of the Department's Office of Administration Hearings is P.O. Box 7875, Madison, Wisconsin 53707.

**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.

**History:** Cr. Register, June, 1991, No. 426, eff. 7-1-91; r. (1) (c) and (e), renum. (1) (d) and (f) to be (1) (c) to (f), Register, June, 1992, No. 438, eff. 7-1-92.